# Compensation, Effort Reporting and Related Issues FAQ

**Updated October 1, 2018**

## EFFORT REPORTING

### What is effort reporting?

At Penn State, based on current policy and procedure, effort is documented through salary distribution in the Pay & Effort system and confirmed annually. As required by Uniform Guidance 2 CFR 200.430, salary/wage charges to Federal awards must be based on records that accurately reflect work performed and be supported by internal controls which provide reasonable assurance that charges are accurate, allowable and properly allocated. Budget estimates alone do not qualify as support for charges to awards. After-the-fact review is needed to make necessary adjustments.

### Can effort be too much, too little or too precise?

While we don't have a policy on this – no formal number such as cannot pay more than 95% time on sponsored awards - 100% effort on sponsored awards is difficult to justify for anyone given that time spent writing proposals or on other administrative tasks is not allowable on sponsored awards. We base effort on general estimations – and we do not track time by the hour (with the exception of ARL). So, being too precise may raise questions that we are adjusting the effort to get to a certain dollar amount.

### Why is a 40-hour work week NOT the basis for 100% effort?

Faculty and exempt staff are expected to work a minimum of 40 hours per week, so working additional hours does not result in overtime – effort is based on what time is actually worked – whether 40 hours or 60 hours. Effort is based on proportion. If one person works 40 hours per week and another 60 hours per week and they each spend 20 hours on a project, the first is 50%, the second 33.3%.

### A faculty member performed far more effort than what was proposed/awarded. Does this need to be declared to the sponsor and tracked as cost-share?

It should be tracked as cost-share if for no other reason than to assure they are not charging that effort to another award. It may or may not need to be reported to the sponsor, depending on the award terms and conditions and what details were proposed to the sponsor. If the faculty is budgeted for 50% effort, but report they are doing 75%, we have to assure that additional 25% effort does not put the faculty member over 100% effort for all job responsibilities (such as teaching, outreach/service), and especially that it is NOT being charged to other sponsored awards. If the award budget can be adjusted, charging the extra effort beyond the original proposal level may be appropriate. See the Cost-Sharing FAQ for additional guidance.

## MINIMUM FACULTY EFFORT

**I've been told that I have to show a minimum amount of my PI's effort, either as a direct charge or as cost-share. Why?** OMB Circular A-21 was clarified in 2001 (memorandum M-01-06) to indicate that most federally funded research programs should have some level of committed effort by faculty (or senior researchers) either paid (by the federal government) or unpaid (cost-shared by the institution). Even though A-21 was retired December 25, 2014, Memorandum M-01-06 lives on at Uniform Guidance 2 CFR 200.306(k). PSU implements this requirement in RA21 – Development of Proposal Budget.

**Does this rule apply to non-federal awards?** In consultation with the Corporate Controller's office, it has been decided that this rule ought to be enforced consistently across all sponsored activities. A reasonable allocation of effort should be reflected on all sponsored projects.

**Does this rule apply only to the PI or do I also need to show minimum faculty effort for other project personnel?** The rule applies to all Senior Personnel. For the purpose of this policy, Penn State uses NSF's definition of Senior Personnel as defined here.

**Are there exceptions when I don't have to show any PI effort?** Memorandum M-01-06 identifies a number of exceptions when PI effort is not required. In the following cases, it is considered acceptable for Penn State to show zero faculty effort:

- Gifts
- Instrumentation grants (where the sole purpose of the grant is to procure equipment or property)
- Conference/workshop grants (where the sole purpose of the grant is to support a conference or workshop)
- Training grants and other student-led projects where the PI is just supervising student effort
- Industry membership agreements (as long as some source of funds is identified for covering the PI's administrative effort)
- Non-federal projects < $50K as long as a percent of the PI's time is paid on general funds. (If a researcher is paid solely on external funds, then some percentage of his or her funds must be charged to every project on which he or she works.)

**What is the minimum? Can I charge 0.00001 percent?** No minimum has been established to date. However, any amount charged or cost-shared must represent a reasonable allocation of effort. There is no way that 0.00001 percent effort will be defensible in the event an auditor were to question our allocation of effort on the project.

**If I show it as cost-share, do I have to track it?** Yes. We must be able to document these costs, and just as importantly, demonstrate by posting these costs to specific cost-sharing cost centers that these costs were not used in support of other federal awards.

