

Investigations

Civil and Criminal Investigations

School District Agrees to Settlement and Compliance Plan

The investigation of an NSF award to a large city school district was resolved with the execution of settlement and compliance agreements and a \$150,000 reduction in a current award to the district. The case arose when OIG attempted to audit the district and identified a number of significant issues including the district's inability or unwillingness to provide adequate documentation to support the \$13.8 million in costs claimed and \$21 million in claimed cost sharing. The auditors were unable to express an opinion on claimed costs and cited material weaknesses in internal controls and non-compliance with federal requirements.

Because of the nature and scope of the problems identified, and the lack of cooperation it received, the Office of Audits referred the matter to the Office of Investigations. OIG subpoenaed relevant records from the district, which cooperated with the investigation. However, the district was not able to provide sufficient source documentation to contest most of the audit findings.

The district acknowledged numerous systemic weaknesses in its award management practices and voluntarily implemented corrective actions. After consulting with the United States Attorney's Office, and in coordination with NSF management, OIG determined that settlement of this case should include a plan

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The Benefits of Compliance Programs

The use of compliance programs as part of the resolution of investigations of organizational misdeeds is increasing. Compliance plans have proven to be an effective means of strengthening internal controls, curbing misconduct, and changing the culture of organizations. Such programs also serve the interests of federal agencies in ensuring compliance with their regulations and policies.

According to the Department of Justice (DOJ):

“Corporations should not be treated leniently because of their artificial nature nor should they be subject to harsher treatment. Vigorous enforcement of the criminal laws against corporate wrongdoers, where appropriate results in great benefits for law enforcement and the public, particularly in the area of white-collar crime. Indicting corporations for wrongdoing enables the government to address and be a force for positive change of corporate culture, alter corporate behavior, and prevent, discover, and punish white-collar crime³.”

DOJ therefore actively promotes the implementation of compliance programs:

“Compliance programs are established by corporate management to prevent and to detect misconduct and to ensure that corporate activities are conducted in accordance with all applicable criminal and civil laws, regulations, and rules. The Department encourages such corporate self-policing, including voluntary disclosures to the government of any problems that a corporation discovers on its own⁴.”

The U.S. Sentencing Guidelines recognize the benefits of compliance programs, and when organizational criminal wrongdoing does occur, entities with compliance programs in place are accorded consideration by the Guidelines.⁵ The Guidelines set out seven components for organizational compliance programs:

- (1) Establish standards and procedures to prevent and detect criminal conduct.
- (2) Managerial knowledge and specific responsibility for the content and operation of the compliance program.
- (3) Avoid employing personnel who have engaged in illegal activities or other misconduct.
- (4) Periodic training of personnel about the requirements of the compliance program.
- (5) Monitoring and auditing of the effectiveness of the compliance program; and establishing and publicizing a confidential, anonymous, risk-free whistleblower program.
- (6) Promotion of the program through incentives for success and disciplinary measures for failures.
- (7) Taking timely action when wrongdoing is detected, both reporting it and making appropriate modifications to the compliance program to avoid recurrence.

to ensure future compliance with federal requirements and to safeguard current and future funds awarded to the district. The compliance plan requires the district to form a compliance committee to oversee the implementation of procedures outlined in the agreement, and to report annually for five years to OIG. The settlement also resulted in the reduction of the district’s current award by a total of \$150,000.

Former NSF Employee Convicted of Felony Not Debarred

Two years ago NSF’s former Travel Card Program Manager pled guilty to the willful and unlawful destruction of an official government record, a felony.⁶ The manager misused her own government travel card on approximately four dozen occasions, and initially concealed her misuse from an OIG audit by deleting information from official agency records. Following an investigation that resulted in her conviction, the manager was sentenced to 20 weekends in jail, 2 years supervised probation, fined \$1,000, and permanently barred from all employment with the federal government.

Although her sentence prohibited the manager from serving as a government employee, there was nothing to prevent her from seeking private employment for a federal government contractor or subcontractor. In light of the seriousness of

³ “Principles of Federal Prosecution of Business Organizations” (available at <http://www.usdoj.gov/dag/cfff>) at 1.

