

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**THE NATIONAL INSTITUTES OF
HEALTH DID NOT ALWAYS
ADMINISTER SUPERFUND
APPROPRIATIONS DURING FISCAL
YEAR 2015 IN ACCORDANCE WITH
FEDERAL REQUIREMENTS**

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Office of Inspector General

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

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

Report in Brief

Date: February 2018

Report No. A-04-16-04046

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Review

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) established the trust fund known as Superfund. The CERCLA requires the Inspector General of a Federal organization with Superfund responsibilities to audit all uses of the fund in the prior fiscal year (FY).

To meet this requirement, OIG conducts an annual audit of the Superfund program at the National Institutes of Health (NIH), National Institute of Environmental Health Sciences (the Institute), to determine whether NIH administered Superfund appropriations in accordance with applicable Federal requirements.

How OIG Did This Review

Our audit covered \$77 million of obligations and \$73 million of disbursements related to the FYs 2010 through 2015 Superfund appropriations that occurred from October 2014 through September 2015 (audit period). We also (1) analyzed cumulative obligations, totaling \$466 million, and cumulative disbursements, totaling \$378 million, for unusual balances or activity; (2) reviewed a judgmental sample of 19 grants and related files from which we assessed NIH's efforts to ensure grantee compliance with grant terms and conditions; and (3) conducted onsite audit procedures at a grantee that we found to have significant grant noncompliance issues.

The National Institutes of Health Did Not Always Administer Superfund Appropriations During Fiscal Year 2015 in Accordance With Federal Requirements

What OIG Found

During FY 2015, NIH did not always administer Superfund appropriations in accordance with applicable Federal requirements. NIH generally obligated and disbursed Superfund appropriations in accordance with Federal requirements, including obligations and disbursements related to administering the Superfund program. However, NIH (1) did not ensure grantee compliance with grant terms and conditions in 6 of 19 grants that we reviewed, (2) improperly recorded Superfund grant disbursements totaling \$145,237 in the NIH accounting system, and (3) did not resolve findings contained in three Superfund grantee audit reports as required.

What OIG Recommends and NIH Comments

We recommend that NIH (1) issue new or updated guidance, as applicable, that provides to NIH grants management personnel clear examples of circumstances that require the review of Federal Cash Transaction Reports and corrective or enforcement actions against noncompliant grantees and incorporate into the *NIH Policy Manual* or the *NIH Grants Administration Manual* grant closeout procedures (consistent with the *Grants Policy Administration Manual*) when grantees fail to provide final reports; (2) provide additional training to grants management personnel to ensure awareness of applicable grants management responsibilities and compliance with applicable policies and procedures, including new or updated guidance; (3) formalize procedures for identifying and resolving negative unliquidated grant obligation balances recorded in NIH's accounting system; and (4) update policies and procedures to require the reconciliation of audit reports in the Division of Financial Advisory Services database to monthly reports generated by the National External Audit Review Center.

In written comments on our draft report, NIH did not concur with our first two recommendations to issue new or updated guidance and provide additional training. However, NIH concurred with our third and fourth recommendations. NIH also provided technical comments on our draft report that we incorporated into the final report.

We maintain that our findings and recommendations are correct. However, we added clarifying language to our first recommendation based on NIH's comments.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9601 et. seq.) established the Hazardous Substance Response Trust Fund, commonly known as the Superfund. The National Institute of Environmental Health Sciences (the Institute) of the National Institutes of Health (NIH) receives an annual Superfund appropriation to carry out functions mandated by the CERCLA.¹

The CERCLA requires the Inspector General of a Federal organization with Superfund responsibilities to audit all uses of the fund in the prior fiscal year (FY) (42 U.S.C. § 9611(k)). To meet this requirement, the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), conducts an annual audit of NIH's use of its Superfund appropriations. (See Appendix A for a list of related OIG reports.)

OBJECTIVE

Our objective was to determine whether NIH administered Superfund appropriations during FY 2015 in accordance with applicable Federal requirements. Specifically, we determined whether NIH properly obligated and disbursed Superfund appropriations and provided adequate oversight of grant awards and related transactions.

BACKGROUND

Superfund

The CERCLA was extended and amended by the Superfund Amendments and Reauthorization Act of 1986. The Superfund is used to respond to emergency environmental conditions that are hazardous to health and to pay for the removal of toxic substances.

The Institute receives funding to carry out functions mandated by the CERCLA. In carrying out its Superfund responsibilities for FY 2015, the Institute obligated approximately 5 percent of these funds for administrative costs and used the remaining 95 percent to award grants and cooperative agreements (grants) to other organizations to:

- train persons who are engaged in handling hazardous waste and managing facilities where hazardous waste is located and

¹ In FY 2015, NIH received \$77.3 million to carry out these activities through the Consolidated and Further Continuing Appropriations Act, 2015 (P.L. No. 113-235).

- conduct research—using advanced techniques, methods, and technologies—to detect, assess, and evaluate the effects of hazardous substances on human health and to reduce the amount and toxicity of those substances.

National Institute of Environmental Health Sciences

The Institute, located in Research Triangle Park, North Carolina, is 1 of 27 Institutes and Centers of NIH, which is a component of HHS. NIH provides the Institute with direction and other administrative and professional services.

HOW WE CONDUCTED THIS REVIEW

Our audit covered all obligations and disbursements related to FYs 2010 through 2015 Superfund appropriations that occurred from October 1, 2014, through September 30, 2015 (audit period).² During the audit period, NIH obligated³ approximately \$77 million and disbursed approximately \$73 million in Superfund resources. Of the \$73 million in disbursements, \$4 million came from the FY 2015 appropriation, and \$69 million came from prior years.

The \$4 million represented expenditures for NIH’s FY 2015 administrative activities related to the Superfund program. We performed analytical tests of transactions to determine whether there were significant variances between FY 2015 and FY 2014 administrative expenditures that would warrant further testing.⁴

We also analyzed cumulative obligations, totaling \$466 million, and cumulative disbursements, totaling \$378 million, associated with FY 2010 through FY 2015 appropriations to determine whether there were unusual balances of prior-year Superfund appropriations, including large balances of unliquidated obligations, new obligations of expired appropriations, or unusual disbursement activities.

² Annual appropriations expire at the end of the FY but remain available for 5 years for recording, adjusting, and liquidating obligations that were properly incurred during the time the appropriation was available for obligation (31 U.S.C. §§ 1553(a) and 1552(a)). Therefore, our scope included obligations and disbursements of FY 2010 through FY 2014 appropriations, as well as those of FY 2015.

³ “Obligated” funds are amounts for which the Federal agency has made binding commitments for orders placed for property and services, contracts and subawards, and similar transactions that will require payment immediately or in the future (GAO-05-734SP Budget Glossary, p. 70).

⁴ There were no significant variances; therefore, we did not perform additional testing.

As part of our review of NIH's monitoring of Superfund grants⁵ and to verify that all uses of Superfund appropriations received audit coverage, we reviewed whether (1) single audit⁶ or non-Federal audit⁷ requirements applied to each grantee, (2) applicable grantees complied with audit requirements, (3) there were audit findings related to Superfund awards, and (4) NIH resolved those findings.

We judgmentally selected for review a sample of 19 Superfund grants⁸ that included 12 colleges and universities, 4 nonprofit organizations, and 3 small commercial organizations to determine whether (1) grantees complied with grant terms and conditions⁹ and (2) NIH adequately monitored the selected grants or took enforcement actions to ensure compliance, if applicable. On the basis of significant noncompliance issues that we identified with one grantee, including a failure to submit required reports, we performed onsite audit procedures to determine whether NIH had adequately monitored the grantee and to determine the effects of any inadequate monitoring on the program.

