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BY THE COMPTROLLER GENERAL

Report To The Honorable Carl D. Pursell United States House Of Representatives

OF THE UNITED STATES

National Science Foundation Conflict Of Interest Problems With Grants To Short Term Employees

The National Science Foundation augments its permanent professional staff with specialists who serve in noncareer positions for 1 to 2 years. Known as "rotators," these specialists are usually appointed as program officers with authority for proposal evaluation. Without proper controls, the rotator program can create conflict of interest problems.

In attempting to accommodate the needs of rotators for continuity in their research support, NSF officials—who are usually professional associates from the same NSF office as the rotators—have made decisions on grant proposals that create an appearance of impropriety under applicable Federal guidelines and NSF policies and regulations.

A draft of this report included a proposal for identifying conflicts of interest. NSF implemented this proposal. GAO's current recommendations, if implemented, should (a) provide greater visibility to potential conflict of interest situations associated with grants involving rotators and (b) resolve conflicts in accordance with statutes and regulations.



114148



01/21/81

PAD-81-16
JANUARY 15, 1981

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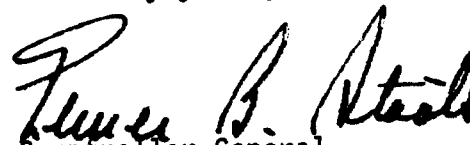
The Honorable Carl D. Pursell
House of Representatives

Dear Mr. Pursell:

In accordance with your May 2, 1979, request and subsequent discussions with our representatives, we reviewed the National Science Foundation's policies and procedures for precluding conflicts of interest in its grant award process when the Foundation's short term employees are involved. This report demonstrates that in the absence of effective controls, conflict of interest problems have resulted.

We are sending copies of this report to the Director, National Science Foundation; the House and Senate Committees on Appropriations and the Senate Appropriations Committee's Subcommittee on HUD-Independent Agencies; the Senate Committees on Commerce, Science, and Transportation and Labor and Human Resources; the House Committee on Science and Technology and its Subcommittee on Science, Research and Technology. Copies will also be available to others who request them.

Sincerely yours,


Comptroller General
of the United States

Enclosure



COMPTROLLER GENERAL'S
REPORT TO THE HONORABLE
CARL D. PURSELL
HOUSE OF REPRESENTATIVES

NATIONAL SCIENCE FOUNDATION
CONFLICT OF INTEREST PROBLEMS
WITH GRANTS TO SHORT TERM
EMPLOYEES

Since its early years, the National Science Foundation has augmented its permanent professional staff with specialists who serve in noncareer positions for 1 to 2 years and who are referred to as "rotators" within NSF and the scientific community. Recruited from colleges, universities, industry, and government, these specialists are usually appointed as program officers with firstline authority for grant proposal evaluation. Some are appointed to supervisory positions as section or division heads.

The potential for conflict of interest problems within the rotator program is great. Rotators are usually researchers who have been given or could possibly receive NSF grants. NSF officials taking actions on their grants are or are about to become their professional associates, often in the same NSF unit. Because of the information available to them, these same officials are in the best position to report potential conflicts of interest.

GAO identified a significant number of problem cases involving short term, or rotational, employees. The cases presented in this report demonstrate that NSF needs to strengthen its policies and procedures to preclude conflicts of interest in its grant award process when short term employees are involved. The cases are intended to highlight only the inadequacies of these policies and procedures, not the activities of individual scientists.

Federal conflict of interest laws prohibit Government employees from acting for the Government in matters in which they have a financial interest. These laws are intended to insure that Federal officials act impartially to promote the interests of the general public. NSF policies, procedures, and directives also guide NSF employees in the proper

conduct of their official duties. Although NSF has characterized the conflict of interest statutes and regulations as "complex, elaborate, and difficult," NSF believes that its employees should avoid actions, whether or not specifically prohibited, that might result in the appearance of conflicts of interest (chapter 2).

In March 1978, NSF established an ad hoc committee to resolve a series of conflict of interest questions. The committee recommended that NSF's standards be revised to provide for the resolution of potential conflicts of interest involving prospective employees, but improved standards of employee conduct incorporating the committee's recommendations may not be completed until August 1981.

NSF believes that the rotator program is vital to it. The rotators bring in fresh scientific and technical expertise, thus helping NSF and its permanent employees stay in touch with the latest developments. Because the rotators are greatly affected by NSF's policies, they also prevent NSF from becoming an indifferent bureaucracy. The rotators gain rich developmental experience and additional insight into Federal support of scientific research, the improvement of science education, and the dissemination of science information. In addition, their institutions benefit when they return from NSF with increased knowledge of the administration of national science programs. Conflict of interest problems associated with this program should be resolved.

THE PROBLEMS IDENTIFIED

In attempting to accommodate the needs of rotational employees for continuity in their research support, NSF officials have made decisions on their grant proposals that create an appearance of impropriety under applicable Federal guidelines and NSF policies and regulations. The grant activity of a significant number of former short term employees and short term employees working at NSF on September 30, 1979, raises conflict of interest questions. The questionable

activities include instances of officials awarding new grants, renewals, extensions, and supplemental funds to short term employees in the same NSF unit or to researchers who were planning to join that unit; overriding negative peer reviews; and such improprieties as peer reviewing proposals in one researcher's name but awarding the grant to someone else and submitting proposals while still employed at NSF. Of the 51 short term appointees who terminated their NSF employment, 15 had questionable grant activity. Of 81 current short term employees, 8 had questionable grant activity. GAO found 39 problems in the grant activity of these 23 short term employees comprising:

- 19 instances of concurrent grant processing and employment negotiation,
- 16 instances of questionable grant actions during the employment period,
- 2 instances of questionable post-employment grant actions, and
- 2 instances of the use of waivers of the post-employment restriction on submitting new proposals in a questionable manner.

The questionable grant awards totaled about \$3 million (chapter 3).

AGENCY RESPONSES

In March 1980, after being advised of GAO's preliminary findings, NSF issued a staff memorandum addressing the special problems of the appearance of conflicts of interest for grant actions involving prospective, current, and past employees.

In response to a draft of the present report, NSF recognized that it has been less than successful in addressing the conflict of interest problems associated with the rotator program. NSF has implemented GAO's proposal that the NSF Office of Audit and Oversight monitor all proposals, awards, and other grant actions associated with prospective, current, and past employees.

Visibility should be improved by additionally requiring NSF's Office of General Counsel to review conflict of interest matters referred to it by the Office of Audit and Oversight. NSF has also taken steps to consolidate its conflict of interest policies in a single document, as GAO recommended in a March 1979 report, National Science Foundation Standards of Employee Conduct Need Improvement.

NSF disagrees with GAO's recommendation to formally refer conflict of interest matters arising during the grant award process to its General Counsel. Regarding GAO's recommendation to take remedial or disciplinary action under certain circumstances, NSF stated that to do so corresponds with its existing policy and that it is looking into the question of whether discipline was not imposed when it should have been. Regardless, NSF believes that disciplinary action would not be appropriate in many cases. It contends that the present report identifies only inadequate guidance to staff, not that the staff is unwilling or unable to adhere to guidance. GAO stands by its recommendations. Not only is clear guidance needed; compliance should also be insured (chapter 4).

RECOMMENDATIONS

To insure that the National Science Foundation's conflict of interest review procedure can (a) provide greater visibility to potential conflict of interest situations associated with grants involving rotators and (b) provide resolutions that are in accordance with the standards set forth in statutes and regulations, GAO recommends that the Director of NSF:

--require that the Office of Audit and Oversight formally refer to the NSF General Counsel for prompt resolution all conflict of interest matters that it finds while monitoring the grant activity associated with scientists who are being considered for, are serving in, or have recently completed short term NSF appointments;

--take appropriate remedial or disciplinary action when people fail to report conflict of interest situations or otherwise violate prescribed standards of conduct.



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CHAPTER 1

INTRODUCTION

In a May 2, 1979, letter, Congressman Carl D. Pursell asked us to review the National Science Foundation's policies and procedures for awarding grants when former NSF employees are involved. Specifically, he wanted to know if these policies and procedures, including provisions for their waiver, adequately prevent conflicts of interest and whether NSF complies with them. His interest was sparked by the case of a researcher from his home district whose proposal NSF had declined to fund although later it funded a similar project proposed by a former NSF employee. We discuss this case in chapter 3.

In this report, we focus on the special problems of processing grants for short term employees. Known as "rotators," they work for NSF for 1 or 2 years and then return to their home institutions. We assess NSF's grant award process as it relates to awards made to scientists who are being considered for, are serving in, or have completed short term appointments at NSF.

NSF'S OPERATIONS

NSF is an independent agency in the executive branch of the Federal Government established under the National Science Foundation Act of 1950, as amended. With its policies set by the 24-member National Science Board, its general mission is to strengthen U.S. science by supporting basic research and science education programs and applied research on selected national problems (42 U.S.C. 1862).

The research NSF finances is conducted primarily through grants to scientists at colleges and universities. About 2,000 colleges, universities, and other institutions participate in NSF programs. During fiscal year 1979, NSF received approximately 26,000 proposals from scientists seeking support for their projects; about 12,000 of these proposals resulted in awards. NSF's fiscal year 1980 obligations for research and related activities are expected to exceed \$910 million.

NSF employs approximately 1,275 people, more than 30 percent of them scientific experts who process grants. About 80 of these experts are scientists serving short term appointments from academic, governmental, and other institutions that receive or could potentially receive NSF grants. **NSF's**

general philosophy is that the people involved in the grant award process should exercise their authority with integrity and objectivity and that conflicts and the appearance of conflicts of interest should be avoided.

PROPOSAL EVALUATION

Proposals are evaluated within NSF's six organizational units, called directorates, within which key individuals called program officers manage the evaluation process. Program officers are the main point of contact between NSF and the rest of the science community. They are the ones responsible for recommending whether proposals be funded.

Program officers usually draw on several sources for assistance, including external peer reviews, internal staff reviews, consultations with other Federal agencies, and site visits. Of these, the external peer reviews are by far the most important, being at the heart of the proposal evaluation process. NSF requires that, with limited exceptions, all proposals receive peer review. Peer reviewers are selected by program officers as able to give expert advice in the discipline that is the subject of the proposal. In a report published in 1977, the National Science Board made the following comments on NSF's peer review procedures:

The peer review process is used to select for funding those projects offering both the highest quality of science and the greatest prospect for resultant benefits. The Board is particularly aware that the peer review process should be open, objective, and free from bias, especially in this era of increased competition for research funds. The Board also believes that the peer review process should continue to preserve the traditional benefits of peer evaluation of intrinsic scientific merit. At the same time, it is essential that the research community perceive the peer review process to be fair, and equitable as well as accessible to all qualified persons--both as research applicants and as reviewers. These are longstanding and continuing concerns of the Board. 1/

1/National Science Board, Report to the Subcommittee on Science, Research and Technology of the Committee on Science and Technology, U.S. House of Representatives, Regarding Peer Review Procedures at the National Science Foundation, NSB-77-468, November 1977.

Program officers analyze the peer reviews and recommend to higher level management that proposals be declined or that grants be awarded. When an award is recommended, the higher level managers who review it are generally a section head, a division director, and a directorate head, who has final program authority.

