Direct sponsor funding to affiliated entities for international activity

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Direct funding to affiliated overseas entities

Why?

- PEPFAR programs increasingly favor “local” in-country entities.
- Non-federal sponsors may prefer to fund “non-U.S. entities”.
- Foreign entities are eligible for local host country government funding.
- Foreign entity may help to mitigate currency exchange losses.
- Direct grants may be the expectation of university researchers stationed at foreign site (e.g., branch campus, local office).

Direct funding to affiliated overseas entities

Sample considerations

- Wise for an affiliated foreign entity to have its own federal / non-federal funding identity?
- Adequacy of foreign site compliance infrastructure (financial, scientific, administrative, etc.).
- Jeopardizes the “unified” model in sponsored projects.
- Credit for award -- does the U.S. institution benefit?
- Control.

PEPFAR Program

- USAID goal: 70% funding to "Local Entities".
- USAID generally defines a "Local Entity" as follows:
  - Is legally organized under the laws of;
  - Has as its principal place of business or operations in;
  - Is majority owned by individuals who are citizens or lawful permanent residents of; and
  - Is managed by a governing body who are citizens or lawful permanent residents

of the country receiving assistance.

EU Funding

- Horizon 2020.
- European Union’s Structural and Investment Funds.
- China National Natural Science Foundation.

Traditional “unified” model in international projects

- Overseas affiliated entity often facilitates the university’s “legal presence” abroad.
  - Owned and controlled by US university.
  - Registers a corporate presence, employs local nationals, enters into local contracts, leases local office space, etc.
- For federal award purposes, the affiliated entity’s activity is considered the university’s activity, and university remains the federal awardee.
  - Affiliated entity falls within the university's organizational structure and is not organizationally independent from the university (i.e., no “subaward” to affiliated entity).
  - Affiliated entity relies almost entirely on the university's compliance infrastructure.

Traditional “unified” model

- Overseas costs incurred by affiliated entity (e.g., local salaries, leases, equipment) treated as university’s costs for reimbursement purposes -- like a division of the university.
  - Overseas entity adheres to relevant university policies applicable to sponsored projects.
  - Functions as an “off site” location of the US university.

Direct sponsor funding to affiliated overseas entities

- May disconnect the overseas entity from the “unified” model.
- Overseas entity may need its own financial, administrative, and scientific infrastructure to directly receive federal funds.
  - Independently stand up to an audit?
  - Implications of a separate “DUNS” number.
  - Independently make representations / certifications to sponsors.
  - Indirect cost limitations where foreign entity is a direct recipient.

Direct sponsor funding to affiliated overseas entities

- Sponsors may require that US university <u>not</u> "control" the overseas entity.

- Can foreign entity disregard US research laws and standards (especially for non-federal projects)?
  - Is the overseas entity's work the US institution's work?

Regulation of affiliated overseas entity's research

- Is the overseas entity still "part of" the US institution, even if legally separate and/or not controlled by the US institution?
- Which university policies must/should extend to the affiliated overseas entity?
- Possibilities:

Scientific compliance	**Financial compliance**
• Human subjects • Animal research • Conflict of interest • Research misconduct	• Cost allowability • Effort reporting • Cost sharing
Administrative compliance • Purchasing • Audit • Intellectual property	

- Does the home institution take ownership of these policies, or does the overseas entity? Can the home institution provide services to enable performance?

Maintaining control

- Parent entity can exercise influence in many ways:
  - Appoint board of directors of affiliated entity.
  - Draft Bylaws.
  - Require that certain types of transactions be approved by the board.
  - Require SOPs modeled on home institution.
  - Services agreements for legal and other support.
  - Affiliation Agreement.
  - License Agreement.

But not too much control…

- Home institution exposure to liability.
- Corporate veil.
- Tax considerations (permanent establishment).
- No longer a “local entity”.
- Principal/agent issues.

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