

Report on Research Compliance Volume 20, Number 2. January 25, 2023 In This Month's E-News: February 2023

By Theresa Defino

◆ **Hired under the Intergovernmental Personnel Act (IPA), staff referred to as IPAs assist the National Science Foundation (NSF) as temporary directors, advisors and leaders.** IPAs “bring fresh perspectives and innovative approaches to solving problems facing the federal government,” NSF’s Office of Inspector General (OIG) said in a recent audit. But whether NSF’s process for vetting IPAs is sufficient to ensure candidates meet all IPA program and NSF requirements wasn’t clear, OIG said. After reviewing 25 IPA assignments from 150 new IPA agreements that began in 2018 and 2019, auditors determined NSF “did not always ensure that IPA candidates met all program eligibility requirements or verify IPA’s salary and employment history,” nor did the agency revise its security and “suitability review process to address risks associated with foreign influence,” OIG said in a Jan. 9 report.

Decentralized processes led to problems, OIG said, adding, “there is no single office or individual [with] full visibility of the entire vetting process.” Auditors also discovered one instance where “NSF deviated from its process of basing [an] individual’s salary on that of the home institution, and the Office of the Director instead negotiated a salary of \$250,000 with the individual. The individual then provided false information about both the start date and salary at Institution B, which the individual reported as \$250,000. A senior official at Institution B also falsely stated that the individual’s “actual salary paid” was \$250,000, even though the position was unpaid.” Documentation showed the individual’s previous position was at “Institution A,” which “had not applied for the IPA program but was eligible to become an approved institution. However, the individual obtained an additional unpaid position at a different institution (Institution B) that had already been approved for the IPA program,” and “only appointed the individual to a research position to enable the individual to serve as an IPA at NSF.” OIG referred this case to the Department of Justice, which declined to prosecute. NSF accepted OIG’s five recommendations, including that it “update procedures to validate Intergovernmental Personnel Act candidates’ employment and salary at their home institutions, as well as any other information necessary to confirm eligibility for an Intergovernmental Personnel Act assignment,” “strengthen the vetting process for Intergovernmental Personnel Act assignees to address foreign influence-related issues” and “incorporate a step within the Intergovernmental Personnel Act assignee vetting process to identify and address harassment-related issues.” (1/19/23)

◆ **A special committee investigating allegations of image manipulation—a form of research misconduct—against Stanford University President Marc Tessier-Lavigne, established a website to share updates and “communications” as well as to accept comments.** “As volunteers in service of the University, we are committed to actively engaging with all members of the community and welcome ongoing feedback and input on our process,” reads a post from Jan. 13. “We have established this web page to host this and any future communications, as well as [provide] an email address for the Special Committee” and “encourage members of the community to share their perspectives with the Committee via this email address. We will continue to update the community through our web page and other channels when there are important developments.” In November, Stanford’s student newspaper disclosed allegations of “multiple” image manipulations in Tessier-Lavigne’s published papers.

Established by Stanford's Board of Trustees, the special committee hired former federal judge Mark Filip and Kirkland & Ellis "to lead the review of questions relating to academic articles" for which Tessier-Lavigne is an author." Filip "engaged a panel of leading scientific experts," according to the post. The five-member panel "agreed to conduct a thorough and impartial evaluation of the facts and scientific issues that it determines are relevant." Filip "will incorporate the panel's evaluation into his report to the Special Committee and ultimately the full Board of Trustees." Members include Shirley M. Tilghman, former president of Princeton University and Steven E. Hyman, former provost of Harvard University. (1/19/23)

◆ **Under NIH's new grants policy statement (GPS), "institutions receiving NIH support will now be required to have internal controls to assure compliance with terms and conditions of award,"** including "behavioral codes of conduct to assure safe and healthful working conditions for their employees and foster work environments conducive to high-quality research," as Michael Lauer, NIH deputy director for extramural research, recently wrote on his Open Mike blog.

"We previously established our own code of conduct for NIH staff. Codes of conduct define what is expected for staff to maintain professional behaviors, integrity, and ethical values when conducting NIH-supported research"—which can be found at <https://policymanual.nih.gov/1311>—Lauer wrote on Dec. 29. The updated GPS applies to awards issued as of Oct. 1, 2022, the start of fiscal year 2023. Referring to specific parts of the document, the GPS states that "recipient organizations are expected to establish codes of conduct which define expectations of integrity and ethical values and criteria of competence of personnel involved in the work supported by NIH grant funds. Codes of conduct should articulate expectations to assure compliance with terms and conditions of award, including but not limited to, providing true, complete, and accurate information on application documents (2.3.7.6); assuring work environments are free of discriminatory harassment and are safe and conducive to high-quality work (4); and meeting applicable public policy requirements (4.1)." (1/12/23)

◆ **NSF is requiring Ohio State University (OSU) to repay \$386,368 of \$502,587 in costs questioned by the agency's OIG but is allowing \$116,219 auditors deemed improper.** The audit covered Feb. 1, 2015, through Jan. 31, 2019. The largest amount among five categories of costs auditors questioned that NSF permitted was \$76,822 for a subaward OIG said was made without prior approval from NSF. The agency permitted the entire amount, saying it had "retroactively approved the subaward while the award was open." NSF also allowed \$37,744 of \$304,977 auditors said was for expenses not appropriately allocated to NSF awards; it did not specify what the allowable expenses were for.