Since 1976, directorate heads have been able to use the additional advice of action review boards, which comprise NSF employees who have scientific, legal, business, or policy backgrounds. These boards were established to insure compliance with NSF policies and procedures for evaluating proposals for research support, but they do not review all grant actions. The use of the action review boards varies widely among the six directorates.

After a proposal has been approved at the directorate level, the Division of Grants and Contracts reviews the recommended award for its conformity with NSF's fiscal and administrative procedures and prepares the final award. Recommended awards amounting to \$500,000 or more in a single year and awards that will total \$2 million or more over the life of the grant require the additional approval of the Director of NSF and the National Science Board.

SHORT TERM APPOINTMENTS

Since the early years of NSF, it has augmented its permanent professional staff with specialists who serve in non-career positions for 1 to 2 years. Referred to as "rotators" within NSF and the scientific community, they are generally recruited from college and university faculties, but some come from industry and government. They are usually appointed as program officers with firstline authority for proposal evaluation. Some are appointed to supervisory positions as section or division heads.

NSF believes that the rotator program is vital to its vigor and responsiveness. The rotators bring in fresh scientific and technical expertise, helping NSF and its permanent employees stay in touch with the latest developments. In addition, because the rotators are greatly affected by NSF's policies, they prevent NSF from becoming an indifferent bureaucracy. In short, the rotators do a great deal to keep NSF fresh and open.

The rotators themselves also gain rich developmental experience and additional insight into Federal support of scientific research, the improvement of science education, and the dissemination of science information. Moreover, their

institutions benefit when they return from NSF with increased knowledge of the administration of national science programs.

Some scientists NSF hires are principal investigators on ongoing grants at the time they are selected for rotational assignments. In such cases, either a co-principal investigator may assume sole responsibility for the grant or else a substitute principal investigator must be nominated and approved by NSF, to avoid potential conflicts of interest.

OBJECTIVES, SCOPE, AND METHODOLOGY

We addressed some aspects of employee conduct at NSF in 1979 in our report National Science Foundation Standards of Employee Conduct Need Improvement (FPCD-79-33, March 29, 1979). For the present report, we reviewed the effectiveness of NSF's policies and procedures intended to preclude conflicts of interest in the grant award process. To do this, we examined the grant activity of current and former NSF employees.

Initially, we selected 157 people who terminated their employment with NSF between January 1, 1977, and April 30, 1979. They were scientists and professional staff generally in grades GS-13 and above whose positions might have enabled them to influence grant award decisions and who could also have reasonably been expected to submit research proposals and obtain grants. After matching these 157 with NSF's grant history records, we examined grant folders for the 38 individuals we identified as having active research grants. We found a variety of problems in the awarding of their grants, including some problems that originated while they were negotiating for NSF employment.

We performed a second match for 332 different people who were working at NSF on September 30, 1979. We examined grant folders associated with the 34 individuals among these 332 whom we identified as having active research grants. The problems we found confirmed our preliminary finding that there were conflict of interest problems associated with the rotator program.

All the problem cases involve short term employees. Therefore, they are the subject of this report. Among the 157 people who terminated their NSF employment, 51 were short term employees; among the 51 were 15 who had questionable grant activity. Of the 332 people still working there on September 30, 1979, 81 were short term employees and 8 of these had questionable grant activity. In the cases we present, we intend to pinpoint only the effects of NSF's method of handling conflict of interest matters, not the activities of individual scientists.

CHAPTER 2

CONFLICT OF INTEREST LAWS, POLICIES, AND PROCEDURES

Federal conflict of interest statutes and regulations and NSF policies, directives, and procedures apply to people who serve short term and permanent appointments at NSF. The purpose of these measures is to guide NSF employees in the proper conduct of their official duties. In particular, they are directed not to act for the Government when their private economic interests are involved. NSF has characterized the conflict of interest rules as "complex, elaborate, and difficult."

In the work that resulted in our 1979 report, we found that NSF's standards of employee conduct were contained in several documents rather than in one source. We also found that NSF did not adequately make its employees aware of these sources or their responsibilities. We recommended that NSF provide to each new employee a separate orientation package containing all documents relevant to the standards and that it emphasize the importance of the standards during orientation of new employees. ^{1/} We discuss NSF actions in this regard in chapter 3 of this report.

FEDERAL LAWS

NSF holds all employees responsible for becoming acquainted with applicable portions of each Federal statute relating to their conduct as employees of NSF and of the U.S. Government. In 1979, section 207 of chapter 11 of title 18 of the U.S. Code, "Disqualification of former officers and employees; disqualification of partners of current officers and employees," was amended to strengthen restrictions on the activities of Federal employees. We did not examine the effect of the 1979 amendments on the activities of NSF appointees that we reviewed, however, because they did not apply at the time the activities occurred.

The pertinent portions of title 18, "Crimes and Criminal Procedure," are summarized here:

^{1/}National Science Foundation Standards of Employee Conduct Need Improvement, U.S. General Accounting Office, FPCD-79-33, March 29, 1979, pp. 11-12.

--Government employees may not, except in discharging their official duties, represent anyone before a court or Government agency in a matter in which the United States is a party or has an interest. (18 U.S.C. 205)

--Government employees may not, after their employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which they participated personally and substantially for the Government. (18 U.S.C. 207(a))

--Government employees may not, for 1 year after their employment has ended, represent anyone other than the United States in connection with a matter that was under their official responsibility during the last year of Government service and in which the United States is a party or has an interest. (18 U.S.C. 207 (b)) 1/

--Government employees may not participate in any matter in which they, their spouses, minor children, or outside business associates or people with whom they are negotiating for employment have a financial interest. (18 U.S.C. 208)

According to the 1979 amendments, the prohibitions of 18 U.S.C. 207(a) and (b) do not apply if the head of the department or agency concerned certifies, after consulting with the Director of the Office of Government Ethics, that the former officer or employee is acting in the national interest and in so doing is using outstanding qualifications in a scientific, technological, or other technical discipline that requires those qualifications (18 U.S.C. 207(f)).

Aside from the statute, the ethical standards and conflict of interest provisions of section 201(c) of Executive

1/The period in 207(b) was amended from 1 year to 2 years and language was added that disqualifies former Federal employees from representing anyone in a matter that was "actually pending" within the year before the employee's official responsibility terminated. Also, 207(j) was added to provide that if the head of the department or agency finds that former officers or employees violated 18 U.S.C. 207(a) or (b), the department or agency head may prohibit the violator from appearing before the department or agency for as long as 5 years or may take other appropriate disciplinary action. Other subsections not relevant here were also added.

Order 11,222 (May 8, 1965) are intended to insure that Federal officials act impartially to promote the interests of the general public. Specifically, Federal employees must avoid actions that might result in or create the appearance of:

- (1) using public office for private gain;
- (2) giving preferential treatment to any organization or person;
- (3) impeding government efficiency or economy;
- (4) losing complete independence or impartiality of action;
- (5) making a government decision outside official channels;
- (6) affecting adversely the confidence of the public in the integrity of the government.

NSF'S REGULATIONS, POLICIES,
AND PROCEDURES

As Executive Order 11,222 requires, NSF has established conflict of interest regulations (published in 45 C.F.R. 600.735) and has implemented them by publishing NSF Circular 54, "Employee Conduct and Conflicts-of-Interests." According to Circular 54, NSF is confident of its employees' integrity and sense of responsibility. It intends to impose on their conduct, activities, and financial interests only requirements, prohibitions, and limitations that are established by Federal statute or regulation. NSF also believes that its employees should avoid actions, whether or not specifically prohibited, that might result in the appearance of conflicts of interest. The relevant sections of Circular 54 are summarized here:

- An employee on leave of absence from a university or other organization who has suspended work on an NSF grant or contract to become an NSF employee may resume work under the grant or contract immediately upon terminating service with NSF. The former employee may also apply at once to NSF for support for the resumed activities. (section 10(e)(1))
- Former full-time employees of NSF may not negotiate with NSF with a view of obtaining support for another organization--by grant, contract, or otherwise--within 1 year after having left NSF, except with the written authorization of the Director. (section 10(e)(2))
- Former full-time employees of NSF may not be compensated directly or indirectly from an NSF grant or contract within 1 year of leaving NSF, except with written permission of the Director. (section 10(e)(3))

--NSF employees are prohibited from negotiating with Government agencies on behalf of private institutions. (section 10(g)(9))

NSF has also published Office of General Counsel Bulletin 74-2, covering conflict of interest situations that are encountered frequently, and NSF Circular 139 implements section 10 of the National Science Foundation Authorization Act for fiscal year 1978. Circular 139 states that NSF employees shall not participate in decisions in which they have a disqualifying academic affiliation or financial interests.

NSF employees may request advice on these conflict of interest regulations and requirements and their applicability in particular situations from the Office of General Counsel. The Conflicts of Interest Counselor in the Office of General Counsel is the attorney who is responsible for conflict of interest matters, but most questions are answered by operating division managers without informing or consulting the Conflicts of Interest Counselor.

NSF has established procedures for convening a Conflicts of Interest Review Panel to assist the Director. Its members are the General Counsel, as Chairperson, the Deputy Director, and two Assistant Directors appointed ad hoc. The Chairperson is responsible for reviewing matters referred by the Conflicts of Interest Counselor, working with the employees concerned to resolve them, and bringing to the panel situations that cannot be resolved satisfactorily. The Chairperson also refers matters to the Director. The General Counsel's Office informed us that, to the best of their knowledge, the panel has been convened only once since the procedures were established 15 years ago.

Remedial and disciplinary actions to end conflicts or the appearance of conflicts of interest are supposed to be taken promptly and in accordance with applicable statutes, Executive orders, Office of Personnel Management rules, and NSF regulations. Action might consist of, among other things, changing existing duties, divesting employees of their conflicting interests, disqualifying them for particular assignments, or removing them from employment. NSF officials informed us that, to the best of their knowledge, NSF has never found it necessary to take formal disciplinary action against program officials for violating conflict of interest laws and regulations.

CHAPTER 3

NSF NEEDS TO STRENGTHEN ITS SYSTEM FOR PRECLUDING CONFLICTS OF INTEREST IN PROCESSING GRANTS ASSOCIATED WITH SHORT TERM EMPLOYEES

The grant activity of a significant number of former short term employees and short term employees working at NSF on September 30, 1979, raises conflict of interest questions. Questionable activity includes instances of officials awarding new grants, renewals, extensions, and supplemental funding to short term employees from the same NSF unit or to researchers who were planning to join that unit; overriding negative peer reviews; and such improprieties as peer reviewing proposals in one researcher's name but awarding the grant to someone else and submitting proposals while still employed at NSF.

We found 39 problems in grant activity for 24 past and current short term NSF appointees (23 in the sample and the appointee in the case involving Congressman Pursell's constituent). These problems occurred because NSF's system for identifying and resolving conflicts of interest needs to be made more effective. Contributing to this problem is the fact that the decisions on this grant activity were made by associates of the appointees. Often these relationships were between supervisors and subordinates. The 39 problems comprised

- 19 instances of concurrent grant processing and employment negotiation,
- 16 instances of questionable grant actions during the employment period,
- 2 instances of questionable post-employment grant actions, and
- 2 instances of the use of waivers in a questionable manner.

