



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report
Washington State University

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August 17, 2017

Kirk Schulz, President
Washington State University

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 17-009 at the Washington State University.

The State Auditor's Office received an assertion of improper governmental activity at the University. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

If you are a member of the media and have questions about this report, please contact Assistant Director for Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

Pat McCarthy
State Auditor
Olympia, WA

cc: Governor Jay Inslee
Heather Lopez, Chief Audit Executive
Kate Reynolds, Executive Director, Executive Ethics Board
Jacque Hawkins-Jones, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertion and results

Our Office received a complaint asserting a Washington State University (University) associate dean (subject) instructed University personnel to improperly charge two employees' salaries (Employees A and B) to federal grants.

We found reasonable cause to believe an improper governmental action occurred.

Background

In 2016, the University's College of Agriculture, Human and Natural Resource Sciences (CAHNRS) secured more than \$83 million in research funding, which accounted for more than 40 percent of all University research funding. The subject works in the Office of Research, which assists in coordinating and supporting grants.

Federal grants are awarded to the University. To ensure the terms of the grant are followed and the funds are spent appropriately, each grant has a principal investigator (principal), who is the primary contact responsible for overseeing the performance of the project to the terms of the grant, including its fiscal aspects. According to University policy, the principal shares the fiscal responsibility with other University employees such as unit directors, deans and administrators, who act in an oversight capacity.

In this case, we reviewed two federal grants funded by two separate agencies: National Aeronautics and Space Administration (NASA) and Department of Energy (DOE).

About the Investigation

Our Office requested copies of the federal grant agreements, salary documents for the employees and the subject's email folders from August 1, 2015, through August 30, 2016.

We found Employee A's salary was fully funded by a general state operating fund until June 30, 2016. Beginning July 1, 2016, and through August 15, 2016, Employee A's salary was funded entirely by NASA. We spoke with Employee A who said she has "never worked on the NASA grant."

We spoke with the principal, who confirmed Employee A, a technician who works under the principal's supervision, did not work on the NASA grant, so he could not authorize her salary to be charged to the grant. He said when he found out her salary had been charged to the grant, he felt obligated to notify NASA. In response, NASA sent a letter to the University reminding them of their fiscal responsibility.

We found the subject improperly authorized \$8,218 in compensation and \$3,416 in benefits to be charged to the grant.

We found Employee B's salary was partially funded by DOE until June 30, 2016. Starting July 1, 2016, Employee B's salary was entirely funded by DOE, even though she did not work solely on the grant. We spoke with Employee B, a technician who works under the principal's supervision, who said she did not know how her salary was funded.

When we spoke with the principal, he said he authorized Employee B's salary to be partially charged to DOE, because she did some work on this grant. He said he did not realize her entire salary was charged to the grant until his office manager brought it to his attention.

We found the subject improperly authorized \$3,569 in compensation and \$1,850 in benefits to be charged to the grant.

In an email, the principal's supervisor stated he had "been instructed by CAHNRS administration" to assign Employee A to NASA from July 1, 2016, through June 30, 2017, and Employee B to DOE at 100 percent for three months, beginning July 1, 2016, "with anticipated continuation."

The principal discovered the charges in late July and contacted NASA. The response from NASA, dated August 2, 2016, stated, "[a]ny attempt by others . . . to place any individuals on this project without your approval, or assign expenditures not for the project, would constitute fraud and/or misuse of competitive federal funds." The principal forwarded the response to his supervisor and the subject.

By mid-August, the employees' salaries were no longer improperly charged to the grants.

We spoke with the subject, who said, "We [the University] have a responsibility to manage the finances of the College." He said some of the principal's employees were funded by the University's general fund when they should have been funded by other sources. He said the principal was directed by his supervisor to find funding for Employees A and B, or the University would have no choice but to start the process of terminating the two employees.

The subject said he worked with the principal's supervisor to give the principal suggestions on how he could fund the employees' salaries, which was the principal's responsibility. When the principal failed to identify alternative funding sources, the subject directed the principal's supervisor to begin charging the salaries to the grants.

The subject stated the principal, who has many years of experience as a principal, was well aware that he needed to ensure the employees were doing work on the grant, if being paid from the grant. He said there were limited funding sources available for these employees and in order to keep them employed they had to work on these grants. Ensuring they did so was the responsibility of the principal, which he failed to do. The subject said that when the principal was charged to 'assign' the employees to noted grants, he assumed the principal understood the employees were to be reassigned to duties consistent with the funding source. In mid-August,

after they stopped charging to the grants, the University had to start the termination process. However, the subject said ultimately the principal did move one of the employees to one of the grants.

The subject said the University had tried to give the principal the opportunity to “do the right thing.” He said the actions the University took were “in good faith,” and that it had been working with its attorney and human resources department to find a solution. He said the University did not intend to do anything unlawful.

We found the subject directed employee salaries to be paid out of grants on which they did not work, or worked at a lesser percentage than was charged to the grant. According to federal regulations, charges to federal grants for salaries and wages must be based on records that accurately reflect the work performed.

