Conflict of Interest

FDP COI Subcommittee Meeting

& Organizational Conflicts of Interest

Working Group

September 7, 2018

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SUBCOMMITTEE CO-CHAIRS

- *Diane Dean, Director, Division of Grants Compliance and Oversight, Office of Policy for Extramural Research Administration OER, NIH -* deand@od31em1.od.nih.gov

- *Mary Lee, Director, COI Office, Stanford University -* marylee@stanford.edu

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AGENDA

1. Business – Monthly meetings schedule, update to FDP COI Listserv, Entities that follow PHS rules

2. COI Reqs DB Update – call for volunteers

3. WG on OCI - Progress to Date

4. Subcommittee Wrap-Up

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Business Items

- Monthly Subcommittee Calls will be used for WG calls
  - Second Tuesdays at 12:30pm PST

- Update to FDP COI Subcommittee Listserv
  - All of the January & May attendees who left business cards were added to the COI Listserv.
  - Please leave your business card or your contact info to be added.

- List of Entities that require compliance with PHS COI regs
  - Any interest in maintaining this list?

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COI Requirements DB Update

- COI Reqs DB has launched!
  - not affiliated with any one group, non-partisan
  - Main purpose: serves as Open Source, crowd-sourced, ongoing COI Tool for academic research institutions
  - No longer focused on regulatory reform (but may be accessed as a non-partisan DB to inform discussions)
- No license needed – IT'S FREE!

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COI Requirements DB Update

- Start Page – has all the links and will be emailed to academic research institution collaborators who agree to the terms

- Terms – not-for-profit, agree to add 3-5 entries minimum per year, follow naming conventions

- Orientation Calls – planned for Wednesdays at 10am PST and 1pm PST, *upon request to Mary Lee*

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COI Requirements DB Update

- 700 entries to be analyzed
- Ready to start categorizing COI types!
- *Calling all COI subject matter experts for review*
- Your institution will get access to the reports
- Targeted timeline: September/October 2018

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Working Group on Organizational COI

OCI Working Group Co-Chairs

- *Mary Lee, Director, COI Office, Stanford University –* marylee@stanford.edu

- *Joy Bryde, Director, COI Program, UNC – Chapel Hill -* jbryde@unc.edu

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OCI Working Group Goals:

- Gather information regarding the types of OCI out there, as well as best practices to address them;

- Analyze the requirements to see if a model policy is possible;

- Engage federal partners in a discussion to streamline requirements if possible; and

- Share best practices/standard pre-award instructions on how to deal with them at present.

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OCI Working Group

	Lead Area	Name/Org/Focus	Email
1	Lead, OCI Definitions	Abbey McSwigan / University of Pittsburgh / Federal Contracts	abm72@pitt.edu
2	Lead, Process Flows & Use Cases	Zack Byrnes / University of Pittsburgh / Federal Contracts	zjb12@pitt.edu
3	Lead, Best Practices & Instructions for Pre-Award Staff	Kristy Hall / University of Virginia / Sponsored Research Contracts	kjh4c@virginia.edu

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OCI Working Group

- **Jun/July -** Information gathering by Leads: 1. Definitions, 2. Use Cases, 3. Best Practices and Trainings for Pre-Award staff.

- **Aug/Sept -** Analysis & Discussion – Is a model policy possible?

- **Sept FDP meeting –** Provide status update to COI Subcommittee.

- **Oct/Nov/Dec -** Practical Approaches/Best Practices – What does our Pre-Award need now? Review of FDP members' institutional trainings, guidelines, blurbs to insert into proposals, etc., as well as the different process flows. Any differences between public and private institutions?

- **Jan FDP meeting –** Share "draft instructions for Pre-Award" or best practices.

- **Jan/Feb/Mar -** Engagement with Federal partners

- **April –** Monthly call will summarize our findings with the WG members

- **May FDP meeting -** Share our findings at COI Subcommittee meeting at FDP meeting and close WG.

