

# Report on Research Compliance Volume 17, Number 11. October 22, 2020

## False Claims, Overcharging Allegations Prove Costly: \$16M Paid Just This Year

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By Theresa Defino

Perhaps nothing can drive home the need to deal effectively with suspected infractions of policies and procedures related to federal research grants more than learning that a fellow university has had to pay millions to settle alleged False Claims Act (FCA) violations or questions of overcharging on grants.

Compliance officials from the Research Foundation of the State University of New York and Memorial Sloan Kettering Cancer Center recently addressed the need to create a “speak-up” culture to avoid just such settlements but also to foster ethical decision-making on the part of employees.<sup>[1]</sup>

For years, the Department of Justice (DOJ) rarely pursued cases against universities, but that changed in the recent past. In addition, a trend has emerged in the last two years, namely settlements—and in some cases criminal charges against professors—related to inappropriate or undeclared support from foreign organizations or governments.

DOJ closed out 2019 with a \$5.5 million settlement with Van Andel Research Institute, which it accused of repeatedly failing to report employment and other support that two now-former researchers had with Chinese entities from 2012 to 2019.<sup>[2]</sup> Unlike other FCA settlements, there was no alleged fraud in the conduct of funded research or inappropriate use of government support.

So far this year, payments to resolve FCA and overcharging allegations have totaled more than \$16 million. The following are settlement agreements resolving allegations against universities and research institutions related to federal awards, beginning with the most recent one.

- The Scripps Research Institute agreed in September to pay DOJ \$10 million, of which \$5 million is restitution, based on a suit originally brought by a whistleblower after he left Scripps.<sup>[3]</sup> DOJ said Scripps “improperly charged NIH-funded research grants for time spent by researchers on non-grant related activities” from 2008 to the end of 2016. At issue was a “soft-money” policy that required professors and investigators to raise 100% of their salaries through awards, which resulted in overlaps in effort when they typically had more than one grant. DOJ and the whistleblower, Thomas Burris, director of Scripps’ Center for Diabetes and Metabolic Diseases in Jupiter, Florida, from 2008 to 2013, also contended that this method of charging included time he had spent applying for grants and teaching and actually conducting research.

Burris said he learned that “it was wrong to bill time spent drafting new grant applications to awarded grants” when he joined Saint Louis University in 2013. Burris received \$1.75 million as part of the suit, which he filed in 2015. Scripps also agreed to pay Burris’ attorneys \$615,234.82. While admitting no liability, Scripps was almost dismissive of the claims, calling them the result of “an accounting discrepancy.”<sup>[4]</sup>

- Although it is for a much smaller amount than Scripps’, Lehigh University’s \$200,000 settlement has
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additional costs baked in because it requires implementation of a compliance plan, which DOJ sometimes imposes among the terms of an agreement.<sup>[5]</sup> This case was an outgrowth of criminal charges DOJ brought against a former professor for fraud related to his small business, called ArkLight, which had received \$2.7 million in awards from 2004 through 2013. Lehigh received \$1 million as a subcontractor to ArkLight, but in truth it had done all of the work, DOJ announced in July.

Yujie Ding, formerly a professor of electrical engineering, and his wife were convicted in 2015 of wire fraud, with Ding sentenced to a year in prison and \$75,000 in restitution and fines. A special agent for the NASA Office of Inspector General (OIG) found that there were no lab facilities in the couple's home, which was listed as the headquarters for ArkLight. According to DOJ, Lehigh "cooperated in the criminal investigation and trial of Ding and [his wife] by responding to subpoenas and making witnesses available for interviews." The compliance plan required Lehigh to "draft, review and/or revise" a new set of policies and implement an oversight structure, to include a central office and specific duties for its personnel.<sup>[6]</sup>

- In June, the University of Virginia (UVA) paid \$1 million related to alleged misspending issues. DOJ said "some rebates and discounts obtained on certain purchases by the university during the 2009 to 2017 time frame were not accounted for in reducing charges against Federal Award funding."<sup>[7]</sup> A spokesman for the U.S. Attorney's Office for the Eastern District of Virginia told RRC UVA's agreement was an "overpayment resolution," not an FCA case. According to the settlement the government provided to RRC, federal regulations require that, "on an annual basis, rebates and discounts obtained when taking these purchases must be accounted for and subtracted from claims made by a university against Federal Award funds." Awards at issue came from HHS, NASA, the U.S. Army, the National Science Foundation (NSF), and the Departments of Commerce, Education and Energy.

UVA officials would not answer questions from RRC, such as how the \$1 million was arrived at. Instead, UVA emailed the following statement: "The University is pleased to have resolved this matter with the federal government. The University takes seriously its responsibility to be a good steward of federal funds and addressed areas of potential disagreement regarding accounting for rebates and credits for the time period between 2009-2017. The University has fully cooperated with the investigation and implemented new policy changes to our accounting practices." The settlement permitted UVA to make two payments of \$500,000. The first payment was due June 26 and the second within six months.

- Pennsylvania State University settled with the federal government in May, agreeing to pay \$151,000 for what the U.S. Attorney's Office for the Middle District of Pennsylvania said were "mischarges to various grants and contracts" from NSF, NASA, the U.S. Navy and U.S. Air Force.<sup>[8]</sup> The government said the potential false claims were "isolated alleged mischarges identified [that] occurred in 2013-2016." Penn State did not admit liability and cooperated with the investigation, and "implemented policy changes to prevent mischarges in the future."

Penn State officials would not address questions from RRC about the settlement, but emailed the following statement: "Penn State cooperated fully with this investigation and we are pleased to bring this matter to a close. We are committed to being careful stewards of government funding in managing our grants and contracts processes."

- After Scripps, the largest settlement this year is with Rice University for \$3.75 million for alleged violations from 2006 to 2018.<sup>[9]</sup> The U.S. Attorney's Office for the Southern District of Texas said FCA violations occurred when Rice "budgeted for graduate student stipends in its research grant proposals but then used a portion of the money to pay the students to perform teaching duties unrelated to the NSF awards." The

amount paid back, DOJ said in April, is “double the loss” the government suffered because Rice “knowingly engaged in a pattern and practice of improperly charging graduate students’ stipends, tuition remission and related facilities and administrative charges to NSF awards.”

But Rice officials not only did not admit to wrongdoing as part of the settlement, they said there was none. The university would not answer RRC’s questions but issued the following statement: “Rice University strongly believes it complied with the law and with the relevant federal rules in all respects regarding this dispute. The university does not admit any liability or violation of the law. However, the university has agreed to pay a settlement in order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation with the federal government.”

- The third largest settlement was with Harvard University for \$1.359 million, a case that had several unusual features, including that it began as a self-disclosure and identified a professor, by name, as being at the root of “overcharges.”<sup>[10]</sup> DOJ and HHS OIG officials said Donna Spiegelman, Ph.D., then a Harvard T.H. Chan School of Public Health professor, allegedly claimed unallowable charges against NIH awards for “salary costs” over a five-year period.

“The government alleges that Professor Spiegelman and her team inappropriately charged their time and effort by evenly distributing their time across all grants for which they provided statistical support, without accurately accounting for the time they actually spent on particular grants,” DOJ officials said in April. But Spiegelman’s attorney told RRC her client was unaware the settlement was in the works, saying “Harvard has appallingly attempted to scapegoat Dr. Spiegelman” for well-known problems, including those she brought to university officials, and that she was never accused of wrongdoing.

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