

Department of Health and Human Services

OFFICE OF
INSPECTOR GENERAL

REVIEW OF SELECT EXPENDITURES
CLAIMED BY THE RESEARCH
FOUNDATION OF THE STATE UNIVERSITY
OF NEW YORK, STATE UNIVERSITY OF
NEW YORK AT STONY BROOK

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



James P. Edert
Regional Inspector General

August 2012
A-02-11-02008

Office of Inspector General

<http://oig.hhs.gov>

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

Office of Audit Services

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

Office of Evaluation and Inspections

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

Office of Investigations

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

Office of Counsel to the Inspector General

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC
at <http://oig.hhs.gov>

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

The State University of New York (SUNY) is the nation's largest state university system. SUNY has 64 educational institutions located throughout New York State, including the University at Stony Brook (the University).

The Research Foundation of SUNY (the Foundation), headquartered in Albany, New York, helps SUNY acquire, administer, and manage external funds to advance research and education, and transfer technology from SUNY campuses to the marketplace. During the period July 1, 2008, through June 30, 2010, the Foundation claimed reimbursement for \$140,683,213 of expenditures incurred on 432 sponsored agreements with U.S. Department of Health and Human Services operating divisions, including the National Institutes of Health.

Principles for determining the allowability of expenditures charged to sponsored agreements with the Foundation and other educational institutions are set forth in 2 CFR pt. 220, *Cost Principles for Educational Institutions* (formerly Office of Management and Budget Circular A-21), incorporated by reference at 45 CFR § 74.27(a). These cost principles apply both to direct costs—expenses incurred solely for the performance of a particular sponsored agreement—and to facilities and administrative (F&A) costs—indirect expenses incurred for common or joint objectives of the institution and cannot be readily and specifically identified with a particular sponsored agreement.

OBJECTIVE

Our objective was to determine whether the Foundation claimed Federal reimbursement for clerical, administrative, and extra service compensation expenditures as direct costs in accordance with Federal regulations.

SUMMARY OF FINDINGS

The Foundation generally claimed Federal reimbursement for clerical, administrative, and extra service compensation expenditures in accordance with Federal regulations. However, of the 121 administrative expenditures that we reviewed, 8 expenditures totaling \$2,425 did not comply with Federal regulations. In addition, extra service compensation paid to one faculty member, totaling \$15,829, did not comply with Federal regulations. These unallowable expenditures occurred because the Foundation had not established adequate controls to ensure consistent compliance with the cost principles applicable to charges for administrative and extra service compensation expenditures.

RECOMMENDATIONS

We recommend that the Foundation:

- refund \$18,254 to the Federal Government and
- establish adequate controls to ensure consistent compliance with the costs principles applicable to charging administrative and extra service compensation expenditures to sponsored agreements.

FOUNDATION COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the Foundation disagreed with our first recommendation (financial disallowance), concurred with our second recommendation, and described actions it has taken or planned to take to ensure compliance with Federal cost principles. Under separate cover, the Foundation provided additional documentation to support the allowability of costs questioned in our draft report. Based on our review of the additional documentation, we accepted some of the costs questioned in our draft report and revised our findings and related recommendation accordingly. The Foundation's comments appear as Appendix B.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	1
The State University of New York.....	1
The Research Foundation of the State University of New York.....	1
The American Recovery and Reinvestment Act of 2009.....	1
Cost Principles for Educational Institutions.....	1
OBJECTIVE, SCOPE, AND METHODOLOGY	2
Objective	2
Scope	2
Methodology	2
FINDINGS AND RECOMMENDATIONS	4
CLERICAL EXPENDITURES	4
ADMINISTRATIVE EXPENDITURES	4
EXTRA SERVICE COMPENSATION	4
RECOMMENDATIONS	5
FOUNDATION COMMENTS	5
OFFICE OF INSPECTOR GENERAL RESPONSE	6
APPENDIXES	
A: DEPARTMENT OF HEALTH AND HUMAN SERVICES EXPENDITURES CLAIMED BY THE FOUNDATION FROM JULY 1, 2008, THROUGH JUNE 30, 2010	
B: FOUNDATION COMMENTS	

INTRODUCTION

BACKGROUND

The State University of New York

The State University of New York (SUNY) is the nation's largest state university system. SUNY has 64 educational institutions located throughout New York State, including the University at Stony Brook (the University).

