

Investigations

Civil and Criminal Investigations

Small Business Owner Pleads Guilty to Mail Fraud and Tax Evasion

An investigation of the owner of a company that received Small Business Innovation Research (SBIR) awards from NSF and other Federal agencies resulted in the owner entering a plea of guilty in Federal court. The investigation, which was conducted by NSF OIG and other affected agencies' OIGs, uncovered a broad scheme by the owner to defraud the government by submitting false statements in SBIR proposals and research reports, and converting award funds to his personal use.

The owner pled guilty to mail fraud, 18 U.S.C. § 1341, for sending a progress report to NSF for his SBIR Phase II award that included research that was previously conducted by the company under an Air Force SBIR award. He also pled guilty to tax evasion, 26 U.S.C. § 7201, for using Federal SBIR funds to pay for personal expenses, such as repairs and improvements to his home, thereby evading over \$93,000 in income tax on his personal tax return for 1999. The total loss of Federal funds related to the subject's fraudulent scheme is estimated at \$1.4 million.

Based on the guilty plea and our recommendation, NSF recovered \$120,000 of its funds that it withheld from the NSF grant pending the outcome of OIG's investigation. We also recommended that NSF exclude the owner and his company from receiving funds from any Federal agency. NSF's decision is pending.

HIGHLIGHTS

Civil/Criminal Investigations	25
Administrative Investigations	27

University Admits to Mis-Charging Technical Salaries to NSF Awards

OIG received a complaint that a university was charging a 5% surcharge to NSF awards for technical support salaries. We initiated an investigation and worked with the university to review technical support charges to NSF awards. Although we found no evidence of fraud, the university restored \$364,539 to NSF for technical support expenses that were erroneously charged to its NSF awards. Generally technical support costs can be charged to Federal grants as direct costs only for particular services provided for particular grants; otherwise such costs constitute administrative support services costs that are included in the university's indirect cost rate.

As a result of our investigation, the university changed its policies and procedures to ensure that technical support is charged appropriately to Federal awards. The university also identified \$518,993 of technical support charges that had been wrongfully charged to awards from 12 other Federal agencies. We notified the other Federal agencies of this issue and obtained a commitment from the university to work with each of them to resolve these overcharges.

University Employee Sentenced for Theft of Grant Funds



Attorney Richard Woodford addresses a grant fraud conference hosted by NSF OIG.

Last March we reported that a California university discovered that one of its employees had stolen \$40,889 in NSF grant funds.⁵ The subject pled guilty to one count of violating 18 U.S.C. § 666, “theft or bribery concerning programs receiving Federal funds,” and was sentenced to 30 days in prison followed by 150 days of home confinement and 3 years of supervised release. We recommended that NSF debar the subject from obtaining the benefits of Federal awards for a period of two years. NSF has not yet acted on this recommendation.

⁵ March 2004 Semiannual Report, p.26

Personal Use of Agency Information Technology Resources Clarified

Two recent Semiannual Reports described a case involving an NSF employee who advertised stolen property for sale using NSF's electronic bulletin board.⁶ The employee did not cooperate with our investigation and ultimately resigned. During the course of this investigation, we identified several weaknesses in NSF's policy for personal use of information technology (IT) resources, and later issued a report with recommendations for corrective actions. In response, NSF recently updated the policy, defining acceptable personal uses of NSF's IT resources and prohibiting private business use. The revised policy provides that personal use of agency IT resources must not result in additional charge to the government, be offensive to others, or break the law. The revised policy also includes links to other relevant policies such as NSF's IT Security Policy for employees to review.

