

Evaluation of Espresso Rule

Issue

Should UCSF modify the existing policy that limits the maximum amount of effort allowable on sponsored projects to 95%?

UCSF Background

In 2010, UCSF Internal Audit conducted a review of faculty commitment in response to a high risk exposure that was then facing the higher education industry from the Office of Inspector General. In response to the recommendation of the Internal Audit and consistent with other institutions across the nation, UCSF issued the attached policy communication “Allowable Effort on Federally Funded Sponsored Projects” as a joint statement from the Office of Academic Affairs, the Office of the Controller, and Office of Sponsored Research on July 20, 2011 (see Appendix A). This policy limits the maximum faculty effort allowable on sponsored projects to 95%. This 2011 policy updated a similar policy that was established by UCSF in 1996.

The School of Medicine refers to this effort funding limitation as the “Academic Senate 95% Rule” (see Appendix B). Note, the SOM policy erroneously refers to the previous 1996 policy instead of the current policy from 2011. Further, they have established a process whereby exceptions can be sought on an annual basis from the Vice Chancellor of Academic Affairs.

Over the last 4 effort reporting periods, UCSF has 138 and 310 In Residence and Adjunct faculty, respectively, charged 100% to sponsored projects, of which 74 and 190, respectively, were charged 100% to Federal funds.

It is also important to note that, currently, UCSF effort reporting guidelines establish a tolerance of 5% for accuracy between unique activities.

Federal Regulations

Federal regulations have always required institutions to have internal controls to support the distribution of the employee's compensation salary among specific activities, such as various Federal awards, non-Federal awards, indirect cost activity, or unallowable activity. (2 CFR §200.430 (i) (vii)) Further, Federal regulations have always defined the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards, including the development of supporting data, as indirect cost activity. (2 CFR §200.460)

It is these regulations that drove institutions in the 1990's to adopt rules similar to UCSF's stating the maximum effort allowed on sponsored activity is 95%. At the time of the Internal Audit in 2010, the HHS OIG was conducting significant number of audits reviewing the allowability of salary charged to federal awards. Most of these audits focused on allowability of administrative activities, such as lectures, consulting with students, attending meetings, etc.

In 2013, higher education had the opportunity to negotiate changes to federal regulations with the drafting of the Uniform Guidance. The Office of Management and Budget was committed to alleviating administrative burden on faculty conducting Federal research through the new Uniform Guidance. Two new key principles were introduced into the federal regulations, in addition to the existing principles above, as follows:

- Recognition that teaching, research, service, and administration are often inextricably intermingled in an academic setting; when recording salaries charged to Federal awards,

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a precise assessment of contributing costs factors is therefore **not always feasible, nor is it expected**. (2 CFR §200.430 (i) (x))

- Allowable charges to Federal awards may include delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences. (2 CFR §200.430 (h) (1) (i))

It is also important to note that the Uniform Guidance no longer requires effort reporting as the required documentation support for salary charged to Federal awards.

Peer Assessment

Even though the Uniform Guidance has provided higher education institutions with the opportunity to reevaluate long-standing policies that have been implemented to safeguard the institutions from the noncompliance risks under Federal regulations with the objective of reducing administrative burdens, most institutions are moving very slowly in enacting policy changes. For instance, to date, only 2 schools outside the FDP pilot schools have enacted alternatives to effort reporting.

So, it is not surprising, when evaluating if any schools have changed the long-standing policy of 95% maximum effort, only 2 schools were identified: University of Washington and University of Illinois. The University of Washington policy has been included as Appendix C. All UC Campuses still have 95% maximum effort policy in place.

The schools that have changed their policy still abide the Federal regulations: to reasonably allocate salary between activities, including unallowable and indirect. They are simply leaving the definition of reasonable allocation to the professional judgment of their faculty, given that there is recognition that “precise assessment of contributing costs factors is therefore **not always feasible, nor is it expected**”.

