



NATIONAL SCIENCE FOUNDATION  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

## CLOSEOUT MEMORANDUM

Case Number: I-97090045

Page 1 of 1

1. Initial Allegation:

In January 1997, a former University of [REDACTED] graduate student contacted the National Science Foundation, Office of Inspector General. He alleged that Drs. [REDACTED], had undisclosed personal business interests in eastern Russia which created conflict of interests (COI) since they were also there conducting NSF-funded geologic field research. The implication was that they engaged in activities related to his personal business ventures while claiming to conduct NSF-funded scientific research.

2. Investigation:

Aside from failing to disclose these conflict of interests, [REDACTED] filed false and duplicative claims for travel during the period from 1994 to 1999 for a combined amount of \$20,007.56 in violation of 18 U.S.C. § 666 and §287.

3. Referrals for Prosecution:

This case was presented to the US Attorney's Office in Tampa Florida and declined for prosecution. The case was then presented to the Florida State Attorneys office and declined for prosecution.

4. Administrative Recovery:

NSF-OIG recovered \$71,277.65 from the University of [REDACTED] which [REDACTED] refunded as they were expended in violation of NSF expenditure guidelines. [REDACTED] both wrote letters to NSF-OIG detailing future actions to ensure proper expenditures of grant funds.

5. Final Disposition:

This case is closed.

	Agent	Attorney	Supervisor	AIGI
Sign / date				

NATIONAL SCIENCE FOUNDATION  
4201 WILSON BOULEVARD  
ARLINGTON, VIRGINIA 22230

10 September 2001



VIA FEDEX

\_\_\_\_\_, Ph.D.  
Interim Vice President for Research

Re: Return of Funds for Grants Awarded to the  
for Drs. \_\_\_\_\_

Dear \_\_\_\_\_

Thank you for your letter dated 20 August 2001. I would like to emphasize that we affirm the conclusions in our investigation report, and my letter of 25 July 2001 should not be interpreted as attenuating the primary responsibility of \_\_\_\_\_ for their mischarges to the NSF grants (as well as their failure to provide appropriate disclosure to \_\_\_\_\_ their conflicting financial interests). Nevertheless, \_\_\_\_\_ as the grantee, subject to the grant conditions and applicable OMB Circulars, and unallowable costs must be reimbursed.

We appreciate \_\_\_\_\_ offer to repay \$71,277.65 in unallowable costs. Please forward a check to me, payable to the National Science Foundation, with a breakdown showing which dollar amounts relate to which NSF awards.

With regard to the provision in \_\_\_\_\_ COI policy concerning SBIR/STTR institutions, if someone from your Office of General Counsel will call me I will endeavor to explain the problem.

Sincerely,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Senior Counsel  
Office of Inspector General

NATIONAL SCIENCE FOUNDATION  
4201 WILSON BOULEVARD  
ARLINGTON, VIRGINIA 22230

25 July 2001



VIA FEDEX

General Counsel

Office of the General Counsel

Re: Return of Funds for Grants Awarded to the \_\_\_\_\_  
for \_\_\_\_\_

We have completed our investigation of \_\_\_\_\_, and have concluded that they wrongfully used National Science Foundation (NSF) grant funds and wrongfully obtained NSF grants. Our general conclusions are that \_\_\_\_\_

- Used NSF grant funds to further their personal financial interests. Besides being unallowable under cost principles applicable to NSF grants, such expenditures are potentially fraudulent.<sup>1</sup>
- Used NSF grant funds for expenditures that, while possibly related to their general scholarly research pursuits, were clearly unrelated to the objectives of the particular NSF grants. Such costs are unallowable.
- Failed to make financial disclosures required for NSF grant proposals, resulting in the award of two grants.

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<sup>1</sup> As you know, neither the United States nor Florida is going to pursue criminal or civil prosecution in this matter.

We have concluded that, in violation of NSF proposal certification requirements,<sup>2</sup> [redacted] obtained no financial disclosures from [redacted] for four proposals that [redacted] submitted, with the result that two grants were awarded to [redacted] totaling \$119,524, which involved significant investigator financial conflicts of interests which [redacted] had not reported or resolved as required by NSF. In addition, under one of those grants and two earlier NSF grants, [redacted] paid \$32,334.60 to [redacted] for costs improperly charged to the NSF grants. [redacted] also charged indirect costs to the NSF grants for these costs.<sup>3</sup>

Substantial problems with [redacted] policies, procedures, and practices contributed significantly to each of these outcomes. [redacted] is responsible for ensuring that proposals submitted to NSF by [redacted] comply with all appropriate requirements, and for ensuring that NSF grant funds received by [redacted] are expended properly.<sup>4</sup> We are seeking your views with regard to the amount of funds [redacted] will return to NSF as a result of these improperly received grants and improper grant expenditures. We would also like information about steps that [redacted] is taken to ensure that such problems will not recur in [redacted] proposals to NSF and under NSF's grants to [redacted]

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<sup>2</sup> See NSF's Grant Policy Manual (GPM) § 510 Conflict of Interest Policies (<http://www.nsf.gov:80/bfa/cpo/gpm95/ch5.htm#ch5-6>).

