



Tomorrow's Doctors, Tomorrow's Cures

AAMC EFFORT REPORTING CONFERENCE CALL

QUESTIONS AND ANSWERS

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Association of
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1. *“I would be interested in hearing a discussion of how to handle effort for investigators with joint appointments. I am thinking of two aspects: the annual certification process (what constitutes 100% when the University defines effort in % of time and the VA defines it in hours), and the definition of base salary for purposes of charging effort when the salary is paid from two sources.”*

Answer: The definition of base salary, when compensation comes both from the university and the VA, is only the compensation paid by the university, and the university would account only for university effort, and not both university and VA effort. It does not make any difference for purposes of this question that the university calculates effort in terms of %s and the VA uses hours.

The Memorandum of Understanding between the VA and the institutions establishes the split of responsibilities and helps the institutions ensure there is no possibility for dual compensation for the same work. But the VA portion of the MOU should not be reflected in the university payroll or payroll distribution system. The University should only account for university effort and salary in its appointment forms, payroll records and certifications and IBS would be limited to university compensation.

2. *“What is the definition of base salary for purposes of charging effort, when the salary is paid from two sources”?*

Answer: If “two sources” in the question means two separate organizations, then it would be appropriate to refer to the 3-prong test provided by NIH in the Grants Policy Statement detailing the circumstances under which compensation from a separate organization can be included in the calculation of IBS, provided the effort expended for that separate organization is also included in the calculation of effort. However, if the question’s reference to two salary “sources” means internal sources, internal sources may be aggregated together.

It is important to remember that A-21 defines personnel compensation (J.10) as covering “all amounts paid ... by the institution for services of employees rendered during the period of performance under sponsored agreements.”

“Two sources” may also refer to affiliated organizations in NIH Grants Policy Statement (12/03), Part II: Terms and Conditions of NIH Grant Awards, Subpart A.

Services Provided by Affiliated Organizations

A number of universities and other organizations have established closely affiliated, but separately incorporated, organizations to facilitate the administration of research and other programs supported by Federal funds. Such legally independent entities are often referred to as “foundations,” although this term does not necessarily appear in the name of the organization. Typically, the parent organization

provides considerable support services, in the form of administration, facilities, equipment, accounting, and other services, to its foundation, and the latter, acting in its own right as an NIH grantee, includes the cost of these services in its F&A proposal.

Costs incurred by an affiliated, but separate, legal entity in support of a grantee foundation are allowable for reimbursement under NIH grants only if at least one of the following conditions is met:

- The grantee foundation is charged for, and is legally obligated to pay for, the services provided by the parent organization.
- The affiliated organizations are subject to State or local law that prescribes how Federal reimbursement for the costs of the parent organization's services will be expended and requires that a State or local official acting in his or her official capacity approves such expenditures.
- There is a valid written agreement between the affiliated organizations whereby the parent organization agrees that the grantee foundation may retain Federal reimbursement of parent organization costs. The parent organization may either direct how the funds will be used or permit the grantee foundation that discretion.

If none of the above conditions is met, the costs of the services provided by the parent organization to the grantee foundation are not allowable for reimbursement under an NIH grant. However, the services may be acceptable for cost-sharing (matching) purposes.

3. *“We continue to have debate over the definition of total professional effort. Some faculty believe that 40 hours per week is total professional effort. The NIH appears to have been reluctant to specifically define this in the past, so we have been stuck with a definition that defines total professional effort as TOTAL regardless of whether you work 40 or 100 hours per week.”*

Answer: The NIH focus for purposes of this question is on TOTAL professional effort, provided it conforms to university policy, consistently applied regardless of source of funding. Effort isn't defined by A-21, but the commitment that is to be reflected in the estimation and confirmation process is the amount of work activity in accomplishing the responsibilities of the university position. A-21 indicates that practices may vary among institutions and WITHIN institutions as to activity that constitutes a full workload, and therefore payroll systems can reflect categories of activities expressed as percentages.

NIH has not defined what constitutes a full time commitment in terms of hours per week. Primarily, this is not how institutions generally define professional commitments – particularly for faculty members. So if NIH were to impose such a policy this would place an unreasonable burden for compliance. Full time – total professional effort needs to be defined by each institution. Broadly, total professional effort can be defined as all the effort involved by the individual in fulfilling his or her responsibilities to the institution. The number of hours per week may be a useful straw man in these discussions, but at almost all institutions under A-21 defining TPE in hours per week is not appropriate for professional staff.

