

Management Review

National Institute of Environmental Health Sciences

Office of Management Assessment

**National Institutes of Health
Department of Health and Human Services**

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Table of Contents

EXECUTIVE SUMMARY	1
BACKGROUND	4
PART 1. KEY FINDINGS	7
I. The Ethics Program Is Not Operating Effectively.....	8
II. Decisions to Fund Grants Out of Rank Order Are Not Documented.....	12
III. Resource Information Provided to the Board of Scientific Counselors Is Incomplete.....	13
IV. Negative Perceptions of NIEHS Leadership Are Prevalent Among NIEHS Employees	15
PART 2. FUNCTIONAL AREA FINDINGS	18
A. Personnel Practices, Including Communication With Employee Union	18
B. Contracting Procedures	23
C. Property Management and Vehicles	29
D. Financial Management and Accounting Practices	31
E. Integrity of NIEHS Grant-Making Processes	39
F. Governance Structure and Other Management Decisions	41
G. EEO and Climate Assessment	44
APPENDIX	46

Abbreviations

BSC	Board of Scientific Counselors
CAN	Common Accounting Number
CFR	Code of Federal Regulations
CRADA	Cooperative Research and Development Agreement
DDM	Deputy Director for Management
DETR	Division of Extramural Research and Training
DIR	Division of Intramural Research
GAB	Government Accounting Branch
GAO	Government Accountability Office
EEO	Equal Employment Opportunity
FAR	Federal Acquisition Regulation
FY	Fiscal year
HHS	Department of Health and Human Services
IPA	Intergovernmental Personnel Act
NEO	NIH Ethics Office
NIEHS	National Institute of Environmental Health Sciences
NIH	National Institutes of Health
OFM	Office of Financial Management
OGE	Office of Government Ethics
OHR	Office of Human Resources
OM	Office of Management

EXECUTIVE SUMMARY

In response to a number of allegations involving the National Institute of Environmental Health Sciences (NIEHS) and its senior management, the House Appropriations Committee, in House Report No. 110-231, requested that the National Institutes of Health (NIH) conduct a comprehensive management review of NIEHS. The Committee specifically asked NIH to review personnel practices, contracting procedures, financial management, financial disclosures, and conflicts of interest. The NIH Director expanded the review to include an evaluation of grant-making processes, the governance structure, management decision-making processes, equal opportunity practices, and the organizational climate at NIEHS. He established a senior-level review panel from within and outside NIH to provide expertise on all aspects of the review and the resulting recommendations. NIH formed teams of subject-matter experts to review each area of concern covered in the Committee's report and other areas identified by management. The teams comprised over 50 federal and private-sector experts, including experts from the National Academy of Public Administration. The review covered the period from October 1, 2004, through July 31, 2007.

The review identified four key management problems, described below, as well as other management and operational problems at NIEHS.

1. The NIEHS ethics program is not operating effectively. NIEHS ethics staff did not maintain proper documentation of ethics actions and reports, and they did not review or certify about half the confidential financial disclosure reports that were analyzed for this assessment. Further, ethics staff said they are having difficulty fulfilling the requirements of their positions, partly because of staffing shortages and partly because they are responsible for additional duties that are not ethics-related. Without an effective ethics program, NIEHS cannot monitor employee compliance with ethics laws, regulations, policies, or procedures, jeopardizing trust in the integrity of major research program decisions and key management processes.
2. Decisions to fund grant applications out of rank order are not properly documented, as required by NIH policy. Although Institute management has flexibility to fund grants out of rank order, such decisions must be properly justified and documented in the official grant files and approved by appropriate officials. Without properly documented justification, NIEHS cannot guarantee that funding decisions are consistent with federal policy and requirements, are free from undue influence, and instill confidence in the integrity of management processes as a whole.
3. The Board of Scientific Counselors (BSC), which is responsible for periodically reviewing the work of tenured and tenure-track intramural scientists, is not receiving complete information about actual resource usage. Without complete information, the BSC may not be able to determine the relative cost-effectiveness of scientific projects and make well informed recommendations on research allocations.

4. There is a preponderance of negative perceptions of senior management among NIEHS staff, including among senior scientists. The results of two surveys, along with individual interviews and focus groups, showed more negative responses than elsewhere at NIH or in the federal government on questions measuring respect for senior leadership and leaders' ability to generate high motivation and commitment. The NIEHS Assembly of Scientists further emphasized these perceptions in August 2007, when it voted (107 out of 142) "no confidence" in the leadership of the NIEHS Director. Although the direct causes of these negative perceptions are not readily apparent, it is clear that the current management and governance structure has been unable to respond effectively to a host of deficiencies that have existed for some time.

These problems also made it difficult for NIH to ensure that the Director's actions and approach were responsive to the Institute's management needs and were consistently in line with federal processes and requirements. Compounding the Institute's current problems is the physical distance of NIEHS from all the other NIH institutes and centers in Maryland, including the Office of the Director. This distance makes it even more difficult for NIEHS management to take advantage of the informal networks and information exchanges that allow senior managers elsewhere at NIH to operate more effectively.

Recommendations

We recommend that the NIH Director instruct the NIEHS Director to:

1. provide sufficient resources to the NIEHS Ethics Office to enable the staff to operate the program effectively and take remedial action to correct past failures;
2. take necessary action to ensure that out-of-rank funding of grant applications is justified and documented in the official grant files;
3. develop a methodology for reporting all costs, including those presently not attributed to scientists, in the information that is provided to the Board of Scientific Counselors; and
4. develop an action plan to address low morale.

We also recommend that the NIH Director instruct the Office of Equal Opportunity and Diversity Management Director and the NIH Ombudsman to release the results of the Organizational Climate Survey to NIEHS employees and conduct a follow-up survey at NIEHS, using the current assessment as a baseline.

Part 2 of this report identifies other management and operational problems at NIEHS. These problems are not considered to have a significant impact on the ability of NIEHS to carry out its mission. Nevertheless, they affect the overall operational effectiveness of the Institute and factors such as morale, efficiency, and outside perceptions. We are making a series of recommendations aimed at addressing these problems in that section of this report.

Many of the areas identified in the NIEHS management review that require corrective actions will be assessed as part of the enterprise-wide risk management program and addressed to ensure

that NIH is achieving internal control objectives in support of its mission. In 2006, NIH began developing and implementing an agency-wide Risk Management Program that focuses on programmatic internal controls. NIH developed this Program using principles developed by the Office of Management and Budget. The Program will provide NIH with a framework for systematically considering the universe of events and conditions, referred to as risks, that might adversely affect the ability of NIH to fulfill its biomedical research mission.

The Program assists NIH in identifying and ranking risks. NIH will then review the identified risks to determine whether they are being appropriately mitigated. The Program has a mission-based perspective (that is, focusing on risks that might impede the NIH mission) suitable for the decentralized structure of NIH. It also clearly assigns responsibility for risks and applies a standard methodology across NIH to help identify high-performing organizations, as well as those that could benefit from increased risk management. The Program includes a comprehensive follow-up system to ensure that NIH managers take agreed-upon corrective actions to mitigate risks.

We have provided a draft of this report to NIEHS leadership for review and comment. A list of corrective actions already taken by NIEHS is reprinted in the Appendix of the report. Within 30 days, NIEHS will have a comprehensive corrective action plan to address each of the findings and recommendations contained in the report.

BACKGROUND

About NIEHS

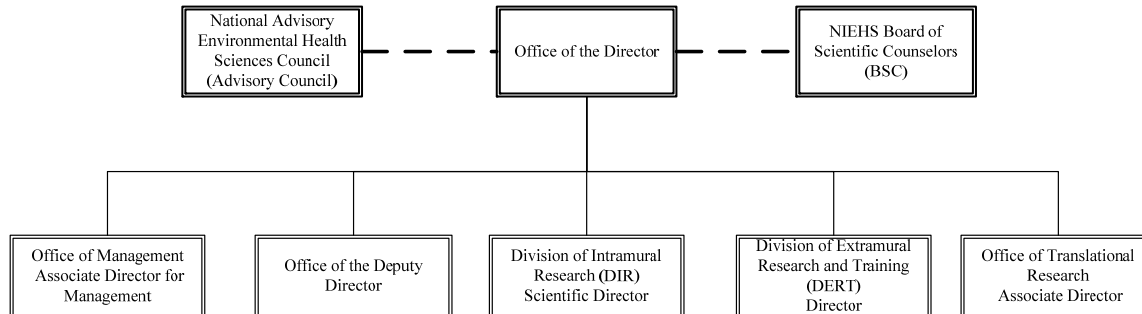
The National Institute for Environmental Health Sciences was created in 1966 and elevated to full institute status in 1969, making it one of 27 current NIH institutes and centers. The mission of NIEHS is to reduce the burden of human illness and disability by understanding how the environment influences the development and progression of human disease.

NIEHS is located in Research Triangle Park, North Carolina, and is the only NIH institute that is not located in Bethesda, Maryland. Although there are other federal agencies nearby (the Environmental Protection Agency and the U.S. Army Corps of Engineers), there are fewer federal job opportunities available within a reasonable commuting distance, thus helping to create a relatively stable workforce at NIEHS. In fiscal year (FY) 2007, the Institute had a \$721 million budget and approximately 700 federal employees. This budget funded management support; intramural research conducted by NIH personnel; and extramural research at universities and other institutions funded by grants, contracts, and cooperative agreements.

The Division of Intramural Research (DIR) conducts research that is often long-term and high-risk in nature and involves specialized research, such as epidemiological studies of environmentally associated diseases and intervention and prevention studies to reduce the effects of exposures to hazardous environments. In FY 2007, DIR had 56 tenured and 14 tenure-track investigators. Within DIR is the National Toxicology Program, an interagency program created as a cooperative effort to coordinate toxicology testing programs within the federal government; strengthen the science base in toxicology; develop and validate improved testing methods; and provide information about potentially toxic chemicals to health, regulatory, and research agencies, scientific and medical communities, and the public.

The Division of Extramural Research and Training (DERT) funds a substantial portfolio of research in environmental health sciences conducted by investigators in many disciplines from various agencies, universities, and organizations. In FY 2007, NIEHS funded 756 research grants totaling \$340 million.

NIEHS Organizational Chart



NIEHS Management Discussion, Changes, and Allegations

A number of allegations involving governance and management at NIEHS have negatively impacted the Institute's reputation and called into question the ability of its officials to responsibly manage NIEHS. The Department of Health and Human Services (HHS) Office of Inspector General, congressional committees, and the NIH Office of Management Assessment investigated a range of issues, from management of a scientific journal to implementation of the performance appraisal system, questionable use of support staff, and improper use of federal funds for office renovations.

In May 2005, a new Director was appointed to lead NIEHS as a change agent responsible for developing and implementing a new vision that would change the way NIEHS conducts basic science. According to the NIEHS Strategic Plan,¹ scientific research of the Institute had been traditionally carried out by individual investigators working on narrowly defined hypotheses. The Strategic Plan introduced integrated science teams that would conduct disease-focused research on complex hypotheses and on the interplay of environmental agents and other risk factors. These changes focused on updating and improving the scientific direction of the Institute.

