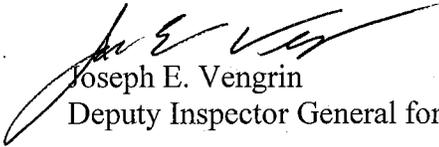




SEP 17 2008

TO: Julie L. Gerberding, M.D., M.P.H.
Director
Centers for Disease Control and Prevention

FROM: 
Joseph E. Vengrin
Deputy Inspector General for Audit Services

SUBJECT: Review of New Hampshire's Bioterrorism and Emergency Preparedness Funds for the Period July 1, 2003, through June 30, 2007 (A-01-07-01502)

Attached is an advance copy of our final report on bioterrorism and emergency preparedness funds in New Hampshire for the period July 1, 2003, through June 30, 2007. We will issue this report to the New Hampshire Department of Health and Human Services, Division of Public Health Services (the State agency), within 5 business days. The Centers for Disease Control and Prevention (CDC) requested this review.

Through its Public Health Emergency Preparedness Program (the Program), CDC provides funds to State and major local health departments to improve preparedness and response capabilities for bioterrorism and other public health emergencies. During State fiscal years (SFY) 2004–2007 (July 1, 2003, through June 30, 2007), the State agency claimed a total of \$29,702,015 in Program funding from CDC. Compensation costs for employees who charged 100 percent of their time and effort to the Program accounted for \$9,575,753 (32 percent) of this total.

Our objective was to determine whether the State agency complied with Federal requirements for claiming compensation costs for employees who charged all of their time to the Program.

During SFYs 2004–2007, the State agency did not always comply with Federal requirements for claiming compensation costs for employees who charged all of their time to the Program. Of the \$9,575,753 in compensation costs that we reviewed, only \$309,004 was allowable. This amount was supported by signed periodic certifications stating that the employees worked solely on the Program, and we verified that the employees worked on the Program during the claim period. The remaining \$9,266,749 in compensation costs was unallowable:

- The State agency claimed \$9,167,762 that was not supported by the required employee certifications. Without such certifications and because job descriptions and our employee survey indicated that these employees worked on other Federal and State programs in addition to the Program, we had no assurance that the employees devoted full time and

effort to the Program. The State agency mistakenly believed that requirements for documenting employee compensation costs did not apply to the Program.

- The State agency claimed \$98,987 in compensation costs for an employee who had been transferred out of the Program before the claim period. The State agency attributed this inappropriate charge to clerical error.

We recommend that the State agency:

- either refund \$9,167,762 in compensation costs claimed for employees who may have worked on multiple programs or provide documentation to CDC to support these charges,
- refund \$98,987 in compensation costs for an employee who had been transferred out of the Program, and
- follow Federal requirements for charging compensation costs to the Program.

In its written comments on our draft report, the State agency disagreed with our findings and recommendations. The State agency said that it had followed Federal requirements for charging compensation costs to the Program.

We maintain that the State agency did not follow the Federal requirement to provide certifications that employees worked solely on the Program. We recognize that some of the compensation costs for these employees may have been appropriately charged solely to the Program. However, without the required certifications, we have no assurance that the employees devoted 100 percent of their time and effort to the Program.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Lori S. Pilcher, Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits, at (202) 619-1175 or through e-mail at Lori.Pilcher@oig.hhs.gov or Michael J. Armstrong, Regional Inspector General for Audit Services, Region I, at (617) 565-2689 or through e-mail at Michael.Armstrong@oig.hhs.gov. Please refer to report number A-01-07-01502.

Attachment



Office of Audit Services
Region I
John F. Kennedy Federal Building
Boston, MA 02203
(617) 565-2684

SEP 24 2008

Report Number: A-01-07-01502

Mr. Nicholas A. Toumpas
Commissioner
New Hampshire Department of Health and Human Services
129 Pleasant Street
Concord, New Hampshire 03301-3857

Dear Mr. Toumpas:

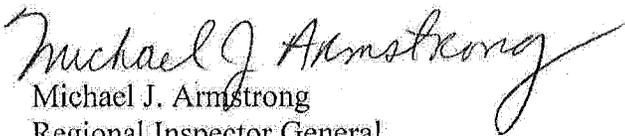
Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Review of New Hampshire's Bioterrorism and Emergency Preparedness Funds for the Period July 1, 2003, Through June 30, 2007." We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

Pursuant to the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, OIG reports generally are made available to the public to the extent the information is not subject to exemptions in the Act (45 CFR part 5). Accordingly, this report will be posted on the Internet at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or contact George Nedder, Audit Manager, at (617) 565-2702 or through e-mail at George.Nedder@oig.hhs.gov. Please refer to report number A-01-07-01502 in all correspondence.

