

Investigations

Civil and Criminal Investigations

Research Firm Returns \$1.55 Million and Enters into a Compliance Plan

A Maryland-based social science research firm entered into a settlement agreement to resolve allegations that it shifted labor costs from private contracts to government contracts, and charged government contracts for unallowable costs such as the preparation of bids and proposals, administrative labor, and overhead. This investigation was initiated pursuant to a qui tam lawsuit filed in 2002. A “qui tam” is an action brought by a private party, the relator, under the False Claims Act, alleging the submission of false claims to the federal government by a contractor or grantee. In this instance, the relator was a former employee of the firm. The four-year investigation confirmed the allegations and revealed that the firm submitted a total of \$958,756 in false claims to NSF and the Departments of Commerce, Justice, and Health and Human Services. Damages attributed to NSF grants and contracts totaled \$395,379. The firm entered into a settlement agreement which required it to pay \$1.55 million to the federal government. As part of the settlement agreement, the firm also entered into a four-year Compliance Plan with our office, requiring implementation and yearly evaluation of a compliance program and an annual financial audit.

Institution Settles with Department of Justice

A review of an institution’s handling of participant support money revealed the institution wrongfully drew down and spent over \$27,000 in award funds after the expiration date of the award. The award was for a one-year period and the institution obtained a one-year, no-cost extension. Two days before the award expiration date, the institution requested and was denied a second no-cost extension.

The program officer that denied the request, reiterated the denial in an email to the PI, and also spoke to the PI on the telephone, emphasizing again that the award had expired, and that “no new costs incurred after the expiration of the

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grant would be honored by NSF.” Despite the program officer’s explicit and repeated instructions, the PI directed the institution’s finance director to draw down all the remaining NSF award funds, approximately \$32,000. The institution later characterized this post-expiration drawdown as a “reimbursement,” which our investigation revealed to be false.

After the award expired, the institution filed a false Federal Cash Transaction Report indicating that all NSF funds had been spent as of the end of the reporting period. The PI also filed a Final Project Report, representing that work on the project was complete. The PI and the institution’s general counsel denied all knowledge of the program officer’s denial of the request for a second no-cost extension.

The Department of Justice (DOJ) accepted our case for prosecution under the civil False Claims Act, and ultimately the institution settled this matter with the DOJ for \$52,150 and agreed to implement a compliance plan. Following the civil settlement, we recommended that NSF debar the PI for a period of three years. NSF is considering this recommendation.

University Foundation Returns Award Funds to NSF

An Ohio university returned \$16,050 in award funds to NSF as a result of an OIG investigation. The investigation revealed that the PI had apparently reallocated both travel funds and participant support funds to pay personal salary, without obtaining proper approvals from the agency. When expenditures appeared in the university’s records that were unusual for the type of award, we reviewed university policies and the financial records of other awards managed by the same PI. While no other irregularities were found, we concluded that the university allowed funds to be reallocated without proper approvals from an NSF program official, and the university agreed to repay those funds.

Former Research Center Employee Pleads Guilty to Mail Fraud

On March 26, 2007, the U. S. Attorney’s Office (USAO) for the District of Colorado announced that a former employee of an NSF funded-research center pleaded guilty to one count of mail fraud for misuse of her employer’s credit card. The indictment alleged that the employee used the center’s credit card to purchase items such as books and iPods from retail outlets, and then advertised and resold many of the items on eBay, using the center’s FedEx account to ship them. The employee hid the fact that she was purchasing the items by misrepresenting the items that had been purchased by spreading the charges among several research center accounts. This resulted in many of the purchases being charged directly to federally-funded projects supported by NSF and DOE. Following her plea, the former employee awaits sentencing by the court. The research center returned \$8,677.37 to its NSF-funded projects and \$6,451.59 to its DOE-funded projects.

News Article Leads to Return of \$69,199 to NSF

An investigation initiated as a result of information that appeared in a news article resulted in \$69,199 being returned to NSF. The news article revealed that another federal agency was withholding substantial funds from a university center that NSF also funded. After discussing the matter with the other agency and the civil fraud division of the Department of Justice, we contacted the university and requested financial and other documents pertaining to NSF awards to the center.

Our investigation revealed that: 1) there were no documents or timesheets to support 12 employees whose salaries were charged to the awards; 2) an additional 13 administrative and non-technical personnel had been charged to the awards though only one part-time administrative position was approved; and 3) there were no timesheets to support the posting of a large number of salaries to the award. The university reviewed its records, returned \$69,199 to NSF, and updated its policies and procedures at the center so that such discrepancies should not recur.

University Agrees to Return Funds for Misuse of Program Income

As reported in previous Semiannual Reports,⁹ we conducted a proactive review of conference awards for compliance with rules associated with program income, and as a result several grantees have voluntarily returned funds that were improperly used. In the course of a follow-up to that earlier review, we noted that a Texas university did not report program income to NSF, despite the fact that the university appeared to have charged and collected registration fees.