⁴ *Id.* at 8.

⁵ U.S.S.G. §§ 8B2.1, 8C2.5(f), & 8D1.4(c)(1) (11/1/04).

⁶ March 2004 Semiannual Report, p.23

her offense, and considering her senior and highly responsible position, OIG advised NSF that the federal interest would be best protected by prohibiting her from having any responsibility for federal funds by debarring her for a period of three years.

NSF declined to debar and explained that it “considered the fundamental policy set forth in the common debarment rule stating that debarment is not to be used as a punishment. Rather, the agency is to exercise its debarment authority in order to appropriately protect the federal Government’s interest. It is therefore relevant that your conviction is a felony and a matter of public record, and that you can no longer work as an employee of the federal government.”

The OIG disagrees with NSF’s view that the conviction of a felony as a matter of public record weighs against debarment, or that the ban on federal employment mandated by the criminal statute she violated should affect a debarment decision. To the contrary, crimes are designated as felonies because they are more serious, conviction of a felony is always a matter of public record, and conviction for “destruction of records” is an explicit independent ground for debarment in NSF’s debarment regulation. The OIG takes the destruction of official records seriously and expressed disappointment to NSF that it did not take administrative action in this case.

NSF Suspends Owner of Small Business

In response to an OIG recommendation, NSF suspended the owner of a small business who pled guilty to Mail Fraud and Tax Evasion, and his company, from participating in contracting with the federal government. A multi-agency investigation found that the owner submitted false reports to NSF and other federal agencies related to SBIR awards to the owner’s company, resulting in loss to the government estimated at \$1.4 million.⁷ The owner has not yet been sentenced.

University Implements New Policy for Charging Administrative Fees to Federal Awards

The Office of Audits previously reported that a California university repaid \$1.3 million to NSF for inappropriately recovering administrative service costs above the maximum allowed under federal regulations.⁸ The Office of Audits

⁷ September 2004 Semiannual Report, p.25

⁸ March 2004 Semiannual Report, p.19

referred the matter to the Office of Investigations to determine whether the university officials who charged such costs to NSF grants knew the charges were wrongful. Our investigation did not disclose any overt evidence of fraud on the part of university officials. Following the audit and subsequent investigation, the university implemented a new policy concerning the charging of administrative fees that complies with federal regulations. The university also committed to training its staff to ensure that the new policy is understood and followed. The audit was forwarded to NSF for resolution and it has recovered the full amount.

Two Employees Misuse Government Computers

In two similar but unrelated incidents, NSF officials notified our office that files containing sexual material had been discovered on the agency's computer network. Our investigation revealed that, in both incidents, the employees used NSF computers and internet access to visit adult web sites and download sexually explicit photographs and videos. The files were maintained on the NSF computers used by the individuals as well as on NSF network drives. Both individuals forwarded some of these files to others via email. Additionally, one of the individuals installed a peer-to-peer file-sharing program, in violation of NSF policy for agency computers, and used this program to download illegally a large number of copyrighted files.

In both cases we submitted our findings to NSF management for appropriate administrative action. At the time of this report, one of the individuals has been terminated, and the other case is pending adjudication. Our office is also working closely with NSF to conduct a proactive review of employees' use of agency computers and electronic resources to determine if the actions identified during our investigations are isolated incidents or indicative of a larger problem of employees abusing government resources.

Administrative Investigations

Actions by the Deputy Director

Proposal Author Commits Plagiarism

Last year, OIG recommended a finding against an author of a proposal that contained text copied from multiple papers.⁹ NSF's Deputy Director (DD)

⁹ September 2004 Semiannual Report, p.30

concluded the author, who was neither the PI nor co-PI, committed plagiarism. The DD issued a finding of research misconduct against the author and required that the author's university provide written assurance for a period of two years that any proposal submitted to NSF by the author adheres to rules of scholarship and attribution.

