

NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

CLOSEOUT MEMORANDUM

TO: AIGI

File Number: I97070030

Date: 02 March 2002

Subject: Closeout Memo

Page 1 of 1

There was no closeout written at the time this case was closed. The following information was extracted from the file in conformance with standard closeout documents.

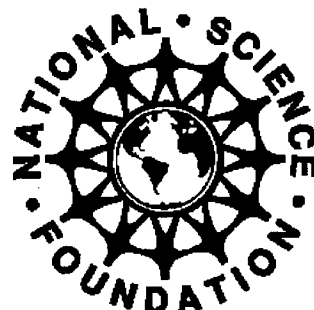
An HHS-OIG agent¹ informed our office that the subject² was alleged to have transferred excess NSF grant dollars to a state account. In the settlement, the Department of Justice recovered and returned \$7755.00 to NSF.

Accordingly this case is closed.

¹ Agent [REDACTED]

² Psychology Dept., U. of Washington

Name:	Prepared by:	Cleared by:		
	Agent:	Attorney:	Supervisor:	AIGI
Signature & date:				



Report No. 5340

**UNIVERSITY OF WASHINGTON
DEPARTMENT OF PSYCHOLOGY**

Agency No. 3600

Special Audit

July 1, 1987 Through August 31, 1993

A U D I T R E P O R T



Washington _____

State Auditor

Brian Sonntag



Legislative Building
PO Box 40021
Olympia, Washington 98504-0021

Washington State Auditor
Brian Sonntag

(206) 753-5277
SCAN 234-5277
FAX (206) 753-0646 SCAN 234-0646

Notice of Filing and Transmittal
January 7, 1994

Notice is given that the attached document is the special audit report of the University of Washington Department of Psychology for the period July 1, 1987, through August 31, 1993.

The report was prepared, filed and transmitted by the State Auditor's Division of Audit pursuant to Chapters 43.09 and 43.88 RCW.

Brian Sonntag
State Auditor

Copies transmitted to:

The Honorable Mike Lowry, Governor
Dr. William P. Gerberding, President
University of Washington
The Honorable Christine O. Gregoire, Attorney General
The Honorable Nita Rinehart, Chair, Senate Ways and Means Committee
The Honorable Helen Summers, Chair, House Appropriations Committee
Cheryle Broom, Legislative Auditor, Legislative Budget Committee
Ruta Fanning, Director, Office of Financial Management
Marty Brown, Secretary, Washington State Senate
Alan Thompson, Chief Clerk, House of Representatives
Kathy Rosmund, Assistant Director, Planning and Policy Division
Department of Information Services
Laurie Fortier, State Publication Distribution, State Library
Betty Gebhardt, Assistant Director, Higher Education Coordinating Board
Department of Personnel, Higher Education Unit
Office of Program Research, House of Representatives
John Fisher, U.S. Department of Health and Human Services
Office of State Auditor

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**UNIVERSITY OF WASHINGTON
DEPARTMENT OF PSYCHOLOGY
Agency No. 3600
Special Audit
July 1, 1987 Through August 31, 1993**

Background

In March 1993, university employees informed us of improper governmental actions existing in the University of Washington Department of Psychology. The complaints were filed under Chapter 42.40 *Revised Code of Washington*, the "Whistleblower Act."

University of Washington Internal Audit Memorandum No. 92-27AM dated October 27, 1992, stated that the Department of Psychology improperly charged departmental administrative costs and costs-for-services-not-provided to numerous federal research grants.

These whistleblowers alleged the investigation by the University of Washington Internal Audit Department was incomplete, the Department of Psychology did not appear to be taking corrective action, and the proper authorities were not notified.

**UNIVERSITY OF WASHINGTON
DEPARTMENT OF PSYCHOLOGY
Agency No. 3600
Special Audit
July 1, 1987 Through August 31, 1993**

Scope And Opinion

This report represents the results of our audit of grant and contract expenditures at the University of Washington Department of Psychology for the period July 1, 1987, through August 31, 1993. The purpose of our audit was to determine whether grant and contract expenditures were properly accounted for and controlled and made in compliance with federal and state laws and regulations. We also reviewed the audit work performed by the University of Washington Internal Audit Department to determine whether the audit was complete, whether the Department of Psychology had taken corrective action, and if University management had notified the proper authorities.

Our audit was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. This audit was conducted under the authority of Chapter 42.40 RCW.

