

## Report on Research Compliance Volume 18, Number 11. October 28, 2021

### In This Month's E-News: November 2021

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By Theresa Defino

◆ **A professor in the University of Washington (UW) College of Engineering allegedly falsified award documents submitted to the National Science Foundation (NSF) from August 2018 to September 2019, the U.S. Attorney's Office for the Western District of Washington announced.** The brief announcement said the university is paying the government \$801,756 to resolve False Claims Act (FCA) allegations. The payment consists of "restitution and a penalty," the announcement said without providing specifics. However, according to settlement documents the government sent to RRC, \$400,878.37 is restitution.

The government did not disclose the nature of the alleged falsifications. The unidentified professor was a principal investigator (PI) on NSF awards, including for the "highly competitive 'Designing Materials to Revolutionize and Engineer our Future' program," the announcement said. Interestingly, and again, without providing any specifics, the government said the "investigation began with a whistleblower complaint regarding work performed under the grant and the grant application." However, AP reported, citing information from UW, that the PI "misrepresented the involvement of two researchers who in reality were not involved in the work... That could have made the grant application more attractive. The university was awarded about \$1.4 million for the work, which concerned how biology interacts with man-made solids at the molecular level." (10/21/21)

◆ **HHS's overall data quality related to compliance with the Digital Accountability and Transparency (DATA) Act earned the agency an "excellent" rating, according to the Office of Inspector General, "indicating that HHS's data was generally reliable,"** OIG reported Oct. 8. However, the performance audit also determined that the agency still needs to address "certain control deficiencies identified within HHS information technology systems that house the source data utilized as part of the reporting of the DATA Act." OIG said they found some "accuracy exceptions" related to the period of performance, including 21 for reporting of the period in total; 10 for the end date; and five for the potential end date. "In the 36 period of performance exceptions, the information in Files D1/D2 did not agree with the supporting documentation provided," OIG said. (10/21/21)

◆ **A private firm spun off from North Carolina Agricultural and Technical State University (A&T) has been sentenced to five years' probation and ordered to make restitution to NSF and the Environmental Protection Agency (EPA) of \$562,500 and \$319,199, respectively, settling allegations of false statements in grant applications.** Bio-Adhesive Alliance Inc. (BAA) pleaded guilty in March and was sentenced this summer for two counts of making false statements, the U.S. Attorney's Office for the Middle District of North Carolina announced. According to its website, BAA produced "eco-friendly, durable, low cost bio-adhesive from swine manure to help facilitate swine manure management while creating added value products for [the] construction industry." It is not clear if the firm is still in business.

Its NSF and EPA awards were from the agencies' Small Business Innovative Research (SBIR) and Small Business Technology Transfer (STTR) programs. "Bio-Adhesive applied for and received multiple STTR and SBIR grant awards from NSF and EPA between 2013 and 2016," the government said. Although awards "totaled \$1,375,000," \$881,669 was disbursed. BAA misrepresented "its eligibility to seek SBIR and/or STTR grant awards from NSF and EPA, as well as other material aspects of their project, including employees, budget, and recommenders,"

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according to the sentencing announcement. In a 2015 application to NSF, for example, BAA reported as its principal investigator an A&T graduate assistant enrolled in the master's in civil engineering program who was ineligible to be a PI. BAA also allegedly identified as the chief technology officer a person who had not agreed to the job, and claimed someone had written a letter of recommendation who had not. BAA also promised to make a subaward of \$134,058 to A&T, but did not, the government said. (10/14/21)

◆ **Florida State University (FSU) is among 10 institutions audited by NSF OIG for compliance with COVID-19-related administrative flexibilities granted for a short period by the Office of Management and Budget.** Like the others, auditors did not identify any exceptions related to FSU's use of the flexibilities, but questioned some costs charged against NSF awards—in FSU's case that amount was \$9,023. Earlier this month, NSF resolved the audit findings and sustained all questioned costs—which FSU had already agreed to repay.