During the investigation, we learned that the University earned \$280,865 in program income for the award from registration fees. The PI improperly used \$103,208 of these funds to pay for meals that took place before the conference began and to financially reward the students involved in helping to coordinate the conference. As a result of the investigation, the university reimbursed NSF for the funds the PI misused.

Recipient of Fellowship Returns NSF Funds

A graduate student repaid three weeks of expenses and stipend totaling \$1,387 to an NSF program after he admitted that he left the program early without authorization. We initiated an investigation after receiving allegations that a graduate student may have defrauded an NSF foreign exchange fellowship program by leaving the program several weeks prior to the program's ending and providing false information about his return date. The fellowship

⁹ September 2004 Semiannual Report, pp.31-32; September 2003 Semiannual Report, p.41.

provided more than \$6000 for travel, expenses, and summer stipend. The NSF program office asked the student about information it received that he did not attend the end of the program, and the student responded with unclear information about his return date and the reasons for the early departure.

After the NSF program office referred the matter to OIG, we interviewed the graduate student. He admitted that he left the program three weeks early without receiving appropriate approvals, and later provided inaccurate information about his return date to the NSF program office. The student wrote a check to NSF for \$1,387, the portion of expenses and stipend that the student received for the three weeks he did not participate in the program, and apologized to the NSF program staff for his actions.

OIG and NSF Continue to Jointly Monitor Compliance Agreements

In this reporting period, OIG and NSF have been responsible for the continued monitoring of two compliance agreements, one with a large city school district and one with a Florida university. As reported in previous Semiannual Reports,¹⁰ compliance agreements are included in settlements reached with grantee institutions whose financial control systems deficiencies have failed to prevent financial improprieties. The two compliance agreements required each entity to create and implement a compliance program. The entities are also required to submit annual compliance reports, to include annual independent audit reports of all NSF award funds at each respective entity, for each year that the compliance agreements are in effect.

During this reporting period, the school district conducted its independent audit and submitted its annual compliance report, within the required timeframe. However, the Florida university failed to complete its independent audit and to submit its annual compliance report in a timely manner. As a result, we notified NSF management that the university was in breach of the compliance agreement. Subsequently, the university submitted a corrective action plan as permitted by the compliance agreement, which required the independent audit and annual report to be completed within 120 days. OIG and NSF management worked together with the university to help bring it into compliance, by ensuring that its independent audit and its annual report were both completed within 120 days of the initial breach, as envisioned by the corrective action plan. We are currently reviewing the annual audit and the annual compliance report to determine whether the university has effectively corrected the breach.

¹⁰ March 2006 Semiannual Report, p.28; September 2005 Semiannual Report, pp.23-24; March 2005 Semiannual Report, pp.27-28.

Administrative Investigations

Actions by the Deputy Director

NSF Finds PIs Committed Research Misconduct in Six Separate Cases

The September 2006 Semiannual Report presented the results of six separate investigations of plagiarism that were forwarded to NSF for appropriate action. The following summaries describe the outcome of each case:

- NSF agreed with our recommendations to make a finding against a PI who plagiarized text in three proposals. It required the PI to certify in writing for a period of three years that any documents submitted to NSF are free of any plagiarism.¹¹
- NSF concurred with our recommendations, finding that a PI at a New Jersey institution committed research misconduct by plagiarizing text into two NSF proposals. In addition, the PI's university did not renew his contract of employment.¹²
- NSF's Deputy Director made a finding of research misconduct in the case of a New York university professor who plagiarized text into three proposals submitted to NSF, but who claimed that the NSF electronic submission process removed quotation marks and citations from his proposals. The DD also proposed a three-year debarment from receiving federal funds and required that, for three years following the period of debarment, the professor certify and a responsible official of his employer provide an assurance, that any NSF proposals or reports submitted do not contain plagiarized, falsified, or fabricated material. The professor objected to the proposed debarment, but the Deputy Director affirmed her decision. The time period for the professor to appeal the finding of research misconduct to the NSF Director is pending.¹³
- NSF concurred with our recommendations concerning a case in which a professor resigned from his tenure-track position after the university investigation concluded that he had plagiarized text into proposals submitted to NSF and other federal agencies. The Deputy Director made a finding that the professor committed research misconduct, sent him a letter of reprimand, and required him to certify for two years that any documents submitted to NSF are free of any plagiarism.¹⁴

¹¹ September 2006 Semiannual Report, p.39.

¹² September 2006 Semiannual Report, p.39.

¹³ September 2006 Semiannual Report, p.36.

¹⁴ September 2006 Semiannual Report, pp.39-40.