These 24 people had a total of 34 grants with awards and commitments amounting to about \$3 million.

The questionable activities occurred because NSF's method of identifying and reviewing potential conflicts of interest involving grants to appointees needs to be made more effective. In many of these cases, questionable situations went undetected or, at least, unreported to higher level officials. A major cause of this problem is that the officials who make

decisions on appointees' grants are the same officials who, because of the information available to them, are in the best position to identify and report potential conflict of interest matters.

These officials were, or were about to become, professional associates of the appointees, and usually they worked in the same program office. Even the appearance of a conflict of interest caused by these relationships affects the credibility of NSF within the research community because grants are critically important to research scientists. Scientists receive many benefits in addition to salary when their research is supported by NSF. These include funds for overhead, equipment, supplies and salaries for graduate student assistants, and the potential for increased opportunities that accompany the successful completion of a research project. These opportunities include the chance to publish, expand one's curriculum vitae, bring more grant money to the institution, acquire tenure, and advance one's career.

GRANTS TO CANDIDATES FOR NSF APPOINTMENT UNDER QUESTIONABLE CIRCUMSTANCES

Beginning in November and December each year, NSF normally publishes vacancy announcements soliciting candidates for rotator positions. These announcements are made well in advance of the actual vacancies to precede the time, March and April, when most academic institutions negotiate contracts with faculty members for the following academic year, which begins in August or September. We recognize that such lengthy recruitment is standard in the academic world, but it can have the result that NSF officials make decisions on grant proposals at the same time that they are negotiating for employment with the proposers.

In 19 of the 23 questionable cases, NSF awarded grants to support the research of candidates who had agreed to accept or were negotiating for and later agreed to accept short term appointments at NSF. Most of the grants, totaling \$1.5 million, were to last 1 year or more beyond the appointee's employment period. They included new grants as well as renewed support for ongoing research projects. Fifteen new grants amounting to about \$500,000 were awarded to 10 individuals.

Executive Order 11,222 states that Government employees are to avoid actions that might result in or create the appearance of treating organizations or people preferentially, losing complete independence or impartiality of action, or affecting adversely the public confidence in the integrity

of the Government. These cases are questionable because many of the officials responsible for making the award recommendations and other decisions on the proposals worked in the same NSF program in which the candidates were negotiating for employment. Under these circumstances, it is difficult to avoid the appearance of conflicts of interest.

In one case, a candidate for a rotational appointment submitted a proposal to renew support for his research project. An NSF official who described himself as a close friend and former research collaborator of the candidate asked his superiors to divorce him from all activity that could be construed as a real or possible conflict of interest by virtue of his role in recruiting the candidate. He also stated, however, that he would appreciate being informed of actions on the proposal because a decision to award or decline it would bear on the candidate's decision to accept an NSF appointment. Less than 1 month before the candidate began work at NSF, the grant was renewed for 3 years with more than \$110,000 of support awarded to the candidate's substitute principal investigator. The NSF official's comments and the subsequent events illustrate the appearance of impropriety that is created when NSF reviews grant proposals from people it is negotiating with for employment. Adding to this appearance of impropriety, the candidate, now an appointee, became the supervisor of the program officer who had been responsible for awarding and who administered the grant.

In a more recent case, a scientist was selected for an appointment to NSF more than a year before he was to report for duty. After he was selected but while he was still at his home institution, he submitted a proposal for a new research project to the same group he would later supervise. The review panel had difficulty with the proposal because they considered it technically poor and they "felt somewhat funny" evaluating their future "boss." Even so, over the reservations of the review panel, the program officer recommended an award. A 3-year grant for about \$80,000 was awarded. The scientist reported for duty 2 months later, and a substitute principal investigator was assigned to his research.

Improprieties can occur when people being considered for a position at NSF, even among others, indicate an interest in the position and are connected, through grant actions, to officials in the program with which they are negotiating for employment. Improprieties or the appearance of conflicts of interest are especially likely in such cases if a candidate later accepts an appointment.

QUESTIONABLE GRANT ACTIONS
DURING EMPLOYMENT

Grant actions directly
involving rotators

In 16 of the 23 cases we are reporting, the questionable grant actions occurred while the rotator was working at NSF. A legal review of two of these cases determined that the people involved did not violate Federal criminal statutes, but their actions appear to be prohibited by NSF regulations.

In one case, an appointee developed and approved a plan to extend the duration and funding of several grants, including one on which he had been principal investigator before coming to NSF and on which he was reinstated after he left. His actions appear to be prohibited by NSF Circular 139 provisions against employees participating in decisions in which they have a disqualifying academic affiliation or financial interest. His involvement resulted directly in an additional year of support at a cost of about \$60,000.

While the researcher was arranging to move to Washington, D.C., to assume his position as NSF rotator, he submitted a revised budget for a proposal that was under consideration. The original proposal had requested more than \$240,000 for 4 years; the award was made instead for about \$180,000 for 3 years. When he arrived at NSF, he became the director of the program funding his research and the immediate supervisor of the program officer responsible for the grant. Thereafter, his substitute principal investigator requested supplemental support. A peer reviewer raised a conflict of interest question, but an action review board cleared it. The substitute principal investigator was awarded more than \$25,000. The appointee then implemented a plan to extend several grants to correct a problem of uneven funding, and under this plan his substitute principal investigator accepted the program officer's offer of a 1-year extension with additional funding.

When the appointee completed his rotational assignment at NSF, he resumed his work as principal investigator, thereby benefiting from his own actions. With the extension and the additional funding, NSF had committed to his grant 4 years of support totaling almost \$270,000.

In the other case, the appointee's actions appear to be prohibited by NSF Circular 54. A researcher came to work at NSF, and 1 month later a proposal was submitted requesting renewal of a grant on which he was listed as a co-principal investigator. The proposal was submitted to the program that

he had been hired to manage. Circular 54 prohibits NSF employees from negotiating with any Government agency on behalf of a private institution. Therefore, another program director in the same section assumed responsibility for evaluating the proposal, but, when the proposal rating sheets were prepared, they showed that responses were to be made to the researcher. Later his name was crossed out and the other program director's name was put in its place. We could not determine when the substitution was made, but it was obvious that the first name could easily have been read by the proposal's peer reviewers.

An action review board questioned conflicts of interest on this proposal and referred it to NSF's Office of General Counsel. An attorney there ruled that the researcher's signature on the proposal constituted negotiation and was, therefore, prohibited by NSF regulations. Later, the attorney reversed this opinion, finding that no conflict was involved after all. NSF officials advised us that the attorney reversed the opinion under the mistaken impression that the rotator had returned to his home institution.

In all, 12 months of support at more than \$50,000 was awarded for the proposal in question while the researcher was still working at NSF. Although officials there knew he would be working on the grant, and stated so in the project summary, they omitted his name from the award letter. Ten days after he left NSF and returned to work on the grant, he and his co-principal investigators applied for, and were granted, 3 additional years of support beyond the original award.

Grant actions associated with substitute
or co-principal investigators

NSF employees are prohibited from submitting proposals for research support. When someone who has an ongoing grant accepts an appointment, the home institution must name a substitute principal investigator to continue research. If an appointee is one of two or more co-principal investigators on an ongoing grant, the other co-principal investigators may assume sole responsibility for it. After the appointee's employment period has begun, further requests for grant actions can be made only by the substitute or co-principal investigators.

In 15 of the 23 cases, NSF awarded grant renewals or extensions and increased funds to a total of about \$770,000 to substitute or co-principal investigators that also benefited the NSF employees after they left NSF. Awards to substitute or co-principal investigators are necessary to

avoid penalizing the ongoing research of short term appointees and their colleagues. We do not question this. However, public officials, in accordance with Executive Order 11,222, must avoid actions that result in or create the appearance of not being in the public interest. When officials who are responsible for making decisions on proposals submitted by substitute principal investigators are professional associates in an NSF program that the appointee works in, or when the appointee is their supervisor, there are natural difficulties in avoiding the appearance of not being in the public interest.

In one of the 15 cases involving substitute or co-principal investigators, an appointee was working at NSF in the section responsible for his continuing grant, and while he was there his substitute principal investigator submitted a proposal to renew the grant for an additional 3 years. A few months later, the substitute principal investigator requested supplemental funding while the renewal action was pending. The section leader, who was the appointee's supervisor, promptly approved the request for supplemental funding, awarding more than \$20,000 and noting that he had handled this request to avoid conflict of interest. After the appointee left NSF, he resubmitted the renewal proposal, listing himself as principal investigator. The grant renewal was officially awarded to him, even though the proposal had been peer reviewed in the substitute's name. This action appears to be prohibited by NSF Circular 132, which states that one of the criteria peer reviewers must use in evaluating proposals is the capability of the researcher to contribute to the scientific area of the proposal. It also does not reflect the National Science Board's perception of peer review as noted in chapter 1 of our report.

In another case, the marriage between the appointee and the co-principal investigator as well as the professional association between the appointee and program officials who made decisions on their grant lead to questions about the appearance of a conflict of interest. One month before the appointee came to NSF, officials awarded the third year of support on the continuing grant. This award carried the understanding that the appointee's spouse, the project's co-principal investigator, could negotiate a grant renewal while the appointee was working at NSF. The person who was to be the appointee's immediate supervisor at NSF was responsible for the grant.

The appointee arrived at NSF, and 2 months later the spouse resubmitted a proposal for supplemental equipment support that the researchers had originally submitted jointly but later withdrew because of the appointee's association

with NSF. Several more months passed, and a substitute principal investigator was assigned to the research project, because the spouse had obtained a short term appointment at another Federal agency. Subsequently, however, the appointee's supervisor telephoned the spouse, not the substitute principal investigator, to discuss the supplemental equipment proposal. The substitute principal investigator was then awarded more than \$50,000 for supplemental equipment and an extension of time. Upon leaving NSF, the appointee was reinstated as principal investigator and submitted a proposal to renew the grant for 4 more years. A professional associate in the NSF section that the appointee had worked in recommended an award of 4 years with additional funding of more than \$540,000.

Another appointee, having determined that his own situation was without conflict, became a substitute principal investigator immediately on leaving NSF, and within the first year he negotiated for his home institution with his former program associates at NSF. While he was still at NSF, he had agreed to substitute as principal investigator on a separate ongoing grant for his own substitute principal investigator, who would soon be on leave from his university. The appointee had stated formally that he was "fully aware of the conflict of interest rules binding NSF employees, and former employees" and that he did not believe that, with the arrangements he was making, "any rule would be contravened." He left NSF and resumed work on his own grant and became substitute principal investigator for his colleague. Then he sought and obtained approval from his former program associates at NSF for a third year of funding at more than \$50,000 for his colleague's continuing grant. He had not obtained the Director's written authorization, as required by section 10(e)(2) of NSF Circular 54, to negotiate within 1 year of leaving NSF.

Grant actions taken by program officials in response to proposals from substitute or co-principal investigators can create improprieties or the appearance of conflicts of interest if the program officials are professional associates of appointees. In our opinion, program officials should not independently dismiss conflict of interest matters.