Among the questioned costs, \$4,808 was for inappropriate drawdowns that resulted when FSU didn't spend all of the \$10,173 it drew down 13 days before an award expired. Additionally, \$3,648 in unallowable expenses consisted of "\$2,424 in fees incurred to publish an article that did not acknowledge" an NSF award, and \$1,215 was for "lab chemical and other costs that [FSU] determined were not allowable on the NSF award, either during grant closeout or in response to the audit." Auditors also said FSU erroneously charged an award "\$9 in credit card fees." Finally, auditors said FSU's application of an incorrect indirect cost rate had led to an overcharge on an award of \$567. (10/14/21)

◆ **NSF OIG is recommending NSF seek repayment of \$136,810 of costs claimed by the University of California, San Francisco (UCSF).** OIG auditors tested \$2.1 million of approximately \$34 million of costs UCSF claimed from March 1, 2017, to February 29, 2020. Specifically, "auditors found \$75,992 of inappropriately allocated expenses; \$36,699 of unallowable expenses; \$14,365 of inadequately supported expenses; and \$9,754 of indirect costs inappropriately applied." UCSF agreed to repay only \$36,980 in total.

The auditors also "identified two compliance-related findings for which there were no questioned costs: non-compliance with UCSF policies and insufficient controls related to the application of indirect cost rates. Additionally, the auditors identified one area for improvement related to UCSF's delays in providing its payroll subledger." Of note, OIG said UCSF charged an award \$66,570, "or 100 percent, of the costs it incurred to publish a research article." OIG allowed half the amount. NSF will determine what amounts, if any, UCSF owes the agency. (10/7/21)

◆ **A professor and former director of experimental radiology at Emory University retired last year, but her tenure is continuing to have a ripple effect.** On Sept. 15, the HHS Office of Research Integrity (ORI) said that Dr. Ya Wang committed research misconduct "by knowingly, intentionally, and/or recklessly falsifying data" included in an NIH grant application in 2019 and in six papers published from 2010 to 2017. ORI said Wang "falsified protein immunoblot data by reusing and relabeling the same images to represent different experimental conditions in mammalian tissue culture models of DNA damage and repair in eighteen (18) figure panels in eleven (11) figures." Further, "western blot images for proteins from chromatin DNA complexes in mouse cell lines transfected with control or expression vectors and in the absence or presence of irradiation were falsified by reusing immunoblot bands and relabeling them to represent different experiments in three (3) figure panels in one (1) paper." Wang agreed to voluntarily exclude herself from applying for Public Health Service funding and from advising PHS for a four-year period that began Aug. 4.

Under the settlement agreement, Wang, who was with Emory's Winship Cancer Institute, is also required to request the retraction of four papers. ORI noted that Wang "neither admits nor denies ORI's findings of research misconduct." RRC was unable to reach Wang for comment as her Emory email address has been deactivated. Emory officials did not respond to RRC's request for comment, including on whether Wang's retirement was the

result of the misconduct finding or its investigation. According to a news item about Wang's retirement, she "joined the faculty in 2008. Her research, which has led to significant advances in the field, has focused on elucidating the mechanism by which mammalian cells respond to DNA double strand breaks." (9/30/21)

◆ **Members of the faculty senate at the University of Tennessee Knoxville have asked the provost to reinstate Anming Hu, a former associate professor in UT's Department of Mechanical, Aerospace, and Biomedical Engineering, acquitted by a judge this month on fraud charges, following a hung jury in his earlier trial.** Hu was "acquitted by Federal Judge Thomas A. Varlan on September 9th of fraud charges in the espionage investigation conducted by the FBI, and are glad to hear that the university is beginning to take steps to make it possible for him to return to the faculty," write authors of a Sept. 13 letter. In addition to seeking full reinstatement, faculty complained of UT's poor treatment of Hu.

In addition, *Inside Higher Ed* reported that, in the wake of Hu's acquittal, "Asian and Asian American civil rights and scientific groups have raised alarms about the China Initiative, arguing that the Justice Department's approach amounts to racial profiling and that it has resulted in professors facing felony fraud-related charges for disclosure errors that would better be handled administratively as employment matters." Similarly, *The Washington Post* chronicled a number of related cases that the Department of Justice has recently either lost or dropped, noting that some of the investigators accused of hiding foreign ties or support are being defended by their own institutions. "This month, nearly 200 Stanford University academics signed an open letter expressing concerns that the initiative disproportionately targets researchers of Chinese origin and urging the program be terminated," *The Post* reported. (9/30/21)

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