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

Appendix B contains the details of our scope and methodology, Appendix C contains Federal requirements, and Appendix D contains additional details related to a noncompliant grantee.

⁵ For grant awards made prior to December 26, 2014, 45 CFR part 74 establishes uniform administrative and audit requirements governing HHS grants and agreements awarded to nonprofit entities. For grant awards made on or after December 26, 2014, 45 CFR part 75 establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities. The scope of our review covered the period October 1, 2014, through September 30, 2015. Therefore, we cite to both regulations as applicable.

⁶ "Single audit" refers to an audit performed in compliance with 45 CFR § 74.26(a) and the Office of Management and Budget (OMB) Circular A-133 (generally applicable to audits of FYs that began on or before December 26, 2014, of not-for-profit entities that expended more than \$500,000 in Federal awards prior to December 26, 2014) or with 45 CFR § 75.110(b) and 45 CFR § 75.501 (generally applicable to audits of FYs beginning on or after December 26, 2014, of not-for-profit entities that expend \$750,000 or more during their FYs beginning on or after December 26, 2014).

⁷ "Non-Federal audit" refers to an audit performed in compliance with 45 CFR § 74.26(d) (applicable to commercial non-Federal entities that received and subsequently expended more than \$500,000 in Federal awards during FYs that began on or before December 26, 2014) or 45 CFR § 75.501 (generally applicable to non-Federal entities that expend \$750,000 or more during their FYs beginning on or after December 26, 2014).

⁸ We initially selected 21 grants for review; however, 5 had reports that were not yet due as of the end of our audit period. We added three other grants to our review on the basis of high-risk indicators (e.g., disbursement of funds after project expiration) that we identified later in our fieldwork.

⁹ Terms and conditions included requirements to submit various reports including financial reports, progress reports, and other reports used for grant monitoring.

FINDINGS

During FY 2015, NIH did not always administer Superfund appropriations in accordance with applicable Federal requirements. NIH generally obligated and disbursed Superfund appropriations in accordance with Federal requirements, including obligations and disbursements related to administering the Superfund program. However, NIH:

- did not ensure grantee compliance with grant terms and conditions in 6 of 19 grants that we reviewed,
- improperly recorded Superfund grant disbursements totaling \$145,237 in the NIH accounting system, and
- did not resolve findings contained in three Superfund grantee audit reports as required.

These deficiencies occurred because NIH's policies, procedures, and other guidance were not clear, specific, or otherwise sufficient to ensure NIH administered Superfund appropriations in accordance with Federal requirements.

These deficiencies (1) put Superfund resources, totaling at least \$489,000, at high risk of misuse; (2) resulted in inaccurate financial data that could have limited NIH's ability to make appropriate management decisions; and (3) prevented NIH from addressing potentially significant issues reflected in grantee audit findings.

NIH GENERALLY MET FEDERAL REQUIREMENTS FOR ADMINISTERING SUPERFUND APPROPRIATIONS

NIH generally obligated and disbursed Superfund appropriations in accordance with Federal requirements and incurred costs for administering the Superfund program at levels that were consistent with prior years. NIH received \$77.3 million under the FY 2015 Superfund appropriation, of which it obligated 5 percent of the FY 2015 appropriation for administrative activities and the remaining 95 percent for grants.¹⁰ Obligations and disbursements for administrative activities increased by less than 1 percent and about 10 percent over FY 2014 levels, respectively (together representing only about one-quarter of a percent of the total appropriation).

There were no unusual balances of prior-year appropriations such as large balances of unliquidated obligations or new obligations of expired appropriations. However, there were some inaccurate disbursement balances in grant accounts as discussed later in this report.

¹⁰ These funding levels were the same for FY 2014.

NIH DID NOT ENSURE GRANTEE COMPLIANCE WITH GRANT TERMS AND CONDITIONS

In general, NIH grant terms and conditions require that grantees submit annual financial reports and progress reports as well as final reports that cover the entirety of a grant's period of performance. The type of grant determines what reports are required and when the reports are due.¹¹ For example, final progress reports and final Federal Financial Reports (FFRs) for the grants that we reviewed were due either 90 days or 120 days after project end dates.¹²

NIH did not ensure grantee compliance with grant terms and conditions in 6 of 19 grants that we reviewed. Specifically, NIH did not provide adequate oversight to ensure that six Superfund Research Program grantees, three for-profit organizations that received grants under the Small Business Innovation Research (SBIR) program¹³ and three universities, complied with financial or progress report requirements.

As noted in Table 1 on the next page, grantees filed progress reports or FFRs from 8 to 1,332 days late.

In addition, one grantee did not submit an FFR.

¹¹ NIH establishes reporting requirements for various types of awards in the NIH Grants Policy Statement. Specific Federal requirements are contained in Appendix C.

¹² For NIH grants and grant supplements issued on or after December 26, 2014, grantees are allowed up to 120 days to submit final reports per the revised NIH Grants Policy Statement (March 31, 2015). For grants and supplements issued prior to that date, grantees were allowed 90 days to submit final reports.

¹³ The SBIR program is a competitive awards-based program for small businesses to research and develop potential commercial technology.

Table 1: Grantee Noncompliance With Reporting Requirements

Grant Number	Organization Type	Progress Report (Annual or Final)	Days Late	FFR (Annual or Final)	Days Late
5R44ES011433-04	For-profit small business	Final	1,086	Final	*
5R44ES013622-03	For-profit small business ¹⁴	Final	577	Final	1,332
5R44ES020099-03	For-profit small business ¹⁵	Final	164	Final	164
5P42ES010356-13	University	Annual	0	Annual	14
5P42ES013661-09	University	Annual	0	Final	11
5P42ES010337-13	University	Annual	0	Annual	8
* Report not filed.					

In addition, one SBIR grantee had:

- filed only 2 of 13 required Federal Cash Transaction Reports (FCTRs) on time and had not filed 7 at all and
- reported inconsistent information on its final progress report.

Furthermore, the grantee submitted two FCTRs after the grant period expired; then, 46 months after the grant’s end date, it drew down \$262,000 of grant funds.¹⁶ NIH did not investigate why the grantee had not drawn down these funds earlier. After we brought these late drawdowns to NIH’s attention,¹⁷ NIH asked the grantee to provide support that it used these funds for grant purposes; however, the grantee did not provide any support.¹⁸

Appendix D contains additional detail regarding the grantee’s compliance issues.

NIH took some steps to ensure that the SBIR grantees complied with reporting requirements, primarily by emailing requests to grantees for late reports; however, grantees were often unresponsive to these requests. For example, records we received from NIH indicate that NIH

¹⁴ NIH received this grantee’s final progress report in FY 2013 (prior to our audit period).

¹⁵ NIH received this grantee’s final progress report and final FFR in FY 2016 (after our audit period).

¹⁶ This amount represented all available funds for the grant’s third and final budget year.

¹⁷ We brought this matter to the attention of the responsible Grants Management Officer (GMO) at the Institute.

¹⁸ As a result, we performed onsite audit procedures at the grantee’s place of business.

had emailed the SBIR grantee discussed above at least 17 times over the course of 43 months¹⁹ after the grant period ended to obtain final reports; however, the grantee replied to these emails on only 4 occasions and never submitted a final FFR.

In other cases, when grantees did not comply with reporting requirements, NIH took no action to ensure that grantees complied. Thus, NIH's oversight was not effective in achieving timely compliance with grantee reporting requirements.