The scope of our audit was limited to determining whether grant expenditures were properly accounted for, controlled, and in compliance with federal and state laws and regulations. The scope of our work was not sufficient to enable us to express an opinion on the university's financial statements and we do not express an opinion on the financial position or results of operations of the University of Washington.

In our opinion, as detailed in the following findings, the lack of compliance with federal and state laws and regulations resulted in questioned costs totaling \$186,627 at the University of Washington Department of Psychology.

**UNIVERSITY OF WASHINGTON
DEPARTMENT OF PSYCHOLOGY
Agency No. 3600
Special Audit
July 1, 1987 Through August 31, 1993**

Schedule Of Findings

1. The University Of Washington Department Of Psychology Should Comply With Federal Regulations And University Guidelines When Directly Charging Salaries To Federal Grants

The University of Washington Department of Psychology did not keep detailed time records required by Office of Management and Budget (OMB) Circular A-21 to support grant monitoring services charged as a direct cost to federal grants.

Between May 1989 and June 1992, the salary and benefits of a grant monitor and her support staff were routinely charged without adequate support to at least 35 federal and nonfederal grants per month. Salaries and benefits were initially charged to departmental operations and then recharged to grants by using cost transfer invoices.

OMB Circular A-21 states in part:

Direct costs are those costs that can be identified specifically with a particular sponsored project . . .

. . . a system of personnel activity reports will be used for nonprofessional employees whose costs are charged direct or are required to be distributed to more than one activity for purposes of allocating indirect costs.

The distribution of salaries and wages whether treated as direct or indirect costs, will be based on payrolls documented in accordance with the general accepted practices of colleges and universities.

The payroll distribution system will (i) be incorporated into the official records of the university, (ii) reasonably reflect the activity for which the employee is compensated by the institution

The University Operations Manual, Policy D34.2, states in part:

The CTI can only be used to charge for services or supplies provided to other budget entities. Transfers of salaries . . . must be accomplished by journal voucher.

Department fiscal personnel thought the time of the grant monitor and her staff was adequately supported by a time study conducted for only May and July 1989. The fiscal staff did not recognize the need to maintain additional detailed time records in support of

grant charges. The department's practice ended after an investigation by the university internal auditor.

By using CTIs to recharge salaries the department bypassed the university's federal grant effort certification process which ensures compliance with federal regulations.

To avoid disallowance of grant charges, we recommend the Department of Psychology comply with federal regulations and university guidelines for direct charges to grants and contracts.

<u>Federal Agency</u>	<u>Program</u>	<u>CFDA Number</u>	<u>Questioned Costs</u>
DOD	Department of Navy	12.99902	\$ 4,273
NSF	Other Federal Assistance	47.999	5,875
HHS	Alcohol, Drug Abuse, Mental Health	93.992	42,249
HHS	National Cancer Institute	93.99903	512
HHS	National Institute Child Health/Development	93.99905	9,162
HHS	National Eye Institute	93.99906	16,148
HHS	National Heart, Lung, Blood Institute	93.99907	5,903
HHS	National Institute Diabetes/Digt./Kidney	93.99912	7,907
HHS	National Institute Neuro/Comm. Disorders	93.99915	13,115
HHS	Health Resources and Services Administration	93.99917	<u>2,345</u>
Total			<u>\$107,489</u>

Auditee's Response

The UW considers the costing practice utilized by Psychology during the audit period to be in compliance with federal regulations and University guidelines. During the period in question, Psychology charged grants and contracts for the services of a grant monitor through a departmental cost center (recharge center). Rates were developed using actual time and effort devoted to various projects for the period May - June 1989. Subsequent rates were adjusted when the grant monitor and supervisor determined that effort to specific project increased or decreased sufficiently to necessitate a change in the recharge rate. The UW considers recharge rates that are based on historical data and adjusted for major changes in service levels to constitute an equitable and reasonable basis for allocating costs in accordance with OMB Circular A-21, Section C.4. In June 1992, Psychology provided institutional funds for the grant monitor function to ensure compliance with new federal costing regulations proposed by OMB and finally published as a July 15, 1993, revision to Circular A-21.

Auditor's Concluding Remarks

The absence of detailed time records to support the university's subsequent rate adjustment does not meet the requirements of OMB Circular A-21. We, therefore, reaffirm our finding.

