

**Breakout Session**  
**Institutions of Higher Education**

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- Senior Counsel in Feldesman Tucker Leifer Fidell LLP’s Federal Grants, Health Law, and Litigation & Government Investigations practice groups.
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- Former Senior Counsel for HHS OIG grant and contract fraud matters. Recipient of 4 awards for leadership and cases related to Grants and Contracts at HHS OIG.
- Certified Grants Management Specialist (NGMS); Certified Corporate Compliance and Ethics Professional (SCCE); Certified Fraud Examiner (ACFE).

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- Advises Health Centers and Ryan White HIV/AIDS Program providers with matters of contracting and affiliation that implicate federal regulatory requirements.
- Assists government contractors with various contracting matters, including compliance, claims, small business matters, and disputes.
- Prior to joining Feldesman Tucker, Scott was a procurement attorney with the United States Navy, counseling Navy contracting officers and program managers on, among other things, federal acquisition laws and regulations, claims, and bid protests.
- Co-Chair of the American Bar Association, Public Contract Law Section's Grant Law Committee and member of the National Grant Management Association ("NGMA") Board of Directors.

# AGENDA

(1) Context: IHE Grants History and Perspective

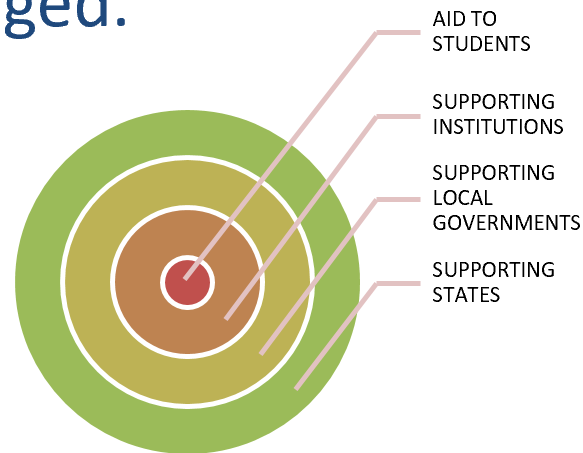
(2) Grant Management Considerations for IHEs

(3) Special Considerations for Research Grants

(4) Overview: Higher Education Emergency Relief Fund

# CONTEXT: LEGAL FRAMEWORK FOR FEDERAL EDUCATION FUNDING

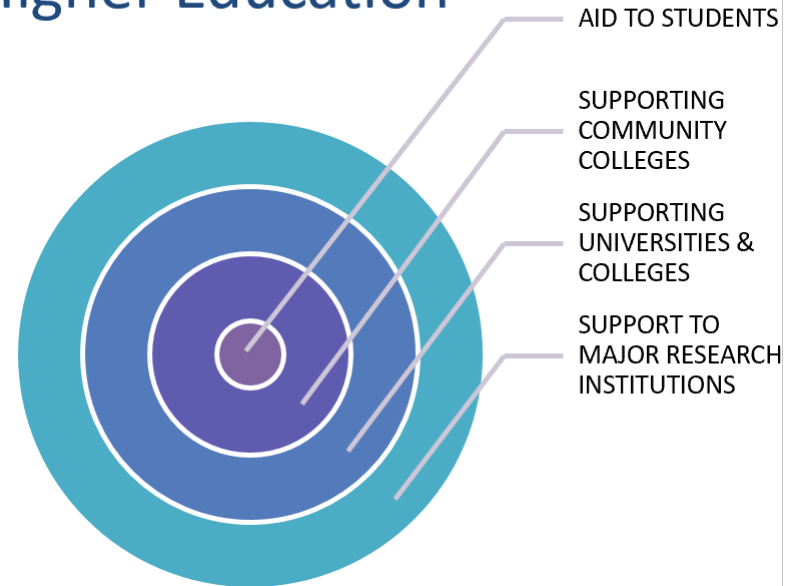
Over time, the relationship between the federal government and education institutions of varying levels has changed.



# CONTEXT: FEDERAL FUNDING TO HIGHER EDUCATION

- Federal higher education policies have usually been implemented through appropriations. The Morrill Act of 1862 strengthened the budding network of state universities by granting public lands. Federal support for higher education expanded greatly during World War II. Post WWII brought a surge in federal support for research, particularly military research to support the cold war efforts of the nation.
- The next major milestone in federal support for higher education was the passage of the Higher Education Act of 1965. Since the passage of the Higher Education Act of 1965, financial aid for students has been central to federal support for postsecondary education in the nation.