<sup>3</sup> According to their budgets, the relevant grants had the following indirect cost rates:

<sup>4</sup> "The recipient institution (recipient) has full responsibility for the conduct of the project or activity supported by this award, in accordance with the requirements of this award, and for the results." Federal Demonstration Partnership General Terms and Conditions (FDP) § 1(a) (9/93 and 7/1/97) ([http://www.nsf.gov/home/grants/grants\\_fdp.htm](http://www.nsf.gov/home/grants/grants_fdp.htm)).

# **I. Background**

## **A. NSF Grants**

Since 1993, USF has received the following grants from NSF with Drs. \_\_\_\_\_ and \_\_\_\_\_ as PIs or Co-PIs:

<u>Title</u>	<u>Dates</u>	<u>Award Number</u>	<u>PIs</u>	<u>Amount</u>
_____	2/15/94- 1/31/96	_____	_____	\$85,300
_____	5/1/94- 4/30/95	_____	_____	\$98,783
_____	07/15/95- 06/30/97	_____	_____	\$73,900
_____	7/1/97- 6/30/99	_____	_____	\$84,836
_____	7/1/99- 6/30/01	_____	_____	\$34,688

The general purpose of each of these grants was the geochemical sampling and paleomagnetic dating of specimens retrieved from the Kamchatka peninsula in far eastern Russia, in order to advance the understanding of the region's geological history.

## B. PIs' Personal Financial Interests

Drs. \_\_\_\_\_ have incorporated several private companies, including \_\_\_\_\_ Through geochemical sampling and paleomagnetic dating, the companies seek ore deposits in far eastern Russia and elsewhere, to obtain exploration and/or exploitation rights either for themselves or on behalf of other companies.

## II. Violations of NSF Requirements

### A. Material Omissions

Since October 1995, NSF has required "each grantee institution employing more than fifty persons to maintain an appropriate written and enforced policy on conflict of interest" (COI) which should "require that each investigator disclose to a responsible representative of the institution all significant financial interests of the investigator that would reasonably appear to be affected by the research or educational activities funded or proposed for funding by NSF."<sup>5</sup> The grantee institution must

review financial disclosures, determine whether a conflict of interest exists, and determine what conditions or restrictions, if any, should be imposed by the institution to manage, reduce or eliminate such conflict of interest. A conflict of interest exists when the reviewer(s) reasonably determines that a significant financial interest could directly and significantly affect the design, conduct, or reporting of NSF-funded research or educational activities.<sup>6</sup>

NSF will not process a grant proposal submitted without a signed certification of compliance with this requirement.<sup>7</sup> COI policy requires each investigator to "file a Significant Financial Interest Disclosure, to update it annually, and to modify it, if Interests change."<sup>8</sup>

\_\_\_\_\_ submitted four proposals to NSF with \_\_\_\_\_ PIs or Co-PIs for which \_\_\_\_\_ obtained financial disclosures from neither \_\_\_\_\_ nor \_\_\_\_\_

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<sup>5</sup> GPM §§ 510.a & .b.

<sup>6</sup> GPM § 510.d.

<sup>7</sup> 61 Fed. Reg. 34,839 (7/3/96) (<http://www.nsf.gov/pubs/stis1996/faqinfin/faqinfin.txt>).

<sup>8</sup> USF COI policy, 0-309, § VIII.A ([http://usfweb.usf.edu/usfgc/gc\\_pp/genadm/gc309.htm](http://usfweb.usf.edu/usfgc/gc_pp/genadm/gc309.htm)).

On each cover sheet,  
Representative (AOR) certified to the following:

Authorized Organizational

In addition, if the applicant institution employs more than fifty persons, the authorized official of the applicant institution is certifying that the institution has implemented a written and enforced conflict of interest policy that is consistent with the provisions of Grant Policy Manual Section 510; that to the best of his/her knowledge, all financial disclosures required by that conflict of interest policy have been made; and that all identified conflicts of interest will have been satisfactorily managed, reduced or eliminated prior to the institution's expenditure of any funds under the award, in accordance with the institution's conflict of interest policy. Conflicts which cannot be satisfactorily managed, reduced or eliminated must be disclosed to NSF.

