

**TO:** Dr. Esin Gulari  
Assistant Director (Acting)  
Directorate for Engineering

**FROM:** Deborah H. Cureton  
Associate Inspector General for Audit

**SUBJECT:** Audit Report #02-2012:  
Travel Reimbursements from Industry/University Cooperative Research Centers

**DATE:** September 25, 2002

Enclosed is the final report on our audit of NSF travel reimbursements received from Industry/University Cooperative Research Centers (IUCRC) Program awardees. The audit found that the Division of Engineering Education and Centers (EEC) accepts approximately \$34,000 annually in travel reimbursements from IUCRC awardees, which represents approximately 34 percent of EEC's annual travel budget. We believe this practice is contrary to NSF and Federal policy. In addition, it raises concerns about the appearance of a conflict of interest. We have included your response to our draft report as an attachment to this report.

We thank you and your staff for the cooperation extended to us during this audit. If you have any questions about this report, please contact James Noeth at extension 5005, or William Harrison at extension 4992.

cc: Division of Engineering Education and Centers  
Office of General Counsel

Travel Reimbursements for Industry/University  
Cooperative Research Centers

September 27, 2002

OIG 02-2012

## EXECUTIVE SUMMARY

This report provides the results of our audit of NSF Division of Engineering Education and Center's (EEC) practice of accepting travel reimbursements from Industry/University Cooperative Research Centers (IUCRC) Program awardees. The purpose of our review was to determine whether EEC may receive payment or in-kind contributions from IUCRC awardees for travel, subsistence, and related expenses with respect to program officer attendance at Industrial Advisory Board (IAB) meetings.

The IUCRC Program was established to develop long-term partnerships among industry, academe, and government. The Centers are started with a small NSF investment and are primarily supported by the Center members, representing both universities and industry, that pay "membership fees" to support Center research projects. Under the IUCRC program, each Center has an IAB that meets twice a year to review ongoing and completed activities and select new Center research projects. For many years, EEC program officials have attended IAB meetings to enunciate or interpret NSF policy to prevent misunderstanding by either the university or industry partners.

To cover the associated travel costs, EEC has accepted \$32,375 in FY 1999 and \$37,280 in FY 2000 from IUCRC awardees for program officials to attend the biannual IAB project review and selection meetings, which represents approximately 34 percent of EEC's annual travel budget. At the same time EEC was accepting these funds, its program officials were overseeing these same awardees and making continuing annual award funding decisions. This occurred because the Engineering Directorate's travel budget was insufficient to cover the travel costs and the Office of General Counsel had advised them that accepting the IUCRC reimbursements was an acceptable alternative.

Although we do not believe that EEC program officers gave preferential treatment to IUCRCs in return for travel reimbursements, acceptance of travel costs from NSF awardees raise concerns about the appearance of a conflict of interest. NSF could be viewed as biased or giving preferential treatment to IUCRCs in response to providing travel funds. This may not be the type of perception that NSF would like to project when it is responsible annually for awarding approximately \$4.3 billion in public funds. In addition, this practice is inconsistent with NSF's Standard of Conduct policies which state "NSF must earn the confidence of the scientific, engineering, and educational communities, of the Congress, and of the general public in the integrity, effectiveness, and evenhandedness of its decisionmaking processes. It will not do so if these processes are seen to be compromised by conflicts of interest."

We believe NSF management has another option for funding IUCRC travel costs. NSF can reevaluate its travel budget allocations to its divisions and programs and provide additional travel funds to the IUCRC program. This option would ensure the integrity of NSF's decision-making processes and eliminate possible concerns with the appearance of conflict of interest issues or the potential improper augmentation of NSF's appropriation. Therefore, we encourage NSF and the IUCRC program to reconsider its practice of accepting travel funds from the Centers that it is overseeing and for whom it is making annual funding decisions. NSF disagreed that its acceptance of travel funds is contrary to NSF or federal policy but decided to use other funding sources for future travel under the IUCRC program.