## Key Facts About Federal Funding in Higher Education





# CONTEXT: CATEGORIES OF FEDERAL SUPPORT TO IHE

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- **Pell Grants and other financial aid grants** are the largest area of funding from the federal government.
- **Research** funding in the form of grants, contracts, and cooperative agreements supporting medicine, science, and engineering is the next largest area. The federal government is the largest funder of such research and development in the United States.
- **Veterans educational benefits** is the third-largest category of federal higher education.
- **General purpose** appropriations exist for military academies, historically black colleges and universities, land grant institutions, and a few other specialized institutions.
- **Other grant programs** administered by IHE include health centers, day care, hospitals, and emergency aid.

# DIFFERENCES IN TYPES OF GRANTS THAT IHES MAY RECEIVE – SERVICE DELIVERY / RESEARCH

Compare types of grants. SAMHSA's efforts in schools and on college campuses include:

- SAMHSA's underage drinking prevention campaign; Project AWARE grants to local and state educational agencies;
- Safe Schools/Healthy Schools resources for reducing violence and promoting access to mental health services;
- Funding systems of care for students with serious emotional disturbance;
- Mental Health First Aid training for school personnel and other adults;
- The Garrett Lee Smith Campus Suicide Prevention Program; and
- Support to Centers dealing with mental health and substance abuse

Some of the service grants above could fund services to students on college campuses with mental health issues. Those grants are different than the NIH research grant that funded the research that resulted in a report titled: "Addressing collegiate mental health amid COVID-19 pandemic."

# CONTEXT: FEDERAL PANDEMIC ASSISTANCE FOR HIGHER EDUCATION

Colleges and universities are uniquely vulnerable to the impact of the COVID-19 pandemic.

Here we briefly summarize the funding pools created to benefit higher education institutions in the CARES Act. Of the \$13.95 billion the CARES Act awarded to colleges and universities, 90 percent of the funds are distributed directly to schools via the Title IV distribution system.

Each state received an amount based primarily on its population, and some governors may direct more to higher education than others. Additionally, some other sources of supplemental funding exist for specific services and populations.

Funding Pool Specifics	Enrollment Formula Funds	Governors' Education Relief Fund	Additional Minority Serving Institutions Funding	Supplementary Emergency Funding
Total Amount	\$12.56B	\$2.95B	\$1.05B	\$349M