Scope and Methodology

In response to the allegations involving NIEHS, the House Appropriations Committee, in House Report No. 110-231, Pages 161-2, requested that NIH conduct a comprehensive management review of NIEHS. In response, the NIH Director appointed a senior-level review panel of leaders in scientific and administrative management to oversee the effort and ensure that the review was conducted with sound methodology and scientific rigor, met applicable standards, and supported the NIH mission. The review panel provided expertise to the NIH Director on all aspects of the review and on the resulting recommendations. NIH also formed teams of subject-matter experts to review each area of concern expressed by the Committee, as well as additional areas identified by NIH management.

¹ NIEHS 2006-2011 Strategic Plan: *New Frontiers in Environmental Sciences and Human Health*.

The teams comprised over 50 NIH personnel and contractors with subject matter expertise in seven functional areas:

1. Personnel practices, including communication with the employee union
2. Contracting procedures
3. Financial management and accounting practices
4. Financial disclosures and conflicts of interest of NIEHS employees and contractor staff
5. Grant making processes
6. Governance structure and other management decisions
7. Equal Employment Opportunity issues and organizational climate

In addition to engaging internal subject-matter experts in the review of NIEHS, NIH also sought the advice of the National Academy of Public Administration,² a nonpartisan organization chartered by Congress to help public organizations improve effectiveness and address management challenges. NIH reviewed the findings of all the functional area teams and conducted a crosscutting analysis of NIEHS management and leadership issues to derive its findings, conclusions, and recommendations for the NIH Director.

The review covered the period from October 1, 2004, through July 31, 2007.

² Although the assistance and specific comments of the National Academy of Public Administration were very helpful, NIH alone is responsible for the contents of this report.

PART 1. KEY FINDINGS

The review revealed four key management problems within NIEHS: (1) The NIEHS ethics program is not operating effectively, therefore compromising the Institute's ability to monitor employees' compliance with ethics laws, regulations, policies, and procedures; (2) the Division of Extramural Research and Training does not document decisions to fund grants out of rank order, resulting in reduced transparency of grant making decisions and potentially calling into question the integrity of the Institute; (3) the Division of Intramural Research is not consistently providing all resource allocation information to the BSC, creating the risk that the BSC may not be able to determine the relative cost-effectiveness of scientific projects; and (4) the results of the 2006 Federal Human Capital Survey and of a 2007 Organizational Climate Survey, as well as interviews and focus groups conducted at NIEHS, indicated widespread negative perceptions of NIEHS leadership.

Even though the organizational structure at NIEHS appears similar to that of most other institutes and centers at NIH, the number and scope of changes at NIEHS in recent years required both strong organizational management and individuals accountable for carrying out change. The geographical separation of NIEHS from the rest of NIH may have contributed to management problems because NIEHS leadership did not effectively use the informal network for exchanging information on effective solutions to issues, a network that is readily available to other senior managers on the Bethesda campus.

Management issues can cast public doubt on the integrity of decision-making processes and can pose a significant obstacle to the Institute's ability to effectively perform its critical research mission. This review of NIEHS offers an opportunity for addressing these issues and developing self-correcting management processes, with clear lines of accountability and better transparency. Given the importance to NIEHS—and to NIH—of preserving a reputation for integrity in funding scientific research and in attracting renowned scientists to serve in key management positions, comprehensive corrective actions must be taken to restore and rebuild the Institute's management structure and processes.

I. The Ethics Program Is Not Operating Effectively

A team of ethics officials from the NIH Ethics Office (NEO) examined the ethics program at NIEHS and found that most public and confidential financial disclosure reports were not being reviewed or certified and that ethics staff did not maintain proper or complete documentation of their reviews.³ Without an effective ethics program, the Institute's ability to monitor employees' compliance with ethics laws, regulations, policies, and procedures is compromised. Most importantly, an ineffective ethics program impedes efforts to avoid conflicts of interest, thus jeopardizing trust in the integrity of NIEHS with regard to major research program decisions and key management processes.

The NEO examined the ethics program at NIEHS to determine whether it was operating effectively and in accordance with Executive Branch ethics laws, regulations, policies, and procedures. The NEO analysis included the NIEHS public and confidential financial disclosure systems; employee outside activities approval system; official duty activities involving outside organizations; counseling and advice services; ethics education and training program; ethics requirements for contractors; and enforcement of ethics laws and regulations.

The NIEHS Ethics Office was led by the NIEHS Deputy Ethics Counselor and had two staff: an Ethics Coordinator and an Ethics Specialist. They managed all elements of the NIEHS ethics program.

Title I of the *Ethics in Government Act of 1978* (5 U.S.C. App.) requires that high-level federal officials in the Executive Branch report certain financial interests publicly to ensure that every citizen can have confidence in the integrity of the Federal Government. It is important that other less senior Executive Branch employees whose duties involve the exercise of discretion in sensitive areas confidentially report their financial interests and outside business activities to their employing agency to facilitate the review of possible conflicts of interests. These confidential reports assist an agency in administering its ethics program and counseling its employees.

Financial Disclosure Reports Are Not Reviewed or Certified

Most Public Financial Disclosure Reports (SF-278)⁴ and Confidential Financial Disclosure Reports (OGE-450)⁵ filed between 2004 and 2007 either were not reviewed by NIEHS ethics staff or were reviewed and certified, but with obvious errors. For example, the team examined one employee's files that disclosed the following:

- The new entrant's SF-278 report due in 2004 was not reviewed or certified.

³ According to 5 Code of Federal Regulations Part 2634 Section 605, *Review of Reports*, the review is to determine whether each required item has been completed and, on the basis of information contained in reports, whether the filer is in compliance with applicable laws and regulations.

⁴ Public Financial Disclosure Reports are filed by employees in senior-level positions.

⁵ Confidential Financial Disclosure Reports are filed by employees in designated positions.

- Annual SF-278 reports for 2005 and 2006 were not reviewed or certified.
- Multiple outside activities were reported on the SF-278 forms, but the employee's files did not contain approved HHS-520 (*Request for Outside Activities*) forms.
- There were no notes in the file to identify what the ethics officials had reviewed, if anything.

This employee's file was typical of most NIEHS employees' files that were examined by the NEO team. Furthermore, NIEHS ethics files were generally not maintained in a system such that ethics information for each employee is complete and readily retrievable by name or other identifier assigned to each individual.

With respect to the confidential (OGE-450) reports filed in 2004 and 2005, approximately 179 employees were in positions that required the filing of OGE-450 reports. Of the 48 confidential reports filed in 2004 and 2005 that were examined, only 24 had been reviewed by the NIEHS ethics staff.

At the time of the NEO review in September 2007, the team found that as of February 2007, 251 confidential reports were required to be filed. When NEO examined these reports, ethics staff had certified only 50 reports that disclosed no reportable items and 2 reports that disclosed minimal financial holdings.⁶ Ethics staff had not reviewed or certified the other 199 reports.

Regulations⁷ implementing the Executive Branch ethics program and delegations of authority within each Executive Branch agency or department charge ethics staff with specific responsibilities for reviewing forms, assisting employees with procedures and questions, and submitting appropriate reports on ethics activities. These duties and responsibilities, however, were not properly carried out at NIEHS.

When interviewed, NIEHS ethics staff cited a number of reasons why they had difficulties carrying out their duties:

- Ethics staff no longer have access to a database required to track new and departing employees.
- Ethics staff are accountable for the accuracy and completeness of sponsored travel requests and say they spend too much time correcting technical issues in sponsored travel packages that are unrelated to the conflict of interest analyses they should be conducting.
- The Ethics Program does not have adequate office space for storing files, making it difficult to manage and track cases.
- Repeated requests for additional staff support for the NIEHS ethics program have been denied.

⁶ The Office of Government Ethics changed the OGE-450 reporting period and filing cycle for 2006. No fiscal year reports were due on October 31, 2006. Instead, OGE required confidential filers to submit their next annual report by February 15, 2007. The reports covered the 15-month period from October 1, 2005, to December 31, 2006, avoiding a gap in the reporting period coverage. In 2008 and forward, OGE-450 filers will file a calendar year report by February 15.

⁷ 5 C.F.R. Part 2638, *Ethics Responsibilities*; 5 C.F.R. Part 2634, *Financial Disclosure*; and 5 C.F.R. Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch*.

Documentation Supporting Conflict of Interest Analyses Did Not Exist

The team could not verify whether NIEHS ethics staff reviewed ethics reports and activity requests for potential conflicts of interest⁸ because documentation did not exist to indicate that reviews had been performed. Specifically, the team found that staff did not document conflict of interest analyses for financial disclosure reports, outside activity and sponsored travel requests, and Cooperative Research and Development Agreements (CRADAs). It is necessary to document, within the employee's file, ethics reviews for potential conflicts of interest to show that the reviews have been performed and that the decision-making process is adequate, reliable, and objective.

Federal law, as implemented by NIH Policy Manual 2300-735-1, *Avoiding Conflicts of Interest*, Section G, *Guidelines to Avoid Conflicts of Interest*, prohibits employees working on a CRADA from having a financial interest in, engaging in an outside activity for, or negotiating employment with that company. Four CRADAs were submitted to the ethics office during the review period. The team found that NIEHS ethics staff did not maintain documentation of the clearance action, therefore providing no record that staff had indeed reviewed the four CRADAs for potential conflicts of interest.

Further, although a number of outside activities were listed in financial disclosure reports filed by NIEHS staff, the ethics files did not contain sufficient supporting documentation. For example, in one case, multiple outside activities were reported on an employee's SF-278 report, but there were no approved outside activity requests in the employee's file.

Finally, NIH Policy Manual Chapter 1500-08-01, *Acceptance of Payment from a Nonfederal Source to Cover Travel Expenses (Sponsored Travel)*, Section A, *FTR Travel Acceptance Authority*, 31 U.S.C. 1353, Part 4, *Conflict of Interest Analysis*, requires that travel requests be reviewed for potential conflicts of interest. Although ethics staff stated that they spend much of their time reviewing sponsored travel requests for compliance with conflict of interest and travel rules, they did not keep copies or notes of the 612 travel requests that were entered into the NIH Ethics Management Information System between February 2005 and July 2007.