These deficiencies occurred because NIH's grants management guidance was not clear, specific, or otherwise sufficient. For example, NIH did not have written guidance requiring that grants management personnel review FCTRs, even though the NIH Grants Policy Statement²⁰ stipulated that Institutes and Centers would use the quarterly FCTR to monitor financial aspects of grants and indicated that grants management officers may review FCTRs to analyze whether performance or financial management problems existed.²¹ For some types of grants, the quarterly FCTR is the only financial report available for monitoring grant performance.²² This monitoring may not occur without a clear requirement that grants management personnel review FCTRs in appropriate circumstances.²³

¹⁹ On the basis of the email records we received, there was a 17-month lapse during this period for which NIH had not emailed the grantee.

²⁰ The *NIH Grants Policy Statement* contains the policy requirements that serve as terms and conditions of NIH grant awards.

²¹ *NIH Grants Policy Statement*, 2003, page 131, states that “[t]he GMO may review the report for patterns of cash expenditures, including accelerated or delayed drawdowns, and to assess whether performance or financial management problems exist” and that “[f]or domestic awards under [Streamlined Non-Competing Award Process (SNAP)], in lieu of the annual [FFR], NIH will use the quarterly FCTR, submitted to [Payment Management System (PMS)] to monitor the financial aspects of grants.” The 2003 *NIH Grants Policy Statement* was in effect for budget periods that began before October 1, 2010. The final budget period for the SBIR grantee with grant number 5R44ES011433-04 cited above began on September 8, 2010. Revisions to *NIH Grants Policy Statement*, including the 2016 revision, contained similar language.

²² Small organizations, such as those that receive grants under the SBIR program, may not be required to have annual audits performed and therefore may be at higher risk for fraud, waste, and abuse. Thus, effective oversight over these types of grants is especially important.

²³ HHS issued an interim final department-wide Grants Policy Administration Manual (GPAM) as of September 24, 2013, that required grants management personnel to “review FFRs and/or other required financial reports to determine any significant changes in the rate of obligation or expenditure from that expected, and to ensure consistency with the terms and conditions of the award” (GPAM chapter 301.4.1.2). On December 31, 2015, HHS issued a final version of the GPAM, which contained similar language. Agencies may supplement the GPAM by adding agency-specific policy as long as the policy does not contradict HHS policy and is not less restrictive than GPAM requirements.

NIH grant closeout and enforcement action policies and procedures were also unclear. For example, the *NIH Policy Manual* states that if NIH determines that a grantee has a pattern of submitting delinquent reports, NIH should report the grantee to NIH's Office of Policy and Extramural Research Administration (OPERA) for appropriate corrective actions or sanctions; however, the policy provides no guidelines or examples for making that determination.²⁴ The *NIH Policy Manual* also allows for the waiver of final report requirements (closeout documents) after NIH exhausts reasonable efforts to obtain delinquent reports. The manual provides two examples in which a waiver might be considered, but it is not clear whether the examples are meant to be exhaustive or whether the waiver authority may extend beyond the cited examples.²⁵

NIH's failure to ensure grantee compliance with grant terms and conditions put at least \$489,000 in Superfund resources at high risk of misuse.²⁶

NIH Improperly Recorded Superfund Grant Expenditures

In accordance with the *Federal Managers' Financial Integrity Act of 1982*, NIH's internal controls shall provide reasonable assurance that revenues and expenditures are properly recorded.²⁷

NIH improperly recorded Superfund grant expenditures totaling \$145,237 in the NIH accounting system.²⁸ In November 2014, NIH's Office of Financial Management (OFM) identified two expenditure transactions that had not automatically posted within the usual timeframe (the expenditures should have posted during October 2014). To ensure the accounts reflected the accurate expenditure balances, OFM manually posted the transactions.

The accounting system automatically posted the same transactions in the following month (December 2014); however, OFM did not identify the duplicated transactions or reverse its manual adjustments. The duplicated transactions caused a negative unliquidated grant obligation balance (i.e., disbursements exceeded obligations), totaling \$145,237, in the affected account.

²⁴ The GPAM also includes general circumstances when enforcement actions should be considered and described the types of enforcement actions available to HHS awarding agencies. The GPAM generally gives discretion to agencies on whether to impose an enforcement action on a grantee and what type of enforcement action to impose.

²⁵ *NIH Policy Manual, 55805 Closeout of NIH Grants*.

²⁶ Further discussion of this amount and the SBIR grantee discussed above is contained in Appendix D.

²⁷ *Federal Managers' Financial Integrity Act of 1982*, section 2.

²⁸ NIH's accounting system is called the NIH Business System.

This error occurred because NIH did not have adequate procedures for identifying and correcting negative unliquidated grant obligation balances. Although NIH had an informal procedure for reconciling balances between its accounting system and a monthly expenditure file produced by the HHS PMS, NIH had no policy that required this procedure to be consistently performed.²⁹

Although the dollar amount of this error was relatively insignificant, such errors, if uncorrected, result in financial data that could limit NIH's ability to produce reliable financial reports, to maintain accountability over Federal funds, and ultimately, to make appropriate management decisions.

NIH Had Not Resolved Findings Contained in Three Superfund Grantee Audit Reports

Grantees are subject to the audit requirements of OMB Circular A-133.³⁰ Findings contained in OMB Circular A-133 audits must be resolved by the appropriate resolution agency. NIH's Division of Financial Advisory Services (DFAS) is the resolution agency for audit findings related to NIH grants.³¹

NIH had not resolved Superfund grant-related findings contained in three grantee audit reports issued during FY 2015.³² DFAS representatives told us that records of the reports were not in their database and that human error was the cause of the lost reports.³³

These deficiencies occurred because NIH's policies and procedures for resolving grantee audit report findings were not adequate to ensure compliance with Federal requirements. In

²⁹ As a result of our inquiries, NIH corrected the errors we had identified and stated that it was considering more robust monitoring procedures to review abnormal account balances such as negative unliquidated grant obligations; however, NIH had not established a formal policy at the time of our fieldwork.

³⁰ HHS requires compliance with OMB Circular A-133 at 45 CFR § 74.26. This audit requirement was superseded by 45 CFR part 75, which became effective on December 26, 2014. Independent auditors had performed the audits discussed in this section prior to this effective date.

³¹ The National External Audit Review Center (NEARC) distributes reports for resolution through letters issued to grantees and to DFAS, the resolution agency.

³² Although audit resolution for each of the reports was not due during our audit period, we noted that resolution had not occurred by the end of our fieldwork, with one report being 3 months late, another being 5 months late, and the third being 10 months late.

³³ DFAS personnel were unaware of the three missing audit reports until we brought them to their attention. DFAS told us that it would resolve the findings contained in the reports as soon as possible; however, by the end of our fieldwork, DFAS had still not assigned the reports for resolution.

particular, policies and procedures³⁴ did not require reconciliation of audit reports in DFAS's database to monthly reports generated by NEARC.³⁵

Without timely audit resolution, NIH is unable to address significant grantee issues reflected in audit findings such as internal control deficiencies, noncompliance with grant requirements, unallowable costs, or fraud.

RECOMMENDATIONS

We recommend that NIH:

- issue new or updated guidance, as applicable, that provides to NIH grants management personnel clear examples of circumstances that require the review of FCTRs and corrective or enforcement actions against noncompliant grantees and incorporate into the *NIH Policy Manual* or the *NIH Grants Administration Manual* grant closeout procedures (consistent with the GPAM) when grantees fail to provide final reports;
- provide additional training to grants management personnel to ensure awareness of applicable grants management responsibilities and compliance with applicable policies and procedures, including new or updated guidance;
- formalize procedures for identifying and resolving negative unliquidated grant obligation balances recorded in NIH's accounting system; and
- update policies and procedures to require the reconciliation of audit reports in the DFAS database to monthly reports generated by NEARC.