Recommendation

As a leader in our field, UCSF should embrace the spirit of the Uniform Guidance and establish processes that reduce administrative burden and empower our faculty members. We should modify our 95% maximum effort policy to a 100% Sponsor Funded Faculty Policy. This policy change shifts the focus from a forced limitation on the funding to an accurate evaluation of the Faculty’s efforts; it would only require unallowable activities, such as proposal activities, to be funded from non-sponsored funding sources. The policy would focus on the concepts of reasonable allocations versus precision. UCSF should continue to promote the concept of 5% tolerance threshold in viewing reasonableness. It also makes it clear that the department is required to fund the non-sponsored activities that are required of the faculty member. OSR and CGA can support this policy change by:

- OSR can build policy education into its existing training plans regarding faculty support reviews
- CGA can train departments on how to utilize the 100% funded faculty report
- CGA can also conduct annual compliance monitoring review to identify violations

A summary of the risk-benefits of a policy change follows:

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- UCSF would be reducing current risk associated with a policy statement that limits faculty effort for which we have no current monitoring of policy compliance but for which we have faculty that are not in compliance, which may or may not be approved or legitimate exceptions.
- UCSF could be assuming some risk for be on the leading edge of enacting Uniform Guidance opportunities when it is unknown how the Federal audit community is planning to enforce these new regulations.
- UCSF would gain relief from unilateral rule that creates undue burden on some faculty.
- Not all faculty members would view the new rule as empowering them to exercise their professional judgement in documenting the allocation of their effort; some faculty will see these change as shifting burden to them. However, this rule is not actually changing responsibilities in this regard.
- It would eliminate the inherent conflict between today's policy and our tolerance threshold of 5%.

It does not appear that 2011 policy revision was taken before the Academic Senate, but the original policy in 1996 appears to have been discussed and adopted by the Academic Senate. Therefore, there needs to be consideration if this proposed policy revision needs to be brought before the Academic Senate.

This communication was directed to all Faculty members, Department Managers, Financial Administrators, RSAs, Post-Award Administrators, and all effort certifiers for federally funded sponsored projects on July 20, 2011.

Allowable Effort on Federally Funded Sponsored Projects

This communication superseded the October 31, 1996 memo from Dorothy Bainton, Vice Chancellor Academic Affairs, entitled "UCSF Academic Policy: Maximum Salary Charge to Extramural Sponsored Research".

The following information clarifies current UCSF campus practices regarding effort commitment on sponsored projects:

Per academic policy APM 110, faculty is responsible for (1) teaching, (2) research and other creative work, (3) other professional activity, and (4) University and public service.

Some sponsor agencies, such as agencies of the federal government (e.g. NIH), prohibit faculty from devoting 100% of their effort to sponsored activities when their academic appointment requires them to be engaged in non-sponsored activities. As such, the following activities must be paid from sources other than sponsor funds unless they are specifically approved activities of a sponsored project:

- teaching
- clinical and professional activities such as seeing patients outside of the context of a sponsored human subject study, patient consultation, patient care, etc.
- university and public service (University service includes institutional governance, service on institutional committees, and department administrative activities)
- preparation of new or competing proposals (unless current funding allows it, such as a K award)

Please note that some contracts and grants, most notably mentored K awards, allow or require faculty to participate in teaching/mentoring and/or clinical activities as part of the grant objectives.

Faculty and department administrators should regularly review proposed effort to ensure that sponsor terms and conditions are met, with particular attention to the effort spent on sponsored activities in relation to the other activities required of a faculty member. Over the course of a fiscal year, consideration for the amount of time spent preparing competitive proposals or working on institutional and department administrative work must be evaluated to ensure that funds are available to support these activities from non-sponsored sources:

- faculty in the In Residence series must have at least 5% effort from a non-contract or grant source;
- faculty in the Adjunct series must have at least 5% effort from a non-contract or grant source in any quarter, in which he/she prepares a proposal.