Conclusion

Without an ethics program that provides thorough reviews and documentation of analyses for possible conflicts of interest, NIEHS cannot effectively monitor employees' compliance with ethics laws, regulations, policies, and procedures. Further, and most importantly, an ineffective ethics program impedes efforts to avoid conflicts of interest in research program decisions,

⁸ NIH Policy Manual Chapter 2300-735-1, *Avoiding Conflicts of Interest*, Section G, *Guidelines to Avoid Conflicts of Interest*, Part 1, *Definitions*, states that an "Actual Conflict of Interest" is when an employee has or would have official responsibilities with an outside organization with which that employee has a financial interest (his/her own or an interest which is imputed to the employee) or affiliation. It also states that an "Apparent Conflict of Interest" is when an employee is involved in a particular matter involving specific outside parties (including individuals, corporate entities, etc.) and the circumstances are such that a reasonable person with knowledge of the relevant facts would question the employee's impartiality in the matter.

endangering the Institute's reputation and jeopardizing the integrity of NIEHS research program decisions and key management processes.

Recommendations

We recommend that the NIH Director:

1. Instruct the NIEHS Director to assess, with assistance from the NEO, the NIEHS Ethics Office's staffing and resource needs and provide it with sufficient support to fully and properly perform its duties and responsibilities.
2. Instruct the NEO to conduct a follow-up review in one year to determine whether NIEHS has taken action to correct identified deficiencies in its ethics program.
3. Instruct the NIEHS Deputy Ethics Counselor to:
 - a. ensure that the filing system is complete, in working order, and readily retrievable by individual identifier for each employee;
 - b. ensure that the files contain documentation of the reviews performed;
 - c. ensure that all public financial disclosure reports filed from 2004 to the present are reviewed and certified and that all related reports and requests⁹ are collected, reviewed, and, if appropriate, certified or approved; and
 - d. ensure that all confidential financial disclosure reports for the October 2005 and February 2007 filing dates are reviewed and certified and that all related HHS reports and requests are collected, reviewed, and, if appropriate, certified or approved.⁹

⁹ HHS 716, "Initial Report of Financial Interests in Substantially Affected Organizations for Employees of the National Institutes of Health," October, 2005; HHS 7171, "Confidential Report of Financial Interests in Substantially Affected Organizations," May, 2007; HHS 520, "Request for Approval of Outside Activity," January, 2006; HHS 521, "Annual Report of Outside Activity," January, 2006.

II. Decisions to Fund Grants Out of Rank Order Are Not Documented

A team of subject matter experts in grants management reviewed the NIEHS grant award process, analyzing available documentation and interviewing NIEHS staff. The team found that decisions to award extramural grant applications out of rank order are not properly documented, as required by NIH policy. This lack of documentation reduces the transparency of grant award decisions and may call into question the integrity of the overall grant funding process at NIEHS.

NIEHS is one of 24 institutes and centers that issue grant awards. In FY 2007, NIEHS funded 756 research grants totaling \$340 million. Grant applications are reviewed for scientific merit by experts and assigned a priority score and/or percentile ranking. On the basis of these scores/rankings, NIEHS officials calculate the projected number of grant applications recommended for funding and available funds to determine a cut-off point, also known as the payline.

Although NIH policies give institutes and centers the flexibility to consider scientific opportunity, portfolio balance, and public health needs when selecting applications for award, any deviations from the payline must be documented in writing. NIH Policy Manual Chapter 4204-204C, *Notification of Funding, Section C, Policy, Part 4, Ranking, Approval, and Funding*, states that “funding applications out of rank order must be justified and documented in the official grant files, and approved by the appropriate official at each [institute and center].”

The team found that from FY 2005 through FY 2007, 2,516 NIEHS grant applications received priority scores. During that period, 45 applications that scored beyond the payline were funded. However, NIEHS staff did not document the justifications for these decisions.

Conclusion

NIEHS must create and maintain proper documentation for all out-of-rank grant funding decisions. A transparent, well documented grant award process ensures that the selection of applications for funding is consistent with HHS and NIH policy and requirements; is free from undue influence or conflicts of interest, either real or apparent; and fosters the integrity of key management processes at NIEHS and, by extension, at NIH.

Recommendation

1. We recommend that the NIH Director instruct the NIEHS Director to take action necessary to ensure that all out-of-rank funding decisions of grant applications are justified and documented in the official grant files.

III. Resource Information Provided to the Board of Scientific Counselors Is Incomplete

A team of analysts from the Office of Management Assessment reviewed the NIEHS governance structure and found that resource information provided to the BSC for programmatic review of tenured and tenure-track intramural scientists at NIEHS does not consistently and fully reflect actual resource usage. Further, the team found that there is no consistent methodology at NIEHS for reporting some of this information. Without complete information, the BSC may not be able to determine the relative cost-effectiveness of scientific projects and make well informed recommendations on research allocations.

The review team assessed how senior NIEHS leadership interacts with the NIEHS community in making decisions and supporting the institute's mission, goals, and objectives. The team examined decision-making processes, strategic planning processes, organizational structure, functions of the NIEHS Advisory Council, and BSC reviews of intramural scientists. The team analyzed confidential summaries of resource information provided to the BSC and interviewed DIR staff.

NIH Policy Manual Chapter 3005, *Review and Evaluation of Intramural Program*, Section E, *Policy*, requires that the BSC review the work of each tenured and tenure-track intramural scientist at least once every four years. As part of its review, the BSC analyzes confidential summaries of research resources used by each scientist to determine how much support staff and space the scientist uses for each project and whether the resources available to each scientist are commensurate with research accomplishments. The summaries also provide detailed information on budgets, contracts, and CRADAs. This information enables the BSC to evaluate and provide advice to the Scientific Director on issues related to research, including resource allocation.

The review team found that some resources are not always included with information provided to the BSC—specifically, costs associated with core facilities and contracts that are not attributed to scientists. Further, a consistent methodology does not exist at NIEHS for reporting resource usage of core facility and central service resources.

Conclusion

Evaluations that are based on incomplete expenditure information prevent the BSC from performing an accurate analysis of intramural research needs and resources. Failure to provide this data to the BSC on a consistent basis for all researchers increases the risk that BSC recommendations may not accurately or properly identify whether funding levels for intramural investigators are appropriate or correct.

Recommendation

1. We recommend that the NIH Director instruct the NIEHS Director to develop a methodology for reporting all costs, including those presently not attributed to scientists, in the information provided to the Board of Scientific Counselors.

IV. Negative Perceptions of NIEHS Leadership Are Prevalent Among NIEHS Employees

The Office of Equal Opportunity and Diversity Management and the Office of the Ombudsman, Center for Cooperative Resolution, jointly examined Equal Employment Opportunity (EEO) complaints filed by NIEHS employees and assessed the organizational climate at NIEHS. The team found that many employees have a negative view of NIEHS leadership. Although the reviewers did not assess the direct causes of these negative perceptions, they believe that current management problems have contributed to low morale, which can negatively affect recruitment and retention and could make it more difficult for senior management to implement the changes needed to reverse this problem.

Organizational Climate Survey

In November 2007, the Defense Equal Opportunity Management Institute¹⁰ conducted an Organizational Climate Survey of NIEHS. The survey is a tool that allows management to assess critical organizational climate dimensions that have an impact on the effectiveness of an organization. The Institute obtained 244 responses to the survey. It also conducted voluntary focus groups with 19 staff and 13 individual interviews, but because of the low number of participants, results of the focus groups and interviews should not be extrapolated to reach conclusions about the causes of the opinions expressed.

The survey did obtain positive responses to questions about work group effectiveness, job satisfaction, and work group cohesion. However, the themes that emerged from the survey were widespread perceptions by NIEHS staff of poor communications, retribution, a hostile leadership style, favoritism, and nepotism.

The results of the Organizational Climate Survey showed that the NIEHS organizational climate needs to improve in the following areas:

- Leadership cohesion, which refers to how a respondent perceives the organization's leadership.
- Organizational commitment, which shows an individual's desire to be assigned to and remain within the organization.
- Trust in the organization, which refers to the organization's leadership, management, and processes.

2006 Federal Human Capital Survey

There were 186 NIEHS responses to the 2006 Federal Human Capital Survey, which rated leadership and work experiences and compared the rankings to those obtained at NIH, HHS, and

¹⁰ The Institute is a center of excellence for EEO, diversity, and human relations that provides consulting services for federal, state, and local agencies.

government-wide. The survey was used to establish a baseline and reference point from which to identify possible trends or aberrant data in the Organizational Climate Survey.

NIEHS employees' responses to the 2006 survey questions on leadership reflected a lower ranking than those in NIH, HHS, and the government as a whole. To the statement, "*I have a high level of respect for my organization's senior leaders,*" 46 percent of employees responded positively; however, 35.8 percent of employees responded negatively. This negative rating was almost 10 percent higher than the government as a whole and almost 15 percent higher than NIH. Similarly, responses to the statement, "*In my organization, leaders generate high level of motivation and commitment in the workforce,*" reflected a negative rating 10 percent higher than government-wide and 16 percent higher than at NIH.

On the other hand, NIEHS employees' responses to statements in the category "*Personal Work Experiences*" reflected a higher satisfaction rating than at NIH, HHS, and the government as a whole.

No Confidence Vote in NIEHS Leadership

In August 2007, 107 out of 142 voting members of the NIEHS Assembly of Scientists cast votes of "no confidence" in the leadership of the NIEHS Director. The Assembly was established by intramural scientists within DIR to promote an atmosphere conducive to professional and scientific excellence.

Although the Assembly was enthusiastic about the NIEHS Director's scientific vision, it met during the summer of 2007 to discuss concerns that it then raised in a letter to the NIEHS Deputy Director on the impact of managerial decision-making on research programs. The Assembly's concerns included the following:

- Actions by NIEHS leadership had damaged the Institute's reputation and would weaken support for NIEHS.
- The new NIEHS outpatient clinic would grow at the expense of other intramural research programs.
- Low morale at the Institute would affect recruitment and retention of researchers.

In August 2007, the Assembly of Scientists voted on three questions, with the following results:

- How have the actions and decisions of the NIEHS Director affected your morale? (99 out of 141 responded "Negatively.")
- At this time, does the NIEHS Director have your continued support? (91 out of 142 responded "No.")
- Do you have confidence in the leadership of the NIEHS Director? (107 out of 142 responded "No.")

Conclusion

Employee perceptions of NIEHS leadership are substantially negative, morale appears low, and confidence in NIEHS management is lacking. These negative perceptions can adversely impact organizational effectiveness by lowering morale, stewardship, motivation, and integrity, leading to severe problems with recruitment, retention, and scientific progress.

Recommendations

We recommend that the NIH Director:

1. instruct the Office of Equal Opportunity and Diversity Management Director and the NIH Ombudsman to release the results of the Organizational Climate Survey to NIEHS employees;
2. instruct the Office of Equal Opportunity and Diversity Management Director and the NIH Ombudsman to conduct a follow-up organizational climate assessment survey at NIEHS, using the current assessment as a baseline to identify improvements in any areas listed in this report; and
3. instruct the NIEHS Director to develop an action plan to address low morale.

PART 2. FUNCTIONAL AREA FINDINGS

The additional findings described in this section are not considered to have a significant impact on the ability of NIEHS to carry out its mission. Nevertheless, they will also need to be addressed, as they contribute to the overall operational effectiveness of the Institute and affect factors such as morale, efficiency, and outside perceptions.