POST-EMPLOYMENT PROBLEMS AND QUESTIONABLE WAIVERS

Immediately upon leaving NSF, appointees who have been on leave of absence from their home institutions and return there may apply to NSF for resumed support of their grant activities. They are prohibited from negotiating for support for new projects within 1 year of leaving, although

NSF's Director may waive this prohibition. We have seen in this report, however, that the officials who make decisions on appointees' grants such as whether a former appointee's activities constitute the resumption of suspended work or new research projects are usually professional associates working in the same program office that the appointee has left.

The post-employment restriction on submitting new proposals is meant to be waived only under special circumstances. Waivers are to be granted only when denying them would work a hardship on the researcher or when the benefits to NSF would clearly outweigh the harm in sanctioning the appearance of a conflict of interest. Waivers apply only to NSF employees who expect to leave their employment. They cannot be given to current employees to allow them to submit research proposals while working at NSF.

To apply for a waiver, an NSF employee submits a memorandum describing the special circumstances that justify a waiver. The memorandum is forwarded through the chain of command to the Director, who consults with the Office of General Counsel before deciding. NSF officials informed us that, because NSF discourages them, the Director rarely receives requests to waive the post-employment restriction on submitting new proposals. According to NSF officials, only one formal request of this type was made in fiscal year 1979 and only one was made in fiscal year 1980. NSF officials could cite only three instances of ever having granted a waiver of this type.

In addition to the three waivers cited by NSF officials, we identified two others that we did not include in our 23 problem cases. One of these two precipitated Congressman Pursell's request, but it is not among the problem cases because the waiver was granted before 1977 and is therefore outside the time of our sample. The other is also not among the problem cases, because, although a waiver was granted, the proposal was later withdrawn.

We reviewed, in all, three cases involving waivers of post-employment restrictions on new research. Two are the additional two that we identified beyond the three cited by NSF. The third is one of the three that NSF officials cited and that is among the 23 problem cases. We discuss here only the case of Congressman Pursell's constituent and the one waiver case that we included among the 23 problems.

In the case of the constituent, questionable circumstances surround a waiver of post-employment restrictions and proposal review. The constituent submitted a proposal

that NSF declined because, so NSF officials informed us, it probably lacked scientific merit, a subjective judgment on the project and on the technical adequacy of the researcher as well. Information from which to judge whether the constituent's proposal was treated fairly is limited, because all the files relating to it had been routinely destroyed by the time of our review.

One year after the constituent's proposal was rejected, another researcher began a 2-year rotational appointment at NSF in the program office that had rejected it. While at NSF, the appointee applied for a waiver to submit a proposal upon leaving NSF. The waiver request contained the following statement: "Because of the relatively small retirement available to me, I will have to obtain some partial supplementary salary for at least several years after leaving the Foundation."

His waiver request asked that he be allowed to submit a proposal on a specific subject, but the waiver that was granted did not specify one. After leaving NSF, he submitted a proposal, but it was to study a subject different from the one named on the waiver request. In fact, it was the same subject as the constituent's. For reasons that we could not determine, he withdrew his proposal 2 months later and submitted another one with the same title.

The proposal was submitted to the program that the former appointee had directed. The review of the proposal, including peer review, was completed 3 months after the former appointee had originally submitted it, and the program officer recommended a grant award. At that time, it usually took NSF about 5 months to act on proposals. The program officer who made the award recommendation had earlier used the appointee as a reference on his application for his own employment at NSF, and he had also worked for the former appointee for 1 week at NSF.

NSF awarded the former appointee more than \$90,000 over 5 years. Within the 5 years, he requested and was granted an increase that brought the total award to more than \$100,000. During the sixth year, he was awarded about \$40,000 in additional funds and the grant period was extended to a total of more than 7 1/2 years.

NSF employees may apply for waivers of the 1-year restriction on submission of proposals, but the waiver does not permit them to submit proposals before their employment has ended. It also does not permit either consideration of proposals or the granting of awards before employment has ended. In the case that we included among our 23 problem cases, a

researcher who knew at least 1 full year in advance that he would be serving as an NSF rotator submitted a new proposal 2 1/2 months before he arrived. The program officer handled the proposal so expeditiously that he was prepared to recommend an award within 6 weeks--that is, 1 month before the researcher was scheduled to begin work at NSF. An NSF official estimated that usually about 5 months elapse between the receipt of proposals and award recommendations for this division. The appointee began his employment at NSF, the final award was held in abeyance, the Director approved a waiver that allowed the appointee to be compensated directly from an NSF grant or contract within 1 year of leaving NSF, and the grant was finally awarded just before he left NSF to return to his home institution.

The waivers in both of these cases should have stated clearly the scope of the grant actions that were being authorized. Program officials should have limited their actions accordingly. Considering and funding a proposal before employment had ended was improper.

NSF'S EFFORTS TO IMPROVE STANDARDS OF CONDUCT

In March 1978, NSF established an ad hoc committee to resolve a series of questions on conflicts of interest. The committee issued a report in November 1978, suggesting that NSF Circular 54 be revised to clarify standards of conduct and to provide additional guidance on ethical problems. The committee saw considerable need to resolve conflicts during pre-employment discussions with prospective employees. One recommendation was that the Circular's wording be made more urgent in tone and that it state in new language that NSF supervisors should refer possible conflicts involving prospective employees or subordinates to the Conflicts of Interest Counselor. Improved standards of conduct for employees, however, may not be completed before August 1981.

In response to a question on whether a permanent body should examine complex conflict of interest questions, the members of the committee felt strongly that the Conflicts of Interest Review Panel already provides a ready mechanism for this purpose. The Panel, however, has met only once in the 15 years of its existence. The committee also believed that temporary working committees are more practical for periodic review of accumulated questions.

In our 1979 report, we recommended that NSF establish a procedure for periodically reviewing and evaluating employee standards of conduct, identifying the need for revisions, and resolving outstanding issues. We also recommended that

standards revisions be coordinated with the U.S. Office of Government Ethics.

In February 1980, the NSF Office of General Counsel informed us that the ad hoc committee's recommendations for revising Circular 54 were being combined with Circular 139 into a single draft document that would replace both circulars. An NSF official told us that a preliminary circular should be published in the Federal Register by February 1981, but a final circular that incorporates any comments and is approved by the Office of Government Ethics may not be released until August 1981. The revised standards would also reflect the changes in 18 U.S.C. 207.

On March 6, 1980, we told NSF officials what we had found in the current review, and we discussed with them their system for precluding conflicts of interest in grant awards to rotational appointees. They subsequently informed us that a forthcoming staff memorandum from the Director would spell out a policy for resolving the conflict of interest problems we had discussed with them. The memorandum was issued on March 20, 1980, and is reprinted here in appendix II.

The March 20 memorandum addresses the special problems of the appearance of conflicts of interest in grant actions involving prospective, current, and past appointees, but it does not specify who is responsible for bringing them to the attention of the Assistant Directors. In addition, the memorandum gives Assistant Directors the authority to determine that particular matters are inconsequential and need not be referred to the General Counsel. The memorandum does not adequately preclude NSF employees from failing to report and properly resolve conflict of interest matters.

CHAPTER 4

CONCLUSIONS, AGENCY COMMENTS AND OUR RESPONSE, AND RECOMMENDATIONS

CONCLUSIONS

While having researchers from colleges, universities, and other organizations obtain short term appointments at the National Science Foundation is desirable, NSF needs to strengthen its policies and procedures to preclude conflicts of interest and the appearance of conflicts of interest in awarding grants when they are involved. NSF officials, who are usually professional and sometimes personal associates of the short term appointees, have tried to accommodate their needs for continuity in their research support. In doing so, they have made decisions on proposals and grants that create an appearance of impropriety under applicable Federal guidelines and NSF regulations and policies. NSF has taken some actions to strengthen its conflicts program, but it needs to do more to prevent conflict of interest problems associated with the rotator program. NSF must assure itself that grant actions associated with employees are not prohibited by the standards of conduct set by statutes and regulations.

AGENCY COMMENTS AND OUR RESPONSE

NSF was given the opportunity to review and comment on a draft of this report. We address NSF's most significant comments here. We discuss those that remain in appendix III.

In its August 15, 1980, letter, NSF described its overall conflict of interest program as generally strong and becoming stronger. NSF also recognized, however, that it has been less than successful in addressing the unique problems associated with the rotator program. NSF stated that our report has performed a real service in "forcefully focusing" on imprecise and fuzzy policies and inadequate procedures for sensitizing employees to conflict of interest problems in the rotator program. Accordingly, NSF has taken four steps in response to our draft report. The Acting Director of the Foundation has

- created a task group to examine existing conflict of interest policies and procedures associated with awards to rotators and to recommend more precise ones by September 30, 1980. The task group's recommendations are currently being reviewed by the NSF Director.

They will be the basis for new conflict of interest policies and procedures that the Director is planning to issue.

- directed the General Counsel to consolidate the resulting policies with all other conflict of interest policies in one document;
- asked the Director of the Office of Audit and Oversight to monitor all proposals and awards involving NSF staff members, people being considered for NSF staff positions, and former staff members away from NSF less than 1 year;
- directed that all staff in grades GS-12 and above who are leaving NSF be specially counseled by the Ethics Counselor about post-employment conflict of interest restrictions.

We support these four steps. In fact, the third one implements one of the draft report's principal proposals, and the second step was recommended in our 1979 report National Science Foundation Standards of Employee Conduct Need Improvement. We recommended then that NSF consolidate the standards of employee conduct in a single package. 1/

NSF stated also that it has taken a fifth step in response to our draft report. It has "formally established as NSF policy what was already our usual and preferred practice of substituting another scientist as principal investigator under any outstanding award on which a new rotator has been principal investigator, unless work under the award will be suspended while the rotator is employed at the NSF." We also favor this practice as a way to avoid penalizing the rotator's ongoing research. This is not new, however; it has been formal NSF policy for quite some time. Section 622.4 of the NSF Grant Policy Manual requires that if the principal investigator's temporary activities could constitute a conflict of interest (as working for a Federal agency might do), then a substitute principal investigator must be appointed.

NSF did not agree with our second proposal that NSF require referral to the General Counsel of all conflict of interest matters involving short term employees that arise during the grant award process. NSF stated that

1/U.S. General Accounting Office, FPCD-79-33, March 29, 1979, p. 12.

what the report demonstrates is primarily a weakness in the Foundation's guidance to staff, not in their willingness or ability to follow guidance they have been clearly given. Thus a need for involvement of the General Counsel in every case that raises any conflicts issue whatever has not been established. Even if the General Counsel's office had sufficient staff to become involved in every such case, in many cases their involvement would be unnecessary and wasteful. Many cases involve relatively simple problems on which there are clear rules and routine procedures that program staff understand well and generally follow quite adequately.

With regard to our third and last proposal, that NSF take appropriate disciplinary or remedial action when people fail to report conflict of interest situations or when they otherwise violate prescribed standards of conduct, NSF responded as follows:

Your third recommendation corresponds with existing NSF policy, cited on p. 12 of the draft report. If the implication is that discipline has not been imposed when it should have been, that is being looked into in connection with the cases cited in the draft report. We doubt, however, that disciplinary action will prove appropriate in many cases. The major problem the report reveals is inadequacy in the Foundation's guidance for staff, not in their adherence to guidance.