We sent the PI listed on the proposal a letter stating that, although she did not personally commit research misconduct, we agreed with her university that she failed to meet her responsibilities as PI by not thoroughly reviewing the proposal before it was submitted. As a result of our recommendations in this case, NSF changed its Grant Proposal Guide to require that a proposal's authors, if not the PI or co-PI, be named and acknowledged.

Deputy Director's Finding Upheld on Appeal

We previously discussed a finding by the DD of research misconduct in Pennsylvania in which the subject plagiarized from a confidential proposal and a published paper.¹⁰ The subject appealed the DD's decision to NSF's Director, who upheld the DD's finding and actions.

NSF Takes Action Against co-PI Who Plagiarized

In a previous report,¹¹ we discussed a case in which OIG recommended that NSF take action against a co-PI at a Michigan university who participated in plagiarizing a Research Experiences for Undergraduates (REU) proposal. Based on our investigation and recommendations, NSF made a finding of research misconduct and required, through November 2005, the subject's university to provide written assurance that any proposal the subject submits to NSF adhere to rules of scholarship and attribution. In addition, NSF prohibited him from serving as an NSF peer reviewer, advisor, or consultant for an 11-month period and required him to complete an ethics training course.

PI Fabricates Publication Record

A PI who fabricated his publication record in two awarded NSF proposals, one of which was a prestigious Faculty Early Career Development (CAREER) award, was found to have committed research misconduct.¹² Based on OIG's investigation and recommendations, NSF made the finding and required that,

¹⁰ March 2004 Semiannual Report, p.28; September 2004 Semiannual Report, p.28

¹¹ September 2004 Semiannual Report, p.30

¹² September 2004 Semiannual Report, p.29

for three years, the subject provide written certification and the subject's university provide written assurance that any document he submits to NSF adheres to rules of scholarship and attribution.

PI Plagiarized from Book and Paper

Following OIG's recommendation, the DD found that a PI at a North Dakota university committed plagiarism in a proposal she submitted to NSF. OIG received an allegation that the PI copied material from the preface of a book into her proposal. In response to our questions about the copied text, the PI admitted she failed to properly distinguish the text, and identified additional text she had copied from a published paper. We referred the allegation of plagiarism to the PI's university for investigation.

Following its investigation, the university concluded that the PI plagiarized text from a book and a published paper into her proposal. It reprimanded the PI and took the following actions: 1) her proposals and manuscripts submitted for the rest of the year (2004) had to be reviewed and approved by her department head; 2) she must have a co-chair on all committees which she chairs for a period of 2 years; 3) she must make one or two presentations annually as part of the graduate assistant ethics training course for the duration of her employment at the university; 4) she must undergo formal training in research ethics at her own expense; 5) her salary adjustment for FY 05 will be 1% instead of 3%; and 6) a letter of reprimand was placed permanently in her personnel file.

We agreed with the university's conclusion and recommended that NSF send a letter of reprimand to the subject informing her she has been found to have committed research misconduct. Considering the relative seriousness of the PI's misconduct, and the actions taken by the university, we did not recommend that NSF take additional action against the PI. The DD followed our recommendations.

Reports Forwarded to the Deputy Director

Graduate Student Fabricates Data

A California university notified OIG that it was investigating an allegation that a graduate student fabricated data that found its way into proposals submitted to NSF and the National Institutes of Health (NIH). The graduate student provided the data to her advisor who unknowingly used it as the basis for a manuscript submitted for publication and both proposals.

The university's investigation indicated that the advisor suspected that the graduate student fabricated the results and asked the subject for the raw data. However, the student declined requests for the raw data from both the advisor and the investigations committee. She claimed that she gave her data to an unnamed undergraduate who analyzed it and emailed her the results. The student refused to identify the perpetrator, and instead provided an email alleged to be from the undergraduate stating that she had falsified the analyses and she was sorry. The university concluded that the student created a fictitious person to hide the fact that she was responsible for falsifying the results. It found that the subject committed research misconduct and dismissed her from the university.

