

Investigations

Civil and Criminal Investigations

University Settles Three-Year Investigation

After a three-year investigation, a Florida university agreed to return \$1.495 million to the federal government and entered into a Compliance Agreement for the next five years. In April 2002, we received an allegation that the university was not providing the agreed upon cost-share under an NSF award and was misrepresenting to NSF the amount of cost-share funds it provided. We initiated an investigation to determine whether the university submitted false statements to NSF.

During the investigation, we interviewed several individuals at the university and worked extensively with a forensic auditor. We asked the university to provide documentation of award expenditures and documentation regarding cost-share funds certified to by the university.

As a result of these investigative efforts, we uncovered significant issues with the university's financial administration of this award. Notably, we discovered that the university maintained award documentation in boxes stored in an attic and in numerous and constantly-shifting administrative offices on campus. Consequently, we had to make multiple requests and pay multiple visits to the university before obtaining award documentation sufficiently organized and comprehensible for a forensic auditor's review. The documentation submitted by the university failed to account for approximately \$1.4 million of the award funds received from NSF.

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After gathering sufficient evidence, we consulted the Civil Division of the U.S. Attorney's Office for the Eastern District of Virginia. With its guidance, OIG, NSF, and the university developed a Compliance Agreement and a Settlement Agreement. In June 2005, the university, NSF, and OIG signed both agreements. The Settlement Agreement settled OIG's investigation and requires the university to repay \$1.495 million to NSF. The Compliance Agreement requires the university to set up a program to prevent fraud and to ensure compliance with federal regulations. The compliance program must include the appointment of a compliance officer and a compliance committee, the identification of the roles and responsibilities of individuals involved in the administration of grant funds, and the establishment of a variety of internal systems, including financial systems pertaining to time and effort, cost sharing and monitoring of sub-recipients. In addition, the university is required to establish a whistleblower program and perform an annual audit of its compliance with federal laws and regulations.

The elements of the Compliance Agreement are parallel with those in the Federal Sentencing Guidelines for Institutions, which recently formed the basis for guidance issued by the Council on Government Relations on *Managing Externally Funded Research Programs: A Guide to Effective Management Practices*. The Sentencing Guidelines identify seven elements of an effective compliance and ethics program to prevent and detect criminal activity. These elements include: written policies and procedures; clear lines of responsibility; supportive, responsible institutional leadership; training and education programs; programs to encourage compliance, ethical behavior and the detection and prevention of criminal wrongdoing; and a risk assessment program.

The university recently informed us that it has appointed a compliance officer to oversee institutional compliance with applicable laws, regulations and NSF award conditions. Further, the university's Board of Trustees recently adopted an array of rules and policies designed to improve its financial management of NSF awards. We look forward to continued progress by the university.

Company Pays \$155,500 to Resolve Case Involving Duplicate Research Results

In 2003, we received an anonymous letter claiming that a company received overlapping research awards from multiple agencies without fully disclosing the company's research activities. The same letter was sent to OIGs at several other agencies, and we led a multi-agency investigation which included agents from DoD, DoE, and NASA, and a forensic auditor from

DCAA. We found that the company had received Small Business Innovative Research (SBIR) awards involving overlapping research from multiple agencies, and submitted the same research results to multiple agencies. Specifically, we identified an SBIR Phase I final report submitted to NSF in 2002 that contained the same research that had been submitted in an SBIR Phase II report to DoD in 2001.

We also found that the company submitted an SBIR proposal to DoD without disclosing that the same research proposal had previously been submitted and funded by NASA. We referred our findings to the Civil Division of the U.S. Attorney's Office for the Eastern District of Virginia. In June 2005, the company signed a Release and Settlement Agreement with the U.S. Attorney's Office, agreeing to pay \$155,500 to resolve this matter, which included full repayment of the 2002 NSF Phase 1 SBIR Award. The company also implemented written procedures to ensure that in future SBIR submissions it will disclose similar or overlapping SBIR proposals or awards.

Investigation Prompts Recommendation to Increase Monitoring of Awardee

The Department of Justice (DoJ) entered into a settlement agreement with a non-profit research institution investigated for improperly transferring costs among various federal and non-federal accounts, resulting in approximately \$5,000 being returned to NSF. DoJ and the Department of Health and Human Services Office of Inspector General conducted a joint investigation and reached a settlement with the institution in which the institution agreed to reimburse \$6.5 million to the United States. The government concluded that the institution lacked adequate internal controls to ensure that cost transfers were made in a timely fashion, for an appropriate reason, and with adequate documentation. Moreover, during the investigative audit, it was determined that the institution's accounting systems were incapable of complying with applicable requirements regarding the request, receipt, and use of federal grant proceeds. We recommended that NSF take action to protect NSF funds awarded to the institution, by declaring it a high-risk organization and imposing special award conditions to safeguard current and future NSF funds awarded to the institution.