The Research Foundation of the State University of New York

The Research Foundation of SUNY (the Foundation), headquartered in Albany, New York, helps SUNY acquire, administer, and manage external funds to advance research and education, and transfer technology from SUNY campuses to the marketplace. During the period July 1, 2008, through June 30, 2010, the Foundation claimed reimbursement for \$140,683,213 of expenditures incurred on 432 sponsored agreements with U.S. Department of Health and Human Services (HHS) operating divisions, including the National Institutes of Health. A summary of these expenditures, by operating division, are included as Appendix A.

The American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009, P.L. No. 111-5 (Recovery Act) was enacted on February 17, 2009. During the period February 17, 2009, through June 30, 2010, the Foundation received \$104,416,333 in total Recovery Act funding from HHS and other Federal agencies. Of this amount, the University received \$33,169,199 of Recovery Act funds awarded by HHS.

Cost Principles for Educational Institutions

Principles for determining the allowability of expenditures charged to sponsored agreements with the Foundation and other educational institutions are set forth in 2 CFR pt. 220, *Cost Principles for Educational Institutions* (formerly Office of Management and Budget Circular A-21), incorporated by reference at 45 CFR § 74.27(a). These cost principles apply both to direct costs—expenses incurred solely for the performance of a particular sponsored agreement—and to facilities and administrative (F&A) costs—indirect expenses incurred for common or joint objectives of the institution and cannot be readily and specifically identified with a particular sponsored agreements.¹

¹ Educational institutions are reimbursed for F&A costs through rates negotiated with the Federal Government. Institutions with significant numbers of federally funded agreements frequently have multiple F&A rates applicable to different functions, such as research, training, or other institutional activities. The F&A rates are made up of two components—facilities and administrative.

In accordance with 2 CFR pt. 220, App. A § C.4.d.1, each college and university is responsible for ensuring that direct and F&A costs charged to federally sponsored agreements are allowable under these cost principles.

OBJECTIVE, SCOPE AND METHODOLOGY

Objective

Our objective was to determine whether the Foundation claimed Federal reimbursement for clerical, administrative, and extra service compensation expenditures as direct costs in accordance with Federal regulations.

Scope

Our audit covered clerical, administrative, and extra service compensation expenditures claimed for reimbursement from July 1, 2008, through June 30, 2010.² The audit was limited to sponsored agreements between the Foundation and the following HHS component agencies: National Institutes of Health, Centers for Disease Control and Prevention, Administration for Children and Families, Health Resources and Services Administration, Substance Abuse and Mental Health Services Administration, and Food and Drug Administration. We did not evaluate expenditures related to the Foundation's agreements with other Federal agencies.

We did not perform an overall assessment of the Foundation's internal control structure. Rather, we reviewed only the internal controls designed and implemented to identify, account for, and support clerical, administrative, and extra service compensation costs claimed for Federal reimbursement.

We conducted our field work at the Foundation's offices located on the University's campus in Stony Brook, New York, between November 2011 and December 2011.

Methodology

To accomplish our audit objective, we:

- held discussions with Foundation officials to obtain an understanding of the University's procedures for claiming administrative, clerical and extra service compensation expenditures to sponsored agreements;
- reviewed how the Foundation identified, accounted for, and supported claims for reimbursement of administrative, clerical, and extra service compensation expenditures;

² Clerical expenditures are salary costs for administrative and clerical staff (e.g., secretaries and administrative assistants). Administrative expenditures are costs for items other than personal services (e.g., office and lab supplies). Extra service compensation expenditures are salary costs earned above the individual's institutional base salary.