NSF's support for its rebuttal of our proposals was that the report primarily identifies that NSF's guidance to its staff is inadequate, not that staff are unwilling or unable to adhere to guidance. This impression of our report is mistaken. NSF has, indeed, failed to focus adequately on conflict problems presented by the rotator program and to provide clear guidance and procedures, and we have reported these failures here. We have also demonstrated in this report, however, that not only is clear guidance needed but also compliance with the guidance is needed. Disciplinary or remedial action should be taken when individuals fail to report conflict of interest situations or otherwise violate prescribed standards of conduct.

NSF contended in its comments that the cases we cite as examples give only selected facts and an exaggerated impression of the extent to which laws, regulations, and existing NSF policies have been violated. Similarly, NSF stated that none of the basic rules it uses to guard against conflicts

of interest involving rotators (except the one that requires that a rotator's ongoing research be terminated or a substitute principal investigator be appointed) were violated in any of the cases cited in the draft report. In both our draft and this final version, we have given only the facts germane to the issue being discussed to avoid confusing the reader by cluttering the cases with information that is not relevant. Several of the cases involve many people, proposals, and awards. If we presented a case to illustrate a pre-employment conflict problem, for example, we omitted the other questionable employment and post-employment activities.

We have not exaggerated the extent to which the activities we reviewed appear to be inconsistent with Federal guidelines and NSF policies and regulations. The grant activity of a significant number of short term employees reveals various kinds of impropriety and questionable activity. The two cases cited in chapter 3 under the heading "Grant actions directly involving rotators" demonstrate this. In the first, the appointee developed and approved a plan to extend the duration and funding of several grants, including one on which he had been principal investigator before coming to NSF and on which he was reinstated after he left. This appears to be inconsistent with NSF Circular 139. In the other, a researcher came to work at NSF, and 1 month later a proposal was submitted requesting renewal of a grant on which he was listed as a co-principal investigator. This appears to be inconsistent with NSF Circular 54. Both actions are contrary to NSF's statement that "while at the NSF a rotator is disqualified under NSF rules from participating in any way in any matter involving his home institution, including, obviously, any outstanding award or pending proposal with which he or she is or has been associated." In our opinion, both of these cases and others described in this report are indicative of serious conflict of interest problems.

We referred the most serious cases to the Department of Justice. The Department's opinion is that the statute was not violated. NSF stated repeatedly in its comments that the Department of Justice concluded that none of the conflict of interest statutes were violated and so concluded not just because of a lack of criminal intent. Of one of two cases we referred to the Department for review, the Department told us: "It does appear that (name omitted) may have devised a method for processing the renewal of a class of grants, in which his own was included. This aspect of the matter does not warrant prosecution under Section 208, in view of the absence of evidence that this scientist focused on his personal financial interests when he proposed the rule of general applicability at issue." This response indicates that one

reason that the Department of Justice declined to prosecute this case was the lack of criminal intent.

RECOMMENDATIONS

To insure that the National Science Foundation's conflict of interest review procedure can (a) provide greater visibility to potential conflict of interest situations associated with grants involving rotators and (b) provide resolutions that are in accordance with the standards set forth in statutes and regulations, we recommend that the Director of NSF:

- require that the Office of Audit and Oversight formally refer to the NSF General Counsel for prompt resolution all conflict of interest matters that it finds while monitoring the grant activity associated with scientists who are being considered for, are serving in, or have recently completed short term NSF appointments;
- take appropriate remedial or disciplinary action when people fail to report conflict of interest situations or otherwise violate prescribed standards of conduct.

CARL D. PURSELL
2D DISTRICT OF MICHIGAN

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May 2, 1979

The Honorable Elmer B. Staats
Comptroller General of the United States
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Staats:

My staff and I met with members of your staff (Program Analysis Division, National Science Foundation Audit Group) on May 2 to discuss the procedures NSF uses in the grant award process when former NSF employees are involved.

In order to determine the effectiveness of NSF's policies and procedures in this area, I request that the General Accounting Office make such inquiries as are necessary to respond to the following questions:

- (1) Are NSF rules and procedures for controlling the award of grants adequate to prevent conflicts of interest regarding former employees?
- (2) Under what circumstances can these restrictions be waived?
- (3) What is the decision process used in the waiver procedure and who has the authority to approve such waivers?
- (4) How effective has the NSF been in complying with the rules and procedures, and how frequently do waivers occur?

In seeking answers to these questions, I am hopeful that GAO can formulate recommendations on future NSF policy in this area, should there be a need to do so.

Sincerely,


Carl D. Pursell, MC

CDP:bk

NATIONAL SCIENCE FOUNDATION
OFFICE OF THE DIRECTOR
WASHINGTON, D.C. 20550

STAFF MEMORANDUM

March 20, 1980

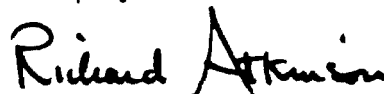
O/D 80-5

GRANTS AND CONTRACTS

SUBJECT: Proposals or Awards Involving NSF Staff Members

Proposals or awards involving NSF staff members, persons about to become staff members, or persons who have recently left the staff can present special problems involving the appearance of conflicts-of-interest even though there may be no violation of conflict-of-interest rules. It has become clear that some situations are so complex that many staff members do not recognize all of the implications. Therefore, it is necessary to give special attention to such cases.

Effective immediately, any proposals or awards involving or likely to involve NSF staff members, persons thought likely to become NSF staff members within the next year or persons who have submitted proposals to the Foundation within a year of leaving the staff of NSF will be brought to the attention of the cognizant Assistant Director in order to obtain guidance on the processing of such a proposal or the actions to be taken with regard to such an award. The Assistant Director, after consulting with the Conflicts-of-Interest Counselor as necessary, will provide guidance in writing to the program staff with a copy to the Deputy Director.


Richard C. Atkinson
Director

Distribution E

Please include this Staff Memorandum in NSF Manual No. 16, "Handbook for Program Officers"

NSF COMMENTS

NATIONAL SCIENCE FOUNDATION
WASHINGTON, D.C. 20550

nsf

August 15, 1980

OFFICE OF THE
DIRECTOR

Mr. Morton A. Myers
Director
Program Analysis Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Myers:

This responds to your July 16 request for comment on your draft report, "The National Science Foundation Needs to Resolve Conflict of Interest Problems Associated With Grants to Short-Term Employees."

A strong conflict of interests program is important to the National Science Foundation. Success in our mission depends on maintaining a proposal-review process that is fair and unbiased and is perceived to be so by the scientific community, the general public, and the Congress. For that reason the NSF has conflict of interests rules that are stricter than those of other Federal agencies in important respects. We work hard to see that those rules are observed and believe that for the most part they are observed. We have also been working on revised conflict of interests regulations and a number of other improvements to our program. In general we believe it is a strong program and becoming stronger.

As your report makes clear, however, the NSF faces some unique conflicts issues and problems in connection with its practice of hiring short-term employees, or "rotators", who interrupt active research careers to spend a year or two at the Foundation in critical scientific positions. We have been aware of the issues and problems in this special area for some time and have made some effort to address them. Your report makes clear, however, that we have been less than successful. It reveals imprecision and fuzziness in our policies that bear on these problems and inadequacy in our procedures for sensitizing employees to them and bringing them to the surface. The report has performed a real service in bringing out these shortcomings and focusing our attention forcefully upon them.

NSF COMMENTS

Mr. Morton A. Myers

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I have already taken steps to address the issues and correct the deficiencies revealed by the report. First, I have created a task group to examine our existing policies and procedures that relate to conflict of interest problems associated with awards for rotators with a view to recommending more precise policies and procedures for that special class of cases. I have directed the task group to report its findings and recommendations to me no later than September 30, 1980. Second, I have directed the General Counsel to consolidate the resulting policies with all other conflict of interests policies into one document. Third, I have asked the Director of the Office of Audit and Oversight to monitor all proposals and awards involving NSF staff members, persons under consideration for NSF staff positions, or former staff members away from the Foundation less than a year. Fourth, I have directed that all staff at the GS-12 level or above who are leaving the Foundation be specially counseled by the Ethics Counselor about post-employment conflicts of interests restrictions before they leave the Foundation. And fifth, I have formally established as NSF policy what was already our usual and preferred practice of substituting another scientist as principal investigator under any outstanding award on which a new rotator has been principal investigator, unless work under the award will be suspended while the rotator is employed at the NSF.

On the other hand, the draft report would give what seems to us a quite misleading picture of the problems and issues addressed and of the NSF's conflicts program.

In addressing specific cases the report gives only selected facts and an exaggerated impression of the extent to which laws, regulations, or existing NSF policies were violated in the cases cited. This leaves the impression that quite serious "improprieties" are commonplace at NSF, which we believe is quite contrary to fact. This is also the effect of the way in which sweeping generalities derived from the specific cases and the limited though significant problem they reveal are formulated and repeated.

The report also provides little description of the key elements of the NSF conflicts program that bear on the problems and issues addressed by it. This leaves the impression that the NSF has virtually no conflicts program bearing on these problems. A clearer presentation would make evident that the NSF has in fact a strong program.

Finally, the reports ducks the difficult dilemmas the NSF has to face in trying to reconcile the conflicts considerations addressed in the report with equally important

GAO RESPONSE

In addressing specific *** repeated.
We respond to this comment in chapter 4.

The report also *** program.

Three full pages in chapter 2 of the draft report were devoted to a description of NSF's conflict of interest policy and regulations and its procedures for resolving possible conflicts of interest. NSF's single detailed comment on this section of the report implies that it considers the description factual. We have adopted its recommendation to expand the description of NSF Circular 139, and the full description should now be complete. NSF recognized elsewhere in its response that it has not been successful in solving conflict of interest problems associated with the rotator program.

NSF COMMENTS

Mr. Morton A. Myers

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considerations of public interest associated with the NSF rotator program, to which the report gives only grudging passing notice. This leaves the impression that the actions criticized in the report followed from casual disregard of the conflicts considerations and from the alleged general "ineffectiveness" of the NSF conflicts program.

The rotator program seems to us a vital ingredient of NSF vigor and responsiveness. It brings into the Foundation at all levels scientists who are new to the NSF and new, usually, to the Federal government. They come from among the nation's bench scientists, who are most directly affected by NSF policies and activities and whose work must be productive if the Foundation's work is to be productive. Because the rotators are new, they question and invent and take nothing for granted. Because they come from among those most directly affected by the NSF's policies and activities they prevent the NSF from becoming a distant or indifferent bureaucracy. They also bring in fresh scientific and technical expertise and help the Foundation and its permanent employees to stay in close touch with the latest developments in the nation's scientific laboratories and disciplines. In short, the rotators do a great deal to keep the NSF fresh and open.

Coming to the Foundation as a rotator has some advantages for a scientist. It allows him or her to develop a broader overview of a field or fields of science and of the scientific enterprise in the United States and yields a grasp of the research support system and programs of the NSF and the country.

But there are also important disadvantages. By far the most critical are the interruption of the scientist's basic career as a researcher and educator and disruption of the research program with which he or she has been associated, usually involving other researchers and graduate students. To keep the rotator program viable the Foundation tries to keep these interruptions and disruptions to the minimum inherent in acceptance of a temporary NSF position. In particular, where the research program of the scientist in question has been funded by the NSF, as is typically the case, we try to maintain continuity of funding to the extent possible and consistent with the judgment of scientific peers.