OIG opened its own investigation and coordinated efforts with the Office of Research Integrity (ORI), which handles allegations involving NIH proposals and refers matters to the Department of Health and Human Services (HHS) for adjudication. After several unsuccessful attempts to contact the subject and hear her story, we too concluded that the graduate student committed research misconduct. OIG recommended that NSF jointly resolve this case with HHS, and send a letter of reprimand to the graduate student informing her of the finding and debar her for 3 years. A final decision on this matter is pending.



Dewan Kazi Farhana, a Douglass College Extern, reviews research misconduct policies with the Inspector General.

PI's Plagiarism was Part of a Pattern

An additional instance of plagiarism beyond that involved in the initial allegation first reported last September,¹³ was found in the case of a PI and a co-PI at a Michigan university who appropriated an REU proposal written by scientists at another institution. In the course of reviewing the university's investigation report for accuracy and completeness, we identified a second research proposal previously submitted by the PI that contained 90 lines of apparently plagiarized text. We referred this matter back to the university.

A university committee investigated the new allegations. The PI told this committee that a graduate student provided material for his proposal, that this material accounted for the allegedly plagiarized text, and that the PI submitted his proposal to NSF without reviewing the student's contribution. The proposal provided no attribution to the student. The committee concluded that the PI's actions were reckless and constituted research misconduct, and that his behavior was part of a pattern of misconduct.

The university reprimanded the PI; required him to withdraw from all pending federal applications; excluded him from applying for federal grants for one year; barred him from serving as senior project member on any federal grant; prohibited him from serving as an NSF reviewer; and for three and a half years, institutional officials must review all his proposals prior to submission. OIG recommended that NSF find the PI committed research misconduct, send him a letter of reprimand, require assurances for any proposals submitted for three years, and prohibit him from serving as an NSF reviewer for the same period. Because the PI's plagiarized research proposal resulted in an award, we also recommended that NSF terminate the award.

Falsification, Fabrication, and Plagiarism Found in a Single Proposal

We recommended a two-year debarment for a PI who plagiarized, fabricated, and falsified text, figures, and experimental conditions in an unfunded NSF proposal. The PI's university had investigated an allegation referred by OIG, and found that the PI had committed research misconduct by copying a paragraph of text from a journal article without permission or citation, falsely presenting another's data as his own preliminary results, and copying and editing figures from published sources without attribution.

¹³September 2004 Semiannual Report, p.30

The PI, an instructor at the university, edited both figures substantially and described them in the text with fabricated experimental conditions. The PI's postdoctoral advisor, whom the PI described as a consultant on the project, was a co-author on each of the source documents. However, the investigation found no indication of a formal or informal consulting relationship between the subject and his former advisor.

Because the PI's contract with the university had expired, the university's sanctions were limited and focused on restrictions concerning hiring the PI for other positions. OIG recommended that NSF debar the PI for two years; require the PI to certify completion of an ethics training program before applying for NSF funding in the future; require certifications and assurances for all documents submitted to NSF for three years following the debarment, that each submission is properly referenced and accurate; and bar the PI from serving in the NSF peer review process for three years. NSF's decision is pending.



NSF funds some grants that utilize human or animal testing. In an unrelated project, a premed student tests a head-injured rat on the balance beam for surefootedness. *University Photocommunications, Southern Illinois University, Carbondale*

Significant Administrative Cases

Non-Compliance with Human Subjects and Living Organism Regulations and Policies Forces Changes in Awarded Project

An EPSCoR institution in Oklahoma voluntarily suspended work with animals under an REU award and ultimately changed the scope of the project to eliminate the animal work when it was unable to achieve compliance with NSF policy. NSF policy requires that work with vertebrate animals be declared at the time the proposal is submitted, and that the Institutional Animal Care and Use Committee (IACUC) review work with vertebrate animals before the award is made. Work with human subjects must comply with the Common Rule for the Protection of Human Subjects, and must be self-identified with appropriate exemptions declared or reviewed by an Institutional Review Board (IRB) before the award may be made.¹⁴ An institution must assure NSF, or in some cases the Department of Health and Human Services, that its IRB or IACUC operates under the required guidelines before either committee can review and approve research at that institution.