- reviewed the Foundation’s approved Cost Accounting Standards Board Disclosure Statement (DS-2);³
- obtained a database of 89,747 expenditures, totaling \$140,683,213 that the Foundation charged to 432 HHS-sponsored agreements during the period July 1, 2008, through June 30, 2010;
- identified a sampling frame of 3,528 clerical expenditures totaling \$3,021,307, and 11,420 administrative expenditures totaling \$2,436,179;
- identified and reviewed all 641 extra service compensation expenditures totaling \$132,360 related to 19 individuals that earned such compensation;
- selected and reviewed a stratified random sample of 116 clerical transactions totaling \$168,018 from the sampling frame of 3,528 clerical expenditures and 121 administrative transactions totaling \$182,654 from the sampling frame of 11,420 administrative expenditures;⁴
- identified sponsored agreements that met the definition of “major project;”⁵
- interviewed University clerical staff to gain an understanding of their services provided directly to sponsored agreements; and
- computed the F&A costs related to the unallowable expenditures.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

³ Educational institutions that receive aggregate sponsored agreements totaling \$25 million or more are required to disclose their cost accounting practices by filing a DS-2. The University’s DS-2 was submitted to the HHS Division of Cost Allocation (DCA).

⁴ The sample design for both clerical and administrative expenditures was a stratified random sample containing two strata. The first stratum for the clerical expenditures contained transactions greater than or equal to \$10 and less than or equal to \$3,600. The second stratum contained all expenditures greater than \$3,600. The first stratum for the administrative expenditures contained transactions greater than or equal to \$10 and less than \$5,000. The second stratum contained all expenditures greater than or equal to \$5,000.

⁵ Federal regulations define “major project” as a sponsored agreement that requires an extensive amount of administrative or clerical support, which is significantly greater than the routine level of such services provided by academic departments. (2 CFR pt. 220, App. A § F.6.b.2).

FINDINGS AND RECOMMENDATIONS

The Foundation generally claimed Federal reimbursement for clerical, administrative, and extra service compensation expenditures in accordance with Federal regulations. However, of the 121 administrative expenditures that we reviewed, 8 expenditures totaling \$2,425 did not comply with Federal regulations. In addition, extra service compensation paid to one faculty member, totaling \$15,829, did not comply with Federal regulations. These unallowable expenditures occurred because the Foundation had not established adequate controls to ensure consistent compliance with the cost principles applicable to charges for administrative and extra service compensation expenditures.

CLERICAL EXPENDITURES

Pursuant to 2 CFR pt. 220, App. A § F.6.b.(2), the salaries of administrative and clerical staff should normally be treated as F&A costs. Direct charging of these costs would be appropriate when the costs of such activities are incurred in unlike circumstances, or if the project is considered a “major project.” We determined that all 116 clerical expenditures in our sample were adequately supported to show that the (1) involved sponsored agreements qualified as “major projects” or were able to support unlike circumstances and (2) clerical support being charged directly was beyond the level of support normally required by an academic department.

ADMINISTRATIVE EXPENDITURES

Pursuant to 2 CFR pt. 220, App. A § F.6.b.(3), items such as office supplies, postage, local telephone costs, and memberships shall normally be treated as F&A costs. F&A costs are categorized as indirect expenses when incurred for common or joint objectives of the institution and cannot be readily and specifically identified with a particular sponsored agreement. Direct charging of these costs would be appropriate when the costs of such activities are incurred in unlike circumstances, or if the project is considered a “major project.”

The Foundation improperly claimed \$1,631 as direct administrative expenditures (e.g., laptop, flash drives, batteries, laser printer, printer cartridge, paper, and binder clips). Pursuant to Federal regulations, these supplies should have been treated as F&A expenditures. The Foundation could not show that these expenditures were incurred in unlike circumstances or the related project was considered a “major project.” The Foundation also improperly claimed \$794 for F&A costs applicable to these expenditures. Therefore, the total unallowable amount claimed was \$2,425.⁶

EXTRA SERVICE COMPENSATION

Pursuant to 2 CFR pt. 220, App. A § J.10.d, grantees shall not charge sponsored agreements in excess of a faculty member’s base salary. In addition, the cost principles state that intra-university consulting is a university obligation that generally requires no compensation in addition to full-time base salary. The cost principles further state, “In unusual cases where consultation is across departmental lines [emphasis added] or involves a separate or remote

⁶ The figures presented in this finding are based on actual unallowable expenditures, not a projection.

operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency.”