NSF funded two of these proposals, for a total of \$119,524.<sup>10</sup>

Under --- COI policy, the investigator is solely responsible for subjectively determining whether financial disclosure is necessary because the investigator's interests

possibly could affect, or be perceived to affect, the results of the research or educational activities funded or proposed for funding. The Investigator's Interests are related to a research project if the work to be performed under the project, or the results of such work, can be expected to have an impact on the Investigator's Interests.

If the investigator reports no interest because he decides that his financial interest could not possibly be affected or be perceived to be affected, then the investigator has complied with --- policy. Thus, in circumstances in which an investigator has made no or limited financial disclosures, the --- policy can result in --- submitting a proposal to NSF for which relevant investigator financial interests were not disclosed and conflicts were not resolved. It appears that this happened in this case.

The failure of --- policy to raise and resolve the financial conflicts of interests of --- is particularly troublesome because --- did have a policy in place for mandatory disclosure of all "outside activity which [sic] the employee should reasonably conclude may create a conflict of interest, or which may otherwise interfere

<sup>9</sup> Proposals [REDACTED]

<sup>10</sup> Proposals [REDACTED] and [REDACTED] were funded.

with the full performance of the employee's professional or institutional responsibilities ....<sup>11</sup> [redacted] apparently disclosed their outside activities on these forms, but [redacted] had no procedures in place for assessing possible conflicts between the disclosed activities and the investigators' proposed or funded research activities.<sup>12</sup>

If NSF had been aware that [redacted] had failed to comply with its obligation to ensure that investigator financial interests had been disclosed and conflicts resolved, NSF would not have processed any of the proposals, and therefore would not have awarded the grants totaling \$119,524. Furthermore, if [redacted] had ensured through its COI procedures that it received detailed information from [redacted] about their personal financial interests, and if [redacted] had engaged in appropriate evaluation of that information, we believe it is highly likely that [redacted] would have learned that [redacted] and [redacted] did nothing to distinguish their scholarly and personal financial activities. Minimal scrutiny would have alerted [redacted] of the need for inquiry into expenditures by [redacted] under their previous and extant awards. If [redacted] had apprised itself of the facts of the financial practices of [redacted] its AOR would have been unable to provide the certification quoted above and therefore unable to submit proposals. Accordingly, we believe it would be appropriate for [redacted] to reimburse NSF for the full amount of both awards.

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<sup>11</sup> Rule 6C4-10.005, § (3)(a) (<http://www.ri.edu/usfgc/usfrules/6c4-10/10-005.htm>).

<sup>12</sup> Another aspect of [redacted] COI policy, unrelated to this case, is extremely troubling and casts considerable doubt on the care underlying [redacted] crafting of its policy. The NSF policy excludes from the definition of "significant financial interest" "any ownership interests in the institution, if the institution is an applicant under the Small Business Innovation Research Program [SBIR] or Small Business Technology Transfer Program [STTR]." This simply means that an investigator working for a company applying for an SBIR or STTR grant from NSF does not need to have disclosed to that company any ownership interest he or she has in that company. The SBIR and STTR programs are directed toward aiding small businesses, and small business applicants and their employees are presumed to have a profit motive. [redacted] policy states that an investigator does not need to disclose "Salary, royalties, or other remuneration from a single business entity or any ownership interests in that entity if the entity is an applicant under the Small Business Innovation Research Program or Small Business Technology Transfer Program." Thus—astonishingly—it appears that [redacted] does not require an investigator to disclose any financial interest in any business that has applied for an SBIR or STTR award from any agency as part of assessment of proposals to be submitted by [redacted] NSF.

## B. Improper Expenditure of NSF Grant Funds

Under the award conditions applicable to \_\_\_\_\_ grants from NSF, \_\_\_\_\_ is responsible for ensuring that costs charged to the award are allowable, allocable, and reasonable under the applicable cost principles."<sup>13</sup> \_\_\_\_\_ reimbursed \_\_\_\_\_ and \_\_\_\_\_ a total of \$32,334.60 from its NSF grants for costs that were not properly chargeable to those grants. Drs \_\_\_\_\_ claim to have believed that it is acceptable to: (1) charge NSF grant funds for any activities related to the field of research in the grant proposal or contemplated future grant proposals; (2) charge NSF grant funds for per diem expenses at the same time they are receiving reimbursement elsewhere for those expenses; and (3) charge NSF grant funds for all travel expenses for trips involving substantial amounts of activity unrelated to the NSF grant projects.

