

Effort Reporting: The New Federal Target?

Effort reports are well known to college and university employees. Mandated by the federal government, effort reports describe the allocation of time and effort expended by a university researcher on employment activities. Effort reports provide a method for the institution to certify to the sponsoring agency that direct labor charges allocated to federally funded research projects are reasonable and reflect the actual work performed. Effort reports also play an important role in ensuring that indirect cost charges allocated to federal research projects are reasonable as well.

The failure to properly carry out these effort reporting obligations has recently brought unwanted public attention to several universities. Three major research universities have paid multimillion dollar settlements within the last two years because of effort reporting problems. In February 2003, Northwestern University announced it had settled, for \$5.5 million plus attorneys fees, a False Claims Act suit brought by a former employee and the Justice Department alleging Northwestern had failed to comply with effort reporting requirements. In February of this year, Johns Hopkins University and one of its hospitals agreed to pay \$2.6 million to settle a False Claims Act lawsuit which alleged that researchers had overstated the amount of time they were spending on medical-research projects financed by the federal government. And in June of this year, Harvard University agreed to pay the federal government \$3.3 million to settle claims that it had overbilled the National Institute of Health for work done on several research and training grants. There have also been reports that the Inspector General's Office of the Department of Health and Human Services has stepped up its auditing of effort reporting at other universities. Some observers have suggested that the federal government is applying new standards of compliance with regard to effort reporting.

The basic requirements of effort reporting are stated in Circular A-21: *Cost Principles for Educational Institutions* issued by the Office of Management and Budgets (OMB), though other directives may also be applicable. Under Circular A-21, the effort reporting system must be incorporated into the official records of the university and encompass "on an integrated basis" all sponsored and other activities for which the university compensates the individual. Circular A-21 specifically states that "the payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities." The fundamental principle regarding the methodology to be used is that an individual's effort on a particular project must be reported as a percentage of his/her total effort for the institution ("total institutional effort") during the relevant time frame. This percentage is derived from a fraction where the numerator represents the researcher's time/effort on the project. The denominator must encompass both sponsored and all other activities and must "reasonably reflect the activity for which the employee is compensated by the institution." This means that all of the researcher's effort in teaching, research, service, and administrative activities must be included in the denominator. Sponsored research projects, scholarly activities, mentoring graduate students, service on departmental, college, or university committees or panels, etc. are all part of an employee's "total institutional effort," and time spent on these activities must be included in accurate effort reports. On the other hand, separately compensated outside consulting and other outside professional activities should not be included when assessing "total institutional effort."

Circular A-21 requires that effort reports of individuals supported by federally funded research projects be “certified” by institutional officials who have first-hand knowledge of such individuals’ work and effort. Generally, this means that the principal investigator on a grant or contract must “certify” his/her effort reports, though a principal investigator with sufficient knowledge may certify the reports of employees carrying out activities under that grant or contract. This “certification” has important legal implications because of the federal False Claims Act (31 U.S.C. § 3729 *et seq.*). Certified effort reports provide the basis for institutional claims for reimbursement of direct and indirect charges under a federal contract or grant, and inaccurate or fraudulent reports may give rise to a False Claims Act lawsuit. An individual who is found to have violated this Act can be subjected to civil penalties of not less than \$5,000 nor more than \$10,000 for each violation; to criminal sanctions, if the violation was willful, of imprisonment for up to five years and fines of up to \$25,000; and to an order to reimburse the government for three times the amount of damages sustained by the government because of the individual’s act. There have been reported instances where individual researchers have been required to make substantial civil monetary reimbursements to the federal government because of their involvement in improper effort reports. Of course, the institution can suffer as well for False Claims Act violations by its employees. Institutional sanctions may include the payment of costly settlements, as mentioned above, or even debarment from participating in federally funded research. The issue of compliance with effort reporting requirements should always be approached with these potentially heavy sanctions for violations in mind.

There are some potential effort reporting problems that can be readily identified and should be avoided. Coaches often encourage players to give “110% effort.” While that may be excellent advice for motivating players to do their best, that advice, if followed by university researcher on federal projects, will lead to noncompliance with effort reporting standards. Total institutional effort for an individual (that is, the sum of the time/effort percentages devoted to each category of compensated, employment duties and activities) cannot, of course, exceed 100%. A similar quandary can be created if a researcher thinks that the “40 hour work week” has application to effort reporting. A researcher is improperly reporting effort if, proceeding on this assumption he/she reports an allocation of 50% of his/her total effort to a sponsored research project based on having devoted 20 hours per week to the project, when 20 hours actually reflects a smaller proportion of his/her overall work. Another researcher who has spent many hours mentoring a promising doctoral student may fall into the error of thinking, “I do that on my own time.” These well-intentioned but potentially very costly mistakes all result from a failure to recognize that effort on a federally sponsored research project must be measured against “total institutional effort,” described above. Other researchers may argue that “everyone does it this way,” or that “no one takes these reports seriously.” These rationalizations may prove unavailing if a federal audit or a claim under the False Claims Act targets violations of effort reporting requirements.

There are certain “red flags” that auditors may focus on when evaluating effort report compliance. Late, unsigned, or missing effort reports will likely raise questions. Effort reports that appear to have been signed in batches can be problematic. “Corrected” effort reports may draw an auditor’s attention. This is especially true when the “corrected” effort reports lead to an unusually large number of payroll cost transfers. Researchers at UAH who discover the need to

correct effort reports should keep meticulous documentation in order to be able to explain why the correction was necessary. This explanation may be required in an audit conducted years later when memories have faded, and it may have to be delivered to potentially skeptical federal auditors and officials. Finally, simply “correcting” effort reports near the end of the term of a contract, in order to capture some unused funds in a federally sponsored project, presents such an egregious compliance issue as to raise the possibility of the filing of criminal charges under the False Claims Act.

The University of Alabama in Huntsville has an excellent reputation and record with regard to its effort reporting obligations. In view of the serious legal consequences of derelictions in effort reporting duties, all University employees can appreciate the attention that has been and currently is being given to proper reporting procedures at UAH. With the federal government appearing to be intent on monitoring this area more closely, a resolve to continue approaching this responsibility with due care and on an informed basis is appropriate.