The Foundation improperly claimed \$10,659 for extra service compensation paid to one faculty member because the individual earned such compensation in the same department that he performed his regular duties. The Foundation also claimed \$3,997 for fringe benefits and \$1,173 for F&A costs applicable to the total extra service compensation recommended for adjustment.⁷ Therefore, the total unallowable amount claimed was \$15,829.

RECOMMENDATIONS

We recommend that the Foundation:

- refund \$18,254 to the Federal Government and
- establish adequate controls to ensure consistent compliance with the costs principles applicable to charging administrative and extra service compensation expenditures to sponsored agreements.

FOUNDATION COMMENTS

In written comments on our draft report, the Foundation disagreed with our first recommendation (financial disallowance), concurred with our second recommendation, and described actions it has taken or planned to take to ensure compliance with Federal costs principles. Under separate cover, the Foundation provided additional documentation to support the allowability of costs questioned in our draft report. The Foundation’s comments appear as Appendix B.

The Foundation stated that the administrative expenditures questioned in our report were for exclusive use on the funded project and that the University’s standard procurement procedure includes an attestation from the Principal Investigator that “items are for project specific use if they are to be directly charged.” Regarding the extra service compensation paid to one faculty member, the Foundation stated that the faculty member’s “job title” did not allow for any release time to conduct research and that his role on the sponsored award was in addition to and outside of his official job responsibilities.

⁷ Total fringe benefit costs were calculated using the fringe benefit rate (37.5 percent) negotiated between the Foundation and DCA. The Foundation subjectively used an F&A rate that was equal to or lower than the DCA negotiated rate (56 percent) on HHS awards. In calculating the unallowable amount, we applied the fringe benefit rate to extra service compensation, and the appropriate F&A rate to administrative costs and extra service compensation, and related fringe benefits.

OFFICE OF INSPECTOR GENERAL RESPONSE

Based on our review of the additional documentation provided by the Foundation, we accepted some of the costs questioned in our draft report and revised our findings and related recommendation accordingly.

We maintain that the Foundation improperly claimed administrative expenditures totaling \$2,425. Federal regulations state that colleges and universities are required to consistently allocate costs incurred for the same purpose. According to the cost principles, administrative expenditures should always be considered indirect costs unless incurred in unlike circumstances or related to a “major project.” The Foundation was unable to demonstrate that the administrative expenditures related to our finding were not consistent with similar type expenditures incurred in unlike circumstances or related to a “major project.” Regarding the extra service compensation paid to one faculty member, we maintain that the expenditure was unallowable because the faculty member earned it while working for the same department for which he performed his regularly appointed duties.

APPENDIXES

**APPENDIX A: DEPARTMENT OF HEALTH AND HUMAN SERVICES
EXPENDITURES CLAIMED BY THE FOUNDATION
FROM JULY 1, 2008, THROUGH JUNE 30, 2010**

Operating Division	No. of Sponsored Agreements	Expenditure Amount
National Institutes of Health	403	\$132,612,222
Health Resources and Services Administration	21	5,104,672
Centers for Disease Control and Prevention	3	1,932,649
Administration for Children and Families	3	974,859
Substance Abuse and Mental Health Services Administration	1	58,450
Food and Drug Administration	1	361
Total	432	\$140,683,213

APPENDIX B: FOUNDATION COMMENTS



Executive Vice President

June 29, 2012

35 State Street
Albany, New York

Mailing Address:
Post Office Box 9
Albany, New York
12201-0009

518-434-7061
Fax: 518-434-8351

www.rfsuny.org

Mr. James P. Edert
Regional Inspector General for Audit Services
Region II
Jacob Javits Federal Building
26 Federal Plaza, Room 3900
New York, New York 10278

Re: Report Number A-02-11-02008

Dear Mr. Edert:

The purpose of this letter is to respond to the recommendations contained in your report number A-02-11-0208 dated June 15, 2012.

DHHS Recommendation #1:

DHHS recommends that the Foundation refund \$33,315 to the Federal Government.

Research Foundation (RF) Response:

The RF does not concur with this recommendation.

The following table identifies the questioned costs that were identified in the draft audit report by type.