In this case, the institution failed to self-identify its work with humans and animals in the proposal, despite its use of both as research subjects.¹⁵ During the review period, the institution submitted IRB and IACUC approvals for at least some parts of the research; however, we learned that neither the IRB nor the IACUC had an approved assurance with the relevant federal offices or NSF. This called into question all of the IRB and IACUC reviews not only for this project but also for other NSF awards at the institution. After OIG notified the institution of these concerns, it took steps to correct the errors. It received an approved assurance from HHS for its IRB in a matter of weeks, but after several months it had not received an approved assurance for its IACUC. While trying to obtain the approval, the institution voluntarily suspended its work with animals with the consent of the program officer. Unable to obtain an approval for the work with animals, the institution requested a significant change in scope to remove all animal projects from the award.

¹⁴ There are provisions that cover projects that at the outset do not involve living organism research but later incorporate living organisms into the project. Review and approval must be obtained before those phases of the project may begin.

¹⁵ We also learned that although the program officer correctly coded the proposal for human subjects on NSF's internal processing form, she did not code the proposal for vertebrate animal research.

Improperly Used Participant Support Funds Returned to NSF

Our office investigated two separate allegations that participant support funds were misused and recovered \$30,000 for the agency. Participant support funds are designed to defray the costs of transportation, per diem, stipends, and other related costs for participants or trainees (but not employees) in connection with NSF-supported conferences, meetings, symposia, training activities and workshops. Grantees must obtain prior written approval from the cognizant NSF program officer if they want to reallocate participant support funds to pay for other grant-related expenses.

In these cases, NSF granted funds to support collaborations between a United States scientist and a foreign scientist. The participant support funds were intended to help pay for the travel of the foreign scientists. However, the collaborations failed to take place due to visa restrictions, which prevented the foreign scientists from traveling to the United States. In both cases, the PIs reallocated the participant support costs—\$12,000 in one case and over \$18,000 in the other—to purchase supplies and equipment without permission of the NSF program officer. After the matter was brought to their attention, both institutions reimbursed NSF.

Reviews

NSF Accepts Recommendations to Increase Compliance with Administrative Actions

In order to protect the interests of the federal government, OIG recommends that appropriate administrative actions be applied to those who have engaged in research misconduct or other wrongdoing. These administrative actions or sanctions include debarments, certifications, assurances, and reviewer prohibitions, and are subject to agreement and implementation by NSF management. Because OIG and NSF have a mutual interest in the efficacy of NSF's compliance program, we reviewed NSF management's efforts to ensure compliance with the administrative actions it imposes.

The most significant administrative action that NSF can take against a subject is government-wide debarment. Subjects who are debarred are included on the Excluded Parties List System (EPLS), which NSF (like all federal agencies) is required to check before making an award. We found

that NSF had stopped checking the list, relying instead on the awardee's e-signed certifications. When NSF's debarment regulation was revised in November 2003 to reflect changes in the government-wide common rule, it deleted the previous certification requirement, relying instead on checking EPLS. Accordingly, we recommended that NSF resume checking EPLS, as required by its regulation. NSF initially responded that it intended to continue its practice of not checking EPLS, asserting that "NSF's approach is consistent with the direction the federal government is headed" and "in keeping with a government-wide approach." Subsequently, NSF deliberated and then implemented a policy requiring checking EPLS for all awards.

In addition, we recommend that NSF management require a subject to submit certifications or assurances regarding compliance with requirements as appropriate. Because our review found two cases in which subjects submitted proposals to NSF without submitting the required certifications, we recommended that NSF modify its proposal processing system to ensure that proposals submitted by PIs who are subject to such requirements will not proceed through the merit review process unless the required certifications or assurances have been received. NSF agreed to implement this recommendation.

As a resolution of some cases, a subject is prohibited from reviewing proposals for a specified period of time. However, we determined that the prohibition is effective only if the subject's name is already in NSF's reviewer database. We recommended that NSF ensure that such subjects' names are entered into the system so they cannot be used as reviewers, and NSF agreed to do so.