NATIONAL INSTITUTES OF HEALTH COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, NIH did not concur with our first two recommendations to issue new or updated guidance and provide additional training. However, NIH concurred with our third and fourth recommendations to formalize procedures for identifying and resolving negative unliquidated grant obligation balances and to update policies and procedures to require the reconciliation of audit reports. NIH also provided technical comments on our draft report that we have incorporated into this report. We have summarized NIH's general comments below and included them in their entirety as Appendix E.

³⁴ *Audit Resolution Policies & Procedures*, 2008, pages 29–30.

³⁵ NEARC provides a monthly report to DFAS, the "Stewardship Report," that shows audits issued in the previous month and that lists all audit findings requiring resolution. DFAS's policies and procedures stated that this report assists DFAS in reconciling audit reports processed by NEARC to reports that DFAS has received; however, DFAS's policies and procedures do not specify who is responsible for performing such reconciliations or that such reconciliations are required.

We maintain that our findings and recommendations are correct. However, based on NIH's comments, we added clarifying language to our first recommendation to specify that NIH should incorporate grant closeout procedures into the *NIH Policy Manual* or the *NIH Grants Administration Manual*, consistent with the GPAM, to address when grantees fail to provide final reports.

NEW OR UPDATED GUIDANCE

NIH did not concur with our recommendation to issue new or updated guidance that provides clear examples to NIH grants management personnel of circumstances that require the review of FCTRs and corrective or enforcement actions against noncompliant grantees and incorporate grant closeout procedures when grantees fail to provide final reports. We discuss NIH's comments on each element of the recommendation below.

Federal Cash Transaction Reports

NIH Comments

NIH stated that HHS requires grantees to submit FCTRs directly to PMS and that PMS is responsible for monitoring grantee cash transactions and for overseeing FCTR reporting, including following up on late reports.

Additionally, NIH stated that grants management staff are required to use the FFR to review grant expenditures and that staff members also use the annual Research Performance Progress Report (RPPR) to assess estimated unobligated balances, especially for evaluating Streamlined Noncompeting Award Process (SNAP) grants.

NIH also stated that NIH grants management staff may use FCTRs as a data point to substantiate grant information, such as rate of expenditure of funds, but stated that it does not plan to implement a requirement that its grants management staff use them.

Office of Inspector General Response

We agree that PMS is responsible for receiving and processing FCTRs and taking necessary actions when grantees do not submit them timely. PMS is also responsible for ensuring that FCTRs are available for review by grants management offices, and FCTRs contain more frequently reported and, potentially, more readily verifiable financial data than the RPPR or the FFR.³⁶ Thus, FCTR information can assist grants management personnel to better perform their grant monitoring responsibilities. NIH has acknowledged the value of FCTR information both in its comments on our report and in the NIH Grants Policy Statement; however, NIH did not have

³⁶ Generally, FCTRs are required to be submitted quarterly. Additionally, some FCTR data is fed directly from the grantee's PMS account. Therefore, FCTR financial data is potentially more reliable than financial data that a grantee reports on the RPPR, for example, which is entirely self-reported.

any written guidance instructing grant management personnel on when it is appropriate to analyze information contained in FCTRs or how to otherwise use FCTR data as a grant monitoring data point.

We maintain that NIH should issue new or updated guidance that specifically addresses the appropriate use of the FCTR as a grant monitoring tool, especially for grants, such as those under SNAP, that do not require an annual FFR, so that grants management personnel can ensure compliance with grant terms and conditions and help prevent or detect potential fraud, waste, and abuse in NIH grants.

Late Reports

NIH Comments

NIH stated that it has a longstanding requirement that it will not fund subsequent, noncompeting segments of a grant if the grantee fails to provide a progress report or RPPR and an FFR, as required. NIH stated that although some reports cited in our report were late, it did not make any subsequent awards without receiving required progress reports or RPPRs and FFRs.

NIH also stated that while recipients are responsible for submitting timely reports, monitoring reports is part of its oversight responsibility, and NIH grants administration staff are responsible for following up on late recipient reports. NIH stated that it emphasizes the importance of timely reporting in annual outreach efforts and in presentations to the grant recipient community as well as through periodic notices in the *NIH Guide to Grants and Contacts*.

Lastly, NIH stated that it would pursue enforcement action to address the grantee that submitted two FCTRs to PMS and drew down \$262,000 of grant funds more than 3 years after the project end date. NIH acknowledged that this was a unique, but egregious, situation that it will act promptly to address.

Office of Inspector General Response

We agree with NIH that the requirements that it withhold support from grantees that do not comply with the reporting requirements contained in grant terms and conditions is an effective enforcement mechanism. However, NIH guidance could be clearer or provide examples to NIH grants management personnel when other corrective or enforcement actions may be necessary. For example, the *NIH Policy Manual* and the *NIH Grants Administration Manual* do not provide examples or guidelines that grants management personnel can use to identify patterns of delinquent reports that should be escalated to OPERA for corrective actions or sanctions.

We maintain that NIH should issue new or updated guidance that provides clear examples to grants management personnel about when to take corrective or enforcement actions against noncompliant grantees.

Grant Closeout Procedures

NIH Comments

NIH stated that as of September 2014, it had implemented a more robust closeout policy that included enhanced procedures, NIH staff responsibilities, template letters, and guidance on enforcement actions. NIH stated that the new policy also includes a provision for the unilateral closeout of the grant account if a grantee does not submit one or more acceptable final grant closeout reports, including financial and progress reports, after NIH has made reasonable efforts to obtain them.

NIH also stated that along with the new closeout policy, it had implemented a module within its electronic research administration system that promotes the timely closeout of grants, consistency across the agency, and compliance with policy requirements. NIH stated that the module includes electronic notifications sent at predetermined intervals to grantees with delinquent reports, template letters for the recovery of grantee debts resulting from unilateral closeout actions, and documentation of actions and decisions in the grant file.

Office of Inspector General Response

We agree that NIH's updated closeout guidance and electronic closeout module are improvements over prior grant monitoring and closeout guidance. However, we note that the guidance document NIH references in its comments³⁷ represents "interim guidance," and NIH had not incorporated these requirements into the *NIH Policy Manual* as of December 4, 2017.

The GPAM, effective December 31, 2015, required that HHS operating divisions develop agency-specific guidance, or update existing agency-specific guidance, to implement the GPAM no later than January 6, 2017.³⁸ NIH's interim guidance, dated September 2014, stated that the closeout policy changes would be incorporated into the *NIH Policy Manual*; however, NIH still had not done so. Thus, while the interim guidance cited above had the same effect as policy, we maintain that NIH should finalize this guidance in the *NIH Policy Manual* to ensure that NIH has fully implemented it, that NIH [staff is aware of it, and that it remains in effect](#). . We have modified our recommendation accordingly.

³⁷ OER Policy Announcement 2014-03: *Guidance on Implementation of New HHS Closeout Policy, Including Unilateral Closeout*.

³⁸ Division of Grants Action Transmittal No. DG AT 2016-01: *Issuance and Implementation of the GPAM*.

ADDITIONAL TRAINING

National Institutes of Health Comments

NIH stated that it did not concur with our recommendation to provide additional training to grants management personnel to ensure awareness of applicable grants management responsibilities and compliance with applicable policies and procedures, including new or updated guidance, because it does not plan to issue new or updated guidance. NIH also stated that it provides extensive training and outreach on grant closeout and late reporting for NIH grants management staff and NIH grantees and it listed the internal and external training opportunities it offers.