**What if the sponsor doesn't want to see voluntary cost-share (e.g., NSF), but the PI says there isn't enough money in the budget to pay for any of his or her time?** Even if the sponsor does not want to see voluntary cost-share, the PI needs to show through effort confirmation the committed effort on the award. If the PI is putting 10% of his time on the project, but cannot pay for it directly, than it should be accounted for as voluntary uncommitted cost-sharing so we properly reflect the effort on this sponsored award.

**If I only budget 1% or 2% of my PI's time on a project, how do I deal with effort certification, especially if I know that the PI has worked considerably more than that on the project?** The PI is confirming the effort they he or she has committed to various projects. If the budget is only 1-2%, but the PI is committing a higher percentage, the difference should be put into a cost-sharing account. We must document that the actual effort committed to this project was NOT charged inappropriately to other sponsored awards, and the best way to do that is by charging that effort to a specific cost-sharing account/cost center linked to the project where the effort was committed, even if not reimbursed by the sponsor.

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## SUPPLEMENTAL COMPENSATION

### What is the best method to document Supplemental Pay I on Sponsored Programs?

It is important to document Supplemental Pay I requests by the faculty with either signed salary schedules, E-mail requests or some other written communication initiating the action.

### What is the maximum amount of Supplementary I Payments 36-week faculty would be eligible for per fiscal year?

They would be eligible for up to twelve additional weeks of Supplementary I funding with a maximum of 48 weeks total compensation. Supplemental I salary is derived from the 36 week base and cannot exceed 33.3% of the 36 week salary on a fiscal year basis. Since Supplemental 1 payments are based on the faculty member's base salary, it is considered part of the Institutional Base Salary (IBS) per Uniform Guidance 2 CFR 200.430(h)(2).

### How are Supplementary II Appointments handled?

Supplementary II appointments are similar to overtime, and are not considered part of Institutional Base Salary. Supplementary II appointments are considered Extra Service Pay and not normally paid on sponsored research. Exceptions should be processed through the unit's Financial Officer and the Corporate Controller's Office and would need to meet the exceptions outlined in the Uniform Guidance 2 CFR 200.430 (h)(4) (see next question).

### Are Supplementary II Payments discussed in the OMB Uniform Guidance?

According to the UG, compensation in the form of "extra service pay" is allowable only if all five conditions are met:

1. The university establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.
2. The university establishes a consistent written definition of work covered by institutional base salary (IBS) which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.
3. The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed.
4. The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the university.
5. The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as further described in the UG.

At Penn State, Supplemental II payments would not normally qualify as IBS. Supplemental I payments would.

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## NSF-NIH ISSUES

### What is the NSF "two-ninths rule" and are there exceptions?

NSF proposal budgets submitted should not request, and NSF-approved budgets will not include, funding for an individual senior personnel (PI, co-PI or Faculty Associate) which exceeds two months of his/her regular (9-month academic) salary. NSF's formal definition of "senior personnel" can be found here. Please note that this limit includes salary received from all NSF-funded sponsored awards. In other words, if a faculty member is working on more than one NSF award at the same time, the cumulative total of his or her effort on all NSF awards cannot exceed two months unless an exception applies. Historically compensation payments to senior personnel were made only during the non-academic supplemental period, but now can be academic or supplemental, still not exceeding 2 months in total.

If there is an anticipated need to pay an individual more than two months, such compensation must be disclosed in the proposal budget, justified in the budget justification, and specifically approved by NSF in the award notice.

In December 2014, NSF released their new NSF Guide to incorporate the UG and provided an exception to the rule:

> *"Under normal rebudgeting authority,… an awardee can internally approve an increase or decrease in person months devoted to the project after an award is made, even if doing so results in salary support for senior personnel exceeding the two month salary policy. No prior*

*approval from NSF is necessary as long as that change would not cause the objective or scope of the project to change."*

### What is the NIH salary cap?

NIH Salary cap is a legislatively mandated provision limiting the direct salary that an individual may receive from an NIH sponsored award. Current salary cap amounts can be found at www.grants.nih.gov/grants/policy/salcap_summary.htm.

As an example, if the salary cap amount is $183,300 ($15,275 monthly) for annualized compensation, a PI with a 36-week appointment base salary of $180,000 has an annualized salary of $240,000 ($20,000 monthly) and would be over the cap amount.

