

Report on Research Compliance Volume 19, Number 6. May 26, 2022 In This Month's E-News: June 2022

By Theresa Defino

◆ **Auditors for the National Science Foundation (NSF) Office of Inspector General (OIG) questioned \$35,316 of costs claimed by the University of Idaho (UI) among \$42.7 million expended for 50 awards, according to a new audit.** The audit encompassed “each award’s inception date through” Sept. 2, 2021, and only proceeded through an “initial phase” because auditors “did not identify any extraordinary circumstances that justified the need for a second audit phase.” According to the May 6 report, among six awards, “auditors found \$24,855 in unallowable expenses, \$5,446 of inappropriate Award Cash Management Service (ACMS) drawdowns, and \$5,015 of inappropriately allocated publication expenses.” OIG also made two findings related to UI’s use of what it said were incorrect indirect cost rates—assertions UI rejected that mimic other recent audits.

Among the unallowable expenses was \$9,552 UI charged to an award in June 2021 for “software related to a cybersecurity training program. Although UI had originally paid for this expense, because UI received reimbursement for the expense from the Idaho State Board of Education, UI should have removed these costs from this NSF award.” In addition, in February 2018, UI charged an award for “\$9,100 in unallowable indirect costs that it applied to costs incurred to purchase a vehicle. Although UI indicated that the expense related to a car rental, because UI did not rent the car, but instead paid a car rental agency to purchase the vehicle, UI should have considered this expense the purchase of a capital asset.” Regarding the publication expenses—which UI argued were allowable—OIG said that, in June 2019, UI charged one award \$5,015 for the entire cost of publishing a paper, although NSF “was only one of the three funding sources identified in the publication.” According to the auditors, “UI did not document or provide a reasonable justification as to why it allocated 100 percent of the cost to this NSF award, [thus] we were unable to determine the percentage allocable to this award.” In the draft of the report provided to UI for comment, the questioned amount was only \$502, which auditors revised to the higher amount. In its response, UI said the mention of three funding sources was done “in recognition of the science developed as a foundation to support the research performed for [redacted].” UI officials said they were “concerned about the precedent that could be set” by this finding. (5/12/22)

◆ **The Office of Management and Budget (OMB) has released its 2022 update to the uniform guidance regulations that recipients of federal awards must follow.** As announced in the May 11 Public Inspection section of the *Federal Register*, the new compliance supplement is applicable to 2 C.F.R. Part 200 Subpart F, which addresses “administrative requirements, cost principles, and audit requirements regulations” and “replaces the 2021 Supplement (issued in August 2020), its Addenda 1 & 2 (issued in December 2021 and January 2022), and the technical update (issued April 2022).”

As the notice states, the supplement “adds five new programs (that are funded by the American Rescue Plan Act) and provides updates on many other programs, where necessary. In total, the 2022 Supplement contains audit guidance for 235 individual programs and 48 clusters of programs from 22 Federal agencies. The 2022 Supplement is a continuation of efforts to maximize the value of grant funding by applying a risk-based, data-driven framework that balances compliance requirements with demonstrating successful results.” The agency set a 60-day comment period for the supplement, which will be in effect for “fiscal year audits that cover any period beginning after June 30, 2021.” (5/12/22)

◆ **Gongda Xue, formerly a scientist with a Swiss research institute affiliated with the pharmaceutical firm Novartis, was convicted of conspiracy to steal trade secrets from GlaxoSmithKline (GSK) in Pennsylvania,** where his sister Yu Xue, worked, Jennifer Arbritier Williams, U.S. Attorney for the Eastern District of Pennsylvania announced May 2. Williams' office said that from January 2010 to January 2016, Gongda Xue stole "research into anti-cancer products and sent that research to Yu Xue," while she "stole GSK research into anti-cancer products and sent that to Gongda Xue."