4. *“In calculating percent effort on NIH grant submissions or in fulfilling NIH effort reporting requirements, may percent effort be calculated based on a 40 hour work-week, or is percent effort calculated based on “total time/effort worked” at the organization?”*

Answer: As stated in the last question, 40 hours is not and will not be established as the gold standard. Unless the institution were to define and account for time and effort using 40 hours per week, this would not be the appropriate metric of time and effort. Many institutions do not define appointments on the basis of hours; so imposing a 40-hour metric will not result in reasonably accurate time and effort reporting. Say an investigator works 60 hours/week in an accounting period and spends about 2/3 of their time on instruction and 1/3 on NIH research. Using a 40-hour standard – would one charge all their time to instruction as this represents “40 hours”? Or would one restate distribution on a 40 hours standard. In both cases the effort reported would not be accurate. It would be better to address as % of effort or potentially ‘person months’ (NSF standard and in R&R data set).

5. *“What about the need for consistency between parent universities’ and medical schools’ interpretations of what constitutes a full-time appointment?”*

Answer: Consistency is the principle that generally governs. In A-21’s specification of the allowability of costs, it is indicated that a cost charged to a grant may be considered reasonable if, among other things, it is consistent with established institutional policies and practices applicable to the work of the institution generally, including sponsored agreements. There is, however, some flexibility.

If the salaries are recovered on common NIH projects, they must be consistent. While appointments and compensation are often much more complex at medical schools, if they are managed as one organization for the purpose of personnel appointments, IBS, effort distribution and payrolls, the policies defining full time commitments must be based on the same principles.

However, A-21 does recognize that reasonable flexibility in applying these principles is appropriate. J.10.b.2.d indicates that, “Practices vary among institutions and **within institutions** as to the activity constituting a full workload. Therefore, the payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities.” This reinforces the need to keep away from hours per week as the metric to define full-time appointments for faculty.

6. *“If a faculty member has a .5 research FTE, and a .5 clinical FTE, is there any requirement that the “hours” committed to each are approximately equivalent? Stated differently, would a faculty member be in violation of the regulations if they report that they spent .5 FTE doing research (specifically, 20 hours), and .5 FTE in clinical activities - - but the latter constituted significantly more than 20 hours? Does the answer differ depending on whether or not the school guarantees the faculty member’s total salary?”*

Answer: If these are separate organizations, and compensation and effort from the separate organization are not being included into your calculations of IBS and effort under the special NIH rules, it does not make a difference that the organizations use different standards for what constitutes an FTE. But if you are combining the salary and effort from two separate organizations under the NIH 3 prong test, they must use the same standards.

In other words, if the salaries from both organizations were combined consistent with NIH/HHS policy and appropriately included in IBS, the distribution of effort must be on the same metric consistent with the flexibility and lack of precision recognized in A-21.

7. “Please describe what the regulations allow/require under different practice and corporate models. For example, legally separate practice corporations; practice corporations under the control of the medical school; schools where there are multiple, legally separate practice corporations; situations where faculty also have VA appointments; etc.”

***Answer:* NIH standards are not written in terms of corporate control, nor are they written so as to limit the number of separate organizations that can theoretically be considered when calculating effort and IBS for a grantee institution. The NIH standards in place now are the following:**

1. Compensation from a separate entity must be guaranteed by the grantee institution;
2. The effort and compensation on behalf of the separate entity must be included on the grantee institution’s appointment form and paid through the grantee institution; and
3. The effort expended for the separate entity must be included and accounted for on the grantee institution’s effort report.

8. “We understand that NIH and DHHS are considering a change or clarification to the policy on when Institutional Base Salary can include compensation paid by a separately incorporated clinical practice plan. Can you share with us what the wording of the new policy will be, and what it will allow institutions to do?”

Answer: This has been under discussion with HHS, ONR and OMB, and the three basic principles would remain and would be revised to replace University with Institution (consistent with A-21 language), as well as be clearer on the potential to integrate two payroll systems into IBS if consistent with the criteria. NIH is also considering the suggestion to move away from the intuition “guaranteeing” IBS to “setting” IBS.

There has also been a concern expressed on the ability of Federal Officials to gain access to necessary records under 45CFR part 74.53(b) if the second organization paying compensation has no contractual relationship to the government (under a grant or contract) – i.e., not covered by the terms and conditions of award. So NIH will need to add another requirement to be clear that access to records necessary to document and support the costs must be assured as an additional criterion when the IBS includes amounts paid by two separate organizations. NIH has been charged with this task.