University Returns Overcharges For Principal Investigator's Time

The investigation of a Principal Investigator (PI) for over-billing an NSF award resulted in the return of \$24,781 to NSF. The Office of Audits referred

to the Office of Investigations allegations that a PI at a university made false statements in annual reports submitted to NSF, and claimed an excessive amount of time and effort on the NSF award. After reviewing information regarding the PI's responsibilities both within and outside the university, along with time and effort certifications, annual reports, and travel records, we concluded that there were substantial periods in which the PI was claiming significantly more than 100% of his time to various activities. We also received and investigated additional related allegations of conflicts of interests (COI), duplication of effort, and fraud, which were not ultimately substantiated. At the conclusion of the investigation, the university informed us that the PI had resigned from his position. The university agreed that the PI was overextended in his responsibilities at the time that he billed NSF for a significant percentage of his time, and determined that it should return \$24,781 that had been overcharged for the PI's time.

Employee Misuses Government Travel Credit Card

An employee charged approximately \$2,500 to her government travel card, for a rental car that was unrelated to official travel. The employee explained that she initially rented the car for official travel that lasted one week, and kept the rental car for an additional two months because the car she owned was not working. The bank cancelled the employee's government travel credit card account and NSF offset the employee's salary to pay off the unpaid card balance. We referred the results of the investigation to the agency, which suspended the employee for five days.

NSF Receives Part of Settlement With Government Contractor

NSF received a portion of a \$6.6 million settlement between the government and a contractor that took kickbacks on construction bonds used to finance federal projects. The contractor provided services to an NSF awardee institution to prepare a laboratory for new equipment funded by NSF. The institution paid for those services out of its NSF award funds. The contractor had an arrangement with its broker to receive a commission on bonds for several federal government projects including the work paid for under the NSF award. The NSF awardee was unaware of the contractor's fraudulent activities. As part of the settlement, the contractor agreed to return double the actual funds involved to the federal government.

University Employee Debarred for Embezzling NSF Funds

Pursuant to OIG's recommendation, NSF debarred a former employee of a California university from obtaining the benefits of federal awards for a period of two years. As reported previously,⁶ a federal district court convicted the employee of stealing \$40,899 in grant money from an NSF sponsored research facility following an OIG investigation. The court sentenced the employee to 30 days in prison followed by 150 days of home confinement and 3 years of supervised release. The university restored the stolen funds to the account for the NSF award.

Employee Suspended for Downloading Inappropriate Files on Agency Computers

We previously⁷ summarized the case of an NSF employee who used NSF computers and internet access to visit adult web sites and download sexually explicit photographs and videos. We submitted our findings to NSF, which suspended the subject for five days.

Participant Support Funds Returned

The National Science Foundation provides participant support funds in grants to cover the cost of transportation, per diem, stipends and other related costs for participants or trainees (but not employees) in connection with NSF-sponsored conferences, meetings, symposia, training activities and workshops. This is a restricted budget category, and in award letters, grantees are advised that NSF requires them to obtain written authorization from the cognizant NSF program officer prior to the reallocation of funds budgeted



OIG summer interns discuss their experiences performing program evaluations and investigations.

⁶ March 2004 Semiannual Report, p.26, and September 2004 Semiannual Report, p.26

⁷ March 2005 Semiannual Report, p.30.

for participant support. Our experience suggests that many grantees are either unfamiliar or in non-compliance with this restriction. Our March 2005 Semiannual Report⁸ describes the resolution of two cases in which grantees improperly reallocated participant support costs to purchase supplies and equipment and ultimately returned \$30,000 to NSF. In this period several universities recognized they had misspent such funds and voluntarily returned funds to NSF for expenses related to PI travel, faculty and staff salaries, undocumented expenses, and furniture purchases. In the upcoming period we will summarize our results and send recommendations to NSF to ensure that both program officers and grantees clearly understand the agency's rules regarding the use of participant support funds, including the requirement for prior approval before reallocation.

Administrative Investigations

Actions by the Deputy Director

NSF Debars Fabricator

A previous Semiannual Report⁹ described the case of a former graduate student in California who fabricated data used in proposals submitted to NSF and the National Institutes of Health, part of the Department of Health and Human Services (HHS). We forwarded a Report of Investigation to NSF's Deputy Director recommending that NSF jointly resolve this case with HHS, make a finding of research misconduct, and debar the subject for 3 years. While NSF did not jointly adjudicate the case with HHS, it otherwise followed our recommendations.