2. The University Of Washington Department Of Psychology Should Charge Only Allowable Costs To Federal Grants

Between November 1987 and April 1992, the Department of Psychology processed fictitious and unallowable claims totaling \$97,738 against federal grants as follows:

- a. Deficits on expiring federal grants totaling \$13,676 were transferred to newly awarded federal grants.
- b. Unexpended funds from expiring federal grants totaling \$57,225 were transferred to the department's operating budget to avoid loss of the funds.
- c. Nongrant related items totaling \$26,837 were charged to federal grants.

These transfers were effected by making false claims using cost transfer invoices, and by charging expenditures of one activity to that of another. The department maintained an accounting of all improper transfers and the transactions which effected the transfers.

In response to recommendations from the university's internal auditor, the department returned \$18,600 to federal sponsors.

The Office of Management and Budget (OMB), Circular A-21, *Cost Principles for Educational Institutions*, Section C.4.b. states:

Any costs allocable to a particular sponsored agreement under the standards provided in this Circular may not be shifted to other sponsored agreements in order to meet deficiencies caused by overruns or other fund considerations

Section C.4.c. states:

Any costs allocable to activities sponsored . . . other sponsors may not be shifted to federally sponsored agreements.

Section D.1 states:

Direct costs are those costs that can be identified specifically with a particular sponsored project

Section C.2 states that costs must be reasonable and allocable under the principles and methods provided therein, and conform to any limitations or exclusions set forth therein or in the sponsored agreement as to types or amounts or cost items.

United States Code, Title 18, Section 287, states in part:

Whoever makes or presents to any person . . . in the civil . . . services of the United States, or to any department or agency thereof, any claim upon or against the United States . . . knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than five years and shall be subject to a fine

United States Code, Title 31, Section 3729 states in part:

Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States government . . . a false or fraudulent claim for payment or approval . . . is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person.

Department personnel indicated the processing of false claims and charging of unallowable costs represented a long standing practice of the department's administration.

By processing false claims and not complying with OMB Circular A-21, department administration circumvented federal regulations and university policies and procedures set up to ensure compliance with these regulations. They also subjected the university to substantial liability and criminal penalty.

We recommend the Department of Psychology comply with federal regulations and charge only allowable costs to federal grants.

<u>Federal Agency</u>	<u>Program</u>	<u>CFDA Number</u>	<u>Questioned Costs</u>
DOD	Department of Navy	12.99902	\$ 3,863
NSF	Other Federal Assistance	47.999	1,880
HHS	National Institute Child Health/Development	93.99905	10,026
HHS	National Eye Institute	93.99906	1,446
HHS	National Heart, Lung, Blood Institute	93.99907	7,008
HHS	National Institute Neuro/Comm. Disorders	93.99915	3,699
HHS	Alcohol, Drug Abuse, Mental Health	93.99919	37,472
HHS	Agency for Health Care Policy and Res.	93.99921	<u>13,744</u>
Total			<u>\$79,138</u>

Auditee's Response

In general, the University agrees with the auditor's finding and recommendation. However, we wish to stress that all funding created by the transfer of deficit and surplus balances was used in direct support of the research effort and not redirected to other departmental activities. The deficit transfers referred to in finding 2a, were all made to competing renewals for the same research projects; however, the necessary pre-award authority was not obtained. Of the \$13,676 cited in finding 2a, \$8,705 had been returned to federal sponsors prior to the audit.

In finding 2b, the department made every effort possible to ensure that surpluses transferred to the department's operating budget were spent on the continuing research project of the Principal Investigator involved. Subsidiary records are available to document this practice. Of the \$26,837

cited in finding 2c, \$9,895 had been returned to the federal sponsors prior to the audit. Most costs questioned in the finding were allocated to programs funded by the Public Health Service (PHS). The Department of Psychology has been using PHS expanded authorities, which allow for no-cost extensions, pre-award authority and carryforward of unexpended balances, without sponsor approval, since April 1992. Very careful monitoring of grant projects has helped to ensure that costs are assigned to the proper period and that minor overexpenditures and unexpended balances are transferred in accordance with grantor regulations.

Auditor's Concluding Remarks

We are pleased that the university concurs that only allowable costs should be charged to federal grants.

3. The University Of Washington Should Notify Federal And State Officials Of False And Fictitious Claims Made Against Federal Projects

University of Washington management did not advise the federal cognizant agency or the State Auditor's Office of false and fictitious claims made against federal grants in the Department of Psychology (Psychology).