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## **INTRODUCTION**

### **Background**

The IUCRC Program was initiated in 1973 to develop long-term partnerships among industry, academe, and government. The Centers are started with a small NSF investment and are primarily supported by the Center members, representing both universities and industry partners, which pay “membership fees” to support Center research projects. NSF maintains a supporting role in the Centers’ development and evolution. IUCRC awards are initially for five years in amounts up to \$100,000 per year. Even though there is a 5-year grant commitment, funding currently is renewable annually and each IUCRC Center is required to submit an Annual Report to NSF on its progress and plans. After the initial five years, Centers that continue to be successful by meeting the program requirements can apply for an additional five years of NSF funding of up to \$50,000 per year. After 10 years, Centers are expected to be fully supported by non-NSF sources.

The IUCRC Program requires that each Center receive at least \$300,000 annually in “membership fees” from at least six partners. Center Directors must annually certify that the Centers have met their “membership fee” requirements. Centers that do not meet this requirement are generally given one year within which to “catch-up.” A Center that still cannot generate the required amount of “membership fees” is terminated. NSF currently spends approximately \$5 million annually for approximately 50 IUCRCs through cooperative agreements with the University partners.

Under the IUCRC program, each Center has an IAB that meets normally twice a year to review ongoing and completed activities and select new Center research projects. For many years, program officials in NSF’s EEC have been acting as NSF liaisons at annual IAB meetings with IUCRCs. The purpose of having a NSF staff member present at IAB meetings is to enunciate or interpret NSF policy to prevent misunderstanding by either the university or industry partners. NSF feels that its presence at these meetings is valuable to the industry partners because NSF staff can interpret its expectations for the operations of the IUCRC. NSF staff through its past experiences with IUCRCs is also able to provide valuable advice at meetings to help ensure more success in the program. Industrial members’ fees have been used to reimburse NSF for travel expenses for its program officials to attend the IAB meetings.

### **Objective, Scope, and Methodology**

The audit objective was to determine whether EEC can accept payment or in-kind contributions from awardee institutions for travel, subsistence, and related expenses for NSF employees to attend meetings or events to carry out the Foundation’s statutory or regulatory functions. The review was limited to travel reimbursements received by the IUCRC Program during fiscal years 1999 and 2000. The reimbursement data was obtained from an IUCRC Travel Log maintained by EEC. We interviewed NSF and IUCRC awardee officials and reviewed applicable NSF and Federal policies and procedures.

We conducted our audit in accordance with the Comptroller General's *Government Audit Standards* and included such tests of accounting records and other auditing procedures, as we considered necessary to fully address the audit objectives.

## RESULTS OF AUDIT

### NSF is Accepting Travel Reimbursements From Awardees

EEC has been accepting IUCRC reimbursement for travel costs associated with its ongoing award oversight process contrary to NSF and Federal policy. Established policy discourages employees from accepting contributions for official travel from awardees in order to avoid the appearance of a conflict of interest. Yet, NSF accepted \$32,375 in FY 1999 and \$37,280 in FY 2000 from IUCRC awardees for agency officials to attend their biannual Industrial Advisory Board (IAB) project review and selection meetings. As a result, NSF may have created the appearance of a conflict of interest with its awardees and may have improperly augmented its appropriation. This occurred because the Engineering Directorate's travel budget was insufficient to cover the associated travel costs and the NSF's Office of General Counsel had advised them that IUCRC funding of the travel was an acceptable alternative.

### NSF and Federal Policy Discourage Acceptance of Contributions For Federal Travel

OD Memorandum 91-17, *NSF Staff Travel Paid for by Non-Federal Sources*, establishes NSF policy for accepting travel contributions from all non-Federal sources and recognizes that travel reimbursements may appear improper if received from one of its awardees:

As a matter of policy, the National Science Foundation strongly discourages employees from accepting contributions for official travel or related expenses from NSF Awardees. Moreover, in no case should NSF staff directly or indirectly solicit travel contributions from outside sources. Having travel expenses paid by an awardee may not violate a specific law, but it may create the appearance of a conflict of interest.