Type	Amount of Direct Cost	Amount of F&A	Total Costs	Amount of Expenditures RF Disagrees
Administrative expenditures	1,631	794	2,425	2,425
Extra service compensation	25,508	5,382	30,890	30,890
Total	\$27,139	\$6,176	\$33,315	\$33,315

We have provided additional documentation to DHHS supporting the RF position on the following questioned costs:

- 1) Administrative Expenditures - \$2,425
 - **DHHS Position:** Direct costs for administrative expenditures should have been treated as F&A expenditures.

- **RF Position:** OMB Circular A-21 section J.31.c indicates that "Only materials and supplies actually used for the performance of a sponsored agreement may be charged as direct costs." The Stony Brook University standard procurement procedures, and specifically the purchase requisition, includes an attestation by the PI that items are for project scientific use if they are to be directly charged. For each of the 7 items in question, the purchases were for exclusive use on the project. In addition, there are campus procedures in place that provide for close scrutiny of the type of expenditure that has the potential to be office supplies. For purposes of this audit, the campus obtained specific additional confirmation from 6 of the 7 PIs involved who confirmed that the items were used exclusively for the project.

2) Expenditures for consulting by University employees - \$30,890

- **DHHS Position:** Grantees shall not charge sponsored agreements in excess of a faculty member's base salary except in unusual cases.
- **RF Position:** For 3 of the 4 individuals that had extra service compensation charged to sponsored awards, these individuals are not faculty employees but rather are in professional non-faculty position titles. OMB Circular A-21 section J.10 indicates that "Compensation for personal services covers all amounts paid currently or accrued by the institution for services of employees rendered during the period of performance under sponsored agreements. Such amounts include salaries, wages, and fringe benefits. These costs are allowable to the extent that the total compensation to individual employees conforms to the established policies of the institution, consistently applied, and provided that the charges for the work performed directly on sponsored agreements and for other work allocable as F&A costs are determined and supported as provided below. Charges to sponsored agreements may include reasonable amounts for activities contributing and intimately related to work under the agreements, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, and participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences. "

The Stony Brook University procedure for payment of extra service compensation for non-faculty employees includes the above criteria and is consistently applied to include pre-approval and to document the need and added value to the project.

For the 1 individual that is a faculty member, OMB Circular A-21 Section J.10.d (1) indicates that "...in unusual cases where consultation is across department lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency." In the case of this faculty member, his job title does not allow for any release time to conduct research as is typical for most faculty appointments. His role on the sponsored award is in addition to and outside of his official job responsibilities. The responsibilities of his extra service appointment require him to interact with 11 different academic departments to create mentoring relationships for underrepresented minority students within these scientific departments.

DHHS Recommendation #2

DHHS recommends that the Foundation establish adequate controls to ensure consistent compliance with the cost principles applicable to charging administrative and extra service compensation expenditures to sponsored agreements.

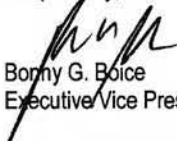
RF Response:

The RF concurs with this recommendation and has planned or has taken the following corrective actions:

- 1) The Research Foundation Central Office completed an Enterprise Risk Assessment to provide an integrated, continuous, and broad approach for assessing risk data across multiple areas of the enterprise and provides management with the information needed to address risks. Management provides quarterly "Risk Assessment and Corrective Action Plan" reports that identify risks and how they will be managed. Risks are reported in five general risk categories – entity level, operational, sponsored program, financial, and information technology. Information about this program is on the RF public web site: www.rfsuny.org
- 2) The Research Foundation Office of Internal Audit conducted an audit of extra service compensation payments.
- 3) The Research Foundation's policy and procedures on extra service compensation are being reviewed and updated and will be revised to include additional language on allowability of these types of charges.

We thank the audit staff of the DHHS Albany office for the courtesy they extended throughout this audit.

Respectfully,



Borhy G. Boice
Executive Vice President

copy: Dr. Benjamin Hsiao
Vice President for Research & RF Operations Manager, Stony Brook University

Nancy Daneau
Associate Vice President for Research & RF Deputy Operations Manager,
Stony Brook University

Dr. Timothy L. Killeen
President, The Research Foundation for SUNY

Emily Kunchala
Vice President, Internal Audit, The Research Foundation for SUNY