CLOSEOUT MEMORANDUM FOR M00050021

On 5 May 2000, we received concerns from a complainant[1] that an NSF program officer, the subject,[2] had violated applicable conflict of interests (COI) rules. The subject approved two separate continuing grant increments (CGIs) for two separate NSF awards,[3] each with different PIs. It was alleged that the subject had a COI with one or more of the PIs on each award at the time he approved the CGIs and, therefore, should have recused himself from both decisions.

According to federal criminal law (18 U.S.C. § 208(a)):

> (a) Except [if a waiver is obtained], whoever, being an . . . employee of the executive branch of the United States Government . . . , including a special Government employee, participates personally and substantially as a Government . . . employee, through decision, approval, disapproval, . . . or otherwise, in a[n] . . . application . . . or other particular matter in which, to his knowledge, he . . . has a financial interest – Shall be subject to the penalties set forth in section 216 of this title.

In addition, an NSF supplemental COI regulation (5 C.F.R. § 5301.102(a)(3)(ii)(C)) prohibits employee involvement with a matter involving a person with whom the employee has "Collaborated on a project, book, article, report, or paper within the last 48 months."

We determined that the subject was employed at NSF from [redacted] as a special government employee in a temporary position under the Intergovernmental Personnel Act. The subject had recommended initial funding for both awards in 1997. We found no evidence that the subject had a COI with any of the PIs at the time he first recommended funding for these awards. The progress reports for the two awards were also signed by the subject, recommending that the CGIs be awarded—however, the content of the progress reports showed that by that time the subject was actively involved in the preparation of a paper[4] with one of the PIs on each award.[5] The subject did not list the paper or its co-authors in the yearly COI statements required by his

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[1] [redacted] is a program officer for the [redacted] in the Division of [redacted] Directorate [redacted]

[2] The subject, [redacted] was a program officer in [redacted] He is a faculty member in the Department of [redacted]

[3] NSF award, [redacted] entitled [redacted] was submitted by [redacted] as the sole PI. NSF award [redacted] entitled [redacted] was submitted by [redacted]

[4] The paper is [redacted] by [redacted]

[5] The progress report for [redacted] listed a paper (in progress) that the subject co-authored with the PI and another scientist. The progress report for [redacted] indicated that the subject and a co-PI were active collaborators as well as co-authors on this same paper (in progress).

division.[6] The subject told us that he had begun working on the paper a few months prior to his signing the progress reports. The subject said that he gained no financial benefit from either award, and we found no evidence to the contrary.

Because the subject did not receive any financial benefit from either of the awards, his actions did not violate the federal criminal COI statute. While the subject clearly violated NSF's supplemental COI regulation, because he was no longer employed by the federal government NSF's recourse was limited. Accordingly, we wrote a letter to the subject, admonishing him to take seriously COI policies wherever he worked in the future. We discussed this matter with NSF's designated agency ethics official[7] (DAEO), who had already reviewed this matter independently. We shared what we learned and provided him with a copy of our letter to the subject. The DAEO said that, given what our offices had learned and done, he was satisfied that no further action was necessary.

This case is closed and no further action will be taken.

c: Investigations, IG

[6] We reviewed the subject's 1997 and 1998 COI statements.

[7] [redacted] in the [redacted] is NSF's designated agency ethics official.