Who to Contact

Questions regarding effort reporting should be directed to post award compliance at EMFCompliance@ucsf.edu

References

FAQs relating to effort reporting are available on the Controller's website at

<http://controller.ucsf.edu/pam>

Academic Senate 95% Rule

Maximum Salary Charge to Extramurally Sponsored Research

Federal regulations require that a faculty member's compensation be apportioned based on the "period of performance under sponsored agreements." It is recognized that it can be difficult to distinguish between research, teaching, and service. Thus, the Federal Government allows a degree of tolerance. For In-Residence faculty where the majority of salary support comes from non-State funds, and frequently from contracts and grants, a maximum of 95% of salary may be charged to extramurally sponsored projects. Permission may be given by the Vice Chancellor of Academic Affairs to exceed this limit for unusual circumstances on a year-to-year basis. The Department Chair must verify in writing that the faculty member will have other non-research activities reduced for the relevant period of time.

Excerpted from a UCSF memo dated 10/31/96 from D. Bainton

VAMC Faculty and 95% Rule

This is to clarify the Academic Policy for In Residence faculty stating: where the majority of funding comes from non state funds, and frequently from contracts and grants, a maximum of 95% of salary may be charged to extramurally funded projects. The remaining 5% of their appointment is meant to be applied towards teaching effort, service and administrative work.

The language as noted above simply refers to salary. For UCSF faculty with joint appointments at the VAMC, salary is defined as being their combined income from both UCSF and the VA sources. When new faculty are appointed at the VAMC their offer letter indicates that their total annual compensation is based upon both VA FTE and UCSF funding sources.

A breakdown of these joint appointments list teaching effort on the VA side. Teaching effort at the VA is monitored via a Physician Delineation of Time and Certification Form. This form is completed and certified by the Faculty and Medical Service Chief (Vice Chair of Medicine).

David Gardner in his role as Chair of the Academic Senate has confirmed that VAMC faculty are in compliance with the In Residence academic personnel policy and that the way the VA administers the teaching component meets the spirit of the 95% rule.

Letter from Jenny Schreiber, Director of Human Resources, Department of Medicine, 4/20/11

University of Washington

100% Sponsor Funded Faculty

Faculty supported 100% from grant funds, including cost share commitments, pose a high audit risk to the University. While it is acknowledged that many of the UW's faculty truly devote 100% of their time to grants, it is highly recommended they periodically consult with their department administrator and chair to discuss and determine if effort performed on non-grant activities, though seemingly incidental, is significant enough to require the department to provide non-grant funds to cover these activities.

The following provides examples of activities which need to be funded by non-grant sources and those activities that may be funded by grant funds. Note, these are merely examples and do not represent an all-inclusive list.

Activities that require non-grant funding:

- Proposal preparation (unless supported by a K Award or non-federally funded grant and the sponsor approves proposal preparation time by published policy.)
- Instruction
- Administration (includes serving on committees)
- Non-sponsored research
- Service
- Clinical activities

Non-research activities that may be charged to sponsored projects (these activities must be directly related to and/or contribute to the goals of the research):

- Delivering special lectures regarding aspects of research outcomes
- Writing reports and articles
- Participating in appropriate seminars
- Attending meetings and conferences
- Consulting with colleagues and/or graduate students

Departments are responsible for oversight to ensure faculty members have no required activities in the department when they are 100% grant supported. When reviewing faculty commitments, consider cost share as part of the 100% sponsor funded activity.

In addition, departments are responsible for providing non-grant funding to cover any non-grant work that is not considered *de minimus*.

It is highly recommended departments develop a budgeting plan for the purpose of funding the non-grant activities noted above. For example, one plan could be to set aside a specific percentage of the department budget for faculty salaries to cover these activities, e.g. 5%. It is important to note that this approach would only apply to the budgeted amount. The percent of salary charged to non-grant funds should represent the **actual** effort devoted to the non-grant activities.

A resource for departments to identify impacted faculty is the 100% Sponsor Funded Faculty report.