Further, one of the Federal government's basic ethical principles is that employees shall "endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards."<sup>1</sup> NSF has its own guidance concerning conflicts of interest and ethical standards. One of the underlying considerations contained in this guidance is that employees "and the NSF should avoid or minimize actual or apparent conflicts of interest."<sup>2</sup> The perspective used to determine whether particular events, decisions, or other circumstances create the appearance that laws or standards have been violated is determined from that of "a reasonable person with knowledge of the relevant facts."<sup>3</sup> This is required so that NSF can safeguard the public's confidence "in the integrity, effectiveness, and evenhandedness of its decision making processes. It will not do so if these processes are seen to be compromised by conflicts of interest."<sup>4</sup>

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<sup>1</sup> 5 C.F.R. § 2635.101(14).

<sup>2</sup> NSF Manual 15: Conflicts of Interest and Standards of Ethical Conduct §2(b) (1997) (emphasis added).

<sup>3</sup> 5 C.F.R. § 2635.101(14).

<sup>4</sup> Id.

The Federal Government's interest in maintaining the public trust and avoiding even the appearance of conflicts of interest is also manifested in its regulation of Federal employee travel. A travel reimbursement is a thing of value and receiving a reimbursement from an external entity, having an interest in NSF's funding decisions, may be seen as potentially impairing the Federal Government's impartiality. Consequently, the Federal Travel Regulations (FTR)<sup>5</sup> allow reimbursement for travel expenses from non-Federal sources only under certain circumstances. Specifically, Federal travel that is paid from non-Federal sources must be for a "meeting or similar function" as defined by the FTR and the employee may not solicit the payment. Further, before the travel occurs, agency officials must still perform a conflict-of-interest analysis for each reimbursement to ensure that acceptance would not "cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations." Thus, the appearance of impropriety standard applies to these travel reimbursements.

However, contrary to NSF and Federal policy, NSF's IUCRC program has been accepting travel reimbursements from its awardees for over 15 years. EEC accepted travel reimbursements valued at \$32,375 in FY 1999 and \$37,280 in FY 2000 from IUCRC awardees for agency officials to attend IAB meetings for reviewing ongoing and completed Center activities and selecting new research projects. At each Center's initial IAB meeting, the NSF program official, either directly or indirectly, informs the IAB that if the industry members want future NSF assistance, they will need to authorize the university to use a portion of the Center's industry funds to reimburse NSF for travel expenses. After the NSF program official leaves the room, the IAB attendees discuss this option and record their decision in the meeting minutes. Virtually all 50 NSF-funded IUCRCs vote to pay for Foundation program officials' travel expenses to participate in all future IAB meetings.

As a result, EEC acceptance of travel reimbursements from IUCRC awardees over the years may have created the appearance of a conflict of interest. The Foundation could be viewed as biased or giving preferential treatment to IUCRCs in response to providing travel funds. This is not the type of perception that NSF would like to project when it is responsible annually for awarding approximately \$4.3 billion in public funds. According to its Customer Service Plan, NSF "provides for a fair and reasonable review and consideration of every eligible proposal." However, this system of review can be compromised if NSF's customers perceive it to be biased because of the appearance of a conflict of interest. As stated in NSF's Ethics Manual:

The success of the NSF in performing its functions depends on the effectiveness of its decisionmaking processes. If judgments are warped or biased because of conflicting interests, that effectiveness is compromised.

NSF must earn the confidence of the scientific, engineering, and educational communities, of the Congress, and of the general public in the integrity, effectiveness, and evenhandedness of its decisionmaking processes. It will not do so if these processes are seen to be compromised by conflicts of interest.<sup>6</sup>

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<sup>5</sup> 41 C.F.R. § 304-1.1 et seq.