# AGENDA

(1) Context: IHE Grants History and Perspective

(2) Grant Management Considerations for IHE

(3) Special Considerations for Research Grants

(4) Overview: Higher Education Emergency Relief Fund

# “BASIC” GRANT MANAGEMENT CONSIDERATIONS

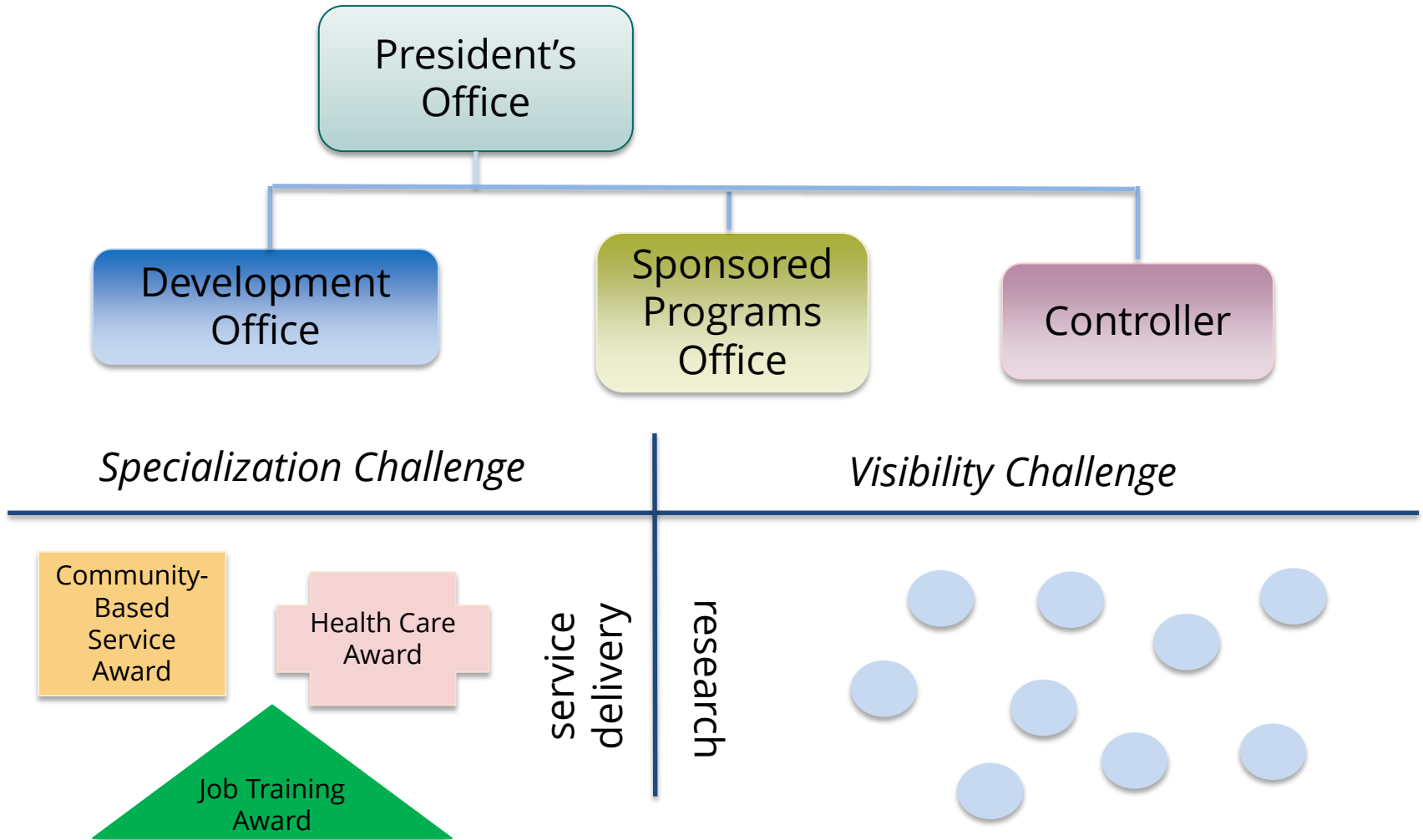
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- Structural Challenges
- Time and Effort in the IHE Context
- IHE-Specific Items Throughout the Uniform Guidance (briefly)
- False Claims – Appealing Targets

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# Structural Considerations

# INTERNAL STRUCTURAL CONSIDERATIONS



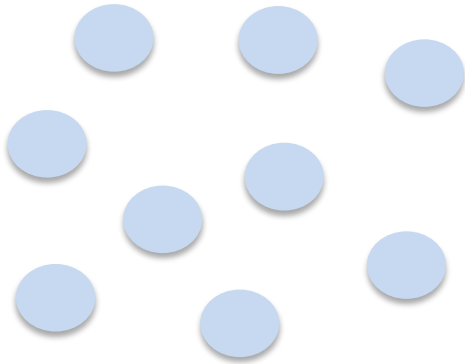
# RESEARCH SIDE

Sponsored  
Programs  
Office

Controller

*Visibility Challenge*

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## Challenges:

- Researcher “Leverage”
- Limited Researcher Attention to Compliance
- Researcher Entrepreneurial Initiative

## Historical Strategies:

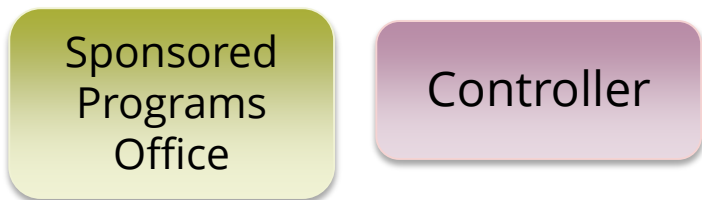
- Centralization (Procurement / Grant Management Admin)
- Compliance Culture
- Policies / Procedures / Training
- Internal Reviews

## Additional Strategies:

- Embedded Expertise at Departmental Level
- Electronic Workflow Visibility



# SERVICE DELIVERY SIDE



## *Specialization Challenge*

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## Challenges:

- Program Specialization (Culture)
- Federal Compliance Expectations (Culture)
- Tension between project personnel and SPO/University Standard Systems

## Historical Strategies:

- Let's Discuss

## Additional Strategies:

- Flexibility and Coordination between Project Leadership and SPO/Controller

# EXTERNAL STRUCTURAL CONSIDERATIONS CONSORTIUM AWARDS / SUBAWARD

- FDP sample documents are designed to be brief and efficient for use among similar entities (<https://thefdp.org/default/subaward-forms/>). Standardized Agreement:
  - Cover form: Description of prime award and basic nature of agreement;
  - Attachment 1: Basic certifications and assurances (e.g., Byrd Anti-Lobbying, Whistleblower protection under 41 U.S.C. 4712, Subpart F audit obligations).
  - Attachment 2: Flow down of prime award terms, Data rights and sharing (modifiable), Copyrights (modifiable), FCOI policy certification, reference to Human Subjects and Animal Welfare Requirements, Plus blank space for “Additional Terms.”
  - Attachments 3A and 3B: Points of contact.
  - Attachment 4: Reporting and Prior Approval Requirements – Plus blank space for special terms.
- Reasonable description of:
  - Federal award basic information.
  - Cost-reimbursement concept.
  - Points of Contact.
- Insufficient detail or potentially inappropriate standard terms for:
  - Invoicing and payment (including a clear disallowance mechanism).
  - Termination (no statement re for cause / without cause with only 30 days notice).
  - Research “ancillary/additional” compliance requirements (e.g., IRB oversight, HIPAA, IP rights allocations, publication coordination, etc.).

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# **Time and Effort in the IHE Context (A Special Challenge)**

# CHALLENGES THAT IHE FACE ARE SIMILAR TO OTHER RECIPIENTS: WHAT TYPES OF ISSUES STAND OUT?

- Recordkeeping
- Program Income
- Matching and Cost Sharing
- Financial Reporting
- **Time and Effort Reporting**
- Closeout, Suspension, and Termination
- Limits on Total Payments to Grantees
- Property Acquisition and Management
- Performance Reporting

Why do IHE often have audits/investigations related to T&E?

Examples of major settlements with government include the University of Florida, Northwestern University

# WHAT TIME AND EFFORT DOCUMENTATION IS ABOUT

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- Fundamentally, Time and Effort documentation is about equitable distribution of shared costs.
- Consider the general standard for such distribution at 2 C.F.R. § 200.405(d):

Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then . . . The costs may be allocated or transferred to benefitted projects on any reasonable documented basis. . .

# THE UNIFORM GUIDANCE

## 2 C.F.R. § 200.430(i)

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Time and Effort Documentation for allocation of personnel expenses (2 C.F.R. § 200.430(i)) must:

- *Accurately reflect the work performed*
- Be supported by a system of internal control that provides a *reasonable assurance* that charges are “accurate, allowable, and properly allocated”
- Reflect total activity of the individual’s compensated time (representation as percentage ok – in fact, best practice)

# TIME AND EFFORT UNDER (PRIOR) OMB CIRCULAR A-21

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Basic Concepts: Same as Uniform Guidance:

- It is about breaking up the documented payroll costs equitably among benefitting activities and documenting how you did so.

Specific Criteria (App. B, ¶ J.10.b.(2)):

- Payroll distribution must be incorporated into institution's official records
- Must include "after-the-fact confirmation or determination" and such confirmation must entail confirmation by "responsible persons with suitable means of verification that the work was performed."
- Covers all activities of employee necessary to accurately allocate costs to awards and F&A pool(s).
- Initial charging based upon estimates ok, so long as "significant changes" in actual performance are identified and reconciled.

# OMB CIRCULAR A-21

## EXAMPLES OF ACCEPTABLE METHODS

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### Plan-Confirmation (Common for IHEs):

- Budgeted/planned effort entered into records
- Covers all activities for which compensated (including all awards and F&A activities)
- Alterations if “significant change in the employee’s work activity”
- At least annually, “a statement will be signed by the employee, [PI], or responsible official(s) using suitable means of verification that the work was performed.”
- Component of system for “independent internal evaluation” to ensure integrity



# OMB CIRCULAR A-21

## EXAMPLES OF ACCEPTABLE METHODS

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### After-the-Fact Activity Records:

- “After-the-fact reporting of the percentage distribution of activity of employees” (estimates ok for billing if final reconciliation).
- Covers all compensated time of employee and addresses all activities to which allocated (awards, F&A activities, and non-federal activities).
- Signed by employee or, PI, or responsible official(s) “using a suitable means of verification that the work was performed.”
- Reports for “professorial and professional staff” each academic term (at least every six months). Other employees no less frequently than monthly.