Office of Inspector General Response

We maintain that NIH should provide training to its grants management personnel on new or updated guidance, if implemented, related to the findings in this report.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered all obligations and disbursements related to FYs 2010 through 2015 Superfund appropriations that occurred from October 1, 2014, through September 30, 2015 (audit period).³⁹ During the audit period, NIH obligated approximately \$77 million and disbursed approximately \$73 million in Superfund resources. Of the \$73 million in disbursements, \$4 million came from the FY 2015 appropriation, and \$69 million came from prior years. Our audit also covered NIH's grant oversight functions because approximately 95 percent of NIH's Superfund appropriations are used for grant funding.

We performed fieldwork from March through October 2016.

METHODOLOGY

To accomplish our audit objective, we:

- reviewed applicable laws and regulations regarding Superfund appropriations;
- reviewed our FY 2015 Superfund audit report (A-04-15-04035) and determined that the report contained a finding requiring followup;
- obtained an understanding of NIH's controls over funding authority, financial reporting, and grants;
- reconciled NIH accounting records with a list that the Institute provided of all Superfund financial transactions recorded from October 1, 2014, through September 30, 2015, to determine its accuracy and completeness;
- reviewed the Institute's FY 2015 interagency agreements to determine whether it funded other government agencies using its Superfund appropriations;
- traced approximately \$73 million in obligations to 87 research and training grant award documents to determine whether grant awards were properly recorded;
- analyzed transactions to test whether there were any significant variances in FY 2015 administrative account balances that would warrant further testing;

³⁹ Because annual appropriations may be disbursed up to 5 years beyond the appropriation year, our scope included obligations and disbursements of FY 2010 through FY 2014 appropriations, as well as those of FY 2015.

- analyzed cumulative obligations, totaling \$466 million, and cumulative disbursements, totaling \$378 million, associated with FY 2010 through FY 2015 appropriations to determine whether there were unusual balances of Superfund appropriations, including large balances of unliquidated obligations, new obligations of expired appropriations, or unusual disbursement activities;
- compared Notices of Award for each Superfund grant NIH issued during FY 2015 to funding opportunity announcements to assess whether the grants were consistent with Superfund program activities;
- determined whether all Superfund grantees were subject to Federal or non-Federal audit requirements by determining the type of organization, the amount of Federal awards received, and the amount of funds grantees expended from Federal awards during applicable FYs;
- determined whether grantees complied with audit requirements, including the submission of audit report information to the Federal Audit Clearinghouse;
- determined whether NIH resolved all grantee audit findings that were related to Superfund grants;
- reviewed a judgmental selection of 19 Superfund grants that included 12 colleges and universities, 4 nonprofit organizations, and 3 small commercial organizations to determine whether:
 - grantees complied with grant terms and conditions, including the submission of financial and progress reports to NIH, and
 - NIH adequately monitored the selected grants or took enforcement action to ensure compliance with grant terms and conditions, if applicable;
- identified significant noncompliance issues with one grantee, including a failure to submit required reports, that warranted our performance of onsite audit procedures at the grantee's place of business to determine whether NIH had adequately monitored the grantee and to determine the effects of any inadequate monitoring on the program; and
- discussed the results of the audit with Institute officials.

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

based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>The National Institute of Environmental Health Sciences Generally Administered Its Superfund Appropriations During Fiscal Year 2014 in Accordance With Federal Requirements</i>	A-04-15-04035	4/2016
<i>The National Institute of Environmental Health Sciences Administered Its Superfund Appropriations During Fiscal Year 2013 in Accordance With Federal Requirements</i>	A-04-14-04024	9/2014
<i>The National Institute of Environmental Health Sciences Generally Administered Its Superfund Appropriations During Fiscal Year 2012 in Accordance With Federal Requirements</i>	A-04-13-01025	4/2014
<i>Superfund Financial Activities at the National Institute of Environmental Health Sciences—Fiscal Year 2011</i>	A-04-12-01013	7/2012
<i>Superfund Financial Activities at the National Institute of Environmental Health Sciences—Fiscal Year 2010</i>	A-04-11-01099	6/2011

APPENDIX C: FEDERAL REQUIREMENTS

HHS Grants Policy Directive, Part 1, Section 04, C: Authorities and Responsibilities

Organizational Placement of Grants Management Function. Grants management staff are primarily responsible for the business and other non-programmatic areas of grant award and administration. They are responsible for ensuring that, for grants under their cognizance, both Federal staff and grantees fulfill applicable statutory, regulatory, and administrative policy requirements.

HHS Grants Policy Directive, Part 1, Section 04, D: Significant Responsibilities

Official Grant Files. GMOs are responsible for maintaining the official grant files for individual grant awards. Program officials will supply such material as necessary to ensure that the official grant files are complete.

Reports and Closeout. In addition to being the mandatory receipt point for required reports, GMOs are responsible for monitoring the receipt of all required reports and taking appropriate follow-up action, as necessary, to obtain delinquent reports. GMOs must also review and ensure all necessary adjustments to financial reports are made prior to grant closeout.

Project officers are responsible for reviewing and preparing programmatic evaluations on all performance reports required to be submitted under grants. Following the completion of all required work under grants by grantees and the performance of all pre-closeout administrative actions by OPDIVs, GMOs are responsible for closing out grant awards/files. In doing so, they must ensure that grant files contain all pertinent documents, including required reports, and evidence that appropriate grants management and program office reviews and evaluations have been conducted.

NIH Grants Policy Statement, December 1, 2003, Part I: NIH Grants-General Information, the National Institutes of Health as a Grant-Making Organization, Roles and Responsibilities, NIH, and HHS Staff

Grants Management Officer. The GMO whose name appears on the [Notice of Grant Award (NGA)] is the NIH official responsible for the business management and other non-programmatic aspects of the award. This includes, but is not limited to, evaluating grant applications for administrative content and compliance with statutes, regulations, and guidelines; negotiating grants; providing consultation and technical assistance to applicants and grantees, including interpretation of grants administration policies and provisions; and administering and closing out grants.

NIH Grants Policy Statement, December 1, 2003, Part II: Terms and Conditions of NIH Grant Awards, Subpart A: General, Administrative Requirements, Monitoring

[T]o fulfill their role in regard to the stewardship of Federal funds, NIH awarding offices monitor their grants to identify potential problems and areas where technical assistance might be necessary. This active monitoring is accomplished through review of reports and correspondence from the grantee, audit reports, site visits, and other information available to NIH

Reporting[.] NIH requires that grantees periodically submit financial and progress reports

Grantees are allowed a specified period of time in which to submit required financial and final progress reports Failure to submit complete, accurate, and timely reports may indicate the need for closer monitoring by NIH or may result in possible award delays or enforcement actions, including withholding, removal of expanded authorities, or conversion to a reimbursement payment method

Non-Competing Grant Progress Reports[.] Progress reports usually are required annually as part of the non-competing continuation award process. However, NIH may require these reports more frequently. The “Grant Progress Report” (PHS 2590) or equivalent documentation must be submitted to, and approved by, NIH to noncompetitively fund each additional budget period within a previously approved project period (competitive segment). Except for awards subject to SNAP, the progress report includes an updated budget in addition to other required information

Late submission or receipt of an incomplete grant progress report will result in delaying the issuance and funding of the non-competing continuation award and may result in a reduced award amount

The progress report for the final budget period of a competitive segment for which a competing continuation application is submitted will be part of that application; however, if an award is not made or the grantee does not submit an application for continued support, a final progress report is required

Streamlined Non-Competing Award Process[.] . . . For awards under SNAP . . . an [Financial Status Report (FSR)] is required only at the end of a competitive segment rather than annually. The FSR must be submitted within 90 days after the end of the competitive segment and must report on the cumulative support awarded for the entire segment. An FSR must be submitted at this time whether or not a competing continuation award is made For awards under SNAP, grantees . . . also are required to submit a quarterly FCTR (SF 272) to PMS

Financial Reports[.] Reports of expenditures are required as documentation of the financial status of grants according to the official accounting records of the grantee organization. Financial or expenditure reporting is accomplished using the FSR (SF 269 or SF 269 A); the grantee must use the long form (SF 269) to report program income earned and used.