A. Personnel Practices, Including Communication With Employee Union

The NIH Office of Human Resources (OHR) reviewed personnel practices and NIEHS management communications with the employee union. The OHR subject matter experts who reviewed personnel practices found no indication of a purposeful or consistent pattern of abuse by NIEHS management. However, the team found that (1) NIEHS management did not comply with HHS and NIH policy on performance appraisals, (2) managers showed intent to hire before receiving Best Qualified lists, (3) the OHR branch that services NIEHS did not maintain proper documentation on above-the-minimum pay, (4) management was not in compliance with the Intergovernmental Personnel Act, and (5) communications between NIEHS and the employee union could be enhanced.

OHR measured the efficiency and effectiveness of the NIEHS personnel management program to ensure adherence with Merit System Principles as prescribed by 5 U.S.C. section 2301. The OHR team examined the processes, policies, procedures, and internal controls for hiring practices, separations, promotions, recruitment, and awards. The reviewers found that NIEHS followed and adhered to merit principles and NIH policies in the areas of promotions, retention, and incentives (recruitment, retention, and relocation) but it expressed concerns about appraisals, recruitment, above-the-minimum salaries, and the Intergovernmental Personnel Act (IPA) Mobility Program. OHR also reviewed NIEHS management communications with the American Federation of Government Employees Local 2923, the only employee union at NIEHS.

Employees Signed Performance Appraisals that Did Not Include Performance Ratings

The HHS Performance Program requires that upon completion of a performance appraisal, each employee be assigned one of four rating levels. When the appraisal form is presented to the employee, he/she is asked to sign and date the appraisal form, which should include an assigned rating level. Reviewers interviewed 22 NIEHS staff, some of whom said that supervisors had required them to sign 2006 appraisal forms that did not include an assigned rating level, adding that some supervisors did so because they had not yet assigned final performance ratings at the time of the appraisal discussion.

Conclusion

Management required employees to sign their performance appraisal forms without assignment of a rating. By doing so, NIEHS violated departmental policy and did not afford employees appropriate notice or possibly the opportunity to seek higher-level review of an appraisal with which they did not agree.

Recommendation

1. We recommend that the NIH Director instruct the NIEHS Director to comply with HHS and NIH policy relating to the 2007 performance appraisal process to ensure that employees sign an appraisal that includes their final rating.

Managers Showed Intent to Hire Before Receiving Best Qualified Lists

The review team found e-mail messages between management and staff of the OHR branch that services NIEHS discussing specific candidate selections prior to the release of the certificate of best qualified candidates. This practice raises questions about whether fair consideration was applied when selecting candidates. NIH Policy Manual Chapter 2300-335-1, *NIH Merit Promotion Plan*, is intended to ensure that qualified available applicants receive fair consideration for positions filled under competitive procedures. The policy describes the process by which a “certificate of best qualified candidates, listed alphabetically, is referred to the selecting official along with their applications” and specifies that management will select individuals “from among the best qualified candidates.”

Conclusion

Premature communications between management and OHR staff discussing the selection of candidates before a list of best qualified candidates is created are inappropriate and undermine the intent of ensuring that all applicants receive fair consideration under competitive procedures. Creating or contributing to a hiring process that is not, in fact or appearance, fair, equitable, and merit-based can potentially damage morale and result in grievances or complaints.

Recommendation

2. We recommend that the NIH Director instruct the NIH OHR Director to provide the staff of the OHR branch that services NIEHS with guidance or training about appropriate and inappropriate communications with management about the recruitment process and the qualification and selection of candidates.

Personnel Files Lacked Documentation on Above-the-Minimum Pay

None of the five sample cases of above-the-minimum pay rates that OHR reviewed at NIEHS contained documentation showing whether NIEHS had initially offered the candidate a recruitment incentive and whether the incentive had been declined. A recruitment incentive is more advantageous to the federal government than a higher pay rate because it constitutes a one-time payment, which is less costly than a higher permanent salary.

NIH Policy Manual Chapter 2300-575-1, *NIH Salary Determination, Superior Qualifications*, Section B, *Exceptions*, Part b, *Superior Qualifications*, states that an employee's rate of basic pay upon appointment or reemployment may be set at any step of the employee's grade if the employee has superior qualifications or there is a special need by NIH for the candidate's services. Among other requirements, each above-the-minimum pay request must include the reasons for authorizing an advanced rate of pay instead of (or in addition to) a recruitment bonus. The policy states that written documentation sufficient to reconstruct the action taken in each case must be maintained. NIEHS did not maintain such documentation.

Conclusion

NIEHS did not maintain documentation showing whether recruitment bonuses had been offered and declined in each pay rate request prior to offering above-the-minimum pay rate, as required by NIH policy.

Recommendation

We recommend that the NIH Director instruct the NIH OHR Director to:

3. ensure that NIEHS document all recruitment bonuses that are offered and declined prior to offering an above-the-minimum pay rate and
4. require the OHR branch that services NIEHS to maintain the documentation in its case files.

NIEHS Is Not Complying with NIH Policy on IPA Mobility Program

The OHR branch that services NIEHS was unaware that three staff were working under the IPA Mobility Program, which provides for the temporary assignment of personnel between the Federal Government and state and local governments, colleges and universities, and other eligible organizations. NIH Policy Manual Chapter 2300-334-1, *Assignments Under the IPA*, Section J, *Arranging an Assignment*, states that IPA agreements and extensions of the assignment period must be documented on form HHS-OF-69, which requires the signature of the OHR Director. In addition, the policy states that assignees who have served for four continuous years may not be sent on another assignment without at least a 12-month return to duty.

In one example, reviewers found that the HHS-OF-69 was correctly used to process an individual who began working at NIEHS in 2001, but subsequent IPA renewals for 2002-07 were incorrectly documented on an Office of Personnel Management form that does not require the signature of an OHR official. In addition, as of 2007, the individual was still at NIH under an IPA agreement, exceeding the allowable four-year period. Two other IPA agreements were also approved and processed using the incorrect form.

Conclusion

Because NIEHS used the incorrect forms, OHR was not aware that three individuals were working on IPA agreements. This may have led to one individual working longer than the maximum allowable four-year period for IPA agreements.

Recommendations

We recommend that the NIH Director:

5. instruct the NIEHS Director to ensure that NIEHS staff are trained on requirements of the Intergovernmental Personnel Act Mobility Program,
6. instruct the NIEHS Director to ensure that all appropriate Human Resources officials sign the form, and
7. instruct the OHR Director to take action necessary to terminate the IPA agreement for the individual assigned since 2001.

Communications Between NIEHS and the Employee Union Could Be Enhanced

There is a lack of collaborative relationship between the American Federation of Government Employees Local 2923 and NIEHS management. As a result, management and the Union have been unable to make substantial progress in negotiating a new labor agreement, even though the current contract has not been renegotiated since May 1990.

There is little collaboration or cooperation between the parties, and no joint successes. The team compared FY 2007 unfair labor practice filing rates at NIEHS to those filed in the Federal Government and found that the number of filings per union member was 87 times higher than in the rest of the government. A neutral third party found that 92 percent of charges filed in FY 2004 through FY 2007 were without merit, and NIEHS has settled only 8 percent (12 cases) during that time period without pursuing litigation to determine merits. In cases where litigation was pursued, the Union almost always refused to join in the settlement.

Conclusions

Without a forum for organized dialogue between employees and management, internal conflict resolution is unlikely. Consistent negative communications between unionized employees and management can result in isolation of some employee groups from the rest of the Institute and can spread resentment.

Recommendation

8. We recommend that the NIH Director require the OHR Director to hire an NIEHS labor relations specialist to help management maintain compliance with the law and the contract with the American Federation of Government Employees.

B. Contracting Procedures

A team of subject matter experts on contracting procedures from the NIH Office of Acquisition and Logistics Management reviewed the NIEHS Office of Acquisition and found occurrences of noncompliance with regulations and policies pertaining to negotiated and sealed-bid contracts and simplified acquisitions. The deficiencies can result in poor proposals, diminished levels of competition, protests, procurement process delays, and increased costs.

The team performed in-depth file reviews of 447 out of 7,285 NIEHS acquisition files. These files included negotiated and sealed-bid contracts and simplified acquisitions (open market purchase orders, Federal Supply Schedule purchase orders, professional service purchase orders, records of call/blanket purchase agreement orders, and SF-44A¹¹ orders). In addition, the team reviewed purchase card transactions of 30 out of 97 cardholders. For its review, the team used *The Health and Human Services Procurement Review Guide* and checklists that conform to the Federal Acquisition Regulation (FAR),¹² HHS Acquisition Regulation, and NIH policies and procedures.

The subject matter experts on contracting procedures did not find evidence of fraud, waste, or abuse in the transactions they examined for this review.

Deficiencies in Negotiated Acquisition and Sealed-Bid Contracts (Non-Simplified Acquisition)

The review team found noncompliance with federal and departmental acquisition regulations and with NIH policies and procedures on negotiated acquisition and sealed-bid contracts in the following areas:

- Evaluation criteria
- Drafting of contracts that reflect mutually binding legal relationships
- Internal file review documentation
- Acquisition planning

The team reviewed nine contracts ranging in value from \$611,000 to \$17,920,000 awarded under FAR Part 12 (*Acquisition of Commercial Items*), FAR Part 14 (*Sealed Bidding*), and FAR Part 15 (*Contracting By Negotiation*). The team examined 255 regulatory and procedural elements for each of the 9 contracts. The types of contracts reviewed included (a) cost-plus-fixed-fee; (b)

¹¹ Standard Form 44A, "U.S. Government Purchase Order."

¹² The FAR System was established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies, and it consists of the FAR and agency acquisition regulations that implement or supplement the FAR.

firm fixed-price; and (c) indefinite-delivery, indefinite-quantity acquisitions. The review disclosed the following occurrences of noncompliance:

Evaluation Criteria

The review team found that in three of the nine negotiated acquisition cases, the Request for Proposals did not clearly state all evaluation factors and their relative importance, and the technical evaluation was not conducted in accordance with the stated evaluation criteria. In two of the three cases, there was no discussion of whether the mandatory evaluation factors had been met. In one case, the technical evaluation was not in compliance with the criteria stated in the solicitation. Unclear evaluation criteria could lead offerors to develop proposals that do not best meet the needs of the government. In addition, technical evaluations that are not conducted in accordance with stated evaluation factors could lead to an award to an offeror that is not the “best value”¹³ to the government. In both cases, there would be an increased likelihood of protest actions on the part of unsuccessful offerors that could lead to a delayed award.