According to the Jan. 3 resolution report, NSF also permitted \$1,653 of \$44,178 OSU charged for what was termed "unreasonable materials and supplies," which were related to travel expenses. Although no costs were associated with OIG's finding, NSF disputed that OSU had used incorrect proposed indirect cost rates. "NSF's policy requires grantees to budget indirect costs using current indirect cost rates in accordance" with NSF's Proposal & Award Policies & Procedures Guide, the agency said. "However, during the award performance period, grantees may provide voluntary uncommitted cost sharing at any time," as allowed under the Uniform Guidance and NSF's FAQs. NSF agreed with a number of auditors' other findings, including noncompliance with OSU policies and inappropriate application of fringe benefits. Of note, NSF said it had "communicated concern about the OSU decision not to provide a full response to the draft audit report," including that it "would not engage OSU in discussions regarding disagreements with the auditors' conclusions or accept additional supporting documentation." As a result, NSF's "management decisions are based upon detailed reviews of the audit workpapers, applicable federal and NSF requirements, and information and documentation maintained in NSF systems." (1/12/23)

◆ **According to a notice sent to the agency's email list on Jan. 4, Jerry Menikoff, director of the Office for Human Research Protections (OHRP), retired;** Deputy Director Julie Kaneshiro has been acting director since Jan. 1. The

news comes as a surprise and is not posted on OHRP's website. At a recent meeting, Kaneshiro revealed that OHRP had 12 vacant positions out of 32 but did not mention Menikoff's. On the day of the announcement, Menikoff was still listed as director on the OHRP website. OHRP did not say when he retired.

The email praised Menikoff for his "exemplary and meaningful leadership," adding that he "had a direct impact on providing leadership in the protection of subjects by offering clarification and guidance, developing educational programs and materials, and maintaining regulatory oversight. Among his many achievements during his tenure at OHRP was his leadership of the revisions to the Common Rule. Dr. Menikoff's efforts led to regulatory changes that strengthen informed consent and promote the trustworthiness of the research enterprise." However, Menikoff's tenure was marked by conflicts with NIH over a finding of noncompliance and was characterized by criticism over lack of enforcement actions. For example, the number of determination letters issued dwindled from several dozen per year when he began to zero issued in 2021. Menikoff's departure means the two most important federal research oversight agencies now lack leadership—as does NIH. The HHS Office of Research Integrity has not had a director since at least January 2021. NIH has not had a permanent director since Francis Collins stepped down a year ago. (1/5/23)

◆ **In three recently issued audit resolutions, NSF agreed with auditors for OIG and is requiring repayment for flagged costs from the University of Colorado Boulder (CU Boulder), the University of Michigan (UM) and the University of Central Florida (UCF), but the amounts are relatively small.** For CU Boulder, NSF's decision was partly in its favor. The audit covered expenditures from Oct. 1, 2014, through Sept. 30, 2017, and "identified a total of \$79,831 in questioned costs claimed on NSF awards and recommended that CU Boulder strengthen its administrative and management controls over the areas." NSF permitted \$11,528 for what OIG said were purchases near award expiration but disallowed \$68,303, which consisted of \$20,263 expended after award expiration, \$15,785 for "unallowable or unreasonable travel," and \$5,273 in unallowable or unsupported transactions.

The UM and UCF audits were part of a series OIG conducted to review how universities employed COVID-19-related flexibilities versus more traditional audits centered on costs. The UM audit, which encompassed operations from March 1 to Sept. 30, 2020, "identified one area for improvement related to UM's use of the COVID-19 flexibilities on monitoring travel credits. The report also questioned \$11,499 in costs claimed under NSF awards and recommended that UM strengthen its administrative and management controls for the areas in which findings were identified," NSF explained in the audit resolution. NSF disallowed all questioned costs, which were categorized as "unallowable rebudgeting of participant support costs." OIG reviewed UCF for the same period as UM, flagging \$448, which consisted of \$134 for "effort not certified" and \$160 for unallowable expenses. In a somewhat unusual occurrence, NSF said UM identified an additional \$154 in unallowable costs. UCF agreed to repay all the costs. (1/5/23)

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

[Purchase Login](#)