



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Recipient Subawards to Fellows Did Not Comply With Federal Requirements and EPA's Involvement in Fellow Selection Process Creates the Appearance EPA Could Be Circumventing the Hiring Process

Report No. 14-P-0357

September 17, 2014



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Report Contributors:

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Abbreviations

ASPH	Association of Schools of Public Health
CA	Cooperative Agreement
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
OIG	Office of Inspector General
ORD	Office of Research and Development

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At a Glance

Why We Did This Review

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), conducted an audit of Cooperative Agreement (CA) No. 83388101 awarded to the Association of Schools of Public Health (ASPH). The EPA's Office of Research and Development awarded the CA to ASPH on July 29, 2008. The purpose of the CA was to place recent graduates into 1- or 2-year fellowships at the EPA, during which the fellows would be mentored by EPA experts.

We sought to determine whether the federal funds were used for their intended purpose and in accordance with the CA terms and conditions and applicable government regulations. In addition, we sought to determine whether the CA's objectives were met.

This report addresses the following EPA goal or cross-agency strategy:

- *Working toward a sustainable future.*

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www.epa.gov/oig/reports/2014/20140917-14-P-0357.pdf

Recipient Subawards to Fellows Did Not Comply With Federal Requirements and EPA's Involvement in Fellow Selection Process Creates the Appearance EPA Could Be Circumventing the Hiring Process

What We Found

Our audit did not disclose anything that would indicate that ASPH improperly used federal funds or that the objectives of the CA were not met. However, we did identify two areas under the CA that require improvement by the EPA.

ASPH's subawards to fellows made under the CA are contrary to federal requirements. Per the agreement between ASPH and the fellows, ASPH considers the fellows as subgrantees, but individuals are ineligible as subgrantees under the Code of Federal Regulations. As a result, a different award vehicle is needed for the ASPH fellowship program.

Also, the EPA's involvement in the selection process for fellowship candidates creates the appearance that the agency could be circumventing the hiring process and recruiting fellows in place of permanent employees. EPA Order 5700.1 states that substantial involvement is anticipated where a project is expected to entail agency involvement in the selection of key recipient personnel.

ASPH's subawards to fellows made under the CA are contrary to federal requirements because individuals are ineligible as subgrantees and agency involvement in selection of fellows creates an appearance that the EPA could be circumventing the hiring process.

Recommendations and Planned Corrective Actions

We recommend that the Director of the EPA Office of Grants and Debarment determine the proper vehicle to be used under the CA and take the necessary actions to ensure subawards comply with applicable federal regulations. We also recommend that the Director obtain an Office of General Counsel opinion on how the EPA should be involved in the selection of fellows and, as needed, reduce the appearance that the fellowship program is circumventing the hiring and recruiting process.

The agency agreed with our recommendations and provided corrective actions with estimated completion dates.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 17, 2014

MEMORANDUM

SUBJECT: Recipient Subawards to Fellows Did Not Comply With Federal Requirements and EPA's Involvement in Fellow Selection Process Creates the Appearance EPA Could Be Circumventing the Hiring Process
Report No. 14-P-0357

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Howard F. Corcoran, Director
Office of Grants and Debarment
Office of Administration and Resources Management

This is our report on a cooperative agreement to the Association of Schools of Public Health conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describes the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of Grants and Debarment, within the Office of Administration and Resources Management, is responsible for grants management of cooperative agreements issued by EPA headquarters program offices. The Office of Research and Development is the office that issued the cooperative agreement reviewed.

Action Required

In accordance with EPA Manual 2750, the agency provided a corrective action plan for addressing the recommendations with estimated milestone dates. Therefore, a response to the final report is not required. The agency should track corrective actions in the Management Audit Tracking System until all corrective actions have been completed.

This report will be available at <http://www.epa.gov/oig>.

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Purpose

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), initiated an audit of Cooperative Agreement (CA) No. 83388101 awarded to the Association of Schools of Public Health (ASPH). We sought to determine whether the federal funds were used for their intended purpose and in accordance with the CA terms and conditions and applicable government regulations. In addition, we sought to determine whether the CA's objectives were met.

Background

The Clean Air Act, Section 103, and Clean Water Act, Section 104, authorize the EPA to establish and maintain research fellowships in the EPA and at public or nonprofit private educational institutions or research organizations. The applicable regulatory provision for the CA is in the Code of Federal Regulations (CFR) at 40 CFR Part 30.