9. *“Are there any restrictions on combining or including the salaries of close affiliates within Institutional Base Salary, such as when a parent or sister corporate entity holds the grant award, but some or all salaries are paid by a subsidiary or by a sister entity of the grantee?”*

Answer: This question encompasses many possibilities. If the reference is to separate organizations, for example, a separate practice plan, the 3-prong NIH test must be met. NIH tests are not written in terms of corporate structure or control. Those things may make a difference if, for example, one is dealing with a subsidiary, and there are contractual obligations flowing between the parent and the sub, but the question doesn't provide enough information to know. The special standards referenced in the response to question 2., above, governing “Services Provided by Affiliated Organizations,” cover circumstances where a grantee organization (perhaps a university affiliated foundation) wants to include salary charges that are incurred by the parent university. These rules, again, aren't dependent on corporate control but rather on close relationships. This is a strictly confined category and depends on explicit contractual ties, legal obligations, or state regulations to support the arrangements.

10. *“Are the ceilings on K award compensation absolute, or can a salary higher than the ceiling (but lower than the NIH cap) be funded by the grantee through re-budgeting under expanded authorities?”*

Answer: Re-budgeting is allowed up to legislative limits. NIH has even incorporated language in its announcements for Career awards to describe this flexibility. However given the relatively small amounts generally provided for other costs on K, there are rarely significant funds available to re-budget.

An example is provided below.

INDEPENDENT SCIENTIST AWARD (K02)

<http://grants.nih.gov/grants/guide/pa-files/PA-00-020.html>

Under allowable costs:

The institution may supplement the NIH salary contribution up to a level that is consistent with the institution's salary scale; however, supplementation may not be from Federal funds unless specifically authorized by the Federal program from which such funds are derived. Because the salary amount provided by this award is based on the full-time institutional salary, funds from other NIH awards may not be used for salary supplementation. Institutional supplementation of salary must not require extra duties or responsibilities that would interfere with the purpose of the K02. **Under expanded authorities, however, institutions may rebudget funds within the total costs awarded to cover salaries consistent with the institution's salary scale provided they don't exceed the current legislated maximum salary.**

11. *“If a university includes VA effort in the denominator of “total professional effort” for purposes of determining whether the 75% effort commitment has been met, may it also include in the numerator research effort that the supported individual is involved in as part of his or her VA duties, if the research is related to the aims of the K award?”*

Answer: This question is governed by the new NIH policy on K awards that has brought a welcomed degree of consistency into calculation of effort and IBS for K award recipients.

Under long-held prior NIH policy (prior to 10-1-04) for determining ‘total professional effort’ for Ks, the VA commitment would have been in the denominator as part of TPE. But NIH only considered ‘research and career development’ from the applicant institution, so you couldn’t count the VA time in the numerator. This made it extremely difficult if not impossible for a candidate with a joint VA/University appointment to participate in K awards.

This changed with NIH’s new policy issued last summer. The revised policy specifically addressed the VA example. However, VA time still cannot be counted in the numerator.

<http://grants.nih.gov/grants/guide/notice-files/NOT-OD-04-056.html>

DETERMINING FULL-TIME PROFESSIONAL EFFORT FOR CAREER AWARDS
8-3-05

A career award recipient meets the required commitment of total professional effort as long as: 1) the individual has a full-time appointment with the applicant organization; and 2) the minimum percentage of the candidate’s commitment required for the proposed Career award experience is covered by that appointment. Please note that a candidate may propose a career award experience that involves sites beyond the applicant institution or organization, provided that the goals of the total experience are encompassed and supported under the appointment with the applicant organization.

...

The following example is illustrative:

An investigator has a full time appointment at a university and a half time appointment with another organization (VA or independent clinical practice plan). Under this new policy, the investigator can be supported because the university and candidate can commit at least 75% of the full time appointment to the award.

The purpose of this policy is to clarify this requirement to ensure that the criteria for proposing and charging effort on career awards are consistent with the other NIH funding mechanisms. We also expect that this clarification will expand the pool of eligible candidates for NIH career awards.

This revised policy applies to all existing Career Development Award announcements for all applications and resubmissions submitted on/after October 1, 2004.