### Multiple Confirmation Records:

- Separate systems for direct and indirectly charged activities.
- Generally the same notions of verification as above, with report periodicity of an academic term (or at least every six months).

# COMPARE TO (PRIOR) OMB CIRCULAR A-122 STANDARD

OMB Circular A-122, App. B, ¶ m.(2):

All individuals whose salary is, in whole or in part, charged to a federal award, must have Personnel Activity Reports (“PARs”) that:

- Reflect an “after-the-fact” determination of the work performed
- Account for the total work activity of the individual
- Be signed by either the employee or his/her supervisor (having firsthand knowledge of the work performed), certifying that it represents a reasonable estimate of the actual distribution of the employee’s work
- Be prepared at least monthly and coincide with one or more payrolls

For “Service Delivery” Grants, this is the system of T&E documentation to which federal reviewers are often most accustomed.

With the Uniform Guidance, an approach more akin to the prior A-87 approach would likely be acceptable (*i.e.*, PARs for those splitting time and bi-annual certifications for those 100% dedicated to a particular activity). However, an approach as “loose” as the prior A-21 approach may not be deemed adequate. This is an area of current uncertainty.

# AREA OF ONGOING TENSION

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- UG Consolidates, leading to an “eye of the beholder” problem on what the regulatory standard means.
- Exacerbated in “service delivery” projects where the federal agencies culture impacts its “eye.”

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# **IHE-Specific Items throughout the Uniform Guidance (briefly)**

# UNIFORM GUIDANCE TREATMENT OF IHE

- Uniform Guidance intended to “unify systems”
- Certain areas where full unification not perceived as possible without special clarification or rules (both for states and IHEs) on cost “allowability” or allocation
- For IHEs, we have:

Issue / Citation	Clarification / Special Rule (briefly)
Indirect Rate Development:  § 200.414 § 200.419 Appendix III	<ul style="list-style-type: none"><li>• Expectation of complex organization (multiple major functions and rates)</li><li>• Prescribed intermediate cost centers and distribution bases</li><li>• Departmental overhead rules</li><li>• Cap of 26% on “Admin” for F&amp;A costs (leading in part to on-campus and off-campus rates)</li></ul>

# UNIFORM GUIDANCE TREATMENT OF IHE (CONT.)

Issue / Citation	Clarification / Special Rule (briefly)
Alumni activities: § 200.424	<ul style="list-style-type: none"> <li>Costs for alumni/ae activities are unallowable.</li> </ul>
Commencement and convocation costs: § 200.424	<ul style="list-style-type: none"> <li>Costs for commencements and convocations are unallowable.</li> </ul>
Scholarships and student aid costs: § 200.466	<ul style="list-style-type: none"> <li>Allowable only when the purpose of award is to provide training and approved by agency.</li> <li>But, tuition remission, etc., in lieu of, wages to working students allowable provided certain circumstances are met.</li> </ul>
Salaries/Wages of faculty and non-faculty (compensation for personal services): § 200.430(h)	Salary rates on sponsored projects are subject to the cost principles in the UG, e.g., IHE institutional base salary (IBS) rate: <ul style="list-style-type: none"> <li>For appointment (9/12 months), whether time spent on research, teaching, administration, or other activities.</li> <li>Cannot exceed the proportionate share IBS for the period. (e.g., base salary \$100,000; PI 25% to a project, salary charged to award \$25,000.)</li> <li>Excludes bonuses, incidental pay, nonguaranteed clinical compensation, and extra service pay.</li> </ul>

