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Two Washington Universities Ink Settlements For Exceeding Salaries, Falsified Application

By Theresa Defino

Washington State University's (WSU) recent settlement with the HHS Office of Inspector General (OIG) for more than \$800,000 followed a university-wide audit that occurred after a salary of a single NIH-funded principal investigator (PI) was suspected of exceeding an award cap, RRC has learned.

WSU was one of two institutions in the Evergreen State to recently settle allegations related to grant fraud. In October, the University of Washington (UW) settled with the Department of Justice (DOJ), agreeing to pay \$801,756 to resolve False Claims Act allegations. DOJ accused UW of submitting, and winning, a National Science Foundation award for which the PI "misrepresented" the involvement of two other researchers.^[1]

The settlements represent a turn from the government's enforcement actions related to inappropriate and undisclosed support from foreign institutions and could represent a new area of risk for universities.

OIG announced WSU's settlement for what it called "overcharging" in a three-sentence paragraph posted on its website under "Enforcement Actions."^[2] It did not specify whether any of the payment included a penalty. However, OIG provided a copy of the settlement agreement to RRC, which indicates that of the \$824,208, \$549,311 is restitution and \$274,897 is a penalty. OIG also responded to some questions from RRC about the settlement, as did officials from WSU.

Federal officials did not address RRC's query about whether this is the first settlement of its type, but the circumstances appear to be highly unusual.

It is not, for example, the time-and-effort type of settlement DOJ enters into to resolve allegations that investigators were overpaid because they made claims exceeding 100% of their time over several awards. In September 2020, The Scripps Research Institute agreed to pay the government \$10 million, of which \$5 million is restitution, based on allegations of this type.^[3]

Nor is it like another recent OIG settlement, in which the University of Nevada Las Vegas paid \$1.45 million related to unallowable charges, including for salaries that lacked documentation.^[4]

The WSU settlement agreement indicates the salary cap was exceeded for 60 awards and one contract over a period of five years—Jan. 2, 2015, to Dec. 31, 2020. According to OIG, WSU was a subrecipient of the awards, but it is not clear if this was the case on all of them.

OIG alleged that WSU "knew or should have known" its claims for salary payments were "false," which is a violation of the Civil Monetary Penalties Law. Payments were drawn down from the HHS Payment Management System.

According to spokesman David Wasson, in early 2019, WSU's Sponsored Program Services (SPS) was notified that "there were potential salary cap issues" with the investigator, whom he did not identify. He also did not indicate

who informed SPS.

“SPS subsequently reviewed this individual’s salary going back to their initial employment at WSU” and “found that amounts were paid in excess of the salary cap and fully corrected and reimbursed those to NIH by June 2019,” Wasson said. He did not respond to RRC’s question as to how much was reimbursed in 2019.

“Then, in early 2020, NIH reached out to WSU regarding concerns about WSU’s compliance with the salary cap,” Wasson said. “WSU’s Office of Internal Audit also initiated an audit of NIH grants system-wide, looking for salary cap overages. WSU reported its findings to NIH, and the parties agreed on an appropriate amount of restitution, which is memorialized in the settlement agreement.”

The settlement, signed Sept. 20, noted that WSU had already repaid \$277,732 and was required to pay the balance within 10 days.

New Policies, Tracking System Implemented

Neither OIG nor Wasson responded to RRC’s question about how or why so many awards exceeded salary caps, information that could help other institutions avoid a similar, costly mistake. It is not always easy to keep up with NIH’s salary cap announcements, nor track all income and other payments PIs receive.

Wasson said WSU implemented a new policy in July of last year “clarifying roles and responsibilities with respect to salary cap.”^[5] He added that “the policy also formalized some of the checks and controls that were already in place.” It can be viewed at <https://bit.ly/3cxcrz1>.

The policy “was accompanied by messaging to principal investigators and administrators about the policy and the need to adhere to the salary cap, as well as increased training efforts. This messaging and training is continuing on a regular basis,” Wasson said.

WSU’s policy applies to “all individuals employed by Washington State University who engage in or support sponsored activities, or who are compensated by sponsored project funding.”

It refers to employee compensation as “institutional base salary” (IBS) and states that “salaries charged to sponsored projects are based on IBS and are not to exceed applicable salary caps or other limitations imposed by external sponsors.”

The policy explains what is included in the IBS (for example, regular salary, summer salary, sabbatical pay) and what is not. IBS “excludes any income earned outside of duties performed” for WSU, such as benefits, external consulting, and facilities and administrative costs (F&A) associated with salary, among others.

Departments Must Respond Quickly to Problems

WSU’s Office of Research and/or its Office of Research Support and Operations (ORSO) verify “IBS limitations from statute and agency policies at the time of proposal preparation” and review “the department-approved budget and cost share budget.” These offices also ensure that “if IBS exceeds an applicable salary cap, all appropriate disclosures, authorizations, and tracking mechanisms are activated and/or administrative units notified.”

The policy further states that, “upon notification from ORSO that an award is subject to IBS limitations,” the Office of the Controller and/or SPS “works with the department to ensure that the project is managed in accordance with the applicable agency’s policies” and other WSU policies.

For their part, department administrators “provide salary notifications to employees on an annual basis and as changes occur, indicating the approved IBS,” while a PI “confirms that all requests and charges for direct salary support and/or cost sharing effort commitments for sponsored projects are based on the affected individuals’ correct IBS. The PI also develops the approved budget with a unit administrator who has been budget certified by ORSO.”

SPS notifies a department if a salary “posted to a sponsored project is found to exceed any applicable cap,” according to the policy. The department “has ten working days to remedy the issue. If resolution is not reached in that time, SPS may transfer the expense to the department’s F&A cost recovery account.”

Wasson told RRC “additional changes that have taken place include the launching of a new finance and human resources software system within this past year,” which he said “will make it much easier for the university to monitor transactions and identify potential overpayments.”

RRC asked OIG if officials had recommendations for awardees to ensure they do not exceed a salary cap.

“OIG encourages all HHS awardees to develop a robust compliance program with effective internal controls to monitor adherence to the applicable statutes, regulations, and program requirements governing their HHS awards,” the agency said.

1 Department of Justice, U.S. Attorney’s Office for the Western District of Washington, “DOJ and University of Washington resolve claims researcher falsified grant application,” news release, October 12, 2021, <https://bit.ly/3cz6IbX>; Theresa Defino, “Addition on NSF Award of Uninvolved PIs Leads to Settlement,” *Report on Research Compliance* 18, no. 12 (December 2021).

2 “Washington State University Agreed to Pay \$824,000 for Allegedly Violating the Civil Monetary Penalties Law by Overcharging HHS Grants,” Enforcement Actions, Office of Inspector General, September 20, 2021, <https://bit.ly/3cwu9CM>.

3 Theresa Defino, “Scripps Pays \$10M for Alleged FCA Violations; Whistleblower Warned of ‘Soft Money Policy,’” *Report on Research Compliance* 17, no. 10 (October 2020), <https://bit.ly/3nWSC8F>.

4 Theresa Defino, “After Paying HHS \$1.45M, UNLV Enhances Award Oversight; OIG Touts Self-Disclosure,” *Report on Research Compliance* 18, no. 6 (June 2021), <https://bit.ly/3cA8Hg6>.

5 Washington State University, Office of Procedures, Records, and Forms, “Sponsored Agreements: Institutional Base Salary and Salary Cap,” *Business Policies and Procedures Manual*, revised May 2021, <https://bit.ly/3cxcrz1>.

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