Internal Audit Memorandum 92-27AM dated October 27, 1992, stated that Psychology improperly charged federal research for departmental administration costs, disallowed costs, and for services not provided. The management issues attached to the memorandum stated that "faculty and management could be prosecuted under the False Claims Act for making fictitious or fraudulent claims against the United States."

The State Auditor's Office became aware of the Internal Audit Memorandum in March 1993, while investigating a whistleblower complaint. Our investigation revealed that grants from the Department of Defense (Navy) and various National Institute of Health awarding units were involved.

The Office of Management and Budget (OMB) Circular A-128, *Audits of State and Local Governments*, Section 12 states:

The recipient . . . shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as . . . falsification of records or reports, and misappropriation of funds

OMB Circular A-110, *Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations*, Attachment F, Section 2 states:

Recipients' financial management systems shall provide for:

- a. Accurate, current and complete disclosure of the financial results of each federally sponsored project.

The University of Washington Operations Manual, Policy D 47.1 states in part:

If there is a reasonable cause to believe that an employee has engaged in any improper activity, the Internal Auditor will report the matter to the individual under investigation, the cognizant dean or vice-president,

the Attorney General, the State Auditor, and such other appropriate authorities as necessary.

University personnel believed they gave notice of corrective action to federal sponsors when adjusted federal financial reports were submitted for the improper charges identified in the Internal Audit Memorandum. The adjusted reports reflected only that the University reimbursed the federal grants, but did not inform the cognizant agency.

Failure to notify the federal cognizant agency inhibits their ability to notify the appropriate sponsoring agencies.

The Internal Audit Director stated there must be a loss of public funds before fraudulent activity would be reported to the State Auditor's Office.

Revised Code of Washington 43.88.160 states in part:

(6) the state auditor shall:

(d) Be empowered to take exception to specific expenditures that have been incurred by any agency or to take exception to other practices related in any way to the agency's financial transactions and to cause such exceptions to be made a matter of public record, including disclosure to the agency concerned and to the director of financial management.

(e) Promptly report any irregularities to the Attorney General.

As the public's advocate, the State Auditor's Office must be notified of all improprieties in order to inform the public and the proper officials as required by RCW 43.88.160.

We recommend the university promptly notify federal and state officials of all false and fictitious claims.

Auditee's Response

The University concurs with the auditor's recommendation. We question, however, the criteria that the auditors have used as a basis for their recommendation.

OMB Circular A-128, section 12, when read in its entirety provides guidance only for those situations where an illegal act or other irregularity is discovered during an audit conducted under OMB Circular A-128. It requires that a recipient notify the cognizant agency whenever they are given notice by the auditor of an illegal act found during a single audit. The transactions transferring grant deficit and surplus grant balances were discovered internally, and the federal sponsors were notified when adjusted federal financial reports were submitted and the unallowable charges returned. Additional transactions were then discovered by the state auditor during their audit.

Auditor's Concluding Remarks

We are pleased that the university concurs with our recommendation to promptly notify federal and state officials of all false and fictitious claims.

FACTS ABOUT THE STATE AUDITOR'S OFFICE

The State Auditor's Office is established by the state's Constitution and is part of the executive branch of state government. The State Auditor is elected by the citizens of Washington and serves four-year terms.

Our mission is to be the public's advocate for government accountability. Our primary service is the performance of regular financial and legal compliance audits of all state agencies and local governments. We also perform fraud, whistleblower and other special investigations. As an elected office, the State Auditor's Office has the independence necessary to objectively perform audits and investigations. Our audits are designed to comply with professional standards as well as to satisfy the requirements of federal, state, and local laws.

The State Auditor's Office is organized into three divisions and consists of 300 employees, who are located strategically around the state to deliver our services effectively and efficiently. Approximately 65 percent of our staff are certified public accountants or hold other certifications and advanced degrees.

Division of Audit

The Division of Audit performs audits of more than 2,400 local governments in Washington consisting of cities, counties, schools, ports, and various types of special purpose districts. Results of these audits are published in individual audit reports for the various entities.

The Division of Audit also audits all state agencies, boards and commissions (including public colleges and universities) and is required to annually audit the State of Washington's General Purpose Financial Statements. Results of these audits are published in the State of Washington's Annual Comprehensive Financial Report, issued by the Office of Financial Management, and in the Statewide Single Audit Report issued by our office.

In addition to its other responsibilities, the division administers the Employee Disclosure or "Whistleblower Act" and investigates citizen complaints.