### How do I calculate the amount over the NIH cap for each month?

To calculate the over-cap portion of a salary we need to compare the employee's monthly base salary to the monthly cap salary. (For the purpose of this example, we will assume that the salary cap is $183,300/12 months, which is $15,275/month. But for actual salary cap calculations, it is important to always check the most current salary cap information provided at the website indicated above.) Let's say an individual has an annualized monthly base of $20,000 and has an effort of 15% in a given month, then the portion charged to the sponsored award is 15% of the cap amount ($2,291.25) rather than 15% of their own salary ($3,000). The amount over the cap would be the difference of $708.75.

### What do I need to do about the monthly amount over the cap?

The over the cap amount must be paid from a source other than the sponsored award, or other federal funds, and must be tracked in a unique cost center within those funds to identify it as salary cap. The purpose of this is to make sure the payment equals the effort and to act as a "placeholder" for that additional percentage of effort so the individual's commitment does not exceed 100%.

Do not include the salary cap amounts in a dedicated cost sharing account. **Salary cap is not cost sharing and cannot be accounted for in a cost sharing account or cost center**. See Cost Sharing FAQs.

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## SABBATICAL PAY

### When should sabbatical pay be charged to the 109 object code?

All sabbatical pay on general funds must be coded 109. Object code 109 may not be used when charging sabbatical pay to a sponsored award.

If sabbatical pay is augmented from a grant or contract per HRG15, then it should be charged to the same object code as regular pay or 134. Do not use object code 109. Object code 109 is used only for

sabbatical leave. In the event that a PI has a required cost share commitment while on sabbatical, that portion should be allocated to object code 104.

### Can sabbatical pay be charged to a sponsored award?

Sabbatical may only be charged to a sponsored award in unusual circumstances. Approval is required from the Corporate Controllers Office. If sabbatical pay is approved on a sponsored award the person's regular pay object code must be used.

### Can sabbatical pay be topped up from a sponsored award?

Yes (see ACG15). Total pay may not exceed 100% of a person's contract pay for the sabbatical leave period. Approval is required from the Dean/VP for Research/VP for Commonwealth Campuses and written approval is required from the granting agency. Top up pay must not be paid on 109.

### Can a person on sabbatical leave receive outside compensation or consulting pay?

Yes. Any pay should be reported to the department head and the compensated activity may not interfere or duplicate the purpose of the sabbatical. Consulting pay must follow Policy AC80. Any compensation over $5K must be disclosed within 30 days per the Conflict of Interest Policy RP06.

### Can a person receive summer pay while on sabbatical?

A person may receive full supplemental pay for periods outside the sabbatical contract period. A 36 week faculty member's sabbatical contract period is normally mid-August to mid-May. However, for pay purposes the system shows a person's leave starting July 1. The best practice is to add a note to the sabbatical leave form stating, "Sabbatical leave period is 7/1/14 – 6/30/15 for pay purposes only; physically on leave 8/15/14 – 5/15/15". Summer/supplemental pay for unusual academic contract periods would have to be addressed on a case by case basis.

### Are there any sponsored award requirements when a PI goes on sabbatical?

Sabbatical leave may be considered a long term absence by the sponsoring agency. Any leave should be discussed with the program officer. The PI may be required to submit formal notification to the sponsor and explain how the sponsored award will be managed during the leave period.

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## RETIRED FACULTY and CONSULTANTS

### Can retired faculty perform effort on sponsored awards?

Policy HR 45 Post-Retirement Appointments must be considered when a retired faculty member wishes to work on a sponsored award. There are two situations which are permitted:

1. The faculty member may decide to return to employee status which would require stopping all SERS or TIAA-CREF payments. If this is done, the faculty member would be treated as any other employee would be regarding pay and the reporting of effort.
2. The faculty member decides to volunteer their time. In this case, there is no direct cost to the sponsored award. Volunteering is permitted, but it is recommended that the faculty member's effort be tracked and confirmed through a formal memo and signatures.

Other than these two situations, a retired faculty member may not perform work on a sponsored award.

## How do we manage effort for faculty members on phased retirement?

If a faculty member is on phased retirement, 100% effort is equivalent to the FTE agreed to as the base for the faculty during the phased retirement. For example, 100% effort would be based on .75 FTE, and then if the faculty member moved to .50 FTE the next year, 100% effort would be based on .50 FTE.

