

## Supplemental Compensation on Federal Awards: Entering the Quagmire

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## Supplemental Compensation: PUI Issues

- Can we pay supplemental compensation? When?
- Why do we need to pay it?
- If we do pay it, how do we make sure we are in compliance with applicable regulations?

## Why do PUIs feel the need to pay it?

- PUI faculty often have heavy teaching loads, and course releases can be difficult to get.
- Extra pay is sometimes seen as a way to motivate faculty to seek grants.
- Some PUIs are bound by regulations that restrict the use of institutional funds for purposes other than teaching.

## Is it allowable? What are the regulations?

- A21 J.10-Cost Principles for Educational Institutions:  
[http://www.whitehouse.gov/omb/circulars\\_a021\\_2004](http://www.whitehouse.gov/omb/circulars_a021_2004)
- Also codified at 2 CFR 220 Appendix A:  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_11/2cfr220\\_11.html](http://www.access.gpo.gov/nara/cfr/waisidx_11/2cfr220_11.html)
- <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=146ec0a3ae106424c4df7567e56437d6&rgn=div9&view=text&node=2:1.1.2.10.4.0.15.10.6&idno=2>
- J.10 covers Compensation for Personal Services

## A21 J.10a

- 10. a. General. Compensation for personal services covers all amounts paid currently or accrued by the institution for services of employees rendered during the period of performance under sponsored agreements. Such amounts include salaries, wages, and fringe benefits (see subsection f). **These costs are allowable to the extent that the total compensation to individual employees conforms to the established policies of the institution, consistently applied,** and provided that the charges for work performed directly on sponsored agreements and for other work allocable as F&A costs are determined and supported as provided below. Charges to sponsored agreements may include reasonable amounts for activities contributing and intimately related to work under the agreements, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences. **Incidental work (that in excess of normal for the individual), for which supplemental compensation is paid by an institution under institutional policy, need not be included in the payroll distribution systems described below, provided such work and compensation are separately identified and documented in the financial management system of the institution.**

## A21 J.10d

- 10.d. Salary rates for faculty members.
 

(1) Salary rates for academic year. Charges for work performed on sponsored agreements by faculty members during the academic year **will be based on the individual faculty member's regular compensation for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary.** Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. **In no event will charges** to sponsored agreements, irrespective of the basis of computation, **exceed the proportionate share of the base salary for that period.** This principle applies to all members of the faculty at an institution.

## A21 J.10d, continued

- Since **intra university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full time base salary,** the principle also applies to faculty members who function as consultants or otherwise contribute to a sponsored agreement conducted by another faculty member of the same institution. However, **in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency.**

## So what does A-21 J.10 mean?

- Charges for compensation are allowable at the faculty member's base rate.
- Extra compensation above the base rate is allowable under certain conditions.
- The work must be above and beyond the normal workload.
- There must be written approval from the sponsor.**

### What are the gray areas?

- How do you determine whether the work in question is truly one of those “unusual cases where consultation is across departmental lines or involves a separate or remote operation”?
- How do you determine whether the work should be considered “in addition to [the faculty member's] regular departmental load”?
- Exactly who at the agency has the authority to approve overload?
- Can the agency revoke its approval later and demand repayment?

### Best Practices for Supplemental Compensation

- COGR paper titled *Compensation, Effort Commitments and Certification* is a must-read! [http://www.cogr.edu/Pubs\\_Financial.cfm](http://www.cogr.edu/Pubs_Financial.cfm)
- Relevant section is CHAPTER 1C. SPECIAL CARE FOR SUPPLEMENTAL COMPENSATION .
- Chapter breaks down J10d(1) and recommends best practices related to institutional base salary, workload considerations, incidental pay, and bonus pay.
- Chapter also identifies issues relevant to PUIs.