One possibility is for the rotator to suspend an active grant upon reporting to the NSF and to resume work under it after returning to the home institution. This is permitted under NSF policy and does not normally raise conflict of interests problems.

GAO RESPONSE

Finally, the report *** program.

(This reference carries over from the preceding page.) In the report, we attempt to provide a balanced discussion of the advantages of the rotator program and the conflict of interest problems it presents. In preparing the draft report, we asked officials in both the NSF Office of Audit and Oversight and the NSF Division of Personnel and Management to inform us about the program's benefits. Their response consisted of the information we have included in the report. We appreciate NSF's now providing us with additional language, pertinent portions of which we have incorporated. The impression is correct that, to a great extent, the actions we criticize followed from casual disregard of the conflicts considerations and from the need for NSF to strengthen its conflicts program.

We have no specific response to the remainder of the comments on this page of NSF's letter.

NSF COMMENTS

Mr. Morton A. Myers

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In more typical cases where other researchers and students are involved in the work, suspension is not a practical solution. In such a case the work is usually continued by these others and the grant support continues to be provided. There is no effort to pretend that the continued work has no connection with the temporary NSF employee. Indeed, he or she is likely to stay in contact with those continuing the work. But the NSF employee is precluded by existing NSF rules from negotiating with anyone at NSF about the award during his or her NSF employment. To guard against the appearance or actuality of negotiation with the NSF the preferred and usual NSF practice has been for the institution grantee to remove the rotator as principal investigator during this period, leaving a co-principal investigator or substitute principal investigator to deal with the Foundation. Although this is not required by law, it is plainly a sound practice. Among the actions I have taken in response to your draft report is to formalize it as a general NSF requirement.

A former employee is also precluded during the one-year period after NSF service from submitting a new proposal to the NSF as principal investigator and from receiving compensation under any NSF award other than one on which he or she suspended work when coming to the Foundation. These restrictions are not required by any statute or executive order and are, so far as we know, unique to the NSF.

Finally, while at the NSF a rotator is disqualified under NSF rules from participating in any way in any matter involving his home institution, including, obviously, any outstanding award or pending proposal with which he or she is or has been associated.

So far as I am aware, none of these basic rules that we use to guard against conflicts of interests involving rotators (except the one that has been until now only a preferred practice) was violated in any of the cases cited in the draft report.

The trouble in virtually all of those cases seems to have arisen where for one reason or another a new award or a renewal or extension was under consideration or came under consideration while the scientist in question was a candidate for a rotator position, was in such a position, or had recently left such a position. In none of these cases does the rotator himself seem to have violated NSF rules by becoming personally involved at the NSF. Thus in none of them was there a violation of what your draft report correctly identifies as the "central principle" of the conflict of interests statutes and regulations -- "that Foundation employees should not act for the Government when their private economic interests are involved."

GAO RESPONSE

In more typical *** work. ***

Finally, while at *** associated.

These two statements contradict one another. In our opinion, it is exactly this type of imprecise and fuzzy policy that leads to NSF's conflict problems. It is imperative that all the people who are involved understand the laws, regulations, and policies and that they act accordingly.

A former employee *** NSF.

NSF thought it necessary to establish a rule against former employees submitting proposals for new projects within 1 year of leaving. This rule is necessary and should be enforced. That NSF's rule is unique to NSF and is also more strict than required by the Ethics Act and the implementing regulations of the Office of Government Ethics are not reasons not to enforce it.

So far as *** report.

The trouble in *** involved."

We respond to these comments in chapter 4.

NSF COMMENTS

Mr. Morton A. Myers

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The actions on such new awards, renewals, or extensions that your report fairly characterizes as "questionable" were taken by officials who, as you say, "were, or were about to become, professional associates of the appointees, usually working in the same program office". In some cases they were, or were about to become, subordinates of the rotator in question. Their capacity for detached and objective judgment in such cases can be suspected. However, NSF staff have not ignored conflicts rules or procedures in such cases. Rather the Foundation has failed to focus strongly enough on the problem they present and to provide the staff with clear guidance and procedures. We expect the work of the task group I have established will enable us to remedy that failing.

This set of problems is the basic one raised by your draft report. It is a limited set because the problems arise in a limited class of cases and because the potential conflicts involved are relatively subtle, not involving any personal financial interests of the employees acting for the Foundation. It is nonetheless a real problem that deserves and will get serious attention and corrective action, some of which has been taken already.

We hope that when your report is finally issued it will focus more clearly on the precise set of problems it correctly identifies and will place them more in context. The current draft could easily leave the impression, as for example by its chapter heading that "THE FOUNDATION'S SYSTEM FOR PRECLUDING CONFLICTS OF INTEREST IN THE GRANT AWARD PROCESS HAS NOT BEEN EFFECTIVE", that the Foundation is slipshod in dealing with conflicts of interests generally. We think that impression would be totally unwarranted.

Enclosed are our specific page-by-page comments and suggestions on the draft report, which may help to give specificity to the major points made in this letter. Thank you again for your service in bringing these problems to our attention.

Yours very truly,



Donald N. Langenberg
Acting Director

Enclosures

GAO RESPONSE

The actions on *** failing.

This set of *** already.

We respond to these comments in chapter 4.

We hope that *** unwarranted.

Since our report is devoted exclusively to the rotator program --as the draft title, digest, introduction, and contents all indicated--we do not understand NSF's confusion that our draft report or chapter title might be misunderstood or that our recommendation might apply to anything other than proposals or awards involving prospective, current, and recently separated rotators. Nevertheless, we have revised our chapter title in the final report to include the words "associated with short term employees." We have also expanded the language in our recommendation to state that conflict of interest matters involving short term employees should be referred to the General Counsel.

NSF COMMENTS

ATTACHMENT: Detailed Comments

Digest

p. i, ¶ 1. The Foundation agrees with and accepts the general conclusion stated in the first sentence. In the second sentence, however, the word "improprieties" seems to us, for reasons indicated in our comments on later portions of the draft report, unduly strong. All but a few of the cases described in the report involve at most appearances of conflicts, not violations of specific conflicts rules or regulations. This is particularly true of the reference to "possible violations of Federal criminal statutes". The Foundation's lawyers agree with those at the Justice Department that no such violations occurred.

p. i, ¶ 2. The word "authority" in the next-to-last sentence is not strictly correct. A better word would be "responsibility". Program officers can only make recommendations on proposals and, except for minor approvals, have no final authority. They do, however, have great influence on results because of their day-to-day responsibility for selection of mail reviewers, conduct of panel reviews (where applicable), and initial recommendations to award or decline.

p. i, ¶ 3. This paragraph reflects only palely the importance of the NSF rotator system. The way the Foundation handles and will handle conflicts issues associated with rotators is greatly affected by its view that maintaining the rotator system is critical to the Foundation's effectiveness and responsiveness. We therefore attach particular importance to your statement of that view. The paragraph on the top of page three of our letter more adequately states that view. We would suggest that it be included or at least paraphrased at this point in the report and included also in the paragraph on page 5 of the report from which this part of the Digest seems to be drawn.

p. ii, ¶ 1. We are not quite clear to what purpose the report would cite our comment that the conflict of interests statutes and regulations are "complex, elaborate, and difficult", but we certainly stand by that comment. The applicable Federal statutes, however, are not all of Title 18, which is the entire Federal criminal code, but only several sections in Chapter 11 of Title 18. Inasmuch as it now seems quite clear that none of these statutes were violated, we are not sure why they should be cited at all, except perhaps to make clear that none of them were violated, which the current draft does not do.

GAO RESPONSE

The Foundation agrees *** occurred.

The draft report was based on informal advice from the Department of Justice. The final report was revised to reflect the Department's formal opinion, which we discuss in chapter 4.

The word "authority" *** decline.

In the report, we state that program officers have firstline authority for proposal evaluation. It is an accurate statement. Program officers can make only recommendations on proposals and have no final authority, but their recommendations are rarely overridden.

This paragraph reflects *** drawn.

We have added language to accommodate this comment. See also our response to the paragraph that ends at the top of page 3 of NSF's letter.

We are not *** do.

We have made changes to accommodate this comment. In the report, we demonstrate that NSF has difficulty implementing the conflict of interest statutes and regulations. We cite them in chapter 2 in order to impress on the reader the seriousness of such matters and also to provide a framework in which to understand the activities described in chapter 3. We discuss in chapter 4 the question of whether the Federal statute was violated.

NSF COMMENTS

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Further, all of Executive Order 11222 consists of conflict of interests provisions, most of them more specific than section 201.c. That provision contains not a specific rule, but a statement of the intent underlying the specific requirements in section 201.a and b. It can fairly be taken as stating an intent underlying Federal conflict of interests rules generally. But if Federal agencies took it as an absolute rule that if anyone, no matter how ill informed, could detect any appearance of conflict of interests, no matter how slight, the action in question would be prohibited without regard for any other considerations, that would carry conflicts purity to an illogical and costly extreme.

Thus, we believe it would be a mistake to cite this provision, or the derivative provision in NSF Circular 54, as if it were a specific rule that may have been "violated", rather than a general adjuration that indicates where rules are needed and how they should be interpreted. The point that can legitimately be made with respect to this provision in your report is that it indicates a need for policies about handling proposals and awards involving "rotators" which the Foundation has not yet established.

p. iii, carryover ¶. NSF Circular 139, as well as NSF Circular 54, should probably be cited here.

p. iii, ¶ 1. The first sentence suggests almost a private benefit to "the Foundation, the rotators, and their home institutions". The benefit that matters -- which we maintain is real and very important -- is to the public.

p. iv, carryover ¶. The reference to "two instances of possible violations of the conflict-of-interest statutes" should be struck.

p. v, ¶ 1. The first sentence on the page seems to us potentially misleading to persons unfamiliar with the NSF and the project grant system. NSF awards are rarely, if ever, made to individuals; they are made to institutions. The awards covered by the cases the report describes may have amounted to \$3 million, but very little of that would actually go to the individuals involved as compensation or the equivalent. This should be made clear. Moreover, it is not established in most of these cases that the awards involved -- as opposed to some of the actions taken in connection with them -- were questionable.

GAO RESPONSE

Further, all of *** extreme.

Thus, we believe *** established.

We agree that the provisions of Executive Order 11,222, section 201(c), state the intent underlying Federal conflict of interest rules generally. We do not in any way intend to imply that Federal agencies take it "as an absolute rule that if anyone, no matter how ill informed, could detect any appearance of conflict of interests, no matter how slight, the action in question would be prohibited without regard for any other considerations." NSF certainly does need to establish policies and procedures that implement section 201(c) with regard to handling proposals and awards involving rotators.

NSF Circular 139 *** here.

The first sentence *** public.

The reference to *** struck.

We have made changes to accommodate these comments.

The first sentence *** questionable.

Scientists receive many benefits in addition to salary when their research is supported by NSF. We discuss these benefits on the first page of chapter 3.

We have made changes to accommodate the comments regarding grants being awarded to institutions, not individuals.

NSF COMMENTS

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p. v, ¶ 2. The Justice Department actually concluded that the statutes were not violated -- and not just because evidence of criminal intent is lacking. That is the view of the Foundation's lawyers as well. In one case the Foundation's Ethics Counselor actually had been consulted and had advised those involved, in our view correctly, that there was no law violation.