<sup>6</sup> NSF Manual 15: Conflicts of Interest and Standards of Ethical Conduct §2(b) (1997).



Based on our interviews with NSF program and Center staff, it appears that the travel reimbursement practice for Foundation officials to attend IAB meetings is universally accepted in the IUCRC community and that both NSF and Center managers believe that this practice is an efficient and effective use of industry funds. However, we believe that “a reasonable person with knowledge of the relevant facts” could arrive at the opposite conclusion. By accepting reimbursements for IUCRC-related travel, NSF may give the appearance that its decisions can be influenced. For example, potential NSF awardees, and particularly those who have been denied NSF funding, may see the practice as improper or biased. Additionally, the Center’s industry participants, who may be less familiar with NSF and its merit review process, may view the travel reimbursement process as a normal cost of doing business with NSF.

#### Insufficient Travel Budget and Office of General Counsel Advice Lead to IUCRC Travel Reimbursements

Cognizant NSF program officials stated that the IUCRC program has been accepting travel reimbursements from the University/Centers because EEC’s travel budget is not adequate to cover the travel costs to each IAB meeting. The EEC supports three center programs, including the IUCRC program, as well as various other education and human resource programs. All of these programs require oversight as delineated in NSF's FY 2001 Congressional Budget Request:

Good management is critical to the success of the research and education activities that we support, and proper and sufficient oversight is vital to this process. Without an increase in total travel authority, the Foundation will be unable to ensure both a reliable merit review process and the oversight recommended by the agency’s Inspector General.

In FY 1999, EEC received appropriated funds of \$112,957 to support travel related to all of its many programs. Because of the annual site visit requirement, EEC has given priority to funding travel for overseeing its 25 Engineering Research Centers and Earthquake Engineering Research Centers. In comparison, NSF does not require site visits to IUCRCs and the EEC does not have adequate funds to cover these non-mandatory site visits. For example, in FY 1999, IUCRC-related travel reimbursements totaled \$32,375 or 29 percent of EEC’s total travel obligations of \$112,957. Similarly, in FY 2000, IUCRC travel reimbursements represented 39 percent or \$37,280 of EEC’s total travel obligations of \$95,608. Clearly, without reimbursements from IUCRC awardees, travel to the non-mandatory IAB meetings would be less likely as the IUCRC would have to compete with other EEC programs for limited travel funds. This could reduce NSF interaction with the Centers and severely cripple the IUCRC program according to one program officer.

In addition, NSF’s Office of General Counsel (OGC) has advised EEC that accepting travel reimbursements from IUCRC awardees was appropriate. During the 15 years that the IUCRC program has been accepting travel reimbursement, EEC has requested and obtained several OGC legal determinations on the propriety of the travel reimbursements. According to EEC officials, the OGC position over the years has always been that the IUCRC travel reimbursements are acceptable. Both EEC and OGC officials, however, were only able to provide us with a written copy of the most recent legal opinion. We were informed the OGC initially concluded that there was no conflict of interest in program officials attending IAB

meetings because NSF funding to Centers was awarded on a 5-year basis and not an annual basis. EEC officials stated that subsequently the OGC determined that the travel reimbursements were acceptable pursuant to Ethics Reform Act provisions. In its latest opinion, OGC concluded that IUCRC contributions should be accepted under NSF's statutory gift acceptance authority.<sup>7</sup> Details of the specific OGC decisions follow.