Administrative Investigations

Action by the Deputy Director

NSF Takes Action in Plagiarism Case

Last September, we reported on our investigation of an allegation that a proposal submitted to NSF that allegedly contained more than a page of text and associated ideas plagiarized from a confidential research proposal submitted to another agency.⁷ We referred the matter to the subject's university, which conducted an investigation and concluded that the acts of plagiarism constituted reckless disregard of the standards of scholarship. We recommended that NSF make a finding of research misconduct, debar the subject from Federal funding for one year, and require certifications and assurances for a period of two years. NSF made a finding of research misconduct and debarred the subject from receiving Federal funds for a period of one year. In addition, NSF imposed a requirement that certification and assurance letters accompany the subject's proposals to NSF for the year following the debarment period, stating that the proposal complies with NSF's research misconduct regulation. Finally, NSF excluded the subject from participating as an NSF panelist, reviewer, advisor or consultant for a period of two years.

⁶ September 2003 Semiannual Report, p.31; March 2004 Semiannual Report, p.27

⁷ September 2003 Semiannual Report, p.35

Plagiarism Results in Misconduct Finding Against PI

Last March, we discussed a case in which the subject plagiarized from a published paper and an NSF proposal received through the confidential peer review process.⁸ Based on our investigation report and recommendations, NSF made a finding of research misconduct and required that any proposal submitted by the subject be accompanied by certifications by the subject and his department chair that his proposal contains no plagiarized material. The subject requested and has been granted an extension of time to file an appeal to NSF's Director.

Reports Forwarded to the Deputy Director

Post-Doctoral Researcher Fabricates Data

OIG received an allegation that a postdoctoral scientist working at a research institute affiliated with a major university in New York, fabricated and falsified data in a published research paper. The scientist's research, supported by NSF and the Public Health Service (PHS), was part of a larger collaborative project involving several universities located across the country, supported jointly by several Federal agencies. After reviewing the institute's inquiry and investigation reports, we determined that the institute had not followed its own published procedures for the investigation of allegations of research misconduct and decided to conduct our own investigation.

We concluded that the researcher knowingly and intentionally fabricated data in multiple analyses to make it appear that replicate experiments had been completed when in fact only a single analysis had been performed. The fabrication involved multiplying the values contained in the original data by a common factor to provide a new set of numerical values that were then presented as the replicate data set. To support the data fabrication, the researcher manipulated corresponding graphical images to make the image consistent with a falsified replicate analysis. The scientist's actions ultimately led to the retraction of the entire publication in which the fabricated and falsified data appeared.

We recommended that NSF make a finding of research misconduct against the subject and debar him for two years. Their decision is pending. We worked closely with the Office of Research Integrity of PHS to coordinate the joint final recommendation to both agencies.

⁸ March 2004 Semiannual Report p. 28

PI Fabricates Publication Record

OIG recommended that NSF debar a PI for two years for fabricating the existence of and citations for two manuscripts referenced in his two NSF awards, one of which was a CAREER award. An investigation by the PI's university determined that he provided false biographical information as part of his NSF proposals. The PI cited two manuscripts as "submitted to" two prominent journals, and also referenced a "submitted" manuscript within the text of the proposal for his CAREER award. The investigation determined not only that the manuscripts had not been submitted to the journals, but that the manuscripts did not exist at all.

The investigation identified a pattern of misrepresentation by the PI. In five proposals submitted to other agencies over a 10-month period, he claimed that the same two non-existent manuscripts were submitted to the same two journals. He later claimed that he planned to submit manuscripts to those journals shortly afterward, but neither manuscript existed when he submitted the first proposal, neither existed 10 months later when he cited them in the fifth proposal, and neither existed when we completed our investigation. The PI's pattern of misrepresentation also included an earlier misconduct case in which the PI was found to have committed plagiarism and falsification under a Public Health Service award when he was a postdoctoral fellow. The investigation also determined that the PI incorporated the same material involved in that case into another of his non-NSF proposals while he was a faculty member at the university.

As a result of its investigation, the University found that the PI committed research misconduct under its policy. He resigned from the faculty, thereby limiting the university's ability to take action. The PI had already begun work in a new position at a Federal research facility by the time he received a copy of our draft investigation report for comments; after receiving the draft, he resigned. To protect the Federal interest, we recommended that NSF debar the PI for two years, and that certifications and assurances be required for any proposals he might submit for a period of three years following his debarment. Their decision is pending.