- A very senior university professor plagiarized text in two NSF proposals despite prior warnings from colleagues that one of the proposals contained plagiarized text. NSF made a finding of research misconduct and concurred with our recommendations. The agency took the following actions: debarred the professor for two years; required the PI to certify, and a responsible official of his employer to assure, that proposals he submits to NSF do not contain plagiarized, falsified, or fabricated material for three years after the debarment period; prohibited the PI from reviewing NSF proposals for a period of two years, concurrent with the debarment period; and required the PI to complete a course in research ethics.¹⁵
- NSF made a finding of research misconduct for a PI who plagiarized text into an NSF proposal from several source documents. Based on our investigation NSF also concurred with our recommended actions, including requiring him to certify to OIG that proposals he submits to NSF for one year from the date of NSF's letter of reprimand do not contain plagiarized, falsified, or fabricated material. As a result of the institution's investigation, the institution's adjudicator had previously recommended that the PI's employment with the institution be terminated. However, after negotiations, the PI was placed on half-pay for one year with additional restrictions.¹⁶

NSF Concludes Postdoctoral Fellow Falsified Research Data

In our last Semiannual Report,¹⁷ we discussed our investigation of an NSF-funded postdoctoral fellow at a New England institution who falsified data in a published article. Based on our investigation and recommendations, NSF found that the postdoctoral fellow committed research misconduct, sent him a letter of reprimand, and debarred him for two years. NSF also implemented our other recommendations which: require him to certify to NSF that the publication containing the falsified data has been retracted; require him to certify completion of an ethics course covering research misconduct before applying for NSF funding; require that, each time he submits a proposal or report to NSF for three years after the debarment period, the PI certify and provide assurances from his employer that the submissions do not contain plagiarized, fabricated, or falsified material; and bar the PI from participating as a reviewer of NSF proposals for three years.

PI's Appeal of Research Misconduct Finding Rejected

NSF's finding of research misconduct against a PI who copied text from numerous sources into several of his NSF proposals, including proposals he submitted during the course of the investigation was upheld on appeal.¹⁸

¹⁵ September 2006 Semiannual Report, pp.37-38.

¹⁶ September 2006 Semiannual Report, p.38

¹⁷ September 2006 Semiannual Report, p.37.

¹⁸ September 2006 Semiannual Report, pp.35-36.

The PI asked NSF's Director to reconsider whether the PI's actions were "a significant departure from accepted practices of the relevant research community," which is the standard for a finding under NSF's Research Misconduct regulation. The Director affirmed the finding of research misconduct based on the PI's own admissions that he copied the text and the university's finding that his actions constituted a "violation of the institutional standard of scholarly integrity."

Reports Forwarded to the Deputy Director

Co-PI Misleads Colleagues with Copied Text

Our office received a substantive allegation that a proposal submitted to NSF by a PI and two co-PIs contained a limited amount of text plagiarized from two sources. We referred the allegation to their university, which investigated and concluded that one of the co-PIs knowingly plagiarized and misled her colleagues into thinking the copied material was her original text. The co-PI tendered her resignation, effective June 2007, and in the meantime is prohibited by the university from submitting proposals for external funding. We recommended that NSF send a letter of reprimand to the co-PI informing her that NSF has made a finding of research misconduct. We also recommended that NSF require, a certification from the co-PI for one year beginning June 2007, that all her submissions to NSF contain nothing that violates NSF's research misconduct regulation.

Faculty Member Commits Plagiarism in Four NSF Proposals

A member of the faculty of a university was found by the institution to have committed plagiarism in multiple NSF proposals. We received an allegation that the subject submitted proposals to NSF containing text and figures plagiarized from several sources, including web sites and published papers. In response to our inquiry, the subject admitted he had copied the text and figures without offset or attribution. He also disclosed that two additional sections of text that had been similarly copied without offset or attribution. In total, over a span of three years, the subject submitted four proposals to NSF that contained copied text, figures and references from 18 different original sources. We referred the investigation into this matter to his university.

Following a careful review of the evidence, the university's investigation committee found that a preponderance of the evidence indicated that the subject committed intentional plagiarism. The subject argued that his practices were accepted within his field, but the committee concluded that, even if there were more "permissive standards" in computer science, the subject's behavior "falls out of the scope." The committee concluded the subject's actions were a significant departure from the standards in his research community,

and that his actions were knowing and willful, and that his plagiarism constituted a pattern. The university sent the subject a letter of reprimand and required that he provide certifications to university officials that none of his proposals or written research materials contain plagiarism, that he take a course in research ethics and that he forego eligibility for any salary increase not mandated by the state during the 2006-2007 academic year.

We concurred with the university's conclusions, and found its discussion on the seriousness of the subject's actions particularly persuasive. According to the committee, the subject's actions were unequivocally wrong because of the extent of plagiarism, his position as a faculty member, and his responsibility to uphold his community standards. We recommended that NSF: send the subject a letter of reprimand concluding that his plagiarism is research misconduct; require for two years after the issuance of the reprimand that the subject certify and obtain assurances from institution officials that any proposals, reports, and other documents submitted to NSF do not contain plagiarized, falsified, or fabricated material; and require him to complete a course in research ethics.