\_\_\_\_\_ claim to have never received guidance from \_\_\_\_\_ about the proper use of grant funds. They also claim to have disclosed ample information to \_\_\_\_\_ in the process of getting these expenditures approved, and that nobody at \_\_\_\_\_ undertook even minimal effort to confirm that the expenditures were consistent with the specific NSF grants. In the current circumstances of this matter, we do not need to resolve the extent to which the defenses proffered by Drs \_\_\_\_\_ are true and absolve them of culpability. Our concern is that the expenditures under the NSF grants to \_\_\_\_\_ were improper and should be repaid by \_\_\_\_\_.

### 1. 1994 Summer Travel Charged to NSF Award

#### a. D

\_\_\_\_\_ submitted a voucher to \_\_\_\_\_ dated 16 September 1994, requesting reimbursement from the \_\_\_\_\_ account corresponding to NSF award \_\_\_\_\_ for an extensive trip he took in the summer of 1994. Starting in \_\_\_\_\_ flew to Greece, Lithuania, western Russia, and back to \_\_\_\_\_, followed immediately by a round trip to eastern Russia (via Anchorage AK).

The proposal for this grant focused exclusively on the collection and analysis of samples of xenoliths from Kamchatka, Russia, and the final project report deals exclusively with xenoliths from Kamchatka. The entire first part of the trip—from \_\_\_\_\_ to Greece to Lithuania to western Russia and back to \_\_\_\_\_—had nothing

<sup>13</sup> FDP § 2(h)(1) (9/93 and 7/1/97).

whatever to do with Kamchatka, and charging those expenses to the NSF grant was improper.<sup>14</sup> These charges totaled \$6,437.51.

The second part of the trip involved travel to Kamchatka and the Khabarovsk region in eastern Russia. According to the voucher, 4-19 August were spent "collect[ing] volcanic samples," which would appear to be within the scope of the NSF award—except for the fact that [redacted] billed his time and expenses for 10-20 August to a company on behalf of one of his and [redacted] companies.<sup>15</sup> It therefore appears that the 25 days that constituted the second part of this trip involved at the most only six days of work related to the NSF grant and eight days for De Beers (16 & 20 August, billed to De Beers, were travel days).<sup>16</sup> This being the case, it was clearly improper to charge the NSF grant for the days spent working for De Beers, and it was inappropriate at best to charge the NSF grant for all of the days not spent collecting samples and for all of the travel expenses. In our view, the NSF grant should have been charged for no more than 43% of the expenses for the second part of the trip ((6 days grant-related work) / (14 work days total)).

Therefore, we conclude that [redacted] improperly charged the NSF grant for all of the first part of the trip, \$6,437.51. For the second part, [redacted] improperly charged the NSF grant for expenses related solely to Dr. Defant's work for De Beers, \$945, and improperly charged the NSF grant for the portion of other expenses attributable to his work for De Beers, \$1,313.63 (57% of \$2,304.62). The total amount mischarged to the NSF grant by [redacted] is \$8,696.14.

b. [redacted]

Dr. [redacted] accompanied [redacted] on essentially the same trip, except that (1) he flew from Moscow directly to Kamchatka, rather than returning to [redacted] or a day

<sup>14</sup> For example, Moscow is the closest Dr. [redacted] came to Kamchatka on this trip—more than 4,000 miles away. The amount provided in the budget for this grant for international travel was for [redacted] to travel to and reside in the United States; no funds were provided for [redacted] to travel the world to "collaborate . . . on volcanic research" as attested in his travel voucher. The improper nature of these charges is reinforced by the fact, as discussed in n.16 below, that [redacted] charged expenses for two of the days in Lithuania to a private company.

<sup>15</sup> [redacted] submitted an "Expense and Time Report" on behalf of [redacted] to a company named [redacted]

<sup>16</sup> This document also indicates that [redacted] charged [redacted] for two days of work in Lithuania—days for which [redacted] also charged the NSF grant. However, since we have already determined that all of the charges to the NSF grant for that part of the trip were improper (see text above at n.14), we need not address those charges separately here.

as [redacted] did, and (2) from Khabarovsk,<sup>17</sup> [redacted] returned for another sojourn in Moscow and Lithuania. [redacted] submitted a voucher to [redacted] dated 19 September 1994, requesting reimbursement from the [redacted] account corresponding to NSF award [redacted].