12. *“In what circumstances can an institution increase a faculty member's existing Institutional Base Salary based on receipt of a new grant award that provides support to the faculty member's salary?”*

Answer: Grant funds can replace, not increase, a faculty member's salary. A-21 requires that to be allowable, a cost has to be, among other things, reasonable. And “reasonable” includes being consistent with established institutional policies that are applicable to the work of the institution generally, including sponsored agreements – not just sponsored agreements. In other words, institutional policies cannot provide for salary increases based only on receipt of federal grant support.

To repeat, an institution can't increase salary simply because part or all of the effort is now charged to a Federal award, assuming that the duties are essentially the same. Institutions can adjust compensation based on past performance and current responsibilities if the adjustment is done on a consistent basis, regardless of the source of support. Therefore, the faculty member's IBS can be reevaluated the next time these levels are set by the institution.

13. *“There's been quite a bit of discussion recently about salary supplements -- when they can and when they must be included in Institutional Base Salary. They come in many forms -- bonuses, administrative overload pay, supplements for teaching extra courses, interdepartmental consulting on grants, research supplements, variable components of salary contingent on external support, etc. etc. What guidance can you give us in dealing with these different forms of supplemental compensation? Is the Government working on any official written guidance in this area?”*

Answer: The NIH Grants Policy Statement indicates that 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 formal policy of the grantee that is consistently applied regardless of the source of funds.” The Statement also says that overtime premium payments “are not allowable for faculty members at institutions of higher education.” Translating these principles into an ABC salary system, the A component, which may be called “base salary”, is includible in the calculation of IBS. The B component, often called the “incentive component” is also includible in the calculation of IBS, provided it is set in advance and awarded according to institutional policy, consistently applied regardless of source of funds (that is, not awarded solely on the basis of federal grant-getting prowess). The C component, or, for example, an after the fact variety of bonus or incentive payment would not be includible in IBS, because it was not set in advance and is not part of the regular commitment of the institution for the salary period in question. Finally, the supplements for doing extra work appear not to be allowable for faculty members. Interdepartmental consulting is addressed in the Grants Policy Statement as follows:

“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 these 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.”

To summarize, it depends on the circumstances for bonuses and administrative overload pay. For supplements for teaching extra courses, such supplements are unlikely to be applicable to NIH awards. For interdepartmental consulting on grants, it may meet the definition of “incidental work (that in excess of normal for the individual), for which supplemental compensation is paid...need not be included in payroll distribution systems.” Research supplements are suspect, and variable components of salary contingent on external support appear plainly unallowable to NIH/Federal awards.

14. *“How should a physician scientist report effort on a monthly basis in the following circumstance: They are considered to be 80% research and 20% clinical. January through May they work 100% on NIH grants, June they work 0% on grants and 100% on clinical activity, July through October they work 100% on NIH grants, November they work 0% on grants and 100% on clinical activity, and December they work 100% on NIH grants.”*

Answer: For reporting on a monthly basis, the actual effort would swing –100% from either research to clinical depending on the month. For reporting on a quarterly basis, the reporting would still have significant swings. However, if the reporting cycle were pushed out to either 6 months or 1 year, the effort distribution would be 5/6 and 1/6. This would round out to 83% research and 17% clinical. The question then would be does this represent a significant variance for the “committed” 80/20. If one were to use a 5-point swing as a standard for defining a significant variance, this would not meet that standard. So, the effort could reasonably be certified as committed. Thus it is important to choose reporting cycles carefully.

15. *“A-21 J.10.c.(2)(e) dealing with after the fact activity records states ‘For professorial and professional staff, the reports will be prepared each academic terms, but no less frequently than every six months....’ The question is how does an institution on the semester system with a summer term handle effort reporting to satisfy these regulations; in other words, does every six months’ reporting suffice? How about an institution on the quarter system?”*

Answer: First, examples in A-21 should be considered examples and not be proscriptive. If a different timing of these reports works better in the business and work cycle of an institution, this should be used, as it should help make the management and compliance with the requirements of the

payroll/effort certification system more transparent. This can only be helpful in reinforcing the reliability and accuracy of the reports.

16. “[Three Scenarios] *Scenario A*: A full time (1 FTE) faculty member has a K award with 75% effort requirement and also has a clinical and teaching schedule. His K award and clinical work are related. The work he performs clinically and the subject matter he teaches can be used in support of the research activities performed under the K award and included in the reports submitted.

The K award Program Announcement states "75% of the recipient's full time professional effort must be devoted to the goals of the award"

The recent clarification (NOT-OD-04-056) makes the same statement.