### What is our favorite one-liner from the COGR paper?

*“Regulations governing the allowability of supplemental pay are clear in some situations, and not so in others.”*

### COGR on Institutional Base Salary

- The paper's chapter on supplemental compensation begins by referencing the chapter on Institutional Base Salary, or IBS.
- IBS is an important concept because J10(d)1 tells us that reimbursement from the federal government for faculty compensation is allowable at the **base salary rate**.
- The NIH Grants Policy Statement provides this definition: “*The annual compensation paid by an organization for an employee's appointment, whether that individual's time is spent on research, teaching, patient care, or other activities. Base salary excludes any income that an individual is permitted to earn outside of duties for the applicant/grantee organization.*”

### COGR on Full Workload

- Institutions have some latitude in defining what is meant by “full workload” ... but they need to define it!
- Typical activities that are “in” include instruction, research, public service, administration, clinical activity.
- Typical activities that are “out” include outside professional work, volunteer work, service on review panels and other advisory activities for sponsors, leadership in professional organizations.
- Institution should define what’s included and excluded. Normally, activities that influence T&P should be included.
- Not based on 40-hour work week.
- Total IBS must be distributed across all activities that are included in a faculty member’s full workload.

### Why Institutional Policies Matter

- “Charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member’s regular compensation for the continuous period which, **under the policy of the institution concerned**, constitutes the basis of his salary. Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. (J10d(1))”
- “Practices vary among institutions and within institutions as to the activity constituting a full workload.” (J10b(2)(d))
- In other words, you can’t comply with your own policies unless you spell them out first!

### COGR: Issues in Supplemental Compensation

- Intra-university consulting
- Incidental work
- Dean and department chair appointments
- Teaching Evening/Weekend Classes
- Bonus Pay
- For PUI and teaching institutions: Redefining the workload and adjusting the base salary

### COGR discusses intra-university consulting:

- When it is across departmental lines or at a separate/remote location
- AND
- When it is in addition to the faculty member’s regular departmental load.
- Must have approval in writing from the sponsor.
- Must be separately identified in the institution’s financial management system.
- Does not have to be included in effort reporting.

### COGR discusses incidental work:

- Incidental work is work that exceeds the individual's normal workload and that is not related to sponsored programs and not part of IBS.
- Does not have to be included in effort reporting, although an institution might choose to include it.
- A-21 does not give examples.
- Institutions should have a policy that defines incidental work and gives examples.
- COGR suggests using the regularity of the assignment as a criterion: if the work occurs regularly, it's probably not incidental.

### COGR discusses bonus pay:

- Bonus pay is normally excluded from IBS—but not always!
- Bonus pay can be charged to sponsored programs under certain conditions.
- Institutional policy must clearly articulate conditions for allowability.
- Institutional policy must be consistently applied, *regardless of the source of funds*.
- Charging bonus pay to sponsored programs may be allowable, but it is often impractical, since it is usually awarded long after the work has been performed.
- Institutions can provide bonus pay without charging it to sponsored programs by identifying bonus payments as a separate item in the payroll system, thus segregating it from effort reporting.

### COGR addresses a couple of PUI issues:

- At some teaching institutions, institutional charters or state laws prohibit the use of institutional funds for purposes other than teaching.
- Release time for PUI faculty from teaching is not always possible or feasible.
- One solution is to redefine the workload and adjust the base salary. *This does not obviate the requirement that you tell the funding agency that this is what you are doing and get their approval!*
- Establishing a research foundation does not automatically mean that you are allowed to redefine the workload and adjust the base salary. Institutions may still be bound by their charters or state laws.

### Redefining the workload and adjusting the base salary:

- Salary policies are uniform and consistently applied.
- Full workload is defined in specific terms, such that it is obvious when full workload is exceeded.
- Revised base salary is commensurate with devoted effort and is calculated and paid in accordance with institutional policy.
- Total revised salary and redefined workload are considered 100% effort and included in institution's effort reporting.
- ***Supplemental compensation must be justified and approved in writing by appropriate officials at the agency.***