Agency Takes Action Against University Professor

In previous reports,¹⁰ we discussed a case in which we recommended that NSF take action against a PI at a Michigan University who plagiarized text into both a declined proposal and an awarded proposal. Based on our investigation and recommendations, NSF: made a finding of research misconduct; sent the PI a letter of reprimand; prohibited him from serving as an NSF reviewer, advisor or consultant to NSF for 14 months; required written assurances from a university official with every proposal he submits until June 2007; and directed him to complete an ethics training course before the close of the calendar year.

⁸ March 2005 Semiannual Report, p.37.

⁹ September 2004 Semiannual Report, page 32.

¹⁰ September 2004 Semiannual Report, p.30, and March 2005 Semiannual Report, p.34.

NSF Agrees That PI Who Plagiarized, Fabricated, and Falsified Committed Research Misconduct

Based on the investigation reported in our last Semiannual Report,¹¹ NSF concluded that a PI who plagiarized, fabricated, and falsified text and figures in an unfunded NSF proposal committed research misconduct. NSF issued a letter of reprimand and: 1) required that the PI provide written certification with any documents he submits to NSF for three years; 2) required that his employer provide written assurance with any proposals he submits that they do not contain fabricated or falsified information; 3) required the PI to certify completion of an ethics training course on plagiarism within the next year; and 4) barred the PI from serving as a reviewer of NSF proposals for the next three years.

NSF Takes Final Action in Case of Data Fabrication

A previous Semiannual Report¹² described a report forwarded to the NSF Deputy Director about a post-doctoral researcher who fabricated data in a published research paper. The research work was supported by both NSF and HHS through an NIH grant. We recommended that NSF make a finding of research misconduct and debar the subject for two years. In May 2005, NSF took final action against the subject by making a finding of research misconduct against him and debarring him for two years. The subject also entered into a Voluntary Exclusion Agreement with HHS that includes an exclusion from serving in an advisory capacity to HHS for four years, and a certification requirement for proposals to HHS or reports of HHS-funded research lasting for two years after the end of the debarment period.

Reports Forwarded to the Deputy Director

Director of Grants Plagiarizes Text in Two NSF Proposals

Through an investigation we determined that the Director of Grants at a community college submitted two proposals as a PI in which he copied substantial portions of text. Although the proposals included meager citations for some of the passages, most passages were full paragraphs lacking quotation marks or some other means of differentiating the copied text from

¹¹ March 2005 Semiannual Report, p.34.

¹² September 2004 Semiannual Report, p.28.

his own words. In instances when he did provide citations, they did not reasonably lead the reader to the source document.

Although we frequently refer investigations of this type to the institution, we did not refer this case because the community college did not have a research misconduct policy. Our investigation revealed that the PI was the Director of Grants, through whom all proposals submitted to various federal agencies flowed, and a professional grant writer who prepared the two proposals as a favor to the Co-PIs listed on the proposals. From the outset of our investigation, the PI accepted full responsibility for the copied text.

Given the unique set of circumstances in this case, we recommended that NSF make a finding of research misconduct against the PI, send him a letter of reprimand, require him to certify completion of a course in scientific ethics, and require him to certify that any documents he submits to NSF for one year following its finding of research misconduct do not contain plagiarized material.

PI's Plagiarism was Part of a Pattern

An OIG investigation concluded that a foreign PI committed plagiarism on multiple proposals submitted to or reviewed by NSF. One proposal was submitted to NSF when the subject was a visiting scientist at a Virginia university, while two other proposals were submitted to another federal agency program that NSF administers. Since the PI was not permanently employed by a U.S. institution, we conducted our own investigation. Our investigation indicated that the subject's declined NSF proposal contained a substantial amount of text copied from multiple sources, as did the two proposals that were submitted to the scientific program that NSF administers for another federal agency.

We recommended that NSF make a finding of research misconduct, issue a letter of reprimand, bar the subject from receiving any federal grant monies for a period of three years, and prevent the subject from serving as a peer reviewer, advisor or consultant for a period of three years.

Graduate Student Fabricates Data in Thesis

A graduate student working with NSF support at a university in Wisconsin fabricated data in a draft of two chapters of her thesis submitted to her thesis advisor. The university informed us it had completed an investigation into an

allegation that the graduate student fabricated data, and concluded it was true. After initially denying the allegation, the graduate student confessed to having fabricated some of the data in the draft, expressed remorse for her behavior, and worked without pay to complete the analyses that were originally fabricated. The university determined that no fabricated data had been published or used in any other inappropriate manner, and that it had no impact on the work represented by the thesis. After the graduate student expunged the fabricated data from the thesis, the university permitted the graduate student to complete her Ph.D. The university reprimanded the graduate student, noted in her official record that she had been found to have committed academic misconduct, and notified the student's new employer of the academic misconduct decision. As a result of our investigation, we concluded that the graduate student committed research misconduct when she fabricated data. We recommended that NSF send a letter of reprimand informing her she has been found to have committed research misconduct.