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# False Claims

# IHE FCA SETTLEMENTS SINCE 2017

3-Jun-20	Xavier University of Louisiana	FEMA	\$12 million
15-May-20	University of San Francisco	CNCS (AmeriCorps)	\$2.56 million
11-May-20	Pennsylvania State University	NSF, Navy, NASA, Air Force	\$151,000
15-Apr-20	William Marsh Rice University	NSF	\$3.75 million
2-Jan-20	Caldwell University	VA (Post-9/11 GI Bill)	\$4.8 million
7-Oct-19	Drexel University	Navy DOE NSF	\$189,062
28-May-19	Oral Roberts University	ED	\$303,502
28-May-19	North Greenville University	ED	\$2.5 million
25-Mar-19	Duke University	NIH EPA	\$112.5 million
21-Mar-19	University of Wisconsin-Madison	HHS NSF DOE DOD NASA	\$1.5 million
29-Nov-18	University of Puerto Rico	NASA DOE NSF	\$1.7 million
20-Sep-18	Texas A&M Research Foundation	ED DOE NASA NSF DOT	\$750,000
25-Jan-18	Florida Technical College	ED	\$600,000
25-May-17	University of Rochester	HHS	\$113,722



# EXAMPLE CASES: VETERANS BENEFITS

## JANUARY 2020

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**“Caldwell University** has agreed to pay the United States more than \$4.8 million to resolve allegations that it engaged in a fraudulent scheme to defraud a federal education benefit program...Caldwell University tried to hoodwink the Department of Veterans Affairs and, worse, veterans themselves, by claiming to offer online classes developed and provided by Caldwell that were in fact marked-up offerings by an online correspondence school,” U.S. Attorney Carpenito said. “Our veterans should never be treated this way, and we will continue to work to ensure that they receive all of the benefits that they deserve as a result of their service to the country.”

# EXAMPLE CASES: RESEARCH GRANTS

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**April 2020 – William Marsh Rice University** paid the United States more than \$3.7 million to resolve claims it engaged in a pattern and practice of improperly charging National Science Foundation (NSF) research and development awards.

**May 2020 – Pennsylvania State University** paid the United States \$151,000 to resolve potential liability under the False Claims Act for alleged mischarges to various grants and contracts from the National Science Foundation, the Department of the Navy, the National Aeronautics and Space Administration, and the Air Force.

# EXAMPLE CASE: CNCS

**May 2020 – University of San Francisco (USF)** paid \$2,561,727 to resolve FCA allegations.

- USF obtained AmeriCorps funding to support the San Francisco Teacher Residency Program that allowed students working towards teaching degrees to earn living allowances and money towards their tuition costs by serving as teacher apprentices in high-needs schools within the San Francisco Unified School District. To receive an AmeriCorps education award, among other requirements, each volunteer had to serve a specified number of hours that were required to be timely and accurately documented.
- Based on its investigation, the United States contends that USF, through the director of the San Francisco Teacher Residency Program, falsified over 1,500 timesheets and falsely certified approximately 61 education awards during the 2014, 2015, and 2016 grant years to qualify its program and students for receipt of more than \$1.7 million in federal grant funds administered by CNCS. When the United States brought these issues to the attention of senior USF management, USF voluntarily relinquished the grant and actively cooperated during the investigation.

# EXAMPLE CASE: FEMA

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Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and program rules, FEMA provided institutional applicants, such as schools and universities, with Public Assistance (PA) program funds for the repair or replacement of facilities damaged by Hurricane Katrina. Applicable rules, however, limit such funding to the amount required to restore damaged facilities to their pre-disaster condition, and the full cost of replacement is available only if repair estimates exceed a defined threshold.

**June 2020 – Xavier University of Louisiana**, agreed to pay the United States \$12 million to resolve its liability for alleged violations of the FCA. Xavier allegedly improperly obtained PA program funds for its gymnasium, student center, and electrical grid that substantially exceeded the amounts it was entitled to receive under program rules. As part of the settlement, Xavier has agreed to cooperate with the department’s investigation of other parties and any related litigation.

# AGENDA

(1) Context: IHE Grants History and Perspective

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(4) Overview: Higher Education Emergency Relief Fund

# SPECIAL CONSIDERATIONS FOR RESEARCH GRANTS

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- Scientific Misconduct
- Hot Topic: Required disclosures of other support and alleged inappropriate foreign influence
- 1000 “Other” compliance considerations

# SCIENTIFIC MISCONDUCT

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- In December 2000, the Office of Science and Technology Policy (“OSTP”) in the Executive Office of the President adopted a Federal Policy on Research Misconduct.
- The majority of the federal agencies have implemented the policy, in slightly different ways.
- Research misconduct policies, whether Federal, state, institutional, or professional, identify seriously inappropriate behaviors and establish procedures for dealing with them.
- Research integrity remains crucial in the COVID-19 crisis.