Division of Legislative and Technical Services

The Division of Legislative and Technical Services prescribes local governments' uniform budgeting, accounting and reporting systems; plans and implements audit practice aids, training and technical assistance; prescribes the accounting manual for public school districts jointly with the Superintendent of Public Instruction; annually publishes local government comparative statistics; and coordinates our audit efficiency and quality assurance program.

Division of Management Services

The Division of Management Services is responsible for all administrative functions in the office, including budgeting, accounting, personnel, training, information processing and purchasing.

Directory of Key Officials

State Auditor

Chief Deputy Auditor

Director, Division of Audit

Deputy State Auditor - Division of Legislative & Technical Services

Deputy State Auditor - Policy and Communications

Deputy State Auditor - Division of Management Services

Brian Sonntag

Ken Raske

Lee Reaves, CISA

Linda Sheler, CPA

Jerry Pugnetti

Chuck Pfeil, CPA

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1 7. For good and valuable consideration, the receipt and adequacy of which is hereby
2 acknowledged, the parties agrees as follows:

3 A. That the UNIVERSITY OF WASHINGTON shall pay a total of
4 \$181,744.04; (One Hundred Eighty One Thousand Seven Hundred Forty
5 Four Dollars and Four Cents). Payment shall be in the form of a certified or
6 cashier's check made payable to "The Department of Justice," or by means
7 of electronic transfer to the Financial Litigation Unit, United States
8 Attorney's Office, Suite 3600, 800 Fifth Avenue, Seattle, Washington
9 98104.

10 8. In exchange for the items listed in paragraph 7. the United States, including without
11 limitation the OIG, hereby release UNIVERSITY OF WASHINGTON AND AFFILIATES from
12 any civil or administrative claim or cause of action which the United States has or may have under
13 the False Claims Act, 31 U.S.C. §§ 3729-3733; at common law; under the Program Fraud Civil
14 Remedies Act, 31 U.S.C. §§ 3801-12; or under 45 CFR § 76.100 *et seq.* for the conduct described
15 in paragraph 2.

16 9. All costs (as defined in the Federal Acquisition Regulations ("FAR") 31.205-47;
17 U.S. Office of Management and Budget Circular A-21 Regulations paragraph J. 11; and as defined
18 in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. § 1395, *et seq.* and § 1396, *et seq.*
19 and the regulations promulgated thereunder) incurred by or on behalf of UNIVERSITY OF
20 WASHINGTON AND AFFILIATES in connection with 1) the matters covered by this
21 Agreement, 2) the Government's audit and investigation of the matters covered by this Agreement,
22 3) UNIVERSITY OF WASHINGTON AND AFFILIATES audits, investigations, and defenses,
23 4) the negotiation of this Agreement, and 5) the payments made to the United States pursuant to
24 this Agreement shall be unallowable costs for government contract accounting and reimbursement
25 purposes, including but not limited to, the cost principles applicable to federal grants, contracts,
26 cooperative agreements, and other agreements with educational institutions to which Circular A-21
Regulations apply; and for Medicare and Medicaid purposes. These amounts will be separately
accounted for by UNIVERSITY OF WASHINGTON AND AFFILIATES and UNIVERSITY OF
WASHINGTON AND AFFILIATES will not charge such costs directly or indirectly to any
federal Government contract or program.

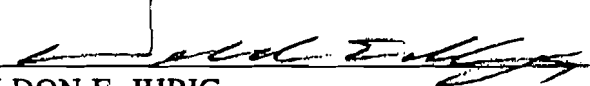
10. Each person signing this Agreement represents that he/she has the full power and
authority to enter into this Agreement and to perform the obligations set forth herein, and that
he/she is fully authorized to do so. This Agreement shall become final and binding only upon
signing by all parties hereto.

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11. This Agreement constitutes the entire Agreement between the United States and the UNIVERSITY OF WASHINGTON AND AFFILIATES with regard to the matter described in paragraph 2.


DATED: 6-6-97


WELDON E. IHRIG
Executive Vice President,
University of Washington


DATED: 6-27-97


DAVID REESE JENNINGS
Assistant United States Attorney/
On Behalf of The United States

DATED: 6.17.97


LEWIS MORRIS
Assistant Inspector General for Legal Affairs
Offices of Counsel for the Inspector General,
Department of Health and Human Services

DATED: 6-25-97


TERRENCE J. TYCHAN
Deputy Assistant Secretary for Grants and
Acquisition Management,
Department of Health and Human Services

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