



Conflict of Interest

FDP TRAINING: Organizational Conflict of Interest

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From the Organizational Conflicts of Interest Working Group



Organizational Conflict of Interest

OCI WORKING GROUP

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Disclaimer

Content provided in this presentation is for general information and educational purposes only. Please consult with your legal and compliance offices to determine the appropriate approach for your university.

Requirements/information in these slides are subject to change per federal regulations or sponsor requirements.



Topics Covered in Overview

- COI Types
 - Individual
 - Institutional
 - Organizational
- Organizational COI (OCI)
- OCI Procurements and Subcontracts
- OCI Certification Processes
- Conclusions
- Resources



3 Types of Research Related COI

Type	Description	Regulations?
Individual	<p>Research Bias: Individual's outside financial interests may bias research.</p> <p>Procurement COI: When individual spends university's funds on vendor related to individual.</p>	Numerous federal regulations.
Institutional	<p>Institution is the "person" with a conflict</p> <ol style="list-style-type: none"> 1. When Institutional Leader has outside financial interest related to University research and is in a position to influence the research or spend university funds for personal gain. 2. When Institution owns equity, intellectual property interests or could otherwise financially benefit (immediate or future) from influencing research. 	<p>No federal definitions or regulations.</p> <p>State institutions subject to state laws.</p>
Organizational	<p>Avoid unfair competitive advantage</p> <ol style="list-style-type: none"> 1. <i>Uniform Guidance (UG):</i> unable to be impartial in a procurement action involving a related organization. 2. <i>Federal Acquisition Regulation:</i> Where a related entity or current/prior work within the University has unfair competitive advantage from <ul style="list-style-type: none"> - Biased ground rules, - Impaired objectivity, or - Unequal access to information. 3. <i>Others</i> 	<p>UG: 2 CFR 200.318(c)2</p> <p>FAR 9.5, where included in federal contracts.</p> <p>Other requirements may not be found in regulations but in RFPs, BAAs or agreements.</p>



Institutional COI (ICOI) \neq Organizational COI (OCI)

Institutional COI Examples in Research

Scenario #1

- University licensed IP is used in a human study at the University
- An entity in which the University owns equity or has a financial interest is the sponsor, particularly for a human study
- The donor sponsoring a gift supporting the study has an interest in the data outcomes

Scenario #2

- An institutional leader has a financial interest related to the University research and is in the position to influence the research.



Organizational COI (OCI)

When does an OCI come into play?

Two most common:

- FAR 9.5 for contracts if included by agency (some non-federal entities also expressly incorporate FAR 9.5)
- Uniform Guidance 200.318(c)(2) (July 2018)

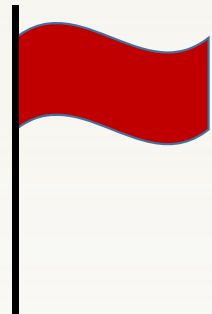
Others:

- Federal Agencies upon inclusion in grants and contracts RFP or awards
- Private agencies or foundations requirements for proposals, grants, contracts



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





OCI principles covered by FAR 9.5

Three categories

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



FAR – 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



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



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:

1. Competitor's proprietary information from Source Selection, or
2. 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.)



How to Check for OCI at Your University



Review proposal for (1) Unequal Access to Information,(2) Biased Ground Rules, or (3) Impaired Objectivity.



Uniform Guidance 200.318(c)(2) (July 2018)

“Parent/subsidiary procurement COI”: If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.