Recommendations

We believe you should reconsider the first of the three recommendations -- that all conflict of interests issues which arise during the grant award process be formally referred to the General Counsel. What the draft report actually reveals is some problems that arise in connection with a limited set of proposals and awards -- those involving prospective, current, or recently separated rotators. It thus provides no basis for a conclusion involving conflicts issues that arise in connection with other proposals and awards. Moreover, what the report demonstrates is primarily a weakness in the Foundation's guidance to staff, not in their willingness or ability to follow guidance they have been clearly given. Thus a need for involvement of the General Counsel in every case that raises any conflicts issue whatever has not been established. Even if the General Counsel's office had sufficient staff to become involved in every such case, in many cases their involvement would be unnecessary and wasteful. Many cases involve relatively simple problems on which there are clear rules and routine procedures that program staff understand well and generally follow quite adequately.

Your second recommendation might be more clearly stated to indicate that the review the Office of Audit and Oversight should conduct would be for compliance with NSF conflict procedures, not for scientific merit. On the understanding that this is the intent, we accept the recommendation and we are implementing it immediately.

Your third recommendation corresponds with existing NSF policy, cited on p. 12 of the draft report. If the implication is that discipline has not been imposed when it should have been, that is being looked into in connection with the cases cited in the draft report. We doubt, however, that disciplinary action will prove appropriate in many cases. The major problem the report reveals is inadequacy in the Foundation's guidance for staff, not in their adherence to guidance.

GAO RESPONSE

The Justice Department *** violation.

We have made changes to accommodate this comment. See also the discussion in chapter 4. The conflict of interest issue on which the Ethics Counselor was consulted had to do with the substitute principal investigator's request for supplemental support. This is not the same aspect for which we obtained a legal review. We submitted the case for legal review because of the appointee's plan to extend the duration and funding of a class of grants that included his own. This is a much more significant issue.

We believe you *** adequately.

Your second recommendation *** immediately.

Your third recommendation *** guidance.

We have changed the language to accommodate these comments. See also the discussion in chapter 4 and our response to the next-to-last paragraph of page 5 of NSF's letter.

NSF COMMENTS

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Introduction

p. 3, carryover ¶. This paragraph does not make clear that among the "several sources" drawn on by the program officer the external peer reviews are by far the most important. The succeeding paragraph does say that, but the point is a bit lost there. A little rearranging might bring out this essential point more clearly. Or the following sentence might be added to this paragraph: "Of these the external peer reviews are by far the most important."

p. 3, ¶ 1. In the first line, the word "certain" might be changed to "limited".

p. 5, ¶ 1. See comment under p. i, ¶ 3.

Conflict of Interest Laws, Procedures, and Policies

p. 8, carryover ¶. Since none of the statutes cited here seems to have been violated in any of the cases described in the report, the purpose and point of the elaborate discussion of them here is not clear. If that discussion is retained, we think there ought to be a clear statement that none of the statutes in question was found to have been violated.

p. 9, ¶ 1. See comment under p. ii, ¶ 1.

p. 11, carryover ¶. The important disqualification rules in Circular 139 are passed over more quickly here than seems appropriate. It seems to us important to say that NSF rules preclude a rotator from involvement with any proposal, award, or other particular matter affecting his or her home institution, including any that might affect the rotator's own interests or research.

The Foundation's System For Precluding Conflict of Interests In the Grant Award Process Has Not Been Effective

The heading of this chapter seems much more sweeping than the cases cited in the report justify. A more accurate heading might be: "The Foundation's Policies and Procedures Regarding Conflict of Interests In Handling Proposals or Awards Involving Short-Term Employees Are Inadequate".

p. 13, ¶ 1. The second sentence of this paragraph mixes categories in a confusing and somewhat misleading way. For example, "overriding negative peer reviews" is often appropriate and not in itself a "questionable activity". It is only questionable in the sense meant where there is some reason to believe it could have resulted from conflict.

GAO RESPONSE

This paragraph does *** important."

In the first *** "limited."

See comment under *** 3.

The important disqualification *** research.

The Foundation's system *** Inadequate."

We have made changes to accommodate these comments.

Since none of *** violated.

See comment under *** 1.

We respond to these comments in chapter 4.

NSF COMMENTS

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of interests. Nor is peer reviewing proposals with one researcher listed as principal investigator but making the award with a different researcher listed as principal investigator necessarily an "impropriety". That too depends on the context.

p. 13, ¶ 2. The first sentence would be more appropriate if it read: "These activities occurred because the Foundation's policies and procedures regarding conflict of interests matters involving grants to short-term appointees are inadequate." The remainder of the paragraph seems to us to place emphasis on the wrong problem. It is almost always the case that the officials who make decisions on any grants are in the best position to identify conflict of interests issues. The passage is not terribly clear about the problem with that, but we take the implication to be that these officials should not be trusted with that responsibility because in these cases (as in quite a few others) they are the ones who have the potential conflicts of interests. Our experience, on the contrary, that such officials are generally quite conscientious about conflicts matters, particularly where their direct personal interests are involved. In this type of case, however, the potential conflicts do not involve such personal interests and so are less easily perceived by the responsible officials in the absence of clear Foundation guidance to them. The fault, again, was primarily with the lack of clear guidance and procedures.

p. 14, ¶ 1. The heading preceding this paragraph is not appropriate, since no conflict of interests laws seem to have been violated.

The first sentence of the paragraph is not in our view an accurate statement of the problem, for reasons already stated. Even if it were, repeating it here seems overkill. Indeed, its special relevance to what follows is not apparent.

As indicated earlier, the Justice view, which is the view of the Foundation's lawyers as well, is that the appointees' actions were not contrary to 18 U.S.C. §208, quite apart from criminal intent. The General Counsel of the Foundation would be glad to discuss these cases with you if you have any further doubts on that score.

p. 14, ¶¶ 2 and 3. The facts of this case are so selectively stated as to create an appearance far more serious than what actually happened. We suggest that these paragraphs be deleted and the following substituted:

"In one case, an appointee developed at the request of his Division director various options to extend the duration and funding of several grants in order to provide for better

GAO RESPONSE

The second sentence *** context.

(This reference carries over from the preceding page.) We stand by our categorization of overriding negative peer reviews as a questionable activity and of peer reviewing proposals in one researcher's name but making the award to someone else as an impropriety. As NSF states, these activities are questionable or improper where there is reason to believe they could have resulted from conflicts of interest. This is exactly the situation in the cases we present in the report.

The first sentence *** procedures.

The first sentence *** apparent.

As indicated earlier *** score.

We respond to these comments in chapter 4.

The heading preceding *** violated.

We have made changes to accommodate this comment.

The facts of *** substituted: ***

Neither the grant file nor additional documents NSF provided us support the suggested substitution. According to the documents, the appointee developed only one plan, which he later had to modify somewhat. The plan could not be adopted in its original form because the extended grant period for three projects would have gone, contrary to NSF policy, beyond the period for which they were reviewed. The appointee modified his plan to exclude these three grants, the plan was approved and implemented, and the remaining 17 grants that received funding for an additional year included the one that the appointee returned to as principal investigator when he left NSF.

NSF COMMENTS

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program management by correcting an uneven distribution in the program's 3-year review cycle. These options were reviewed at several levels within the Foundation, and one was approved by a Deputy Assistant Director. The selected option, not the one the appointee had originally favored, called for extension of grants satisfying specified criteria. Since the grant on which the appointee had been principal investigator before coming to the Foundation and on which he was reinstated after he left satisfied all the criteria specified in the option, it was included among those extended. The appointee did not participate in the decision to include it."

We might also observe that nothing sinister is apparent in the revision of the budget by the researcher before he assumed a rotational assignment. The revision was apparently a downward revision requested by the program officer after an informal decision to make an award in a reduced amount had already been reached. It thus conferred no advantage on the researcher. Moreover, though the supplemental support subsequently awarded the substitute principal investigator is an example of the kind of situation that needs more thought and attention from the Foundation, the action review board which studied this particular case concluded that the request for the supplemental funding arose from a new idea by the substitute principal investigator. The appointee had not participated in any way in the review of the request. Certainly neither of these aspects of the case suggests violation of any criminal statute.

p. 15, ¶¶ 1 and 2. Though the case described in these paragraphs involved no violation of the statute, it was not handled properly. However, a couple of changes would more accurately reflect what occurred. The last sentence of paragraph 1 on p. 15 should read, "Twelve months of support at over \$50,000 was awarded, with the researcher being listed on the budget for \$0 support."

The middle of the last line on page 15 should read: "the attorney, under the mistaken impression that the rotator had returned to his home institution, reversed . . ."

The second full sentence on page 16 should read, "Although Foundation officials knew that he would not be working on the grant at all, and indicated this by listing him on the one-year award for no support and by omitting his name from the grant letter, his earlier work was inadvertently described in the project summary."

GAO RESPONSEWe might also *** statute.

Although the budget was revised downward more than \$60,000, the grant extension and additional funding provided more than \$25,000 beyond the original request. The extension and additional funding were the direct result of a plan that the appointee developed. We referred this case to the Department of Justice because the Federal criminal statute prohibits Federal employees from participating in matters in which they have a financial interest. The question that was cleared by an action review board related to the substitute principal investigator's request for supplemental support. This was not the reason we referred this case for legal review.

Though the case *** support."

The researcher was employed by NSF when the grant was awarded. Therefore, providing the researcher with a summer salary would have been illegal. See also our response to the last comment on the 7th page of NSF's response.

The middle of *** reversed"

We have made changes to accommodate this comment.

The second full *** summary."

The proposal was peer reviewed on the basis of the appointee's strength as a principal investigator, and he was listed on the budget as a principal investigator. Peer review is a program officer's most important source when deciding whether to recommend a grant award, and a primary peer review criterion is the researcher's ability to contribute to the area of science. In commenting on this proposal, some of the peer reviewers mentioned the appointee's strength as a principal investigator. Removing his name from the award letter does not change the fact that the proposal was peer reviewed in his name. Furthermore, the final technical report for the grant period in question shows that he worked on the grant as a principal investigator.

NSF COMMENTS

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p. 17, carryover ¶. The description of the amounts of awards "to" individuals could again suggest to those unfamiliar with NSF operations and the project grant system that the individuals were actually receiving these amounts, which in fact go "to" the institution. Relatively small amounts actually pass to the individuals as salary or other forms of compensation.

The reference to Executive Order 11222 is appropriate here as pointing up the need for formulation of clear Foundation policy and guidance in this area.

p. 18, ¶ 1. The review panel's remark about their "future boss" was a way of dramatizing their concern. As you are doubtless aware, the program officer is not actually the boss or supervisor of this panel of independent outside scientists.

p. 18, ¶ 2. At least as to "the appearance of conflicts of interest" we have no quarrel with the statement in this paragraph. We hope, however, that the nature of the dilemma here is clearly understood. The reason grant actions involving the research of a rotator are usually considered by officials from the program with which the rotator will be associated is that the programs are necessarily organized by technical fields and subfields of science and engineering. Since grant actions usually can be considered effectively only by officials with competence in the specialized subfield of science or engineering involved, those in the same program or a closely related one are the ones qualified to handle grant actions involving the research of a rotator. The challenge for us here is to devise in the face of this dilemma procedures that will guard against the actuality or appearance of conflicts of interests without sacrificing technical competence in handling the grant actions in question.