Co-PI Copied Text into NSF Proposal

A proposal submitted to NSF by a PI and two co-PIs at a Wisconsin university contained a limited amount of text copied from six sources. Previously OIG had received an allegation about the proposal and contacted the subjects. They then reported the allegation to their university, which initiated an investigation. The university concluded that one of the co-PIs recklessly plagiarized, and that the PI and other co-PI were negligent in their review of the proposal. The university applied the same sanction against all three subjects by requiring that a certified committee of researchers review all submissions for external funding from each of them for a period of one year.

We concurred with the university that the co-PI plagiarized, but concluded he did so knowingly, not recklessly. We concluded the PI and other co-PI acted negligently and that neither acted with a culpable level of intent necessary for a finding of research misconduct. We recommended that NSF: make a finding of research misconduct against the co-PI; require the PI to submit copies of the university's assurances for one year; require the PI to submit personal certifications for one year; and require certification the PI complete an ethics class.

Pattern of Plagiarism Committed by a University Professor

A New York university professor plagiarized a substantial amount of text from multiple sources into a proposal submitted to NSF, and into two research publications acknowledging NSF support. The professor claimed that his students and post-doctoral research associate provided the plagiarized texts to him in their research progress reports. A university investigation con-

cluded that these individuals did not provide the text, and determined that the professor had also plagiarized text into a previously submitted NSF proposal, and into three internal university proposals.

We recommended that NSF make a finding of research misconduct; debar the subject from receiving federal funds for a period of two years; prohibit the subject from serving as a reviewer of NSF proposals for the same two-year period; and require, for a period of two years after the debarment period, that the subject submit assurances by a responsible official of his employer that any proposals or reports submitted by the subject to NSF do not contain plagiarized material. We also recommended that NSF require the professor to complete an ethics training course.

Significant Administrative Cases

Program Income Identified at NSF-Supported Center

During an OIG investigation into allegations of fraud, we discovered that an NSF-sponsored center had not reported program income to the agency as required. The center was generating revenue from the sale of two research-oriented items. We determined that all of the revenue from the sale of the first item and part of the revenue from the second item constituted program income that should have been reported to the agency. The institution agreed that program income in the amount of \$26,000 generated by the first item should be used to offset costs associated with the grant but disagreed with our assessment of the second item. We informed the program officer and the grants officer of our differing opinions and asked them to determine whether the income generated by the second item is in fact program income and should be used to offset NSF grant funds. A decision is pending.

University Refunds Overpaid Indirect Costs

During the course of our investigation of a co-PI's time and effort under an NSF-funded award, a Texas university self-identified and refunded to NSF an overpayment of indirect costs to a subawardee under that same award. While the issue of the co-PI's time and effort was ultimately determined to be an internal personnel issue for the university, in the course of the investigation another issue arose concerning indirect costs. Under OMB Circular A-21 G.2., the "modified total direct costs" (MTDC) is used to determine the amount of the awardee's indirect costs that may be claimed under the award. Awardees may include in their MTDC up to \$25,000 of expenses paid to a subawardee. The university self-identified that it had included more than \$25,000 in its MTDC in determining its indirect costs under the award, and refunded the overpayment of \$6,424.20 to NSF.

PIs Are Responsible for Contents of Their Proposals

In a number of recent cases of apparent plagiarism, PIs have sometimes claimed that graduate students or post-doctoral research associates who are not named or otherwise credited in the proposal are responsible for the plagiarized text. The NSF Grant Proposal Guide (GPG) states: “Authors other than the PI (or any co-PI) should be named and acknowledged.”¹⁹ Grant writers, students, and post-doctoral research associates who prepare sections of the proposal should therefore be named in the proposal.

When investigating an allegation of plagiarism, in the absence of other identified authors, we contact the PI and all co-PIs. If the explanation provided indicates that an unnamed individual (such as a graduate student or post-doc) was responsible for the copied text, we contact that individual to confirm the explanation. Unfortunately, many times these individuals have left the university, and in some cases, the country, making it nearly impossible to validate the explanation.

We believe that final responsibility for the contents of the proposal ultimately resides with the named authors of the proposal—the PI and the co-PIs. Recent university investigation committees share this view. Therefore, PIs should carefully review any written materials that their students and post-docs provide as a part of a submitted proposal to ensure they meet the high scholarship standards required of an NSF proposal.²⁰

¹⁹ Chapter 1, Section D3, page 13.

²⁰ Grant Proposal Guide, NSF 04-23, available at http://www.nsf.gov/publications/pub_summ.jsp?ods_key=gpg