The FAR¹⁴ requires that all factors and significant sub-factors that will affect contract award and their relative importance must be stated clearly in the solicitation. In addition, it requires that a technical evaluation be conducted in accordance with stated evaluation factors in the Request for Proposals.¹⁵

Drafting of Contracts that Reflect Mutually Binding Legal Relationships

The review team found that in four of the nine cases, the contract did not fully reflect the total agreement of the parties. In one case, the final proposal agreement, which would have corroborated the contract and provided evidence of a mutually binding relationship, was not included in the file documentation. In another case, the subcontracting plan that was part of the official documentation was not the final plan that had been accepted by the government.

Without proof of a mutually binding legal relationship as part of the contract, a contract may be invalidated or disputed. The FAR¹⁶ defines a contract as a mutually binding legal relationship between the buyer and seller and requires that the contract reflect the agreement of the parties. Further, the HHS Acquisition Regulation¹⁷ states: “The prospective contractor must be informed that the contract is not effective until accepted by the contracting officer.”

¹³ FAR defines “best value” as the expected outcome of an acquisition that provides the greatest overall benefit in relation to the government’s requirement. Agencies can obtain the best value using different types of source selection approaches to reflect the relative importance of cost or price.

¹⁴ FAR subpart 15.304(d), *Evaluation Factors and Significant Sub-factors*.

¹⁵ FAR subpart 15.305, *Proposal Evaluation*, and 15.404-1(a)-(c), *Proposal Analysis Techniques*.

¹⁶ FAR subpart 2.101, *Definitions*.

¹⁷ HHS Acquisition Regulation subpart 315.37(a), *Contract Preparation and Award*.

Internal File Review Documentation

Past performance evaluations. The review team found that seven of the nine contract files reviewed did not contain the required past performance evaluation. As a result, a contractor's past performance information is not available for evaluation during future contract actions.

FAR 42.15¹⁸ (*Contractor Performance Information*) requires the preparation of past performance evaluations for contracts at the time of contract completion; also, it states that "interim evaluations should be prepared as specified by the agencies to provide current information for source selection purposes, for contracts with a period of performance, including options, exceeding one year." In addition, NIH Policy Manual 6015-2, *Past Performance Information*, Section F, *Procedures*, Part 5a, *Evaluation of Contractor Performance*, requires both interim and final past performance evaluations.

Contract modifications. The review team found that seven of the nine contracts had modifications that were improperly documented, cited the wrong authority, were out of scope with no appropriate justification provided, or had unjustified sole-source modifications. The FAR¹⁹ states that contract modifications must be documented to show that they were issued under the appropriate authority, were within the scope of the contract, and had appropriate justification for sole-source actions.

Improper and insufficient documentation of contract modifications can result in the government's inability to defend against contractor claims. The final result could be that at contract close-out, the task of determining the actual costs and responsibilities might be compromised.

Pre-solicitation and pre-award review. The review team found that five of the nine contract files contained no evidence that this type of review was done. Pre-solicitation and pre-award file reviews help to ensure that contract files are complete, well documented, and accurate; act as a "check and balance" to uncover errors and omissions in the file documentation; and help minimize misunderstandings by both parties. NIH Policy Manual Chapter 6304-71, *Pre-solicitation and Pre-award Review and Approval of Proposed Contract Actions*, Section H, *Notification and Submission of Contract Files*, Part a, *Presolicitation Reviews*, and Part b, *Preaward Reviews*, states that contract files must include evidence of an internal pre-solicitation and pre-award file review.

Without internal pre-solicitation and pre-award file review, there is a greater likelihood that errors (e.g., lack of appropriate documentation) will occur in the files, creating misunderstandings or confusion between the government and offerors.

¹⁸ FAR subpart 42.15, *Contractor Performance Information*.

¹⁹ FAR part 43, *Contract Modifications*.

Acquisition Planning

Consideration of all sources and contracts. The team found that three of the nine contract files did not provide evidence that priority sources and existing contracts were considered (e.g., Federal Supply Schedules, indefinite delivery contracts, government-wide contracts) before awarding a new contract. The FAR²⁰ requires that contract files contain evidence that priority sources and existing contracts were considered prior to awarding a contract.

Failure to consider priority sources and existing contracts may lead to the planning, acquisition, and award of an unnecessary contract with a much longer lead time than an existing contract vehicle or a priority source.

ALERT system notice. The team found that three of the nine files reviewed did not contain documentation that the ALERT System Manager was provided a list of principal investigators for all research proposals received by NIEHS. NIH Policy Manual Chapter 6309-1, *Reporting of Proposals Received*, Section E1, *Procedures*, requires that contract officials perform an HHS ALERT notification of institutions, organizations, or principal investigators that are part of ongoing investigations of fraud or abuse.

Failure to provide the notice would put NIH at risk of awarding a Research and Development contract to an offeror who is being investigated for fraud or abuse.

Recommendations

1. We recommend that the NIH Director instruct the NIEHS Director to ensure that:
 - a. all contracting officers are utilizing NCI's Document Generation System to prepare Request for Proposals and
 - b. documentation exists in contract files to demonstrate that at least minimum training requirements have been met for technical evaluators.
2. We also recommend that the NIH Director instruct the NIEHS Director to periodically perform reviews to determine whether:
 - a. contract files are accurate and complete;
 - b. FAR, HHS policy, and NIH policy are being followed;
 - c. past performance information is included in contract files; and

²⁰FAR subpart 8.002, *Priorities for Use of Government Supply Sources*.

- d. all proper documentation to support contract modifications is included in every applicable file.

Segregations of Duty Lacking for Records of Call/Blanket Purchase Agreement Orders (Simplified Acquisition)

The team reviewed 189 Records of Call/Blanket Purchase Agreement Orders ranging from \$56 to \$86,903 and found that approximately 90 percent of them had the same individual as requestor, ordering official, and receiving official. No single individual should control all key aspects of a transaction or event. The Government Accountability Office (GAO) *Standards of Internal Control in the Federal Government* require such segregation of duties. The lack of segregation of duties provides no safeguards against the risk of error or fraud.

A Record of Call is a purchase mechanism used to procure goods or services from a vendor that has a Blanket Purchase Agreement or an Indefinite Delivery Contract. The former provides quick ordering for repetitive buys such as laboratory supplies, equipment and repairs, office supplies, temporary services, conference support services, and biological materials.

Recommendations

We recommend that the NIH Director instruct the NIEHS Director to:

3. conduct a follow-up review to verify that future Records of Call are handled with appropriate segregation of duties;
4. establish segregation of duties for administering Records of Call; and
5. retrain staff at each process level (requestor, ordering official, approving official, receiving official) regarding segregation of duties.

NIEHS Did Not Comply with the Purchase Card Program Requirements (Simplified Acquisition)

The team sampled transactions of 30 cardholders and found 6 occurrences of an unauthorized person either using a purchase card or issuing a convenience check to place an order. Two cardholders shared their card number with multiple unauthorized individuals. NIH Policy Manual Chapter 6013-2, *Internal Procedures for the Purchase Card Program*, Section E, *Regulatory Compliance*, Part 9a, *Unauthorized Use of the Purchase Card*, specifically states that use of the purchase card by a person other than the cardholder is unauthorized.

There were 19 occurrences in which the cards were used to purchase items on the Unauthorized Purchases List, which cites all purchases that may not be made using the Government Purchase Card. NIH Policy Manual Chapter 6013-2, Section E, *Regulatory Compliance*, Part 9d,

Unauthorized Use of the Purchase Card, states that the purchase card may not be used to purchase items on the Unauthorized Purchases List.

In addition, the team found nine statements of account that were either not reconciled by the cardholder or were not reviewed by the Card Approving Official in the required time frame. NIH policy states that the Card Approving Official is responsible for a monthly reconciliation of each cardholder's statement and for verifying that all transactions were valid government purchases.

Unauthorized use of the Government Purchase Card; questionable transactions; and failure of designated officials to reconcile, review, and approve statements of account all increase the risk of fraudulent, improper, and abusive activity.

Recommendations

We recommend that the NIH Director instruct the NIEHS Director to:

6. take immediate action to improve the processes and internal controls over the NIEHS purchase card program in order to maximize the value and benefit of the program and provide reasonable assurance that fraud, waste, and abuse are minimized and
7. ensure that all necessary follow-up actions are taken as required by NIH Policy Manual Chapter 6013-2, *Internal Procedures for the Purchase Card Program*.

C. Property Management and Vehicles

A team of employees from the NIH Office of Logistics and Acquisition Operations reviewed property and vehicle management at NIEHS and found that property pass transactions were not properly documented, and government motor vehicles were issued without proper documentation. The inability to properly track personal property and issue government vehicles can lead to loss, misuse, and unnecessary liability.

The review covered written property management procedures, staffing, training, receiving processes, un-decaled property, reports of survey, trade-ins, loans, property passes, property reutilization and disposal, motor vehicle operation, usage, and life-cycle management. The review assessed compliance with the HHS *Logistics Management Manual*; Federal Management Regulations; and NIH Policy Manual Chapter 2600, *Property and Logistics*. The review team also conducted interviews and sampled the property pass process.

Property Pass Transactions Were Not Properly Documented

The reviewers found that some property custodians released personal property to NIEHS employees without proper and complete documentation. Specifically, property custodians were not ensuring that property passes were appropriately completed prior to releasing property to the borrower. In addition, some custodians were not periodically reviewing property pass expiration dates to follow up with borrowers.

Five of nine property pass transactions sampled were processed incorrectly: two had expired, one was without signature, one was given to a volunteer, and one had the signature of the custodian both as authorizing official and property custodian officer. Interviews with property custodians revealed that some did not know who was required to sign a property pass. NIH Policy Manual Chapter 26101-25-2, *Personal Property Management Guide*, Section O, *Off Site Use of Government Owned Property by NIH Employees*, requires a property pass for off-site NIH employee property use and specifically states that all property passes must be approved by at least the user's supervisor.

Without proper documentation, there is no assurance that government property is being properly safeguarded against loss, theft, and misuse.

Recommendations

We recommend that the NIH Director instruct the NIEHS Director to:

1. enforce property pass policies and procedures and ensure that designed internal asset controls are working effectively and

2. revise Property Custodian Officer training to include appropriate use of property passes.

Government Vehicles Were Issued Without Proper Documentation

NIEHS has a pool of government motor vehicles that are maintained to support official business travel needs of staff. The team found that dispatchers were issuing vehicles without proper documentation. This failure to control access to government vehicles could lead to improper use and unwarranted liability to the government.

NIH Policy Manual Chapter 26101-38, *Official Use of Government Motor Vehicles*, Section C, *Policy*, Item 6.c, requires employees to complete NIH Form 1382-2, *Motor Vehicle Trip Ticket*, which requires approval by an authorized official. The review team sampled 58 trip tickets filled out between October 2006 and July 2007 and found that 21 percent had not been signed by an approving official and 66 percent had not been completed.

Conclusion

NIEHS management has not established controls to ensure that government vehicles are being used for approved purposes.

Recommendations

We recommend that the NIH Director instruct the NIEHS Director to:

3. conduct periodic reviews to verify that Motor Vehicle Trip Tickets are properly completed,
4. require that dispatchers attend training that reinforces their responsibilities, and
5. revise Performance Work Statements for contractor dispatchers to include accountability for ensuring that Motor Vehicle Trip Tickets are accurately completed.