Just as with [redacted]'s expenses, none of Dr. [redacted]'s expenses for the part of the trip involving Greece, Lithuania, and Moscow were related to the NSF grant. Charging those expenses to the NSF grant was improper in the amount of \$7,673.40.

When I [redacted] arrived in Kamchatka, we presume he did "collect volcanic samples" (as stated on his voucher) in pursuit of activities related to the NSF grant—until 10 August, when his and [redacted]'s activities were billed to De Beers as described above. Therefore, of the \$4,613.00 that D [redacted] charged for this part of the trip, only 12 days of per diem,  $12 \times \$105.00 = \$1,260.00$ , were arguably properly charged to the NSF grant and \$3,353.00 were improper.<sup>18</sup>

Therefore, the total amount improperly charged to the NSF grant by USF per Dr. [redacted] is \$11,026.40.

## 2. March 1995 Travel Charged to NSF Award [redacted]

D [redacted] submitted a voucher dated 21 April 1995 requesting reimbursement from the [redacted] account corresponding to NSF award [redacted] expenses incurred during a trip to Kamchatka, via Anchorage and Khabarovsk, from 9-20 March 1995. The expenses charged totaled \$1,109.50.

D [redacted] is stated on his voucher that the purpose of this trip was to "further develop scientific collaboration program in volcanology" by holding seminars and collecting samples. However, this was in fact a business trip for which Geoprospects [redacted] billed a Chilean company called TVX for I [redacted] time. Therefore, the entire \$1,109.50 charge to the NSF grant by F per D [redacted] was improper.

<sup>17</sup> Khabarovsk is the city in eastern Russia to and from which D [redacted] flew en route to and from Kamchatka.

<sup>18</sup> Because [redacted] never traveled directly from the United States to Kamchatka or vice versa, and everywhere he traveled involved either exclusive or substantial activity unrelated to the NSF grant, we do not believe any of the travel expenses were properly chargeable to the NSF grant.

### 3. June 1999 Travel Charged to NSF Award

Drs. \_\_\_\_\_ each submitted vouchers to \_\_\_\_\_, dated 25 May 1999, apparently requesting advance reimbursement from the \_\_\_\_\_ account corresponding to NSF award \_\_\_\_\_ for a trip to Australia they took in June 1999. As with the trips to Greece, Lithuania, and western Russia in the summer of 1994, this entire trip had nothing to do with Kamchatka and therefore nothing to do with the NSF grant. In fact, this was at least in substantial part a business trip by Drs. \_\_\_\_\_ in their roles with \_\_\_\_\_, and they charged this trip to the NSF grant because it was the only active grant they had. Therefore, the entire \$11,502.56 charge to the NSF grant by \_\_\_\_\_ per \_\_\_\_\_ as improper.

### III. Conclusion

It appears that \_\_\_\_\_ received two grants totaling \$119,524 that it would not have received if NSF had been aware that \_\_\_\_\_ had failed to ensure that D \_\_\_\_\_ and \_\_\_\_\_ provided the relevant financial information as part of \_\_\_\_\_'s COI process. In addition, under three NSF grants to \_\_\_\_\_ (including one of the two obtained in violation of the COI policy), \_\_\_\_\_ paid \$32,334.60 to Drs. \_\_\_\_\_ for improper expenses.

We request a statement of \_\_\_\_\_ position on its receipt and expenditure of these funds, and a proposal for the amount that \_\_\_\_\_ will repay to NSF.<sup>19</sup> We also request information regarding the procedures \_\_\_\_\_ as or will put in place to properly manage conflicts of interests and the proper expenditure of grant funds.

If you dispute the factual conclusions we have drawn, please provide specific documentary evidence supporting your position, as well as complete current contact information for witnesses who can provide specific testimonial evidence supporting your position.

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<sup>19</sup> The \$32,334.60 constitutes costs that are simply unallowable under federal cost principles and must be repaid. Along with approximately \$14,376.33 of indirect costs, we estimate the total unallowable costs are \$46,710.93. The two grants received in violation of NSF's financial disclosure policy total \$119,524.00. This, plus the wrongful charges and indirect costs under grants \_\_\_\_\_ (\$19,722.54 + \$8,677.91 (44%)) and \_\_\_\_\_ (\$1,109.50 + 499.27 (45%)) total \$149,533.22.

We would appreciate receiving your response on or before 27 August 2001. I can be reached at .....ov.

Sincerely,

....., J.D., Ph.D.  
Senior Counsel  
Office of Inspector General