### What else do we need to know?

- Besides the federal regulations and your own institutional policies and procedures, we need to know agency specific policies.
- NSF addresses this in the Proposal and Award Policies and Procedures Guide ([http://www.nsf.gov/pubs/policydocs/pappguide/nsf11001/nsf11\\_1.pdf](http://www.nsf.gov/pubs/policydocs/pappguide/nsf11001/nsf11_1.pdf))
- NIH addresses this in NIH Grants Policy Statement ([http://grants.nih.gov/grants/policy/nihgps\\_2011/index.htm](http://grants.nih.gov/grants/policy/nihgps_2011/index.htm))

### NIH Policy on Compensation

Guidance can be found in the SF424 (R&R) Application Guide for NIH and Other PHS Agencies:

- **“Institutional Base Salary.** The annual compensation paid by an organization for an employee's appointment, whether that individual's time is spent on research, teaching, patient care, or other activities. Base salary excludes any income that an individual may be permitted to earn outside of duties to the applicant/grantee organization. ***Base salary may not be increased as a result of replacing institutional salary funds with NIH grant funds.***”

### NIH Policy on Compensation, continued

[http://grants.nih.gov/grants/policy/nihgps\\_2011/nihgps\\_ch7.htm#salaries\\_and\\_wages](http://grants.nih.gov/grants/policy/nihgps_2011/nihgps_ch7.htm#salaries_and_wages) ; NIHGPS, Part II: Terms and Conditions of NIH Grant Awards, Chapter 7, Cost Considerations, has guidance:

- “Compensation costs are allowable to the extent that they are reasonable, conform to the established policy of the organization consistently applied regardless of the source of funds, and reasonably reflect the percentage of time actually devoted to the NIH-funded project.”
- Bonus funds and incentive payments are “Allowable as part of a total compensation package, ***provided such payments are reasonable and are made according to a formally established policy of the grantee that is consistently applied regardless of the source of funds.***”

### NIH Policy on Compensation, continued

- “Consultant Services Allowable. A consultant is an individual retained to provide professional advice or services for a fee but usually not as an employee of the requiring organization. The term **consultant** also includes a firm that provides paid professional advice or services. Grantees must have written policies governing their use of consultants that are consistently applied regardless of the source of support. Such policies should include the conditions for paying consulting fees. The general circumstances of allowability of these costs, which may include fees and travel and subsistence costs, are addressed in the applicable cost principles under ‘professional services costs.’”

### NIH Policy on Compensation, continued

- “In unusual situations, a person may be both a consultant and an employee of the same party, receiving compensation for some services as a consultant and for other work as a salaried employee as long as those separate services are not related to the same project and are not charged to the same project. For example, **consulting fees that are paid by an educational institution to a salaried faculty member as extra compensation above that individual's base salary are allowable, provided the consultation is across departmental lines or involves a separate or remote operation and the work performed by the consultant is in addition to his or her regular departmental workload.**”

### NSF Policy on Compensation:

“NSF regards research as one of the normal functions of faculty members at institutions of higher education. Compensation for time normally spent on research within the term of appointment is deemed to be included within the faculty member's regular organizational salary.”

“As a general policy, NSF limits salary compensation for senior project personnel to no more than two months of their regular salary in any one year. This limit includes salary compensation received **from all NSF-funded grants**. This effort must be documented in accordance with the applicable cost principles. If anticipated, any compensation for such personnel in excess of two months must be disclosed in the proposal budget, justified in the budget justification, and must be specifically approved by NSF in the award.” (NSF PAPP Guide)

### NSF Policy on Compensation, continued

**“NSF award funds may not be used to augment the total salary or salary rate of faculty members during the period covered by the term of faculty appointment or to reimburse faculty members for consulting or other time in addition to a regular full-time organizational salary covering the same general period of employment. Exceptions may be considered under certain NSF programs, e.g., science and engineering education programs for weekend and evening classes, or work at remote locations. If anticipated, any intent to provide salary compensation above the base salary must be disclosed in the proposal budget, justified in the budget justification, and must be specifically approved by NSF in the award budget.”**

(PAPP, II-12)

### Case in Point: NSF OIG Audit of SDSURF

- Under the California Education Code, San Diego State “receives no State funding for faculty effort or for infrastructure for independent or extramural research.” NSF research is considered non-instructional and cannot be funded with State funds budgeted for instructional California State University positions.
- CSU Additional Employment Policy allows faculty to be paid 25% above their full-time academic year salary from federal funds. The policy revises the institutional base salary upwards to accommodate the additional workload. (*Does this sound familiar?*)
- CSU cognizant audit agency is DHHS. They approved CSU Additional Employment Policy in 1981 and again in 2001 the policy was determined to be in compliance with A-21.