D. Financial Management and Accounting Practices

A team of finance and accounting professionals from the NIH Office of Financial Management (OFM) reviewed financial management and accounting practices at NIEHS. The team found that NIEHS did not maintain effective internal controls over financial management and accounting practices and did not comply with laws, regulations, and policies. These deficiencies over financial management increase the risk of waste and improper payments.²¹ Although the shortcomings of the NIEHS financial management internal control system involved immaterial amounts, they could hinder effective stewardship of public resources.

GAO's *Standards for Internal Control in the Federal Government* identify the minimum level of internal control in the Federal Government and provide the basis for evaluating internal control. Control activities, one of the five standards of internal control, include authorizations, approvals, verifications, and the creation and maintenance of related records and documentation. The team assessed the NIEHS systems, processes, and procedures in place to ensure sound financial and accounting activities and NIEHS compliance with financial management requirements found in applicable statutes, regulations, and policies. The team found that NIEHS did not properly

1. maintain documentation of transactions,
2. monitor financial records, and
3. comply with laws, regulations, and policy.

1. Documentation of Transactions

Cashier Activity

The team reviewed cashier activity and found that documentation of payments was not maintained. The OFM *Teller Manual and Guidebook, Introduction*, requires that copies of payment documentation be maintained. Authorization for all payments must come from an authorized individual in the purchasing department or administrative office.

The following are examples of the lack of documentation the team found:

- All documentation was sent to NIH headquarters in Bethesda and copies were not retained at NIEHS.
- Voided checks were not forwarded to NIH.

²¹ Waste often does not violate a law or regulation but rather relates to mismanagement or inadequate oversight. Waste results in taxpayers losing trust. Improper payments include duplicate payments and miscalculations; payments for goods or services not rendered; payments resulting from fraud or abuse; or payments for unallowable costs.

- Checks were issued without complete documentation.
- Payments were issued without proper receipts (SF-44) from approving officials.

In addition, the review team found that payments were made in excess of receipted amounts and checks were issued for purchases and reimbursements that were not channeled through or verified by the purchasing department. Furthermore, up-to-date signature cards (NIH-2393) were not on file for all individuals authorizing SF-44s and other payment documents. The OFM *Teller Manual and Guidebook*, Tab F, Item 10, *SF-44 Unreceipted*, requires that up-to-date signature cards be on file for all individuals authorizing payments through the Cashier Office. Without an updated signature card, payments should not be issued.

Gift Administration

The team reviewed conditional and unconditional gifts²² to NIEHS, totaling about \$937,000 and \$9,400, respectively²³, and found incomplete documentation of conflict of interest reviews. In order to document whether a conflict of interest exists, the appropriate NIEHS official authorized to accept gifts at an institute is required to complete the *Validity Test Survey* form when the value of the gift is \$5,000 or greater and the gift is from a private entity. During the review period, NIEHS received 21 conditional gifts requiring an assessment of whether the gift could potentially create a conflict of interest for NIH or NIEHS. For 12 of the gifts, totaling \$304,511, NIEHS did not properly complete the *Validity Test Survey*. This increases the risk of a conflict of interest because it does not provide assurance that a conflict of interest review was performed. Without documentation, there is a risk that NIEHS may accept a gift that creates a conflict of interest.

In addition, the review found that the NIEHS Director did not submit the required documentation to notify the NIH Deputy Director for Management (DDM) of two conditional gift donations of \$200,000 and \$250,000. NIH Policy Manual Chapter 1135, *Gift Administration*, Section F, *Responsibilities*, Item 1, *Office of the Director, NIH*, requires that the DDM be notified of all gifts over \$100,000 (and under \$2 million) that are accepted. Without proper notification, the DDM cannot reasonably determine whether an institute has improperly accepted a gift. Such documentation is a basic internal control to reduce the risk of fraud, waste, and abuse.

Project Assignments

The team reviewed a sample of the Common Accounting Number (CAN/Project) structure at NIEHS and found that the NIEHS Budget Office did not maintain documentation showing that it had notified NIH of changes made to NIEHS CAN/Project titles. The team also found that 26

²² Sections 231 and 405(b)(1)(H) of the Public Health Service Act, as amended (42 U.S.C. Sections 238, 284(b)(1)(H)) (gift acceptance statutes).

²³ Gifts to the NIEHS Gift Fund account were used for various purposes, including dust allergen assays, nuclear receptor research, and myositis research.

percent of CAN/Project titles in the NIH data reporting system did not match those in the NIEHS Budget System. The discrepancies occurred in 10 of the 12 Cost Centers reviewed.

A CAN/Project is an account number for charging all expenses related to a specific project. All CAN/Projects for NIH are assigned by the OFM Government Accounting Branch (GAB). If NIEHS needs to create, deactivate, or modify a CAN/Project, its Budget Office should request these changes from the GAB by e-mail. If an institute modifies a CAN/Project title without prior approval or supporting documentation, there is a higher risk of incorrectly reporting project expenses.

One of the factors contributing to this problem is that no formal guidance exists on notification to the GAB of CAN/Project changes. Neither the HHS *Accounting Manual*, the NIH *Budget/Finance System User Guide*, nor the NIEHS *Operating Procedures for the Management of NIEHS CANs* includes guidelines or information about notifying the GAB. The GAB only informally requires budget officers to explain any changes made to CAN/Project titles, also explaining whether the scope of the project has changed (if the scope changes, a new CAN/Project number is assigned).

Sponsored Travel

The team reviewed all 317 HHS-348 Forms, *Request for Approval to Accept Payment of Travel Expenses from a Non-Federal Source*, filed in FY 2005 at NIEHS and found 6 that did not contain the signature of the individual who performed the conflict of interest assessment. Sponsored reimbursable travel involves a nongovernmental entity paying full or partial travel costs for a government employee. According to NIH Policy Manual Chapter 1500, *Travel Policies and Procedures*, prior approval must be obtained for all sponsored travel. The HHS-348 Form also documents whether a review was performed to determine whether accepting the sponsored travel payment would create a possible conflict of interest. Without such documentation, there is no assurance that a conflict of interest review was performed, increasing the risk of potential conflicts of interest.

In addition, the team found that NIEHS did not maintain supporting documentation for two sponsored travel orders totaling about \$4,300 and no documentation to show that NIEHS had billed sponsors for travel expenses related to four other trips. According to the *Standards for Internal Controls in the Federal Government*, all transactions need to be clearly documented in an accurate and timely manner to maintain their relevance and value to management in controlling operations and making decisions. Because NIEHS did not have documentation to support sponsored travel activity, it was not possible to determine whether the use of those funds was valid and reasonable.

Recommendations

1. We recommend that the NIH Director instruct the NIEHS Director to:
 - a. consult the NIH Table of Penalties and, in coordination with OHR, consider administrative action for responsible NIEHS officials;
 - b. implement a procedure to ensure that Validity Test Survey forms are completed for all gifts that meet the criteria outlined in NIH policy;
 - c. implement internal controls to ensure that ongoing monitoring of gift administration occurs during the course of financial operations;
 - d. reconcile all NIEHS CAN/Project titles with the NIH data reporting system;
 - e. revise operating procedures for NIEHS CAN/Project numbers to require that (i) NIEHS budget officers be notified if the scope of a project changes, (ii) the NIEHS Budget Office verify the appropriateness of a change, and (iii) the NIEHS Budget Office notify the GAB of all changes to CAN/Project titles; and
 - f. ensure proper, timely, and continuous management oversight and monitoring of sponsored travel.
2. We also recommend that the NIH Director instruct the OFM Director to:
 - a. conduct an audit of the NIEHS Cashier Office and
 - b. develop a Transmittal Letter to Budget Officers on the requirement that they notify the GAB of changes to CAN/Project titles and create a standard form for Budget Officers to request to add, delete, and modify CANs.

2. Monitoring of Financial Records

The team found that NIEHS did not properly monitor conditional gifts funds.

Gift Administration

The team determined that NIEHS failed to monitor conditional gift funds properly in accordance with NIH Policy Manual Chapter 1135, *Gift Administration*, Section G, *Procedures*, Item 4, *Fund Control*. For example, NIEHS records show that four projects were over the obligated amount (overspent) at the end of the review period. One of them was out of balance from beginning to end and never corrected during the review period. In another example, although two conditional gifts totaling \$460,000 were posted to the correct CAN/Project in FY 2005,

\$350,000 of expenses related to those gifts were posted to the incorrect CAN/Project through FY 2007.

NIEHS can use appropriated or nonappropriated funds to cover obligations of an earmarked CAN/Project. However, as part of its financial management oversight and to prevent over-obligations, NIEHS should monitor obligations and balance funds. Without an effective fund control system, NIEHS cannot prevent overspending.

Recommendation

3. We recommend that the NIH Director instruct the OFM Director to conduct a comprehensive review of conditional and unconditional gifts received by NIEHS.

3. Compliance with Laws, Regulations, and Policies

The team found activities that were inconsistent with GAO guidance²⁴, federal regulations, or HHS/NIH policies and guidance, including those covering cashier activities, gift administration, travel, and entertainment.

Cashier Activity

Improper payments were issued for membership fees in violation of the *OFM Teller Manual and Guidebook*, which prohibits payment of membership fees via the Cashier Office.

The team also found that maintenance contracts were paid for 12-month periods on cashier drafts via the SF-44 process. This exceeds the 3-month period allowed by the NIH *Delegated Procurement Reference Guide*.

Lack of oversight and infrequent audits of the NIEHS Cashier Office contributed to this noncompliance. As a result, the noncompliance remained undisclosed until this management review was performed. However, the review team was unable to determine the full extent of these problems because, as explained earlier, copies of receipts and other supporting documentation were not retained.

Recommendation

The recommendations contained under “1. Documentation of Transactions, Cashier Activity” address this issue.

²⁴ GAO Principles of Federal Appropriations Law, Third Edition, Volume, January 2004, Chapter 4, *Availability of Appropriations: Purpose*, Section 5, *Entertainment–Recreation–Morale and Welfare*, Part b, *Food for Government Employees*.

Gift Administration

NIEHS failed to return funds to the donor or transfer funds to the unconditional gift account, as required by NIH policy, for 11 out of 57 conditional gifts reviewed by the team. NIH Policy Manual Chapter 1135, *NIH Gift Administration*, Section G, *Procedures*, Item 1, *Monetary Gifts*, Parts b and c, states that if unobligated excess funds remain in the Conditional Gift Fund account after a project is completed (or if the project cannot be completed), the unexpended balance will be deposited in the Unconditional Gift Fund account and made available to support other activities of the institute or NIH. Unless a gift is under \$1,000, a donor must agree in writing that excess funds will be deposited in the Unconditional Gift Fund account.