The EPA Office of Research and Development (ORD) awarded CA No. 83388101 to the ASPH on July 29, 2008. The purpose of the CA was to place recent graduates of schools of public health in 1- to 2-year fellowships at the EPA. Fellows were to gain practice-based training experiences and perform activities under the mentorship of EPA experts in environmental health. ASPH expected to place a minimum of 12 fellows per year during the performance period September 1, 2008, to August 31, 2013.

Under the CA, the EPA agreed to cost share 100 percent of all approved budget period costs incurred up to \$4,284,350. The CA was closed on September 2, 2014, with total federal expenditures of \$4,043,436. In 2013, ASPH expanded membership to include Council on Education for Public Health-Accredited Programs of Public Health, and subsequently changed its name to the Association of Schools & Programs of Public Health. The fellowship program is intended to fulfill a public purpose and the EPA was not the primary or intended beneficiary of the program.

According to ASPH, fellowships are awarded competitively, involving a two-phase review process. In the first stage, the applications are reviewed by two faculty members from schools of public health (other than the applicant's institution) on the following criteria: quality of essay, strength of credentials, previous professional experience, and letters of recommendation. Applicants approved by the faculty review are invited to Washington, D.C., to interview for the fellowship. The interview results, along with the faculty review comments, are used to assess which candidates applying for individual projects are most suited for the fellowship. Fellows receive a training stipend for living expenses during the fellowship period. In addition, fellows have access to a general expense allowance to cover health insurance premiums (including medical, dental and vision premiums), travel and appropriate professional development expenses. To

be eligible for a fellowship, candidates must have attained a masters or doctoral degree within the last 5 years from an ASPH-member, accredited school of public health. Applicants must also be U.S. citizens or hold visas permitting permanent residence in the United States.

Responsible Offices

The Office of Grants and Debarment, within the Office of Administration and Resources Management, is responsible for grants management of CAs issued by EPA headquarters program offices. ORD is the office that issued CA No. 83388101. For CA No. 83388101, the Grant Specialist is in the Office of Grants and Debarment and the Project Officer is in ORD.

Scope and Methodology

We conducted this audit from December 19, 2013, to June 13, 2014, in accordance with generally accepted government auditing standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To answer our objectives, we completed the following steps:

- Reviewed information in files provided by the Project Officer and Grant Specialist.
- Conducted interviews with the EPA Project Officer and Grant Specialist to obtain an understanding of their roles and responsibilities under the CA.
- Reviewed the limited scope review of ASPH conducted by a contractor in 2012 to identify issues that may have an impact on our audit. The review was requested by the EPA as part of its oversight of administrative and financial practices for grant recipients.
- Conducted interviews with ASPH personnel, current and past ASPH/EPA fellows, and an ASPH/EPA mentor to gain an understanding of the fellowship program's functionality and operations.
- Reviewed available Single Audit reports and ASPH annual reports for each year under the CA.

Results of Review

Our audit did not identify anything that would indicate federal funds were being used inappropriately by ASPH or that the objectives of the CA were not being met. However, we did identify two areas under the CA that require improvement by the EPA:

- ASPH's subawards to fellows made under the CA are contrary to federal requirements in that ASPH considers the fellows as subgrantees. This occurred because of ASPH's interpretation of the federal regulations. A different award vehicle is needed for the ASPH fellowship program to protect the agency's interests and ensure performance accountability.
- The EPA's involvement in the selection process for fellowship candidates creates the appearance that the agency could be circumventing the hiring process and recruiting fellows in place of permanent employees.

Subawards Issued Under CA Contrary to Federal Requirements

ASPH's subawards to fellows made under the CA are contrary to federal requirements under 40 CFR Part 30.5. Fellows receive a training stipend from the ASPH for living expenses. Per the agreements between ASPH and the fellows, the ASPH considers the fellows as subgrantees. Specifically, the agreement states:

For the purposes of this Agreement, the Fellow is considered a sub-grantee, not an employee of ASPH.

However, 40 CFR Part 30.5, in connection with Office of Management and Budget Circular A-110, states:

Unless sections of Circular A-110 specifically exclude subrecipients from coverage, the provision of Circular A-110 shall be applied to subrecipients performing work under awards if such subrecipients are institutions for higher education, hospitals or other non-profit organizations.

Per the regulations cited, fellows are ineligible as a subgrantee because they are not an institution for higher education, a hospital or a non-profit organization. Therefore, a different award vehicle is needed for the ASPH fellowship program. If a different award vehicle is not identified and used, subawards under the CA would not comply with applicable federal regulations. The proper award vehicle must be determined to ensure that all parties are aware of and follow the applicable regulations. Further, determination of the proper vehicle will protect the agency's interest and ensure performance accountability.