### Case in Point: NSF OIG Audit of SDSURF

- San Diego State University Research Foundation paid overload compensation on NSF awards by redefining the workload and adjusting the base salary according to the CSU Additional Employment Policy.
- SDSURF did not disclose to NSF in their proposals that this was supplemental compensation.

### Case in Point: NSF OIG Audit of SDSURF

#### What happened?

- NSF said: “Clearly, extra compensation above the base salary for faculty members can only be charged to federal awards in unusual cases involving ‘intra-university consulting’ arrangements when specifically authorized by the awarding agency.”
- “Extra salary or overload compensation can only be charged to NSF grants when specifically provided for in the NSF grant solicitation, requested by a recipient organization, and approved by NSF.”

### Case in Point: NSF OIG Audit of SDSURF

- “NSF program officials believed that the SDSURF AY salary support requested for senior personnel was for the purpose of faculty release time. ... NSF grant funds are allowed specifically to pay for faculty release time and do not result in augmenting the total salary or rate of salary for faculty members as in the case of overload compensation.”
- HHS approval of the CSU Additional Employment Policy did not negate the need to follow OMB and NSF policies on supplemental compensation.

### Case in Point: NSF OIG Audit of SDSURF

#### OIG Recommendations:

- Require that CSU comply with A-21 and NSF GPG/GPM (now PAPP Guide) provisions requiring that extra salary compensation for faculty members during the academic year be clearly identified and requested in its grant proposals and approved in writing by NSF.
- Disallow \$189,114 in SDSURF overload compensation and associated fringe benefits and indirect costs paid on 12 FY 2000 NSF awards.



### Case in Point: NSF OIG Audit of SDSURF

- None of SDSURF's arguments held any weight – California law doesn't allow state money to be used for anything but teaching; cognizant audit agency's approval.
- The OIG said this: "Therefore, on future NSF grants, SDSUF [sic] should evaluate what portion of the overload compensation could be appropriately classified as instructionally-related research and therefore be supported by state funds. After such a determination, if SDSUF [sic] still believes that overload compensation is justified, then these additional amounts should be disclosed specifically in its proposal and approved as extra salary compensation by NSF. Alternatively, as delineated in CSU's response, the extra salary compensation could be requested as traditional reimbursed time (release time). For either option, CSU would be in compliance with federal cost principles and NSF can be assured that all its awardees are treated equitably."

### Case in Point: NSF OIG Audit of SDSURF

- SDSURF has changed their practices and now requires that supplemental comp be in the proposal and specified as such. "We now ensure that additional employment is disclosed at the proposal stage and ensure that it is included in the award letter or request permission from the grant officer to pay additional employment."
- Cal State Bakersfield: "...we have a change in policy and now allow payments with permission from the sponsor only."
- <http://www.nsf.gov/oig/sdsuf.pdf>

### Case in Point: SUNY

- A recent SUNY audit reinforces the fact that you **MUST** have sponsor approval. "The Foundation improperly claimed \$5,963 for extra service compensation for one employee who performed duties ***not specifically provided for in the sponsored agreement or approved in writing by the sponsoring agency.***"

### Case in Point: MTSU

- MTSU is facing potential repayment of supplemental compensation with the U.S. Department of Education, the Tennessee Department of Education, and the Department of Justice.
- On a FIPSE award, the U.S. Department of Education approved supplemental compensation, but later decided against it.
- For a federal flowthrough teacher professional development grant, the TN Dept of ED specifically stated in the FAQs that supplemental compensation was not allowed. The current proposal does not include supplemental comp, but previous grants that have already been expended did.
- On current DoJ grants, the agency questioned the language MTSU used to justify supplemental compensation. MTSU changed the language, and the costs have been allowed.
- Events have led to discussion at MTSU about how institutional policies might be revised to head off such issues in the future.