OCI Working Group

Definitions of OCI

- *2 CFR 200.318(c)(2) "Parent/subsidiary procurement COI"* **(potential, apparent, actual OCI)**

- *FAR 9.5 – OCI in procuring mgt support svcs, consultant or professional svcs, tech evals, systems engineering* **(potential or actual OCI)**

Still collecting Other Types of OCI language

BUSINESS ASSURANCES & DISCLOSURES FORM

(4) POTENTIAL CONFLICTS OF INTEREST WITHIN PROJECT TEAM: Mandatory. No page limit. The Applicant is required to disclose potential conflicts of interest within the Project Team. An apparent or actual conflict of interest may exist where an individual or entity has different, and potentially conflicting, duties or relationships with respect to other individuals or entities within the Project Team. Complete a separate table for each potential conflict of interest. If additional tables are required, include the tables in an addendum to this form. If no conflicts of interest exist, check the box marked "None" below. Examples of potential conflicts of interest include but are not limited to:

- The PI for the Prime Recipient has an equity stake in a Subrecipient;
- The PI for a Subrecipient has a consulting arrangement with the Prime Recipient; or
- A Subrecipient is a subsidiary of or is otherwise affiliated with the Prime Recipient.

If NONE, check here ☐

Conflicted Individual or Entity #1:	
Description of Potential Conflict of Interest:	

Conflicted Individual or Entity #2:	
Description of Potential Conflict of Interest:	

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Footnote 1: It is DOE's position that the existence of a "covered relationship" as defined in 5 C.F.R. § 2635.502(a)&(b) between a member of a Recipient's owners or senior management and a member of a subrecipient's owners or senior management creates at a minimum an apparent conflict of interest that would require the Recipient to notify the Contracting Officer and provide detailed information and justification (including, for example, mitigation measures) as to why the subaward or subcontract does not create an actual conflict of interest. Recipients must also notify the Contracting Officer of any subcontract or subaward to: (1) an entity that is owned or otherwise controlled by the Recipient; or (2) an entity that is owned or otherwise controlled by another entity that also owns or otherwise controls the Recipient, as it is DOE's position that these situations also create at a minimum an apparent conflict of interest.

~ Footnote 1, DOE's EERE Pre-Award Information Sheet

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FAR 9.5 *Red Flag Contracts*

- Management support or consulting services
- Supporting and furnishing systems
- Technical evaluation services
- Preparing specifications or requirements
- Systems engineering and technical advice
- Making product recommendations
- Systems integration

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OCI principles covered by FAR 9.5

Three categories
- Biased ground rules
- Impaired objectivity
- Unequal access to information

Biased ground rules (FAR 9.505-2)

"a [contractor], as part of its performance of a government contract, has in some sense set the ground rules for another government contract by, for example, writing the statement of work or the specifications." *Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc.*, B-254397, *et al.*, July 27, 1995, 95-2 CPD ¶ 129

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Impaired objectivity (FAR 9.505-3)

• If a contractor is in the position of evaluating its own performance or products, or the performance or products of a competitor

• Making decisions based on contractor's commercial or policy interests, rather than best interests of government

• Contractor's ability to "render impartial advice to the government will be undermined, or impaired, by its relationship to the product or services being evaluated . . . ." *Overlook Sys. Techs., Inc.,* B-298099.4, *et al.*, Nov. 28, 2006, 2006 CPD ¶ 185

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Unequal access to information (FAR 9.505-4)

• A firm gains access to nonpublic information through the performance of one federal contract that is competitively useful in obtaining a separate federal contract

>>Competitor's proprietary information from Source Selection

>>Government's confidential information (possibly from another contract)

(Must have a direct government connection to be an unequal access to information; does not include getting access to information from a non-government, third party source.)

Sample Process Flow
University of Pittsburgh

Working Group on Organizational COI

How many of you are from

- Public institutions?

- Private institutions?

Does your institution have an Organizational COI policy?

Does your institution have an Organizational COI process?
(see sample Process Flow from Univ. Pittsburgh)

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Subcommittee Wrap-Up

Questions?

Concerns?

Would you like to join?