Researcher Commits Plagiarism

We received an allegation that a PI at a California university copied material from multiple published papers into a proposal she submitted to NSF. In response to our questions about the copied text, the PI denied writing the proposal, explaining that she was merely a sponsor for the author, a researcher in her laboratory. Because the researcher was not eligible to be a PI under

the university's rules, the PI submitted the researcher's proposal under her name.

Following its investigation, the university concluded that the researcher committed research misconduct, specifically plagiarism, and that the PI was negligent in carrying out her responsibilities. Additionally, the investigation discovered several significant inaccuracies in the proposal. The university reprimanded the PI and the researcher, and took additional steps to ensure that the researcher does not work for the university in any research capacity or claim any association with the university for a period of two years.

We agreed with the university's conclusions, and recommended that NSF send a letter of reprimand to the researcher informing him he has committed research misconduct. We recommended that NSF require him to provide certifications that his submissions to NSF are properly referenced and accurate, for three years from the resolution of this case. Their decision is pending.

Co-PI Participates in Plagiarism of REU Proposal

We received an allegation that a Research Experiences for Undergraduates (REU) proposal submitted by a PI and co-PI at a Michigan university was plagiarized from a successful REU proposal written by scientists at another institution. We compared the two proposals and found roughly six and a half pages of identical or substantially similar text. The PI and co-PI told us they obtained a paper copy of the source proposal from the authors, made an electronic copy, and used this as the basis for their proposal. They explained that they intended to delete all the original text, but inadvertently neglected to do so.

As a result of its investigation, the university found that the co-PI committed research misconduct under its policy. The PI's case is not yet resolved. The university reprimanded the co-PI, and, for a period of two years: 1) required that an institutional official certify to the accuracy of reports under any of his Federal awards and provide assurance of compliance with all relevant institutional policies, regulations, and guidelines; 2) required that two institutional officials review his requests for Federal funding prior to submission; and 3) prohibited him from serving as an NSF reviewer. Consistent with the university's actions, we recommended that NSF find that the co-PI committed research misconduct, send him a letter of reprimand, require assurances of compliance for two years, and prohibit him from serving as an NSF reviewer for two years. We also recommended that he be required to complete ethics training.

Other Administrative Activities Resulting from Investigations

Court Enforces IG Subpoena

OIG went to court to compel a state entity to comply with an Inspector General subpoena; this is the first time we have been forced to seek judicial enforcement of a subpoena. To facilitate investigations and audits, the Inspector General Act provides broad authority to IGs to:

require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court . . . (IG Act § 6(a)(4).)

In conjunction with an ongoing investigation, we issued an administrative subpoena to the Illinois Department of Revenue (IDR) for tax records and supporting documentation filed on behalf of two corporations under investigation. The IDR refused to comply, asserting that state law prevented them from disclosing state tax records.

The Federal subpoena authority under the IG Act preempts conflicting state law. The U.S. Attorney's Office for the Central District of Illinois filed a motion for enforcement of our subpoena in the U.S. District Court, which the IDR opposed. The Court agreed that the state law was preempted by the IG Act and ordered the IDR to comply with the subpoena, which it did.

\$68,826 in Program Income Recovered

In past investigations and reports, we noted that grantees sometimes use program income incorrectly. Last September,⁹ we discussed a proactive review we conducted to analyze the use of program income in conference and workshop awards. We selected a stratified random sample of awards from fiscal year 2001 and requested financial information about the award from the awardee institution.

Of the awards in the sample, 25 percent were initially determined to contain no program income issues. The remaining grants raised concerns that fell

⁹ September 2003 Semiannual Report, p. 41

Program Income

NSF grants for conferences and workshops are governed by either the Grant General Conditions (GC-1) or the Federal Demonstration Partnership (FDP) General Terms and Conditions, and, if mentioned in the award letter, by Grant Special Conditions FL 26, "Administration of NSF Conference or Group Travel Award."