Agency Involvement in Selection Process Creates the Appearance of Circumventing the Hiring Process

The EPA's involvement in the selection process for fellowship candidates creates the appearance that the agency could be circumventing the hiring process and recruiting fellows in place of permanent employees for the direct benefit of the EPA. EPA Order 5700.1 states that substantial involvement is anticipated where a

project is expected to entail agency involvement in the selection of key recipient personnel. The fellows are considered key recipient personnel.

The ASPH Director of Graduate Training verbally informed us that the EPA is involved at two points during the fellowship candidate selection process:

- At the beginning of the process, the EPA Project Officer works with ASPH to agree on the language to be included in the fellowship announcement.
- After potential candidates have been vetted through the ASPH recruiting process, the EPA host offices conduct phone interviews and make a recommendation to the ASPH for fellowship placement.

The ASPH considers the EPA's recommendations when making final selections and fellowship placement, although the final decision for placement of fellows is ASPH's responsibility. ASPH does not maintain records of the recommendations from the agency and the final placement of the fellow.

The purpose of the CA was to place recent graduates of ASPH member schools in the EPA for 1 or 2 years, to fulfill a public purpose and provide mentorship. The EPA was not the primary or intended beneficiary of the program. However, the agency being directly involved in the selection process creates the appearance that the EPA could be circumventing the hiring process and recruiting fellows in place of permanent employees.

Although there is nothing that prohibits the agency from being involved in the selection process, the agency must exercise care in appearance issues created by its involvement. The EPA's Office of General Counsel is the chief legal adviser to the EPA, providing legal support for agency rules and policies, case-by-case decisions, and legislation. An Office of General Counsel opinion is necessary to determine the extent to which the EPA should be involved in the selection of fellows.

Recommendations

We recommend that the Director, EPA Office of Grants and Debarment:

1. Determine the proper vehicle to be used under CA No. 83388101 between ASPH and the fellows and take the necessary action to ensure subawards comply with applicable federal regulations.
2. Obtain an Office of General Counsel opinion on how the EPA should be involved in the selection of fellows and, as needed, reduce the appearance that the fellowship program is circumventing the hiring and recruiting process.

Agency Comments and OIG Evaluation

The OIG received comments from the Office of Grants and Debarment on July 18, 2014, and those comments are included in appendix A. The Office of Grants and Debarment agreed with the recommendations and provided a corrective action plan with estimated completion dates.

For recommendation 1, the Office of Grants and Debarment indicated it will work with ORD and ASPH to clarify the correct type of agreement between ASPH and the fellows. In addition, the Office of Grants and Debarment indicated it will work with ASPH to clarify the agreement terminology.

For recommendation 2, the Office of Grants and Debarment obtained an Office of General Counsel opinion and indicated it plans to issue a memorandum to the agency's Senior Resource Officials on the agency's role in selecting interns and fellows under assistance agreements.

We held an exit conference with the agency on August 7, 2014, to discuss its response to the draft report. We agree with the proposed actions and consider the recommendations resolved and open with corrective actions ongoing.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	4	Determine the proper vehicle to be used under CA No. 83388101 between ASPH and the fellows and take the necessary action to ensure subawards comply with applicable federal regulations.	O	Director, EPA Office of Grants and Debarment	12/31/14		
2	4	Obtain an Office of General Counsel opinion on how the EPA should be involved in the selection of fellows and, as needed, reduce the appearance that the fellowship program is circumventing the hiring and recruiting process.	O	Director, EPA Office of Grants and Debarment	12/31/14		

¹ O = Recommendation is open with agreed-to corrective actions pending.
 C = Recommendation is closed with all agreed-to actions completed.
 U = Recommendation is unresolved with resolution efforts in progress.

Agency Response to Draft Report

July 18, 2014

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Quick Reaction Report: *Use of Subawards and Agency Involvement in the Selection Process Under Fellowship Cooperative Agreements Impacts Compliance with Federal Requirements* (Project No. OA-FY14-0084, June 13, 2014)

FROM: Howard F. Corcoran /s/ *Howard F. Corcoran*
Director, Office of Grants and Debarment

TO: Robert Adachi
Director of Forensic Audits
Office of Inspector General

The Office of Grants and Debarment (OGD) thanks you for the opportunity to respond to the issues and recommendations in the subject Office of Inspector General (OIG) Draft Quick Reaction Report (Report). Following is a summary of the Agency's overall position, along with its position on each of the report recommendations. For those report recommendations with which the Agency agrees, we have provided either high-level intended corrective actions and estimated completion dates to the extent we can or reasons why we are unable to provide high-level intended corrective actions and estimated completion dates at this time.

AGENCY'S OVERALL POSITION

As describe below, OGD generally agrees with the OIG's findings and recommendations.