Organizational Conflict of Interest

Sample Procurement Organizational COI Standard of Conduct

https://research.unc.edu/files/2018/07/Procurement_OCOI_Guidance-7-10-2018.pdf

Sample Process Map
[University of Pittsburgh](#)



UNC Chapel Hill Sample



UNC
RESEARCH

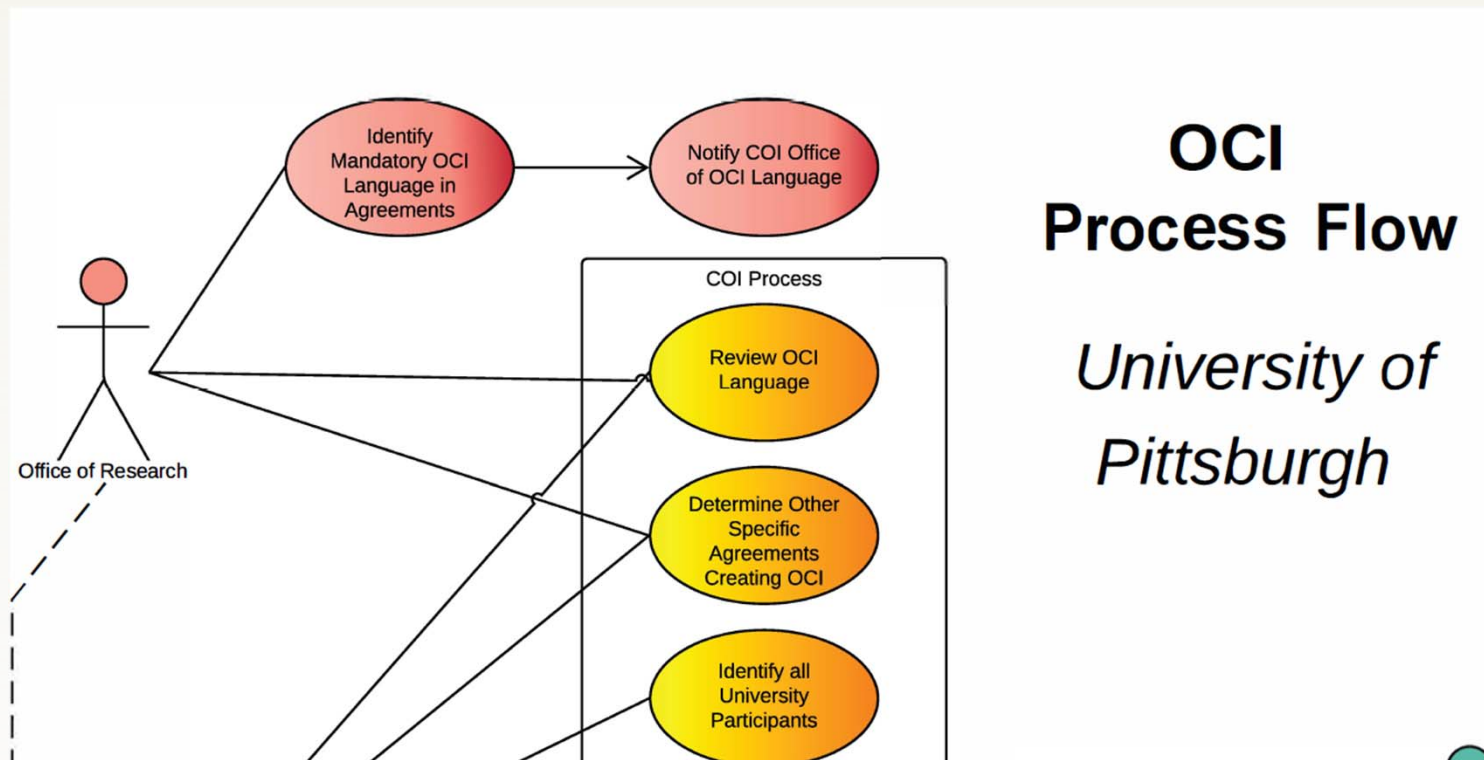
Office of Sponsored Research
Guidance

PROCUREMENT ORGANIZATIONAL CONFLICT OF INTEREST

Responsible Officer: Director
Responsible Unit: Research Administration
Effective date: July 1, 2018



Univ of Pittsburgh Process Flow Sample





Snapshot of OCI Transactions – UNC Chapel-Hill

	Reviews	Assessments	Totals
FY2015	15		15
FY2016	23	5	28
FY2017	52	20	72
FY2018	94	50	144
FY2019 (6 months)	41	18	59

Increase from Implementation from Uniform Guidance in January 2015



Remember ...