# SCIENTIFIC MISCONDUCT

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- The OSTP Policy defines “research misconduct” as “fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.”

## General Information Web Sites

- National Science Foundation, Office of Inspector General. Home Page. ([Link](#))
- Department of Health and Human Services, Office of Research Integrity. Handling Misconduct. ([Link](#))



# SCIENTIFIC MISCONDUCT

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OSTP also set a threshold for proving charges of misconduct.

To be considered research misconduct, actions must:

- Represent a “significant departure from accepted practices”;
- Have been “committed intentionally, or knowingly, or recklessly”; and
- Be “proven by a preponderance of evidence.”

# SCIENTIFIC MISCONDUCT

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## Reporting and Investigation:

- Federal misconduct policy assumes that researchers and research institutions bear the primary responsibility for reporting and investigating allegations of misconduct.
- This assumption is consistent with the position, strongly supported by most researchers, that research is a profession and should regulate its own conduct.

# SCIENTIFIC MISCONDUCT

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## Consequences for Individuals:

- Researchers who commit misconduct place their careers at risk. The Federal Government can debar researchers who commit misconduct from receiving Federal funds for a specified period of time.
- In most instances, research institutions also take their own actions, such as terminating a researcher's employment or requiring supervision of future research activities.
- Sometimes Federal civil and / or criminal false claims investigations develop from the same nexus of facts.

# FOREIGN INFLUENCE

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- Foreign Influence v. Inappropriate Foreign Influence
- Fairness and the integrity of grant making
- Areas of concern:
  - Completeness/accuracy of disclosures, reflecting all sources of research support, financial interests, and affiliations
  - Duplicative funding (“overlap”)
  - Theft of intellectual property
  - Integrity of peer review process
  - National security

# AGENCY UPDATE GUIDANCE ON TERMS & CONDITIONS FOR RESEARCH GRANTS

National Institutes of Health

National Science Foundation

Department of Energy

Department of Defense

Topics covered in updated agency guidance include but are not limited to:

Foreign Components

Conflict of Interest

Foreign Appointments

Talent Programs

Foreign grants

Other forms support (e.g., in-kind, provision of facilities, supplies, post-docs funded by foreign government, etc.)

# EXAMPLE OF RECENT NSF GUIDANCE

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- PAPPG Biographical Sketches and Current and Pending Support modified 2020.
- Current and pending support includes all resources made available to an individual in support of and/or related to all of his/her research efforts, regardless of whether or not they have monetary value. Also includes in-kind contributions (such as office/laboratory space, equipment, supplies, employees, students). In-kind contributions not intended for use on the project/proposal being proposed also must be reported.
- NSF agrees that “disclosure of all professional appointments and all sources of current and pending support, whether foreign or domestic, is essential so that research institutions can determine potential conflicts of interest or commitment and so that NSF can determine any potential capacity or overlap issues.”
- “Requirement of undisclosed current support and in-kind contribution information. If an organization discovers that a PI or co-PI on an active NSF award failed to disclose current support or in-kind contribution information as part of the proposal submission process, the AOR must submit the information outlined in the article within 30 calendar days of the identification of the undisclosed current support or in-kind contribution.” – Effective October 5, 2020

# FOREIGN INFLUENCE



## › Examples

- › Employment terminations/resignations
  - › MD Anderson Cancer Center
  - › University of Florida
  - › Emory University
- › Civil Actions
  - › Van Andel Research Institute (VARI)
- › Criminal Actions
  - › Dr. Charles Lieber (Harvard)
  - › Professor Franklin Tao (Kansas)
  - › Dr. Xiao-Jiang Li (Emory)
  - › Dr. James Lewis (West Virginia)

# PLUS 1000 OTHER CONSIDERATIONS

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Another challenge in the research award context is that there are so many compliance obligations other than grant management, that grant management can be an afterthought. Other very important compliance obligations include:

- Protection of Human Subjects in Research – Institutional Review Board (“IRB”) requirements. FDA investigational new drug and device (“IND”) requirements.
- Animal welfare requirements when using vertebrates in research - Institutional Animal Care and Use Committee (“IACUC”) requirements.
- Tech transfer safeguards such as export control restrictions under the ITAR and EAR (which can be so broad as to prevent emailing certain data from one office to another without controls).
- Tech transfer encouragement – Offices of Technology Management assists in the transfer of technology while generating income to support research and education.