According to EEC officials, in the mid-1980's, the OGC's first legal opinion concluded that the IUCRC industrial members could reimburse NSF for program officials' travel if the IAB wanted a NSF liaison to assist with the industry/university interactions necessary for the Center. At that time, funding for the Centers was committed at one time for an entire 5-year period and annual renewal of funding was not required. Thus, EEC officials stated that OGC reasoned there was no conflict of interest, because funding or renewal decisions could not be associated with program officials' attendance at the IAB meetings. In addition, the OGC concluded there was no conflict of interest because the University/Center itself was not directly reimbursing NSF for travel funds. Rather, the IAB, who represented the industrial members of the Center, provided the funds and they were only being channeled through the University/Center to be deposited with NSF. In OGC's view, the funds were not being directly received from a NSF awardee.<sup>8</sup>

In 1991, EEC asked the OGC for a "blanket approval" for these travel reimbursements to reduce the administrative burden of receiving approval for each reimbursement individually. According to EEC officials, OGC responded that absent special circumstances, the funds should be viewed as travel reimbursements for an occasional "meeting or similar function" under the Ethics Reform Act provisions, thus acceptable for NSF's receipt.<sup>9</sup> The reimbursements had to be reported to the Office of Government Ethics and EEC was instructed to use NSF Form 1311 to document each required agency approval pursuant to the implementing General Services Administration (GSA) regulations.

In 1999, OGC revisited the issue of the travel reimbursements for the IUCRC Program. OGC determined that the IAB meetings do not fall within the purview of the Ethics Reform Act because the GSA regulations specifically exclude meetings that are required to carry out the agency's statutory or regulatory functions such as site visits. OGC determined that NSF attendance at the IAB meetings was not like the sort of sporadic or occasional meetings, conferences, or workshops to which NSF staff is, from time to time, invited. Rather, NSF participation at IAB meetings occurs on a very regular basis pursuant to an established and ongoing NSF oversight process. OGC stated that GSA has made it clear that an agency should use its statutory gift acceptance authority (if any) where a regular agency function is involved. Because NSF has statutory gift acceptance authority, OGC determined that IUCRC contributions to NSF should be accepted under the gift authority and not under the Ethics Reform Act.

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<sup>7</sup> We requested OGC case files or other documentation supporting its three IUCRC travel decisions. OGC only provided documentation for the 1999 decision that did not include an analysis supporting the decision.

<sup>8</sup> Currently, NSF renews IUCRC awards annually. Further, awardee institutions incur expenditures for administratively processing NSF travel claims and are, therefore, co-sponsors with industrial members in providing the travel funds.

<sup>9</sup> 41 C.F. R. § 304-1.3(a)

However, our analysis of applicable Federal and agency statutes and regulations disclosed that IUCRC-funded travel reimbursements are not “gifts” as defined by the Comptroller General. Thus, contrary to OGC’s 1999 legal opinion, the reimbursements may not be acceptable under NSF’s “gift acceptance authority” and may be an improper augmentation of Federal appropriations. Specifically, the Federal Travel Regulations (FTR) and the implementing GSA regulations provide that when “authorized pursuant to an agency gift statute,” an agency may accept reimbursement for travel that is related to the official duties of the employee.<sup>10</sup> As OGC stated in 1999, “NSF participation at these IAB meetings occurs on a very regular basis pursuant to an established and ongoing NSF oversight process.” Accordingly, OGC concluded that these reimbursements could not be accepted under the FTR governing reimbursement for attendance at an occasional “meeting or similar function.” Rather, OGC stated that these reimbursements should be “accepted under NSF’s regular gift acceptance authority.”

NSF’s organic legislation grants the authority for NSF to “receive and use funds donated by others, if such funds are donated without restriction other than that they be used in furtherance of one or more of the general purposes of the Foundation.”<sup>11</sup> This is commonly known as NSF’s “gift acceptance authority.” It is under this authority that OGC concluded in 1999 that it should accept reimbursement for travel to IAB meetings. However, this conclusion is not supported by Comptroller General Decisions.