Except for awards under SNAP and awards that require more frequent reporting, the FSR is required on an annual basis. An annual FSR is required for awards to foreign organizations and Federal institutions, whether or not they are under SNAP. When required on an annual basis, the report must be submitted for each budget period no later than 90 days after the close of the budget period. The report also must cover any authorized extension in time of the budget period. If more frequent reporting is required, the NGA will specify both the frequency and due date.

For domestic awards under SNAP, in lieu of the annual FSR, NIH will use the quarterly FCTR, submitted to PMS to monitor the financial aspects of grants. The GMO may review the report for patterns of cash expenditures, including accelerated or delayed drawdowns, and to assess whether performance or financial management problems exist. For these awards, an FSR is required only at the end of a competitive segment. It must be submitted within 90 days after the end of the competitive segment and must report on the cumulative support awarded for the entire segment. An FSR must be submitted at this time whether or not a competing continuation award is made. If no further award is made, this report will serve as the final FSR

Before submitting FSRs to NIH, grantees must ensure that the information submitted is accurate, complete, and consistent with the grantee's accounting system. The [Authorized Organizational Official's] signature on the FSR certifies that the information in the FSR is correct and complete and that all outlays and obligations are for the purposes set forth in grant documents, and represents a claim to the Federal government. Filing a false claim may result in the imposition of civil or criminal penalties.

NIH Grants Policy Statement, December 1, 2003, Part II: Terms and Conditions of NIH Grant Awards, Subpart A: General, Administrative Requirements, Closeout

Final Reports[.] Unless the GMO grants an extension, grantees must submit a final FSR, final progress report, and Final Invention Statement and Certification within 90 days of the end of grant support. Failure to submit timely and accurate final reports may affect future funding to the organization or awards with the same [principal investigator].

NIH Grants Policy Statement, December 1, 2003, Part II: Terms and Conditions of NIH Grant Awards, Subpart A: General, Administrative Requirements, Enforcement Actions

A grantee's failure to comply with the terms and conditions of award, including confirmed instances of research misconduct, may cause NIH to take one or more enforcement actions, depending on the severity and duration of the non-compliance. NIH will undertake any such action in accordance with applicable statutes, regulations, and policies. NIH generally will afford the grantee an opportunity to correct the deficiencies before taking enforcement action unless public health or welfare concerns require immediate action. However, even if a grantee is taking corrective action, NIH may take proactive action to protect the Federal government's interests, including placing special conditions on awards or precluding the grantee from obtaining future awards for a specified period, or may take action designed to prevent future non-compliance, such as closer monitoring

Suspension, Termination, and Withholding of Support[.] If a grantee has failed to materially comply with the terms and conditions of award, NIH may suspend the grant, pending corrective action, or may terminate the grant for cause. The regulatory procedures that pertain to suspension and termination are specified in 45 CFR 74.61 and 74.62, and in 92.43

Other Enforcement Actions[.] Depending on the nature of the deficiency, NIH may use other means of obtaining grantee compliance. Other options available to NIH include, but are not limited to, temporary withholding of payment or other actions specified at 45 CFR 74.62 or 92.43, conversion from an advance payment method to a reimbursement method, suspension or debarment under 45 CFR Part 76, and other available legal remedies, such as civil action

NIH Grants Policy Statement, December 1, 2003, Part II: Terms and Conditions of NIH Grant Awards, Subpart B: Terms and Conditions for Specific Types of Grants, Grantees, and Activities, Grants to For-Profit Organizations, Administrative Requirements, Audit

The requirements for non-Federal audits of for-profit organizations are specified in 45 CFR 74.26(d). A for-profit organization is required to have a non-Federal audit if, during its fiscal year, it expended a total of \$500,000 or more under one or more HHS awards (as a direct grantee and/or under a consortium participant) and at least one of those awards is an HHS grant.

NIH Grants Policy Statement, March 31, 2015, Part II: Terms and Conditions of NIH Grant Awards, Subpart B: Terms and Conditions for Specific Types of Grants, Recipients, and Activities, 18.4.5 Audit

“The requirements for non-Federal audits of for-profit organizations are specified in 45 CFR 75.21[6]. A for-profit organization is required to have a non-Federal audit if, during its fiscal year, it expended a total of \$750,000 or more in Federal awards.”

U.S. Department of Health and Human Services, Public Health Service, Non-Competing Continuation Progress Report (PHS 2590), Instructions for PHS 2590, Continuation Progress Report

“For NIH awards issued under the Streamlined Noncompeting Award Process (SNAP), the progress report must be submitted electronically through the [Electronic Research Administration] Commons electronic SNAP (eSNAP) module 45 days before the beginning date of the next budget period.”

Federal Managers’ Financial Integrity Act of 1982, Sec. 2.

Section 113 of the Accounting and Auditing Act of 1950 (31 U.S.C. 66a) is amended by adding at the end thereof the following new subsection:

(d)(1)(A) To ensure compliance with the requirements of subsection (a)(3) of this section, internal accounting and administrative controls of each executive agency shall be established in accordance with standards prescribed by the Comptroller General, and shall provide reasonable assurances that-

(i) obligations and costs are in compliance with applicable law;

(ii) funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation; and

(iii) revenues and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports and to maintain accountability over the assets.

HHS Grants Policy Administration Manual, Action Transmittal No. DG AT 2016–01, December 31, 2015

“[HHS Operating Divisions and Staff Divisions] must either develop agency-specific guidance, or update existing agency-specific guidance, to implement the GPAM no later than January 6, 2017.”

**HHS Grants Policy Administration Manual, Interim Final, September 24, 2013,
Chapter 301.4.1.2**

“[Grants Management Officers responsibilities include:] review[ing] FFRs and/or other required financial reports to determine any significant changes in the rate of obligation or expenditure from that expected, and to ensure consistency with the terms and conditions of the award.”

APPENDIX D: ADDITIONAL DETAILS CONCERNING A NONCOMPLIANT SMALL BUSINESS INNOVATION RESEARCH PROGRAM GRANTEE

In FY 2008, NIH awarded a small business phase II SBIR grant⁴⁰ that consisted of three 1-year budget periods beginning September 2008 and ending August 2011.⁴¹ The grant fell under the SNAP requirements, the terms of which required:

- quarterly FCTRs,⁴² due within 30 days of the project’s calendar quarter-ends and a final FFR that covered the entire phase II project period due within 90 days after the project period end date⁴³ and
- an annual “Non-competing Grant Progress Report” (annual progress report) due 45 days before the start of the subsequent budget period⁴⁴ and a final progress report that covered the entire phase II project period due within 90 days after the project period end date.

NIH did not ensure that this grantee submitted timely, accurate financial reports and progress reports.

For example, the grantee submitted only 6 of 13 required FCTRs, of which 4 were late.⁴⁵ NIH did not take any actions regarding the grantee’s late or missing FCTRs.