The Report finds that the Association of Schools of Public Health (ASPH) mischaracterized fellows receiving research training under Cooperative Agreement 83388101 as subawardees because individuals are ineligible as subawardees under 40 C.F.R. 30.5. We agree with this finding albeit for a different reason.

Consistent with [Grants Policy Issuance 07-02](#) and EPA's [Subaward Policy](#), ASPH fellows should have been classified as "program participants" receiving stipends and other financial assistance under the "participant support cost" provision of 2 C.F.R. Part 230 (OMB Circular A-122), Appendix B, Item 33. The Agency's position is also supported by the definition of "subrecipient" in 2 CFR 200.93 of the new OMB Super Circular, which provides that program beneficiaries are not subrecipients.

It should be noted, however, that the Agency has authority to award research and demonstration grants and cooperative agreements directly to individuals under statutes such as section 104 of the Clean Water Act, section 103 of the Clean Air Act, and section 8001 of the Solid Waste Disposal Act. That authority may, in a proper case, support a subaward to an individual provided the terms of the subaward require the individual to comply with regulations applicable to subawards. See Office of General Counsel Legal Opinion, *Subgrantees under EPA Assistance Agreements* (Attachment A). For example, a nonprofit organization that receives a grant from EPA to conduct projects to conduct research and demonstrate innovative methods of preventing water pollution may make a subawards to individual inventors to support technology demonstration projects.

EPA's Subaward Policy expressly allows subawards to individuals provided the subaward is not for a fellowship. This is because under 40 CFR 30.1, EPA's statutory authority to award grants and cooperative agreements to individuals provides an exception to the exclusion of payments to individuals in the definition of "award" at 40 CFR 30.2(e) and 40 CFR 30.2(ff). In this regard, and as noted above, the exclusion of individuals from the definition of subrecipients at 2 CFR 200.93 is limited to program beneficiaries.

OGD will work with the Office of Research and Development (ORD) to determine the correct type of agreement to be used between the cooperative agreement recipient, ASPH, and the fellows. OGD and ORD will then work with ASPH to insure that it documents the process in all of their internal policies and procedures.

The Report also found that EPA's involvement in the selection process for fellowship candidates creates the appearance of circumventing the hiring process. OGD consulted with the Office of General Counsel (OGC) to obtain an opinion on this issue. The award under review is a cooperative agreement and, as such, it is expected that the EPA would have substantial involvement, as opposed to the Agency's more limited involvement as it relates to a grant.

As noted in Attachment B, OGC concluded that, consistent with [EPA Order 5700.1](#), there could be a role for EPA to make recommendations on fellowship candidates as part of the substantial involvement under a cooperative agreement. OGC suggested, however, that a better process might be for the EPA office involved to provide more general recommendations such as parameters or basic qualifications for potentially successful fellowship candidates. This suggestion reaffirms the advice provided in the joint OGC-OGD memorandum, dated January 17, 2001, [Interns Funded Under Cooperative Agreements](#), which states that EPA's role in the placement of interns is limited to advising the recipient on the "fit" between a intern's interest and qualifications and the training and research opportunities available in the program or laboratory. Final decisions on intern selection must be made by the cooperative agreement recipient. The January 17 memo makes clear that a greater EPA role would inadvertently create the appearance that an intern/fellowship program is being used to circumvent personnel ceilings. OGD agrees with the OIG of the importance of avoiding such an appearance, and will issue updated guidance to the Agency's Senior Resource Officials on the limitations on EPA's role in selecting interns.

AGENCY’S RESPONSE TO REPORT RECOMMENDATIONS

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1	Determine the proper vehicle to be used under CA No. 83388101 between the ASPH and the fellows and take the necessary action to ensure sub-awards comply with applicable federal regulations.	1.1 OGD will work with ORD and ASPH to clarify the correct type of agreement used between ASPH and the fellows. We will then work with ASPH to insure they clarify the agreement terminology in their internal guidance.	1 st Quarter FY 2015
2	Obtain an Office of General Counsel opinion on how the EPA should be involved in the selection of fellows and, as needed, reduce the appearance that the fellowship program is circumventing the hiring and recruiting.	2.1 OGD consulted with OGC and received an opinion that has been incorporated into this response.	Completed. Also, in the 1 st quarter FY 2015, OGD will issue a memorandum to the Agency’s Senior Resource Officials concerning the limitations on EPA’s Role in selecting Interns and Fellows under assistance agreements.

CONTACT INFORMATION

If you have any questions regarding this response, please contact me at (202) 564-1903.

Attachments

cc: Denise Polk
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