Specifically, the Comptroller General has rendered several decisions defining the parameters of the term “gift” for purposes of agency gift acceptance authority. The Comptroller General has defined gifts as “gratuitous conveyances or transfers of ownership in property without any consideration.”<sup>12</sup> However, NSF’s participation at IAB meetings could be viewed as a “consideration” to Centers for which NSF is being paid a fee. In particular, Centers receive “consideration” from NSF when program officers enunciate and/or interpret NSF policy at IAB meetings to prevent misunderstanding by either the University or Industry partners. Further, NSF has indicated that its presence at these meetings is valuable to the industry partners because NSF staff can interpret for industry its expectations for IUCRC operations. While Centers indicated that they generally do not feel an obligation to make the reimbursement, they do believe that there is a risk in not electing to reimburse NSF’s travel expenses. One Center Director mentioned that the risk would be that NSF would not be available to point out problems as they arise or help the Center follow program processes and procedures. According to NSF, this might jeopardize the success of a Center.

Consequently, the IUCRC travel reimbursements may not be classifiable as “gifts” within the parameters defined by the Comptroller General, and as such should not be credited to NSF’s appropriation account under the Foundation’s gift acceptance authority. To the extent that these reimbursements are considered to be fees, NSF lacks the authority to either collect or retain fees, and could potentially be improperly augmenting its appropriations. When Congress appropriates funds for a Federal activity, the appropriation represents a limitation Congress has fixed for that activity, and all expenditures for that activity must come from that appropriation absent express authority to the contrary.

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<sup>10</sup> 41 C.F.R. § 304-1.8(a)(3).

<sup>11</sup> 42 U.S.C. § 1870(f).

<sup>12</sup> 25 Comp. Gen. 637 (1946) (emphasis added).

## Conclusion

Although we have no reason to believe that EEC program officers actually gave preferential treatment to IUCRCs in return for travel reimbursements, the Division's acceptance of travel funds from the same NSF awardees that it is overseeing and for whom it is making annual funding decisions raise concerns about the appearance of a conflict of interest and the possible improper augmentation of NSF's appropriation. In addition, this practice is inconsistent with NSF policy which "strongly discourages" employees from accepting travel reimbursements from its awardees.

More importantly, another option is available to NSF management. NSF can reevaluate its travel budget allocations to its divisions and programs and make more travel funds available to the IUCRC program. Even though IUCRC travel reimbursements are a significant portion of the EEC's total travel budget, they are a very small part of the Foundation's overall travel allocation of \$15 million. Thus, reallocation of approximately \$34,000 annually for IUCRC travel should not significantly impact other NSF programs. This option (i.e., using appropriated funds) would help ensure the integrity of NSF's decision-making processes and eliminate any possible concern with conflict of interest appearance issues or the possible unauthorized augmentation of NSF's appropriation. Therefore, we encourage NSF and the IUCRC program to reconsider its practice of accepting travel funds from the Centers and awardees that it is overseeing and for whom it is making annual funding decisions.


## Management Comments

We provided our draft report to Assistant Director for the Directorate for Engineering. The Assistant Director and Office of General Council disagreed that NSF's acceptance of travel funds from IUCRC awardees is contrary to NSF or federal policy but decided for future travel to use other funding sources.

**NATIONAL SCIENCE FOUNDATION**  
4201 WILSON BOULEVARD  
ARLINGTON, VIRGINIA 22230

September 11, 2002

TO: Deborah H. Cureton  
Associate Inspector General for Audit

FROM: Esin Gulari  
Acting Assistant Director for Engineering 

SUBJECT: Travel Reimbursements for Industry/University Cooperative Research  
Centers Program

ENG disagrees with the findings of the Office of the Inspector General (OIG) that past Industry University Cooperative Research Centers (IUCRC) travel practices are contrary to NSF and Federal policy and pose the appearance of a conflict of interest (see August 13 memo from Deborah Cureton to Esin Gulari regarding Draft Report on Travel Reimbursements for Industry University Cooperative Research program). The Office of the General Counsel (OGC) has supported ENG in this view in the past and continues to do so now.

However, the Engineering (ENG) Directorate has elected to adjust its approach to providing funds to accommodate IUCRC travel. For now, ENG will no longer waive Administrative Cost Recovery on funds transferred from other agencies to the IUCRC program. ENG will use those recoveries as a source of funds for IUCRC travel in the future.