A lack of management oversight led to the conditional gift fund balances remaining in accounts with no activity. Four projects had funds available on October 1, 2004, but had no activity through 2007. The other seven projects received funds during the review period but did not have any activity.

Recommendation

4. We recommend that the NIH Director instruct the NIEHS Director to monitor gift funds to ensure that unexpended conditional gift fund balances are transferred to the Unconditional Gift Fund account when a project is completed or cannot be completed.

Travel Regulations and Policy

The review team found instances of noncompliance with policy and regulations involving use of government-issued travel charge cards, premium-class common carrier accommodations, and invitational travel.

Government-Issued Travel Charge Card

The team reviewed quarterly audits performed by OFM, which found that 9 out of 277 government-issued travel card (charge card) holders at NIEHS had misused the charge card, indicating weaknesses in the NIEHS management and oversight of charge cards that expose the program to potential abuse or fraud. However, the findings did not uncover widespread or large-scale misuse of the charge card.

In one case, an employee withdrew cash from an Automated Teller Machine (ATM) over a 10-month period for personal medical expenses, for a total of about \$5,900. An Official Reprimand was issued to the employee. In another case, some of the \$2,640 in cash that an employee withdrew from an ATM was not related to temporary duty travel, and the employee did not obtain approval for a cash advance from a designated official, as required by NIH policy. The other seven cases involved a total of about \$1,600 used to purchase unauthorized goods or services. The employees involved in these transactions received counseling. It should be noted

that although these cases are considered misuse of the government purchase card, the employees used their own money to pay the card balances.

Federal Travel Regulation, Chapter 301, *Temporary Duty Travel Allowances*, Section 301-51.6; the HHS Travel Manual; and NIH Policy Manual Chapter 1500, *Travel Policies and Procedures*, cite the following rules about government charge cards:

- The travel charge card is to be used only for official business expenses in connection with an authorized trip, and employees shall not use the travel card to make personal purchases or ATM withdrawals for personal use.
- Employees must receive prior approval in order to obtain an advance of travel funds.
- NIH Executive Officers are the delegated officials responsible for implementing a system of management controls and oversight for the travel charge card program. Supervisors and managers have the responsibility for properly addressing instances of misuse of the card. Administrative staff members are responsible for tracking and monitoring transactions for compliance with regulations and policy.

Premium-Class travel

The team found that NIEHS did not comply with travel regulations and NIH policy on premium-class accommodations using appropriated dollars. During the review period, NIEHS employees used appropriated dollars for 16 premium-class travel trips. The team found two instances of noncompliance where the same traveler was authorized one lodging rate on the Travel Authorization but was paid at a higher rate on the travel voucher, without any supporting justification. However, either of these allowances could have been authorized in advance of the trip or could have been approved after the trip for emergency conditions. NIEHS stated that these two cases were an administrative oversight.

Federal Travel Regulation, Chapter 301, *Temporary Duty Travel Allowances*, Section 301.52.4 states that a voucher claim must include evidence of a corresponding travel authorization, including any necessary special authorizations. Administrative officials should not approve any voucher that does not correspond with the initial authorized expense without the appropriate justification. There appears to be inadequate oversight at NIEHS to ensure that reimbursements for travel comply with federal regulations and NIH policy.

Invitational Travel

The team also found that NIEHS did not comply with travel regulations and NIH policy on invitational travel. Federal Travel Regulation, Chapter 301, *Temporary Duty Travel Allowances*, Section 301-1.2 defines an invitational traveler as an individual serving without pay or at \$1 a year. Typically, this type of travel is related to a pre-employment interview. The team found 33 trips that entailed invitational travel, sampled 6, and found 1 instance in which a traveler was

authorized an actual expense allowance, in violation of HHS Travel Manual Chapter 1-30, which states that an actual expense allowance cannot be authorized for pre-employment interview travel.

NIEHS officials stated that authorizing such an allowance seemed reasonable given the surrounding circumstances of the travel and that it covered the lowest hotel rate found. However, the Travel Approving Official cannot approve an actual expense allowance for lodging for an interviewee, as HHS policy does not allow such practice.

Recommendations

We recommend that the NIH Director to instruct the NIEHS Director to:

5. review and improve internal controls over the travel charge card program at NIEHS and
6. require travel approving officials to receive training on HHS and NIH travel policy.

Entertainment

The review team selected a sample of 6 purchase card transactions out of 42 performed during the review period and examined 27 requests for entertainment expenses paid through an SF-1034, *Public Voucher for Purchases and Services Other Than Personal*. The team found one instance that was inconsistent with GAO guidance and NIH policy.

NIEHS was inconsistent with GAO guidance and NIH policy when it paid \$2,900 for meals provided at an NIH-sponsored meeting at an official duty station. GAO guidance states that appropriated funds are not to be used to “feed the feds” at their official duty station. In addition, NIH Policy Manual Chapter 1160-1, Appendix 3, states that for a non-training related conference or meeting, appropriated funds may be used only for the provision of light refreshments, and not for meals. NIEHS officials said that they believed the entertainment expense was reasonable given that there were high-profile members of industry and foreign visitors in attendance. However, NIEHS actions were inconsistent with GAO guidance and NIH policies.

Recommendation

7. We recommend that the NIH Director instruct the NIEHS Director to submit all Forms 2408-1, *Request for Use of Appropriated Funds for Light Refreshments or Meals and Other Entertainment Expenses*, to OFM for prior approval until NIEHS develops a process that is acceptable to the OFM Director to protect against misuse.

E. Integrity of NIEHS Grant-Making Processes

A team of subject-matter experts in grants management reviewed NIEHS grants operations to determine whether the selection of grant applications for award is consistent with HHS and NIH policy and requirements; is free from undue influence or conflicts of interest, both apparent and real; and takes into consideration scientific opportunity, portfolio balance, and public health needs.

In the opinion of the team of experts, appropriate attention is being given to scientific opportunity, portfolio balance, and public health needs. However, when the new NIEHS Director assumed his government duties in 2005, problems with the oversight of his conflicts of interest immediately developed. For example, the NIEHS Director was the principal investigator on a NIEHS program project grant while he was employed at Duke University. When left Duke, a new principal investigator was named by Duke University and approved by NIEHS grants management staff. In order to allow continued scientific interactions, the NIEHS Director was granted a waiver that allowed his involvement with Duke University as a collaborator.

Although specific procedures and tools were developed to help staff assess and manage these conflicts, overall oversight of the Director's potential conflicts of interest was managed by his own subordinates, creating an inherent problem. Placing the responsibility for oversight of an institute Director's conflicts of interest on his or her subordinates puts these subordinates in a very difficult—and often untenable—position that in itself conflicts with their duties.

The Director was engaged to a significant degree—and appropriately—in the grant award process at NIEHS. However, several staff members informed the review team that managing the Director's conflicts was indeed very difficult. The NIH Deputy Director for Extramural Research instructed the Director to create a team that would assist him in managing his conflicts. The Director of DERT and the Executive Officer were subsequently tasked with working with the Director to identify and manage his conflicts. However, this proved very problematic, particularly because they both reported to the Director.

NIH conflict of interest policies state that NIH staff shall act impartially in the performance of their government duties. Even the appearance of preferential treatment or the use of public office for private gain must be avoided.

Conclusion

It is important to hire outstanding, active scientific researchers as directors of NIH institutes, and some of these may have potential conflicts of interest that need to be managed. In the absence of clear guidance, however, it is not realistic to expect subordinates of institute Directors to

effectively manage the real or apparent conflicts of interest of their supervisors, particularly at NIEHS, which is geographically distant from the main NIH campus.

Recommendation

1. We recommend that the NIH Director instruct the Deputy Director of Extramural Research and the NIH Ethics Office Director to develop written guidance to assist in the management of conflicts of interest of current and future NIEHS Directors. Topics to address when developing the guidance should include, at a minimum, the following:
 - Identification of all officials involved in the management of conflicts of interest and their roles and responsibilities (e.g., Office Heads, Gatekeepers²⁵, IC Directors, and others)
 - Internal controls to ensure that roles and responsibilities are adhered to
 - Approval/appointment of Gatekeepers and directions for routing recused matters
 - What Gatekeepers and others should do if they find a problem
 - Types of information that can be disclosed to the IC Director about entities from which he/she is recused

²⁵ Gatekeepers are those within an organization who, because of their positions, may have the opportunity to identify matters routed to a conflicted employee and re-route them to an appropriate alternate, and are asked to do so.

F. Governance Structure and Other Management Decisions

A team of analysts from the Office of Management Assessment reviewed the NIEHS governance structure and found that although the strategic planning process was transparent, decisions on the usage of core facilities and central services were not consistent, and some administrative functions in DIR were separate from their counterparts in the Office of Management.

The team conducted over 75 interviews of NIEHS leaders, managers, and employees at all levels; Advisory Council members; and Assembly of Scientist representatives. The team assessed how senior NIEHS leadership interacts with the NIEHS community in making decisions and supporting the mission, goals, and objectives of NIEHS. The review team also examined decision-making and strategic planning processes, the organizational structure, and the functions of the NIEHS Advisory Council.

Strategic Planning Process

The review team found that the strategic planning process at NIEHS included the participation of appropriate stakeholders and incorporated an effective level of objectivity and transparency. The review team heard widespread support for the transparent and inclusive method used to develop the strategic plan. The process included individuals from within NIEHS, along with the outside community of investigators, clinicians, and the public. A strategic planning working group was established to spearhead the planning process. NIEHS staff posted a survey on the NIEHS website to solicit feedback on the strategic direction of the Institute. NIEHS hosted a “Strategic Planning Forum” to solicit additional feedback about the Institute’s priorities. NIEHS staff posted the draft strategic plan on the NIEHS website for public comment. The Advisory Council reviewed the plan before it was finalized. All parties were in consensus with the final outcome. The Institute published the 2006-11 NIEHS Strategic Plan in the summer of 2006.

Advisory Council Governance Structure

The review team interviewed 8 of 18 NIEHS Advisory Council members to gain their perspective on their role as advisors to the NIEHS Director and on the governance process at their periodic meetings. Overall, council members agreed that they freely contribute to meeting discussions and that their opinions are appreciated. Council members participated in discussions pertaining to the strategic plan and in presentations and discussions regarding the implementation of the plan and the budget.

Usage of Core Facilities and Central Services

The review team found that decisions for the usage of core facilities and central services were not consistent throughout the intramural program. Without a transparent and consistent

methodology for allocating resources, there is no assurance that scientific resource decisions are made equitably and efficiently.

NIEHS has approximately 56 tenured investigators who lead research activities in laboratories. In order to efficiently support the needs of these scientists, core facilities and central scientific services provide consolidated research services and supplies necessary to support multiple scientists with similar requirements. This shared approach allows for efficient and effective use of equipment, space, and personnel.