Therefore, we found reasonable cause to believe an improper governmental action occurred.

Recommendation

Because the improper charges identified in this investigation were federally funded, we recommend the University consult with its grantors to determine if it is required to repay any of the improperly charged costs.

University’s Plan of Resolution

We thank the auditors for the opportunity to respond. The University takes allegations of improper conduct very seriously and appreciates the State Auditor’s attention to this matter.

We agree salaries charged to a federal grant must be accompanied by employee effort, otherwise the charges are improper and must be corrected.

We agree salary charges for the two employees were made to the grants and were not accompanied by relative effort on those grants. Thus, the charges were unallowable and must be corrected. Standard University policies and processes, in line with federal regulations, provide safeguards to ensure charges and effort match; if errors are noted, corrections will be made. For the grants noted, the charges have been corrected.

While we agree the charges were not accompanied by employee effort on these grants, we do not agree with the auditor’s conclusion that the subject engaged in improper governmental conduct. The subject did not provide instruction to charge federal grants improperly. The subject instructed personnel to assign employees to appropriate sources of funding, meaning work performed on federally sponsored projects should be charged to sponsored funding. General state funds were being improperly charged by the principal for work performed by research support personnel on federally sponsored projects. The principal had been repeatedly instructed to address the funding concerns but has repeatedly failed to respond and has not taken appropriate corrective action.

There are facts that, by their very omission from the report, lend to an inaccurate and incomplete context of the situation. The most significant:

- *Within this report: “In an email, the principal’s supervisor stated he had ‘been instructed by CAHNRS administration’ to assign Employee A to NASA from July 1, 2016, through June 30, 2017, and Employee B to DOE at 100 percent for three months, beginning July 1, 2016, ‘with anticipated continuation.’ ”*
 - a. *Omitted from the report: this email was addressed to and sent to the principal in June 2016. The principal reportedly “discovered the charges in late July and contacted NASA.” This claim of “discovery” after the fact is disingenuous given the timing of the written directions and the actual charges.*
 - b. *Omitted from the report: this email to the principal also provided that he was, “welcome to change the assignment for [employees A and B] . . . provided that . . . support comes from extramural grant funding.” The principal did not respond to this email and did not provide for any alternate assignments.*
 - c. *Absent a response with alternate assignments, the salaries of Employee A and B were charged to the directed grants in pay period starting July 1, 2016 with effective payment July 25, 2016 with the assumption that they would, as was the direction to the principal, be assigned work on these grants.*
- *From the report, “When the principal failed to identify alternative funding sources, the subject directed the principal’s supervisor to begin charging the salaries to the grants.”*
 - a. *The instruction to the principal’s supervisor was not just to “charge” the salaries to the grants, but to “assign” the employees to the grants. When the direction for assignment was made it was implicitly understood, in line with University policy and federal regulations, the employees were to be reassigned to duties consistent with the funding source.*

The particular circumstances were created by the principal, who, despite direction to provide employees A and B notice that their employment contracts would not be renewed, failed to do so. This created the situation in which the University was contractually obligated to the employees and, therefore, had to find a source to fund their salaries. The solution was to assign the employees to different grants managed by the principal with the expectation that their work would be in relation to those grants. We want to emphasize that under the whole of the circumstances the subject did have the authority to take the actions described.

The University has been and will continue to work on the issues of the principal not following written directives and improper management of grants under his control.

The University will also take this opportunity to ensure employees responsible for grant oversight and management participate in relevant trainings, including responsible conduct and research education for faculty and staff.

State Auditor's Office Concluding Remarks

During the investigation, we learned the principal was aware he had been directed to move the employees onto the grants and assign them to grant work. However, he said he told his supervisor that there was no work for them at that time, so he was not moving them to the grants. He was surprised when he “discovered” that the employees’ funding had been moved to the grants after he had told his supervisor he had no grant work for them.

Regarding “b” and “c” referenced in the University’s response above - after sending the email directing the principal how to fund the employees and giving him the option to find alternate means, the principal did not respond to the email or the directive. The subject assumed the principal had done as instructed, but did not verify the employees were working on the grants before he directed their salaries to be charged to the grants.

Therefore, we reaffirm our reasonable cause finding related to the subject of this investigation. We will follow-up with the University within one year to assess whether it took appropriate action to resolve this matter.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

2 CFR §200.430 Compensation—personal services.

(a) General. Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 200.431 Compensation — fringe benefits. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

- (1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;
- (2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies and meets the requirements of Federal statute, where applicable; and
- (3) Is determined and supported as provided in paragraph (i) of this section, Standards for Documentation of Personnel Expenses, when applicable.

(h) Institutions of higher education (IHEs).

(2) Salary basis. Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.

(8) Salary rates for non-faculty members. Non-faculty full-time professional personnel may also earn “extra service pay” in accordance with the non-Federal entity’s written policy and consistent with paragraph (h)(1)(i) of this section.

(i) Standards for Documentation of Personnel Expenses

(1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

RCW 42.40.020 - Definitions.

(4) "Gross mismanagement" means the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.