In addition, NIH took no enforcement action to ensure that the grantee submitted a final FFR. NIH sent at least 17 emails⁴⁶ notifying the grantee to submit its final FFR; however, the grantee did not comply. When the report was 3 years late, the grantee asked NIH for help filling out its final FFR. Approximately 3 months later, NIH forwarded instructions to the grantee for

⁴⁰ The grantee completed phase I of the grant in 2004.

⁴¹ The grant had not been closed out as of our audit period.

⁴² For some types of grants, including SBIR grants, the quarterly FCTR is the only financial report available for monitoring the grantee’s financial performance during the grant period. Additionally, relatively small grants to for-profit organizations, such as those under the SBIR program, may not be subject to non-Federal audit requirements and may be at higher risk for fraud, waste, and abuse.

⁴³ OMB required Federal agencies to consolidate the FSR and the FCTR into the FFR. NIH implemented the FCTR portion of this change January 1, 2010, and the FFR portion February 1, 2011. SNAP awards do not require annual FFRs.

⁴⁴ Instructions for Public Health Service Form 2590, Revised June 2009, Continuation Progress Report, page 2.

⁴⁵ The project period included 13 calendar quarters, each of which required an FCTR.

⁴⁶ Of these 17 emails, NIH’s electronic grants system automatically generated 11, and the Institute manually sent the other 6.

completing the final FFR process; however, the grantee never completed the process, and the Institute took no further action.

NIH also did not provide adequate oversight of the grantee's progress report submissions.

For example, the grantee failed to submit all three of its required progress reports⁴⁷ on time. Its first and second annual progress reports were 41 and 45 days late, respectively,⁴⁸ and its final progress report was 36 months late. NIH warned the grantee of potential enforcement actions for not submitting timely progress reports;⁴⁹ however, the grantee did not comply, and NIH did not take any enforcement action.⁵⁰

NIH also did not address apparent inconsistencies⁵¹ contained in the grantee's final progress report.⁵² For example, the grantee reported that the grant:

- resulted in various scientific publications,⁵³ but most of the publications predated the grant;⁵⁴

⁴⁷ The grant required three progress reports: two annual reports and one final report.

⁴⁸ These progress reports were part of non-competing continuation applications for continued grant funding and had been submitted 4 days before the start of the second budget year and 1 day before the start of the third budget year.

⁴⁹ The Institute notified the grantee through emails, and for the most part, the grantee did not reply, even when requested to do so.

⁵⁰ We noted that NIH's policies and procedures required that an "Associate Director or Executive Officer level" send a notice to the grantee 60 days after sending the first notice regarding delinquent progress reports and the Deputy Director for Extramural Research and Training to send a notice 120 days (or 7 months from the project end date) after the initial notice was sent. NIH did not follow these procedures in this case.

⁵¹ Misrepresenting a project's status to continue receiving Government funds is one of the most common grant fraud scenarios. (<http://www.grants.gov/web/grants/learn-grants/grant-fraud/grant-fraud-responsibilities.html>. Accessed on November 29, 2016).

⁵² We found no evidence in the grant file that NIH had reviewed the final progress report, and based on our onsite audit procedures, we found that these representations were unsubstantiated.

⁵³ Question 13 on form OMB-0925-0002 (8/12 revision) requests the following: "List titles and complete references to publications, and manuscripts accepted for publication, if any, that resulted from the Phase II award."

⁵⁴ Of the seven unique publications listed (two publications appeared twice in the list), only three had publication dates after the phase II project start date. NIH told us that it was not concerned that the grantee listed the earlier publications because the final progress report was the grantee's last opportunity to report its accomplishments for the entirety of the project, including phase I and phase II.

- supported eight full-time employees, but the application and the annual progress reports showed that only three employees had worked on the grant; and
- was discontinued because the technology being developed under the project was obsolete, but the grantee reported that the grant had helped it secure substantial follow-on funding through various partnerships and outside investments.⁵⁵

Because of these noncompliance issues, we performed onsite audit procedures at the grantee's place of business to further assess whether NIH had adequately monitored the grantee and to determine the effects of any inadequate monitoring on the Superfund program. Our procedures included a review of whether the grantee (1) accurately reported how it disbursed the grant funds, (2) disbursed grant funds for the purposes and intents of the grant, and (3) complied with certain other grant terms and conditions. Among our conclusions, we found that the grantee could not substantiate that it had used approximately \$489,000 of grant funds, including its final drawdowns of \$262,000, for the benefit of the grant. On the basis of these and other observations, we referred the matter to our Office of Investigations.

⁵⁵ The project did not progress to "phase III," and no commercial product was achieved.

APPENDIX E: NATIONAL INSTITUTES OF HEALTH COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health
Bethesda, Maryland 20892

TO: Gloria Jarmon
Deputy Inspector General for Audit Services, HHS

FROM: Director, NIH

DATE: October 12, 2017

SUBJECT: NIH Comments on Draft Report, *The National Institutes of Health Did Not Always Administer Superfund Appropriations During Fiscal Year 2015 In Accordance With Federal Requirements* (A-04-16-04046)

Attached are the National Institutes of Health's comments on the draft Office of Inspector General (OIG) report, *The National Institutes of Health Did Not Always Administer Superfund Appropriations During Fiscal Year 2015 In Accordance With Federal Requirements* (A-04-16-04046).

The NIH appreciates the review conducted by the OIG and the opportunity to provide clarifications on this draft report. If you have questions or concerns, please contact Meredith Stein in the Office of Management Assessment at 301-402-8482.

/s/ Francis S. Collins, M.D., Ph.D.

Francis S. Collins, M.D., Ph.D.

Attachments
Technical Comments
General Comments

GENERAL COMMENTS OF THE NATIONAL INSTITUTES OF HEALTH (NIH) ON THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) OFFICE OF INSPECTOR GENERAL (OIG) DRAFT REPORT ENTITLED: “THE NATIONAL INSTITUTE OF HEALTH DID NOT ALWAYS ADMINISTER SUPERFUND APPROPRIATIONS DURING FISCAL YEAR 2015 IN ACCORDANCE WITH FEDERAL REQUIREMENTS” (A-04-16-04046)

The National Institutes of Health (NIH) appreciates the review conducted by Office of Inspector General (OIG) and the opportunity to provide clarifications on this draft report. The NIH respectfully submits the following general comments.

OIG Recommendation 1:

Issue new or updated guidance, as applicable, that provides clear examples to NIH grants management personnel of circumstances that require the review of “Federal Cash Transaction Reports,” corrective or enforcement actions against noncompliant grantees, and grant closeout procedures when grantees fail to provide final reports.

NIH Response:

The NIH does not concur with the OIG recommendation that the NIH issue new or updated guidance, as applicable, that provides clear examples to NIH grants management personnel of circumstances that require the review of “Federal Cash Transaction Reports,” corrective or enforcement actions against noncompliant grantees, and grant closeout procedures when grantees fail to provide final reports.

Federal Cash Transaction Reports

It is important to note that the Federal Cash Transaction Report (FCTR) is not an NIH report. The FCTR is an accounting report required by the HHS Payment Management System (PMS), and, accordingly, grant recipients submit the report directly to PMS. PMS is responsible for monitoring recipients’ cash transactions and for the oversight of FCTR reporting, including following up on late reports.

The NIH requires that grants management staff review financial expenditure reports, the official financial report of record, which are submitted directly to the NIH using the Federal Financial Report (FFR). FFRs are generally required annually, except for those awards subject to the Streamlined Noncompeting Award Process (SNAP). The NIH also uses financial information contained in the annual Research Performance Progress Report (RPPR) to assess estimated unobligated balances, especially when evaluating SNAP awards. Grants management staff may refer to FCTRs, but only as a data point to substantiate information such as rate of expenditure of funds.