Significant Administrative Cases

PI Careless in Preparing Current and Pending Support Forms

A PI's Current and Pending Support (CPS) forms, submitted with each of his numerous NSF proposals over the past 5 years, contained multiple instances of incorrect and/or contradictory information. When we wrote to the PI requesting an explanation, he took the matter to his university provost for review. At the provost's request, we referred our inquiry to the university. In its report, the university determined that it had failed, in part, to provide appropriate oversight related to information supplied by its PIs on CPS forms. The university concluded that the PI did not provide the full appropriate information on the CPS forms submitted with his NSF proposals, and that he misunderstood the information requirements of the CPS forms, in part, because the explanations provided by NSF were not always clear. The university found no basis to believe that the PI's actions involved intentional violations of rules or knowing attempts to mislead NSF. As a result of this case, the university is taking specific actions to ensure better compliance from all its PIs.

“Clerical Oversights” May Be Indicators of Larger Problems for Compliance with Human Subjects Regulations

In recent Semiannual Reports,¹³ we identified several instances of awardees’ failure to adhere to the Common Rule for the Protection of Human Subjects (the Common Rule), and/or NSF policies for reporting the involvement of human subjects. The awardees initially cited “clerical oversights” to explain the lapse in compliance, but in each instance further review revealed a systemic problem at the institution. Each of the institutions demonstrated a willingness to correct the problems but also expressed confusion with NSF procedures and policies.

In one case, we learned that an institution with more than \$67 million in active NSF awards failed to properly document and report its research with human subjects. That institution received not only research grant funds from NSF but also contracts to produce reports for NSF. Our review of the institution’s full NSF portfolio identified 18 awards, including a Research Experiences for Undergraduates (REU) site award and its subsequent renewal, that were lacking the appropriate NSF Cover Page designations and follow-up materials. For the contracts, we learned that the institution and the NSF program office erroneously relied on OMB approval under the Paperwork Reduction Act making review under the Common Rule unnecessary. We identified the problem areas for the institution, which eventually took steps to review the projects and submit updated information to NSF.

In two other cases, we identified REU sites funded by NSF that failed to report the involvement of human subjects. At one institution, undergraduates were involved in testing software on young children for various therapeutic and diagnostic purposes. At both institutions, the award included a component for the evaluation of the effectiveness of the REU program in achieving its goals. The evaluations included activities such as student tracking, interviews, and surveys, which met the definition of human subjects research under the Common Rule. Both institutions cited “clerical oversights” and misunderstandings regarding NSF policies to explain why neither made the appropriate designation on the NSF proposals.

Both institutions agreed to initiate internal reviews of their portfolios of active awards and pending proposals. One institution completed its review

¹³ March 2004 Semiannual Report, p.28, September 2004 Semiannual Report, p.32, and March 2005 Semiannual Report, p.36.

of 19 proposals and awards, finding numerous failures to provide NSF with the required human subjects information. That institution has modified its internal pre-proposal processing procedures and its Internal Review Board processes to ensure that the appropriate reviews are completed and reported to NSF in a timely manner. The other institution, having a much larger portfolio to review, is expected to report its results to us soon.

These cases are consistent with our observation in past cases that seemingly careless “clerical oversights” may be indicators of broader systemic problems with institutional understanding of and compliance with the Common Rule and NSF policies and procedures. These cases also suggest that the REU program may be prone to lapses in compliance, especially with regard to the evaluation of undergraduates’ performance during and after their REU experience. We are preparing a comprehensive set of recommendations for NSF, targeted at improving human subjects research compliance at NSF and the research communities it serves.

Reviews

Online Availability of Lobbying Disclosure Form

We recommended that NSF make an important lobbying disclosure form available on FastLane, its online electronic proposal submission system. FastLane strives to provide all forms and certifications needed for submission of a grant proposal. A federal law, known as the Byrd Amendment, imposes restrictions on the lobbying activities of applicants for and recipients of federal grants and cooperative agreements, and requires that information about lobbying activities be provided on a designated form when applying for federal funds. We determined that NSF’s instructions for the submission of proposals well inform applicants of the need to provide the lobby disclosure, but do not provide a means to do so. Accordingly, we recommended that NSF modify FastLane to make the lobbying disclosure form readily available to applicants.