Both the current GC-1 and FDP General Terms and Conditions mirror OMB Circular A-110's definition of program income:

"Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them."

FL 26 states that:

"Any registration or other fees paid by conference participants shall be used to defray reasonable expenses directly associated with the conference for which funds are not otherwise available. If fees exceed such expenses, the remainder shall be used to offset allowable costs otherwise chargeable to this grant."

into four categories: failure to account for or properly use program income; inappropriate charges to the award; misuse of travel expenses; and reallocation of participant support without NSF permission. As a result of the review, we have thus far 1) recovered \$68,826 that the awardees determined was inappropriately used, and 2) referred four matters to the Office of Audit. We also clarified the rules for handling conference award funds and associated program income with the awardees and program officers involved. We continue to work with the institutions to address the issues. During the coming semiannual period we expect to complete the project and prepare a Management Implications Report containing specific recommendations for NSF.

NSF Clarifies Its Policy on Holiday Pay

In spring 2003, OIG received several inquiries from employees regarding whether NSF was complying with the rules governing pay to employees required to work on holidays. They expressed concern about whether holiday pay was available for such work and whether supervisors would view their request negatively. We researched the applicable law governing holiday pay and compared it to NSF policy, procedure, and practice. Over the course of a year, we consulted with NSF's Office of General Counsel and Division of Human Resource Management regarding our findings. During this period, NSF clarified its policy concerning holiday pay by issuing an agency bulletin summarizing applicable law, providing examples of the circumstances under which employees are entitled to holiday pay, and encouraging NSF Directorates and Offices to consult with the Division of Human Resource Management regarding employee entitlement to holiday pay prior to the anticipated holiday work.

NSF Takes Steps To Improve Monitoring Of Human Subjects Research

Past OIG investigations identified shortcomings with NSF's procedures to monitor and enforce

compliance with the Federal regulation for the protection of human subjects, known as the Common Rule. Under the Common Rule, an institution must have received approval from its institutional review board (IRB), or affirmatively declare an exemption from the government-wide regulation, before NSF may grant the award for a project involving human subjects. NSF currently relies on grant applicants to self-identify the involvement of human subjects in proposals; however, OIG investigations have drawn attention to the failure of applicants to do so. In our March 2004 Semiannual Report, we reported that a division within an NSF directorate failed to code NSF's internal forms, which are intended as a check on the self-reporting system¹⁰. The omission compromised NSF's ability to track the involvement of human subjects in NSF-funded projects in that directorate. When we reported these concerns to NSF, the agency changed the Grant Proposal Guide to present the requirements more clearly and emphasized the need for someone other than the PI to declare the relevant exemptions. The directorate involved also took steps to improve its internal review of human subjects compliance, including requiring program officers to specifically confirm human subjects compliance before an award can be made.



Federal regulations aim to protect the health and safety of human and animal research subjects such as “Pringles”, a potbelly pig.

Eight Travel Card Cases Receive Administrative Actions

In our March 2004 Semiannual Report, we reported an investigation concerning misuse of government travel cards¹¹. In one case, involving the falsification of official records to hide her misuse, the employee resigned her NSF position and pled guilty to violation of 18 U.S.C. § 2071(b), the willful and unlawful destruction of an official record, which is a felony. In eight less serious cases, NSF employees had misused their government travel credit cards by making ATM cash withdrawals and purchases that were unrelated to official travel. As a result of that investigation, NSF management imposed a range of administrative actions that varied with the seriousness of the violations. While most were issued reprimands or warnings, the most senior employee involved was issued a 5-day suspension and the travel cards of two employees were either revoked or suspended. Our office continues to work with NSF management to prevent and detect credit card fraud and abuse.

¹⁰ March 2004 Semiannual Report, pp. 28-30

¹¹ March 2004 Semiannual Report, pp. 23-24