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# CARES ACT BIG PICTURE

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The CARES Act, Pub. L. 116-136 (March 27, 2020):

- Supplemental Appropriations
- Paycheck Protection Program
- Coronavirus Relief Fund (state and local)
- Provider Relief Fund (health care)
- Higher Education Emergency Relief Fund (IHEs)

# HEERF

## CARES Act §§ 18004 – 18008.

- 18004(a)(1):

- Allocation of 90 percent based upon Pell Grant/non-Pell Grant student per capita formulas. Allocation of remaining based upon other factors.
- 18004(c) Governs Use of funds:

“Except as otherwise specified in subsection (a), an [IHE] may use the funds received to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus, so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship. Institutions shall use no less than 50 percent of such funds to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and child care.”

# HEERF

- 18004(a)(2) and (a)(3):
  - Fund for the Improvement of Post-Secondary Education (“FIPSE”) Awards
  - Language of (a)(2)/(a)(3) creates more flexibility:

“. . . may be used to defray expenses (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, payroll) incurred by [IHEs] and for grants to students for any component of the student’s cost of attendance (as defined under section 472 of the Higher Education Act), including food, housing course materials, technology, health care, and child care.”

# AS ADMINISTERED BY ED

## 1. Student Emergency Grants (at least 50%)

- §18004(a)(1). Uniform Guidance theoretically applies at IHE level.
- Emergency [grants to eligible students](#) (can continue into fall semester).
  - Eligible generally means eligible for federal student aid
  - Also, must have been “in person” (not online only student)
- Purpose is [typical costs of attendance](#) (e.g., food, housing, course materials, technology, health care, and childcare).
- “Recommended” cap at Pell Grant value
- Cannot use to pay “self” back or require use on campus.
- Key Guidance:
  - ED Website: <https://www2.ed.gov/about/offices/list/ope/heerfstudent.html>
  - Secretary’s Letter: <https://www2.ed.gov/about/offices/list/ope/caresactgrantfundingcoverletterfinal.pdf>
  - Certification and Agreement: <https://www2.ed.gov/about/offices/list/ope/heerfstudentscertificationagreement42020.pdf>
  - FAQs: <https://www2.ed.gov/about/offices/list/ope/heerfstudentfaqs.pdf>

# AS ADMINISTERED BY ED

## 2. Institutional Portion (no more than 50%)

- § 18004(a)(1). Uniform Guidance theoretically applies.
- Costs incurred after March 13, 2020, and associated with [significant changes to the delivery of instruction](#) (especially IT services and licenses), but:
  - No payments to contractors for recruitment activities
  - No use for endowments
  - No capital outlays on facilities for athletics or religious worship
  - Per Cert and Agmt, no use on senior administrator salaries (carve out of indirects)
- Potentially includes paying “self” back for prior coronavirus-related refunds to students.

# AS ADMINISTERED BY ED

## 3. FIPSE (formula and competitive (IREPO) portions):

- § 18004(a)(2) and (a)(3).
- Not subject to 18004(c) (according to ED).
- Uniform Guidance theoretically applies.
- [Can use for \(a\)\(1\) student grant and institutional portion activities.](#)
- Theoretically [even broader](#) because of (a)(2) / (a)(3) language (above).
- Updated FAQs indicate available for scholarships whereas (a)(1) funding generally is not. Same for pre-enrollment recruitment activities.
- FAQs briefly address documentation of “lost revenues.” Tricky issue.
- Key Guidance:
  - ED Website:
    - <https://www2.ed.gov/about/offices/list/ope/heerffipse.html>
    - <https://www2.ed.gov/about/offices/list/ope/heerfirepo.html>
  - Secretary’s Letter: <https://www2.ed.gov/about/offices/list/ope/coverletterhbcumsisiptccu.pdf>
  - Certification and Agreement: <https://www2.ed.gov/about/offices/list/ope/candafipse.pdf>
  - FAQs: None specific to FIPSE as of August 23. FIPSE addressed in August 6 Supplemental FAQs at: <https://www2.ed.gov/about/offices/list/ope/caresactsupplemental FAQs63020-080630revision.pdf>

# CONTACT INFORMATION

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