Under phased retirement, you must look at the amount paid each month. For example, 50% effort would equate to 50% of the .75 FTE.

## For faculty on phased retirement, how do we manage the 12 weeks in summer?

We believe for sponsored awards that the faculty member should remain on the same FTE as during the academic year if the faculty is performing the same type of work (i.e. effort on a sponsored award). In some situations, such as summer teaching, OHR approves 100% FTE in the summer. It should be reviewed with the faculty member, the HR Representative and the department head to determine what situation applies and if the amount can be justified to the sponsor.

## Can a retired faculty member be hired as an independent consultant?

HR45 still applies and would prevent a retired faculty member from payment as an independent consultant. The only situation where this would be permitted would be if the retired faculty member was "performing services entirely separate and unrelated to his or her prior University employment duties", such as serving as an usher at the Bryce Jordan Center.

## In what situations can a faculty member be hired as an independent consultant?

Current employees are not permitted to be paid as independent consultants.

A separated Employee (terminated) cannot consult for one year after separation. Penn State cannot pay someone as both an employee and a consultant in the same calendar (tax) year.

Retired faculty, as noted above, also cannot be hired as independent contractors per HR45 unless they are performing services totally unrelated to their prior work at Penn State. This generally would preclude hiring a faculty member to work on sponsored programs in their field of study.

# CONFLICT OF INTEREST and COMMITMENT

## Can a current faculty member perform effort on a sponsored award through a private company or other third party?

Policy AC80– Outside Business Activities and Private Consulting outlines that:

> *Any Outside Business Activities engaged in by faculty:*
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> *Shall not interfere with the performance of his/her University duties or other contractual obligations to the University (including non-classroom and non-research responsibilities expected of all faculty members).*
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> *Should strive to be consistent with his/her professional stature or academic proficiency;*
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> *Shall not adversely affect the University's interests or mission or violate University policies or regulations including, but not limited to, policies or regulations related to intellectual property, conflict of interest, private consulting, use of University's name, logo, letterhead, or other resources, etc.*
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> In addition, the policy states that:
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> *University faculty cannot serve as consultants and/or contractors for University activities, either directly as private consultants, or through a third-party. . . . In situations where extra services are required from current employees, compensation must be as an employee, whether within the scope of their appointment or through supplemental compensation.*

In compliance with Policy RP06 – Disclosure and Management of Significant Financial Interests, faculty with significant financial interests, including private consulting, must disclose those interests in COINS. If the significant financial interest could affect University research in which the faculty member is involved, then the University's Conflict of Interest Committee will review the conflict and determine an appropriate management plan.

In the situation where a faculty member wishes to subcontract to, or accept a subcontract from, a company in which the faculty member has a significant financial interest, the situation must be reviewed by the COI Committee and managed appropriately.

## A faculty member wants to use his research space in support of this private consulting. Is this permitted?

Generally, no. Per AC80 – Outside Business Activities and Private Consulting:

> *Policy FN14 Use of University Tangible Assets, Equipment, Supplies and Services prohibits the use of University facilities and resources including specialized equipment, specialized software, supplies and services for faculty consulting activities. Faculty consultants may access University*

*facilities for consulting in the same manner available to non-University personnel. The utilization of University resources for consulting purposes must be approved by University administrators and documented in a Facility Use Agreement. The Facility Use Agreement clearly identifies the extent and nature of the facilities being utilized and establishes use charges based on the cost to the University of maintaining said facilities. The financial officer of the College or administrative unit should establish the appropriate charge out rate. Faculty consultants may utilize standard office facilities, including internet, local telephone, University-provided computers, etc., if reasonable and if the University incurs no additional incremental cost for said personal use. No administrative approval or Facility Use Agreement is needed for the use of standard office facilities as described above.*

While the policy does indicate that facility use agreements can be put into place, the practice is that these situations are rare because of the time and effort involved in determining appropriate rates. Faculty are able to use Research Service Centers with established rates for external use – and are treated as external customers for all work related to private consulting or privately owned companies.

Faculty or staff members may not allow personnel from outside companies to visit or observe activities in Penn State research space unless approved through a sub-contract or visiting scientist agreement.

## What is conflict of commitment?

Conflict of commitment occurs when an employee engages in professional activities outside the University. This can occur with paid or unpaid activities. Policy AD77 – Engaging in Outside Professional Activities (Conflict of Commitment) should be consulted.