Whether a candidate actually "later receives an appointment", incidentally, seems to us beside the point. If you attach significance to the ultimate outcome, some further explanation would be helpful to us.

p. 20, ¶¶ 2 and 3. That the co-principal investigator in the case described was the appointee's spouse as well as a scientific colleague seems of doubtful significance. The conflict of interests problems in cases such as these do not lie with the appointee, for the appointee does not participate in any NSF decision. The problems lie with the NSF officials who do participate in it, knowing that the appointee is associated with the work. The problems are not different or greater because the appointee's spouse is associated with the work too. We therefore suggest that the reference to the relationship between the appointee and the substitute investigator be dropped as adding more of innuendo than of substance.

GAO RESPONSE

The description of *** compensation.

The reference to *** area.

We have made changes to accommodate these comments.

The review panel's *** scientists.

The program officer was in a sense the "future boss" of this panel of outside scientists. The program officer has first-line authority for proposal evaluation. All these scientists and the program officer specialized in the same general area. Many of them had NSF grants when they evaluated his proposal, and all were potential grantees. In reviewing NSF's automated data files, we found files for 8 of the 11 members of this review panel. Of the 8 reviewers, 6 had ongoing grants, proposals under consideration, or grant awards from the appointee's program at about the same time that they evaluated the appointee's proposal or during the appointee's employment.

At least as *** question.

We have no specific response to this comment.

Whether a candidate *** us.

If a candidate for a position at NSF is appointed, favorable grant actions during negotiation could be construed as preferential. According to Executive Order 11,222, public officials must avoid actions that result in or create the appearance of not being in the public interest. We suggest that NSF adopt our recommendations to make the process more open. This openness should preclude actual conflicts and the appearance of conflicts.

That the co-principal *** substance.

The problems we discuss could be intensified by marriage between a principal investigator and a co-principal investigator. NSF states on page 4 of its letter that "while at the NSF a rotator is disqualified under NSF rules from participating in any way in any matter involving his home institution, including, obviously, any outstanding award or pending proposal with which he or she is or has been associated." When a rotator is married to the person who assumes responsibility for the grant, both the appearance and the likelihood that the rotator is still in some way involved with it increase. That the principal and co-principal investigator were spouses in this case is relevant to a series of questionable events that create the appearance of a conflict of interest.

NSF COMMENTS

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p. 22, ¶ 1. The program official referred to in the final sentence of this paragraph and in the preceding comment did not "waive" any conflict of interest rule or requirement. Perceiving that conflict of interests questions might be raised, he did the open and above-board thing of addressing them specifically and directly in the file. The Foundation encourages that kind of disclosure. He apparently erred, though only to a limited extent. Renewal of a continuing grants is a nearly automatic matter. (See NSF Circular 58, ¶ 3.b.) He probably thought that an application for such a renewal was not submission of a proposal or "negotiation" for purposes of the Foundation's rule.

p. 22, ¶ 2. The discussion here would be more balanced and leave a fairer impression if it noted at the outset that the Foundation's one-year waiting period requirement before a former employee may file a proposal for a new project is unique among Federal agencies and more than is required by the Ethics Act or the implementing regulations issued by the Office of Government Ethics, 5 C.F.R. Part 737 (See especially §737.11(f) and §737.15(c)). In effect, this entire section of the report criticizes the Foundation because it is not enforcing strictly enough a requirement that is stricter than would be required of the Foundation by law or regulation and stricter than any other agency of which we are aware maintains.

p. 23, carryover ¶ and ¶ 1. This discussion might somewhere note explicitly that the principal reason there are so few requests for waiver of the one-year waiting period is that such requests have historically been discouraged.

p. 24, ¶ 1. This case seems to us far less questionable than the presentation suggests, though a technical error was made. In particular, the case did not involve any officials who "were, or were about to become, professional associates of the appointee . . . working in the same program office". It was handled not only in a different program and division than the one in which the appointee served, but in a different directorate -- a critical point nowhere noted in the description. The implication that it was handled with unusual expedition is unwarranted by anything in the record. It was sent out for review in ordinary course. As a subsequent memo in the grant file supporting the later waiver of the one-year rule indicates, before the investigator reported to the NSF highly favorable reviews had come in on his proposal. In the entirely reasonable view of the program officer this had made it a "foregone conclusion at this early date" that the project "deserved a grant recommendation". This was indeed six

GAO RESPONSE

The program official *** rule.

By not seeking the advice of the Conflicts of Interest Counselor or formally bringing the matter to upper management's attention, the official in effect independently waived a conflict of interest matter. The "open and above-board thing" would have been to refer it to the Conflicts of Interest Counselor. We cannot understand how NSF knows that "He probably thought that an application for such a renewal was not a submission of a proposal or 'negotiation' for purposes of the Foundation's rule." Regardless, ignorance is not an adequate defense for taking actions that appear to be prohibited by conflict rules.

The discussion here *** maintains.

See our response to A former employee *** NSF on page 4 of NSF's letter.

This discussion might *** discouraged.

We have made changes to accommodate this comment.

NSF COMMENTS

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weeks after the proposal was filed, which would have been unusually early for the processing of the proposal to be completed, but not for the reviews referenced to have been sought and obtained. Indeed, it was precisely because the processing of the proposal could not be completed in the remaining weeks before the researcher became an NSF employee that the processing of the proposal was suspended.

The very reason that a waiver of the Foundation's post-employment waiting period seemed appropriate in this unusual case and was granted by the Director of the Foundation was because the clear and untainted pre-employment record involving officials not associated with the appointee indicated that an award untainted by any conflict of interests clearly would have been made had there been time to make it. The file shows clearly that the funding program manager proceeded very conscientiously in recommending this waiver, which was issued by the Director on the recommendation of the Ethics Counselor.

The waiver was granted by the Director on July 17, 1978. The program officials of the funding directorate thereupon forwarded the file on the original pre-employment proposal to the Division of Grants and Contracts for award so as to meet the deadline for grants to be awarded in the then current fiscal year. At this point the Division of Grants and Contracts did move with more than usual speed and processed the award (which was to be effective October 1) by August 7. Since the appointee did not depart the Foundation until August 15, this was contrary to usual NSF practice, but the error was technical rather than a serious substantive matter. There was no violation of any law or regulation, and at no point is there any indication that the appointee influenced or could have influenced the review and approval of the award.

We think, in short, that on the record we have seen this was a special case and appropriate for a waiver.

Recommendations

Our comments here are, of course, the same as those made on the same recommendations as they appear in the "Digest" section.

Appendix II

p. 31, ¶ 2. The expression "subjective determination" is loaded and should be dropped. The best solution would be simply to drop the word "subjective", which adds nothing to the substance of the description.

GAO RESPONSE

This case seems *** suspended.

The very reason *** Counselor.

The waiver was *** award.

We think, in *** waiver.

This case is questionable because a proposal for a new grant was submitted just before the rotator reported for duty. Although the proposal was submitted to a different program in another directorate, it was coordinated with the same program to which the rotator was being appointed. The program officer responsible for the proposal had direct communication with the appointee about the particulars of his project while he was working at NSF. The waiver applied only to the 1-year post-employment regulation. Negotiating for a grant while employed at NSF is improper.

Our comments here *** section.

We have no specific response to these comments that we have not already made.

The expression "subjective" *** description.

"Subjective" accurately describes the process of determining scientific merit. How can this process be anything but subjective when NSF sees nothing wrong with its program officers overriding overwhelmingly negative peer reviews from a panel of scientific experts? NSF noted in its comments that peer review is "by far the most important source" that the program officer draws on when evaluating a proposal.

NSF COMMENTS

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The next-to-last sentence almost implies that the proposal was not treated fairly. A fair statement would be this: "We have no reason to believe this was handled other than routinely by disinterested program officials, since the appointee in question was not then at the Foundation. However, information upon which to make a judgment was limited because all of the files related to that proposal had been routinely destroyed by the time of our review."

GAO RESPONSE

The next-to-last sentence *** review."

We have made changes to accommodate this comment.

We have no specific comments to make about the memorandum that follows and that was enclosed in NSF's letter.

NSF COMMENTS

NATIONAL SCIENCE FOUNDATION
Office of the Director
Washington, D.C. 20550

STAFF MEMORANDUM

O/D 80-27

August 14 , 1980

ADMINISTRATION AND MANAGEMENT

SUBJECT: Conflict of Interest Problems Associated With Awards
for Rotators

It has become apparent that the Foundation needs to examine and strengthen its policies and procedures that relate to the handling of proposals and awards involving prospective employees or former employees who have been away from the Foundation less than a year in order to avoid a conflict or an appearance of a conflict of interest. I am taking the following immediate steps:

First, I am creating a task group to examine our existing policies and procedures that relate to this subject and to recommend what further or more specific policies or procedures should be developed to improve our ethics program. I am also asking this task group to recommend any improvements in our program for acquainting staff with conflicts of interests policies and procedures it finds are needed. The General Counsel, Mr. Charles H. Herz, will serve as chairman of this group and the Ethics Counselor, Miss Harriet E. Tucker, will serve as Executive Secretary. Other members will be Dr. Jerome H. Fregeau, Mr. Kurt Sandved, Dr. Richard S. Nicholson, and Mrs. Bertha W. Rubinstein. The group will report its findings and recommendations not later than September 30, 1980.

Second, I am directing the General Counsel to consolidate whatever new policies or procedures the Foundation adopts as a result of the task group's recommendations with existing ones and to include the consolidated policies and procedures in the revised NSF conflicts of interests regulations now being prepared. All NSF policies and procedures that relate to conflict of interest matters will then be available in one document.

Third, I am asking the Director of the Office of Audit and Oversight (OAO) to monitor all proposals, awards, and related activity involving NSF staff members, persons under consideration for NSF staff positions, or former staff members away

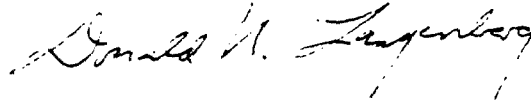
NSF COMMENTS

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from the NSF less than a year. Assistant Directors and Office Heads will provide OAO monthly with the names of all persons who are under consideration for staff positions within the Directorate or Office at the GS-12 level or above.¹ The Assistant Director for Administration will monthly provide OAO with the names of persons who have been certified as highly qualified for such positions or who have entered or left such positions within the preceding month.

Fourth, I am directing that all staff at the GS-12 level or above be specially counseled by the Ethics Counselor about post-employment conflicts of interests during exit interviews.

Fifth, I am directing that no prospective employee be brought on board while he or she is still listed as the principal investigator on any outstanding NSF award, unless the award has been suspended for the duration of the employee's service with the NSF or a specific waiver of this requirement has been granted by the Deputy Director of the Foundation. This formalizes what has already been the usual and preferred NSF practice.



Donald N. Langenberg
Acting Director

Distribution: E

¹A person is under consideration for such a position if a responsible official of the Directorate or Office has discussed a specific opening with the person and he or she has either before or afterwards expressed interest in it or submitted an employment application for it (until he or she is dropped from consideration). A person is in any case under consideration for such a position if he or she is on a list of applicants for the position who have been certified as highly qualified.





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