Therefore, the NIH does not plan to implement a requirement for NIH grants management staff to use FCTR reports.

Late Reports

The NIH has a long-standing requirement that a subsequent noncompetitive segment will not be funded without an approved annual progress report, now known as the RPPR (which the NIH

GENERAL COMMENTS OF THE NATIONAL INSTITUTES OF HEALTH (NIH) ON THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) OFFICE OF INSPECTOR GENERAL (OIG) DRAFT REPORT ENTITLED: “THE NATIONAL INSTITUTE OF HEALTH DID NOT ALWAYS ADMINISTER SUPERFUND APPROPRIATIONS DURING FISCAL YEAR 2015 IN ACCORDANCE WITH FEDERAL REQUIREMENTS” (A-04-16-04046)

began implementing in 2012) and a FFR, based on reporting requirements. If a required report is not submitted, the NIH will not make the subsequent noncompeting award.

The OIG report cites 6 of 19 grants sampled submitted late financial or progress reports. Although some were late, the NIH did not make any subsequent awards without receiving the required progress report/RPPR or FFR, based on reporting requirements. While recipients are responsible for submitting timely reports, the NIH agrees that monitoring reports is part of our oversight responsibility. NIH grants administration staff are responsible for following up on late recipient reports. The NIH emphasizes the importance of timely reporting in annual outreach efforts and in presentations to the grant recipient community as well as periodic notices in the NIH Guide to Grants and Contacts, most recently [NOT-OD-17-074](#).

The NIH will pursue enforcement action to address the grantee that submitted two FCTRs to the HHS Payment Management System and drew down \$262,000 of grant funds more than three years after the project end date. Although this grant award was not subject to the new closeout policy and procedures that are now in place and discussed below, the NIH acknowledges that this is a unique, but egregious, situation and will act promptly to address it.

Grant Close Out Procedures

In recognition of the need for more timely closeout, in September 2014 the NIH implemented a more robust closeout policy that includes enhanced procedures, NIH extramural staff responsibilities, a new provision for the unilateral closeout of delinquent grant accounts, template letters, and guidance on enforcement actions. The new policy (OER Policy Announcement 2014-03) is applicable to grant awards with project end dates after September 30, 2014, and requires that the NIH unilaterally close a grant (i.e., closeout without the cooperation of the grantee) if one or more acceptable final grant closeout reports, including financial and progress reports, have not been submitted by the recipient on time. The policy implemented a more aggressive approach to financial close out in particular: if a recipient fails to submit a timely and accurate final expenditure FFR, the NIH will close the grant using the last recorded cash drawdown level, which may create a debt for the recipient. The NIH will close grants in this manner if acceptable final FFR reports required by the terms and conditions of award are not received after making reasonable efforts to obtain them.

In conjunction with the new policy, the NIH also developed and implemented a closeout module for use by NIH extramural staff to monitor and complete closeout actions. The closeout module is part of NIH's electronic research administration system, the NIH system of record that provides IT infrastructure to support and manage the full grants lifecycle for NIH extramural staff. The closeout module promotes timely closeout, consistency across the agency, and compliance with policy requirements. The closeout module also adds internal controls over the closeout process ensuring that NIH grants administration staff adhere to policy requirements, including the consideration of enforcement actions for late reporting. Other features of NIH's

GENERAL COMMENTS OF THE NATIONAL INSTITUTES OF HEALTH (NIH) ON THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) OFFICE OF INSPECTOR GENERAL (OIG) DRAFT REPORT ENTITLED: “THE NATIONAL INSTITUTE OF HEALTH DID NOT ALWAYS ADMINISTER SUPERFUND APPROPRIATIONS DURING FISCAL YEAR 2015 IN ACCORDANCE WITH FEDERAL REQUIREMENTS” (A-04-16-04046)

implementation of the new closeout module are electronic notifications that are sent at pre-determined intervals to recipients delinquent in submitting closeout reports, template letters for recovery of funds should a unilateral closeout action create a debt for the recipient, and documentation of actions and decisions in the grant file.

OIG Recommendation 2:

Provide additional training to grants management personnel to ensure awareness of applicable grants management responsibilities and compliance with applicable policies and procedures, including new or updated guidance.

NIH Response:

The NIH does not concur with this recommendation because its intent is for NIH to provide additional training on guidance that NIH will not be implementing, as discussed in our response to Recommendation 1. The NIH provides extensive training and outreach for NIH grants management staff and NIH grant recipients on grant closeout and late reporting. The training listed below supports our agency response to OIG Recommendation 1.

Internal:

- The Program Officer’s Role in Closeout of Final Progress Reports Webinar;
- Closeout Webinar;
- New Grant Closeout Standard Report; and
- Extensive discussions about the closeout policy and late reports were also held across NIH, including groups representing grants management, extramural program managers, and scientific program officials.

External:

- All About Grants Podcasts “What Administrators Need to Know About Financial Closeout of Grants;”
- Grants Closeout in eRA Commons tutorial;
- The NIH policy presentations on current policy issues, including new close out policies and late reports, presented at NIH Regional Seminars and at various meetings of grant professionals such as:
 - National Council of University Research Administrators (NCURA) Regional and Annual meetings
 - Society of Research Administrators (SRA) Regional and Annual meeting; and
- Multiple discussions with the membership of professional organizations such as the Federal Demonstration Partnership and the Council on Governmental Relations.

GENERAL COMMENTS OF THE NATIONAL INSTITUTES OF HEALTH (NIH) ON THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) OFFICE OF INSPECTOR GENERAL (OIG) DRAFT REPORT ENTITLED: “THE NATIONAL INSTITUTE OF HEALTH DID NOT ALWAYS ADMINISTER SUPERFUND APPROPRIATIONS DURING FISCAL YEAR 2015 IN ACCORDANCE WITH FEDERAL REQUIREMENTS” (A-04-16-04046)

OIG Recommendation 3:

Formalize procedures for identifying and resolving negative unliquidated obligation balances recorded in NIH’s accounting system

NIH Response:

The NIH concurs with the OIG’s finding and corresponding recommendation regarding identifying and resolving negative unliquidated obligation balances contingent upon the addition of the word “grant” between the words “unliquidated” and obligation”.

The negative unliquidated grant obligation referenced in the report occurred at the grant level and not at the appropriation level. The NIH has a number of controls in place to identify negative unliquidated obligation balances at the appropriation level. These controls include, but are not limited to, monthly status of fund reviews by Institute and Center budget officers, the Quarterly SF-133 review process, and hard funds control in the NIH Business System.

In response to the finding, the NIH has developed detect controls to identify negative unliquidated grant obligation balances. The NIH is working to document these controls in a formal procedure and anticipates finalizing these procedures no later than September 30, 2018.

OIG Recommendation 4:

Require the reconciliation of audit reports in Division of Financial Advisory Services’ database to monthly reports generated by the National External Audit Review Center.

NIH Response:

The NIH concurs with the finding that the Division of Financial Advisory Services (DFAS) did not resolve the audit findings in three grantee audit reports in a timely manner.

DFAS currently reconciles its internal database on a monthly basis to the Stewardship reports provided by the National External Audit Review Center (NEAR). A staff auditor is tasked with this responsibility and the reconciliation is reviewed by the Chief of the Special Reviews Branch (SRB).

DFAS will update its “Audit Resolution Policies and Procedures” to document the requirement of monthly reconciliation of the Audit Resolution database to the NEAR reports and all staff in SRB will be advised of the updated procedure by November 30, 2017.

DFAS actively resolved the audit findings of one report and is currently working with the organizations to resolve the audit findings in the remaining two grantee reports and will complete the resolution process by November 30, 2017.