Core facilities and central scientific services are normally led by staff scientists who manage the usage of supplies and services in relation to the annual budget and schedule. There are 25 core facilities, including the following:

- Comparative Medicine Branch, which manages the NIEHS Animal Care and Use Program and provides professional advice to the institute on important animal issues.
- Scientific Computing Lab, which coordinates information technology services.
- Statistical Consulting Service, which provides advice on study design and data analysis.

Decision-making processes related to the priority of resource usage core facilities and central services vary, depending on the methodology implemented by each staff scientist. The team found that many core facilities and central services do not have a decision-making process linked to the provision of resources. However, two core facilities at NIEHS have recently implemented a review process whereby research proposals are reviewed, and resource usage decisions are made, by a committee. The Microarray Core Facility has established a review process whereby resource request proposals are reviewed by tenured intramural investigators. This decision-making process was established to optimize resources, manage the workload throughout the year, and ensure good overall stewardship. The methodology utilized at the Microarray Core Facility should be considered a best practice for resource usage decision-making.

Recommendation

1. We recommend that the NIH Director instruct the NIEHS Director to develop a consistent decision-making process for allocating usage of core facilities in order to optimize resources.

Functions of the Division of Intramural Research and the Office of Management

The team found that some of the administrative functions in DIR are separate from their counterparts in OM. Without transparency of the data and the decision-making processes used in these areas, NIEHS senior management may not have complete information on which to base decisions.

DIR has its own budget, human resources, and information technology functions, all separate from those maintained by the Office of Management (OM). DIR budget staff, who are not part of the Financial Management Branch in OM, use a different budget tracking system, which staff in OM cannot access. There are also human resources staff in DIR with functions parallel to those of their counterparts assigned to NIEHS by the NIH OHR. Further, there is a Computer Technology Branch in OM and an information technology component that specifically supports DIR.

While there can be various approaches for providing administrative support, these parallel structures have caused conflict between DIR and OM, and there is little or no transparency of decisions made by these independent bodies, thus creating the risk of waste and mismanagement. For example, the OM information technology office was directing efforts to enforce an HHS directive on encryption technology that was to be installed on all NIEHS computers. OM, however, reported difficulties in obtaining the cooperation of all DIR scientists, who use the DIR information technology office for support. The problem was eventually resolved, but only thanks to individual cooperation between employees of the two offices. Another example is the DIR budget system, which is not accessible to the OM Associate Director for Management, limiting transparency of budget decisions in DIR.

Although the review team did not find that these duplicate functions caused mismanagement, the lack of transparency does not provide NIEHS leadership with complete information needed to make sound management decisions.

Recommendations

We recommend that the NIH Director instruct the NIEHS Director to:

2. consolidate the separate DIR functions for human resources and information technology into those servicing the rest of NIEHS and
3. identify the best system to manage the budget and use that system throughout NIEHS.

G. EEO and Climate Assessment

The review by the Office of Equal Opportunity and Diversity Management and the Office of the Ombudsman, Center for Cooperative Resolution, determined that Ombudsman cases reflected distrust between NIEHS employees and senior management. The team also found that during the review period, 10 formal EEO complaints were filed by 7 employees, 5 of whom belonged to minorities. There were no findings of discrimination among the four cases that were completed during the period. The team also found that award trends for various employee groups were similar to those in the overall NIH workforce and that NIEHS was in compliance with current EEO and Diversity Awareness Training.

The team examined EEO practices and the work climate at NIEHS by analyzing trends in EEO complaints, trends in the employee award system, compliance with required supervisor and manager EEO training, and NIEHS Ombudsman cases.

Ombudsman Cases Reflect Distrust Between Employees and Senior Management

The NIH Office of the Ombudsman provides confidential and neutral conflict resolution assistance to staff at all levels, including supervisors and senior managers. The review team analyzed trends in Ombudsman case data for the period from January 1, 2006, through November 9, 2007, and found 29 cases at NIEHS in 2006 and 24 as of November 9, 2007.²⁶

Of particular concern was a 17 percent increase in cases involving DIR, which accounted for 41.3 percent (12 of 29) of all NIEHS cases in 2006, but rose to 58.3 percent (14 of 24) of all NIEHS cases in 2007. In 2007, all 14 DIR cases involved conflicts between a supervisor and an employee, a 33.3 percent increase over the previous year.

Most conflicts involving DIR during both years focused largely on the quality of scientific collaboration and communication. Although the issues raised were consistent from 2006 to 2007, it is worth noting that more concerns were raised in 2007 pertaining to poor management or to the effectiveness and ethical conduct of senior NIEHS leadership, both in and outside DIR.

In 2007, 29.1 percent (7 of 24) of all NIEHS cases originated in the Office of Management, a nearly 9 percent drop from the previous year (11 of 29). Most (71.4 percent) 2007 cases involved conflicts between supervisors and subordinates and were initiated by employees. Several cases reflected larger concerns over the direction and functioning of NIEHS generally, and some were initiated by managers. Supervisor-employee conflicts in the Office of Management were slightly lower in 2006, when 63.6 percent of cases were initiated by employees. Both years, however, issues involved work assignments and performance,

²⁶ The Center for Cooperative Resolution does not keep records or report on cases except in aggregate form, to preserve the confidentiality of communication with customers and their anonymity. Aggregate data is available for January 1, 2006, through November 9, 2007, and was reviewed for potential trends.

questionable management from the employee’s perspective, and communication difficulties. Although performance concerns were raised in both years, in 2007 almost half of all cases in the Office of Management focused on the appraisal of performance under the new Performance Management Assessment Program, which replaced a pass-fail system with a more detailed four-level grading system.

The number of NIEHS cases originating in the DERT fell from 20.6 percent (6 of 29) in 2006 to 12.5 percent (3 of 24) in 2007. The percentage of cases involving issues between supervisor and subordinate increased from 16.6 percent in 2006 to nearly 66 percent in 2007. There was a greater diversity of cases originating from DERT in 2006, including those involving group facilitation and organizational consultation.

The number of Ombudsman cases appears to have held steady over 2006-07, although the individuals and the concerns raised has shifted somewhat. While the overall variety and scope of concerns raised by NIEHS employees and managers were similar to those at other NIH institutes, NIEHS cases reflected mostly mistrust between employees and senior management, as well as difficulties in scientific collaboration and research between peers, mentors, mentees, and other subordinates. NIEHS data from the Office of the Ombudsman is summarized in the table below.

Table: NIEHS Office of the Ombudsman Case Data, 2006-07

	Total	DIR	OM	DERT
2007	24	14 (58.3%)	7 (29.2%)	3 (12.5%)
2006	29	12 (41.4%)	11 (37.9%)	6 (20.7%)
2007 DIR cases involving supervisory relationship directly		14 (100%)		
2006 DIR cases involving supervisory relationship directly		8 (66.7%)		
2007 OM cases involving supervisory relationship directly			5 (71.4%)	
2006 OM cases involving supervisory relationship directly			7 (63.6%)	
2007 DERT cases involving supervisory relationship directly				2 (66.6%)
2006 DERT cases involving supervisory relationship directly				1 (16.6%)

Notes: Percentages in parentheses represent cases relative to overall cases in the designated division for that year. 2007 data represents only cases through November 9, 2007. The total 2007 number will be slightly higher. Because of the relatively small total sample of cases, a change in just one case may affect percentages significantly.

Recommendations

The recommendations under “IV. Negative Perceptions of NIEHS Leadership Are Prevalent Among NIEHS Employees” in the first part of this report address these findings.

APPENDIX

NIEHS leadership reviewed a draft of this report. When they receive a final copy of the report, they will immediately implement a rigorous process to develop a formal corrective action plan within 30 days. NIEHS has been working with the NIH Office of the Director to conceptualize this process and will continue to work closely with the NIH Deputy Directors in developing the corrective action plan. NIEHS provided the following list of corrective actions already taken in response to the report's findings:

- In March 2007, the NIEHS Office of Management began preparing a new program to identify opportunities for enhanced administrative oversight throughout the Institute, along with a risk-based approach to administrative oversight. This plan is being implemented and will be used to conduct a periodic internal audit of each administrative function in the Institute.
- The NIEHS Ethics Office has been transferred to the Immediate NIEHS Office of the Director, to provide greater oversight and visibility, and two more staff have been added (there are now four). Staff continues to receive training and oversight from the NIH Ethics Office. Furthermore, in concert with the NIH Ethics Office, NIEHS is aggressively addressing the backlog of NIEHS Financial Disclosures.
- The Division of Extramural Research and Training developed and implemented a system to record justifications for “out of order” funding decisions. This system was implemented in the fall of 2007. It added a form for recording justifications developed during the pre-Council and post-Council meetings and the practice of including formal justifications for “out of order” funding decisions in the final funding plan package. Of note is that the division has also developed a process that requires dual signatures for justifications of “out of order” funding decisions.
- The NIEHS Gift Fund has been frozen. NIEHS is conducting a full review of the 27 Conditional and 3 Unconditional gifts and is developing new guidelines for conflict of interest review and determination; acceptance criteria for a gift (to include Ethics Office review); and financial and accounting activities related to disbursements from the funds. The NIEHS Executive Officer, with the NIEHS Chief, Financial Management Branch, will implement these new guidelines and business processes.
- To address concerns regarding communications and transparency, NIEHS has initiated the following: new advisory committees to enhance governance (“Executive Committee” and “Budget Committee”); a series of Institute-wide monthly briefings (termed the “NIEHS Roundtable”); a series of receptions in the Divisions and satellite buildings across the Institute; regular meetings with staff in the Division of Extramural Research and Training to

discuss the research portfolio and plans for meeting research and training opportunities. The NIEHS Acting Director has held “all-hands” meetings with each Division and all the special groups at the Institute (e.g., the NIEHS Assembly of Scientists, NIEHS Assembly of Women Scientists, NIEHS Chapter of Blacks in Government, the NIEHS Diversity Council).

- NIEHS is working to tighten internal controls for the Cashier function in concert with the NIH Office of Financial Management. NIEHS will ensure consistent application of policy, independent audit capability and responsibility, and a clearer separation of duties and responsibilities for the Cashier function.
- NIEHS reviewed all existing and planned IPA actions and identified only one existing action, which was forwarded to the Office of Human Resources, NIH, for review. The Office determined that there were no flaws in the terms of the IPA and its final disposition. To ensure that all future IPA activities are consistent with HHS and NIH guidelines, a memo has been sent to all NIEHS management personnel with the correct form attached. In addition, the Program Checklist has been modified to require the approval signature of the Office of Human Resources, NIH, and of the NIEHS Executive Officer prior to final approval.
- Early in 2007, an NIEHS-directed internal review found that policies and processes for the use of the Institute’s 44 General Services Administration (GSA) fleet vehicles were lacking. Oversight was complicated by the fact that the NIH Office of Research Facilities (ORF) has direct responsibility for 19 of the 44 vehicles. NIEHS worked with the ORF Director, to develop and implement audit processes and procedures to obtain control and oversight over the entire NIEHS GSA fleet.