The faculty member charges his effort as such:

<i>Activity</i>	<i>Effort Percent</i>
<i>Teaching, Clinical</i>	<i>50%</i>
<i>K award</i>	<i>50%</i>
<i>Total</i>	<i>100%</i>

Questions:

- 1. Since his teaching and clinical activities are devoted to the goals of the award can 25% of the effort recorded as Teaching/Clinical be used towards his effort requirement for the K award assuming that this is related to the research? If the answer is yes, what type of support would the funding agency (NIH) expect to see to demonstrate the 25% effort and corresponding actions of the clinical and teaching contribute to the “goals of the award?”*

Answer: As described one could make the case that 100% of the effort can be allocated to the K. “The work he performs clinically and the subject matter he teaches can be used in support of the research activities performed under the K award and included in the reports submitted.” Only the “responsible person(s) with suitable means of verification that the work was performed” should be certifying this split is appropriate. However if the commitment were split 75% to the K based on systems in compliance with questions 9 and 10, above, there may not be a basis to question this determination.

Documentation to comply with A-21 J.10.b.2. is addressed in (g) “For systems which meet these standards, the institution will not be required to provide additional support or documentation of the effort actually performed.”

Scenario B

A Principal Investigator receives an award with a 20% effort requirement. The proposal submitted included 20% effort for each year of a 5-year grant.

The Progress Reports are submitted each year on a timely basis and effort is reported as illustrated below:

<i>Proposed/Awarded Effort</i>	<i>Year 1 Progress Report – Effort Performed</i>	<i>Year 2 Progress Report – Effort Performed</i>	<i>Year 3 Progress Report – Effort Performed</i>
20%	18%	17%	14%

Questions:

In deciding if there is a 25% or more reduction in effort for Year 3, is the reduction calculation based on the proposed effort of 20% or the prior year effort reported (17%) when:

- a. The funds released to the PI for the Yr 3 budget period do not change from the previous budget periods?*

Answer: The NIH Grants Policy Statement indicates the following: **“The grantee is required to notify the GMO in writing if the PI or key personnel specifically named in the NGA will withdraw from the project entirely, be absent from the project during any continuous period of 3 months or more, or reduce time devoted to the project by 25 percent or more from the level that was approved at the time of award (for example, a proposed change from 40 percent effort to 30 percent or less effort). NIH must approve any alternate arrangement proposed by the grantee, including any replacement of the PI or key personnel named in the NGA.”**

One can argue that the incremental changes to years 1-2 effectively reduced the committed effort to 17%. This reduction misses some of the key goals of the policy – it only applies to the PI and those named, so NIH has limited its interest to only the most critical staff – and change of these commitments really calls for clear communication and confirmation by the GMO.

While parsing this out might meet the letter of the policy, it could lead to some discomfort if the GMO and Program Official decide the institution/PI is gaming the system. This issue may become more acute as the NIH budget has to stretch and squeeze dollars in the face of a lean Federal budget. Investigators and institutions will not want to be perceived to be gaming the system to get one more award or to garner as many resources as possible. Clear direct communication with the funding IC securing prior approval is always the best approach.

“What about where the funds released to the PI for the Yr 3 budget period are decreased from the previous (Yr 2) budget period (no indication was made in the award notification that the reduced budget is a result of reduced effort)?”

NIH really doesn’t have a method to ratchet effort commitments based on general budget reductions. Unless the institution gets communication to the contrary from the GMO of the funding institute, the effort requested for the PI and the “key personnel named on the NGA” should be considered fixed. This is the most conservative approach, but generally this relates to only 1 individual per award.

“Scenario C

A Principal Investigator was awarded at 10% effort on his/her NIH grant. The grant period is coming to an end and the institution is approving a 12-month no-cost extension under Expanded Authorities. The PI plans to complete the study and prepare the Final Report during the no-cost extension period. During the no-cost extension period the PI will devote “As Needed” effort.

Question: Does the original 10% effort commitment extend to the no-cost extension period? Does the PI need to request permission to reduce his effort? Or, does the institution have the authority to approve the reduction of effort when approving the no-cost extension?”

Answer: From a strict policy stand point, the terms and conditions continue unless amended, so one could argue that the 10% commitment stands. In the real world it is acknowledged that effort commitments during no-cost-extensions when funding and other resources are limited may vary. There may be advantages to documenting reduced effort commitments, and the negotiation of overlap is a prime example.

K awards present a particular case as they generally carry the requirement for a 75% commitment of total professional effort. Again this is a case when communication to the IC on the change will be very useful. Even if a response is received that approval is not required, it will clearly provide the authority to take the actions required.