Yu Xue and "associates" founded a firm in China called Renopharma; her brother created Abba Therapeutics AG in Switzerland. "Renopharma then attempted to re-brand GSK products under development as Renopharma products and attempted to sell them for billions of dollars. Renopharma's own internal projections showed that the company could be worth as much as \$10 billion based upon the stolen GSK data," the announcement said. Yu Xue was arrested in 2016 and Gongda Xue was extradited from Switzerland in 2019. Yu Xue pleaded guilty in 2018 (as did three others) and, on May 26, 2021, was sentenced to eight months in prison, according to court documents reviewed by RRC. The government previously said Gongda was facing 20 years in prison, if convicted. GSK has not been able to collect restitution connected to the case, as a judge ruled the government did not prove GSK suffered actual financial losses. (5/5/22)

◆ **The NSF has agreed with OIG recommendations to seek repayment from the University of Utah of \$15,417 in questioned costs auditors flagged in a report covering July 1, 2013, to June 30, 2016.** But it is allowing \$21,262 for what OIG said were "unsupported stipend costs" and \$5,478 in "unallocable and/or unreasonable expenses near award expiration." NSF "does not agree that participant support costs (PSC), 'budgeted as stipend payments restricts that funding to be paid as stipends only.' Rebudgeting of funds awarded for participants within the participant support budget category is a longstanding, allowable practice under NSF awards," the April 7 audit resolution states. "However, NSF award terms and conditions were revised with the implementation of [2 C.F.R. § 200] and now requires prior approval for any additional categories of participant support costs, such as 'incentives, gifts, souvenirs, t-shirts and/or memorabilia.' NSF determined that the only unallowable rebudgeting was \$24 for a rush payment fee. It is NSF's management decision to disallow \$24 and to allow \$21,262."

OIG also disagreed with auditors' conclusion that the university applied incorrect negotiated indirect cost rate agreement, or NICRA, a common finding among recent audits—stating that "NSF's policy requires grantees to budget indirect costs using current indirect cost rates in accordance with PAPPG [Proposal & Award Policy & Procedures Guide] Chapter II, Section C.2.g(viii), Indirect Costs. However, during the award performance period, grantees may provide voluntary uncommitted cost sharing at any time consistent with OMB's clarification Q-132, 2 CFR Frequently Asked Questions dated 5/3/2021 and PAPPG Chapter II, Section C.2.g(xii), Cost Sharing." Also applicable is "NSF's Cost Sharing Policy at <https://www.nsf.gov/bfa/dias/policy/>. Accordingly, NSF does not agree with the recommendation that Utah needs to strengthen administrative and management controls and processes over establishing indirect cost rates for Federal awards to ensure that it applies costs at the rates in effect at the time of the initial award," NSF said. (5/5/22)

◆ **Perhaps a year or more after the then-director of the HHS Office of Research Integrity (ORI) moved up to join agency leadership, HHS has posted the job opening online at usajobs.gov.** The pivotal office that investigates fabrication, falsification and plagiarism in billions of dollars of research funded by the Public Health Service has been without a leader since Elisabeth Handley became HHS principal deputy assistant secretary sometime last year. Appointed ORI director in March 2020, Handley first served as interim director beginning in August 2019. HHS announced Handley's new job in June of last year, but a misconduct finding in January 2021 was signed by Wanda Jones, who was listed as the acting director.

Before Handley was appointed, the job was vacant for two years following the reassignment of Kathryn Partin,

who had a troubled two-year tenure before she was transferred out of HHS. Her predecessor, David Wright, who was ORI director from 2012 to 2014, also stepped in after a two-year vacancy. All of the previous directors had Ph.Ds. However, the new job application, which was posted April 21, does not have an education requirement. The job is based in Rockville, Maryland, and pays from \$135,468 to \$203,700 annually. Applications will be accepted through May 23. (4/28/22)

◆ **The University of California, Merced (UCM), should repay \$226,652 to NSF, according to a recent report by auditors for NSF’s OIG.** Auditors tested \$724,833 of \$22.3 million in costs claimed from Sept. 1, 2017, to Aug. 31, 2020, questioning a total of \$226,652. Specifically, auditors questioned “\$116,151 of unallowable expenses; \$71,463 of inappropriately allocated expenses; \$21,064 of ACM\$ drawdowns that exceeded expenses; \$17,492 of inadequately supported expenses; and \$482 of inappropriately applied indirect costs,” the audit showed. Of note, auditors recommended NSF disallow—with UCM’s agreement—\$6,471 in publication expenses for two awards because “the published articles did not acknowledge the NSF awards charged.”

The report also found “payroll subledger expenses that exceeded general ledger payroll expenses, inappropriately budgeted participant support costs, and non-compliance with UCM policies.” Auditors made 33 recommendations. As the auditors put it, “UCM expressed varying levels of agreement and disagreement with the findings throughout the audit report, agreeing to reimburse NSF for \$156,775 in questioned costs, but disagreeing with the remaining \$69,877.” (4/28/22)

This publication is only available to subscribers. To view all documents, please log in or purchase access.

[Purchase Login](#)