- FAR 9.5 and UG 2 CFR 200 are just two examples of OCI Requirements.
- OCI Requirements may also be found in RFPs and Agreements from
 - Foundations
 - State Agencies
 - Private Entities
 - Federal Agencies – with DIFFERING requirements



OCI @ Pre-Proposal

Pre-Award Stage

- If we are submitting the proposal, check the Broad Agency Announcement/RFP. Search by “conflict”.
- If we are a Sub, identify the Pass-through Entity and search for “conflict” in that Pass-through Entity’s subcontract/subaward terms.
- If “organizational” or “institutional” COI reporting is required at proposal, then alert the appropriate University stakeholder for review assistance, per your University’s policies and/or processes.

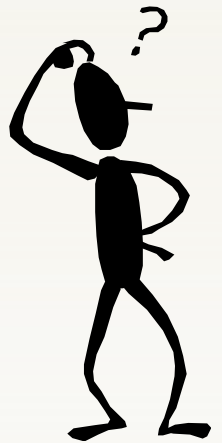




OCI @ JIT Award

Award Stage

- Check the Proposal record for previous OCI analysis.
- Check the BAA/RFP at **Just-in-Time** or when **Award is RECEIVED**. Search by “conflict”.
- If we are a sub, ensure that the search includes the PRIME award documents.
- IF “organizational” or “institutional” COI is required to accept the agreement, then alert your appropriate University stakeholder.





OCI - Procurements and Subcontracts

- Under the old OMB Circular A-110, individual cannot participate in selection, award, administration of a procurement/contract if apparent or real conflict of interest. No guidance for organizations.
- Under the Uniform Guidance, the requirement is in place for individuals and organizations. It is possibly extended to selection of subcontracts. CHECK WITH YOUR LEGAL COUNSEL.
- State Statutes also may apply.



SAMPLE Certification Process for OCI

Who Handles ?	What Circumstance ?
OSR/SPO	If agreement is silent on topic
COI Program	If form or agreement has an OCI section or requires a OCI certification of any type, on behalf of the University
Sub-Recipients or Consultants	If flow down required and proposal has an OCI section or requires a OCI certification of any type.

Check with your own Sponsored Research and COI Offices as to what is applicable for your entity!



ARPA-E 340 Form –
Business Assurances &
Disclosures Form

BUSINESS ASSURANCES & DISCLOSURES FORM

SAMPLE OCI CERTIFICATION

(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:	



OCI Certification FAQs

Who is covered by a University's certification?

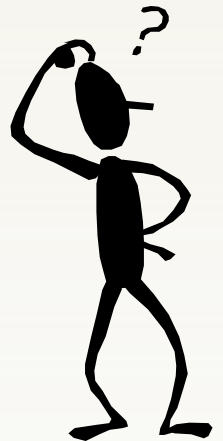
- Only University personnel. Not independent consultants, subcontractors or subrecipients.

Who obtains certifications from Subs at time of PROPOSAL?

- Follow Practice at your University: Submitting Department or Sponsored Research Office

Is FDP Clearinghouse Policy Sufficient for OCI?

- No. FDP Clearinghouse is for policies on Individual COI, not Organizational COI.





Conclusions



- Be familiar with the Types of COI
- Stakeholder education & involvement is KEY
- Good Proposal Prep (including subs)
= Successful OCI Review
- Easier with practice
- Welcome to the COI network!



We're Collecting Resources!

Please share your Institution's OCI resources!

We are collecting the following to be shared in May 2019:

1. Written processes, including Lead Times
2. Process flows
3. Best practices to operationalize: Forms, diagrams, etc.!

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