### Case in Point: KSU

- Late 90's: KSU had to return money to the Department of Education for supplemental compensation charged to Eisenhower (Title II) grants.
- KSU stopped allowing supplemental compensation to be charged to federal (and federal flowthrough) awards.
- Mid 2000s: KSU put the "no overload on federal awards" policy in writing in the faculty handbook.
- This year: KSU revised its overload policy to align with system policy. Under the current policy, no overload at all is allowed in summer, and overload during the academic year is allowed only with a contract addendum.
- The "no overload on federal awards" language disappeared from the handbook and from all associated forms & instructions.
- Supplemental compensation on federal awards is no longer automatically disallowed.
- KSU is now in the process of developing procedures for complying with federal, system, and institutional guidelines.

### Hypothetical Situation 1:

- The School of Nursing at Research and Teaching State University (RTSU) receives a subaward from a state agency.
- The funding is federal flowthrough.
- The School of Nursing wants the five faculty members working on the grant to receive overload pay.
- The project director happens to be the Dean of the School of Nursing.
- Should you allow overload compensation? What information do you need in order to decide?

### Hypothetical Situation 2:

- 10% of Professor Plum's academic year salary is paid by a grant from the National Science Foundation. He also earns one month summer salary on the same grant.
- Professor Plum has been invited to work on a second grant, this one from the Department of Education but his schedule is full.
- He proposes that he be allowed to receive 5% of his salary during the AY as supplemental compensation.
- Professor Plum's institution allows overload under two conditions: (1) written permission from the sponsor, and (2) certification from the faculty member's supervisor that there is no conflict of obligation.
- Professor Plum's dean approves the addition to his workload.
- The program officer at ED approves the supplemental compensation in writing.
- In this case, is RTSU compliant with A-21 J.10.d (1)?

### Hypothetical Situation 3:

- Dr. Worth has a 9 month academic year contract. His IBS is \$60,000.
- His teaching load is 3/3, with courses valued at 10% each.
- The remaining 40% of his time is devoted to research, committee work, advising students, and developing curriculum. These activities are listed in his FPA but not assigned percentages.
- Dr. Worth is PI on an AREA award from NIH that covers 3 months summer salary and gives him one course release during the AY.
- Dr. Worth is asked to devote 10% of his time during the AY to a science education grant led by a PI in another department. The sponsor is NSF.
- Dr. Worth's chair will not release him from any more teaching.
- Should RTSU allow Dr. Worth to take on the additional work? If so, how should this be done?

### Hypothetical Situation 4:

- Here at Teaching State University (TSU), almost all faculty carry a 4/4 teaching load.
- It is very difficult to get a course release at TSU during the AY.
- Prof. X charges 10% to a federal grant and devotes the required effort and fills out his time and effort form accordingly.
- Prof. X did not get a course release.
- Since the institution did not need to use these funds to hire an adjunct, can these funds be used to pay a bonus or incentive?
- Can TSU offer faculty incentive pay for bringing in grants, either by paying the bonus with indirects or paying the bonus through the TSU Foundation?
- When can an institution pay a bonus or incentive payment? What would the conditions have to be?
- Discuss.

### Discussion Question:

Some institutions take a very conservative approach to supplemental compensation on federal awards by refusing to allow it under any circumstances. Others allow it, taking steps to mitigate the risks involved.

- What are the advantages and disadvantages of adopting a very conservative position?
- Are the risks involved in allowing supplemental compensation worthwhile?

### Discussion Question:

- If you allow supplemental compensation only in unusual cases, take care to define for your institution what is meant by “unusual,” document sponsor approval in detail, follow all of COGR’s best practices, and apply your institution’s rules consistently in every case, is your institution “safe” from an audit finding about supplemental compensation?