Sincerely,


Michael J. Armstrong
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Mr. Jerry Shingleton
Team Leader, Oversight and Evaluation
Procurement and Grants Office (MS-E-14)
Centers for Disease Control and Prevention
2920 Brandywine Road, Room 1122
Atlanta, Georgia 30341

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF NEW HAMPSHIRE'S
BIOTERRORISM AND
EMERGENCY PREPAREDNESS
FUNDS FOR THE PERIOD
JULY 1, 2003, THROUGH
JUNE 30, 2007**



Daniel R. Levinson
Inspector General

September 2008
A-01-07-01502

Office of Inspector General

<http://oig.hhs.gov>

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

Office of Audit Services

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

Office of Evaluation and Inspections

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

Office of Investigations

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

Office of Counsel to the Inspector General

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

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC

at <http://oig.hhs.gov>

Pursuant to the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, Office of Inspector General reports generally are made available to the public to the extent the information is not subject to exemptions in the Act (45 CFR part 5).

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

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

EXECUTIVE SUMMARY

BACKGROUND

The Centers for Disease Control and Prevention (CDC) provides funds to State and major local health departments to improve preparedness and response capabilities for bioterrorism and other public health emergencies. From 1999 to 2005, CDC provided this funding through the Public Health Preparedness and Response for Bioterrorism Program. Since 2005, CDC has provided funding through the Public Health Emergency Preparedness Program. We refer to these two funding mechanisms collectively as “the Program.”

Pursuant to applicable Federal cost principles, compensation for employees’ time and effort under Federal awards includes wages, salaries, and fringe benefits. Charges for compensation for employees who work solely on a single Federal award must be supported by certifications that the employees worked solely on that program during the certification period. These certifications must be prepared at least semiannually and signed by the employee or supervisory official.

In New Hampshire, the Department of Health and Human Services, Division of Public Health Services (the State agency), administers the Program. During State fiscal years (SFY) 2004–2007 (July 1, 2003, through June 30, 2007), the State agency claimed a total of \$29,702,015 in Program funding from CDC. Compensation costs for employees who charged 100 percent of their time and effort to the Program represented \$9,575,753 (32 percent) of this total.

OBJECTIVE

Our objective was to determine whether the State agency complied with Federal requirements for claiming compensation costs for employees who charged all of their time to the Program.

SUMMARY OF FINDINGS

During SFYs 2004–2007, the State agency did not always comply with Federal requirements for claiming compensation costs for employees who charged all of their time to the Program. Of the \$9,575,753 in compensation costs that we reviewed, only \$309,004 was allowable. This amount was supported by signed periodic certifications stating that the employees worked solely on the Program, and we verified that the employees worked on the Program during the claim period. The remaining \$9,266,749 in compensation costs was unallowable:

- The State agency claimed \$9,167,762 that was not supported by the required employee certifications. Without such certifications and because job descriptions and our employee survey indicated that these employees worked on other Federal and State programs in addition to the Program, we had no assurance that the employees devoted full time and effort to the Program. The State agency mistakenly believed that requirements for documenting employee compensation costs did not apply to the Program.

- The State agency claimed \$98,987 in compensation costs for an employee who had been transferred out of the Program before the claim period. The State agency attributed this inappropriate charge to clerical error.

RECOMMENDATIONS

We recommend that the State agency:

- either refund \$9,167,762 in compensation costs claimed for employees who may have worked on multiple programs or provide documentation to CDC to support these charges,
- refund \$98,987 in compensation costs for an employee who had been transferred out of the Program, and
- follow Federal requirements for charging compensation costs to the Program.

STATE AGENCY COMMENTS

In comments on our draft report, the State agency disagreed with our findings and recommendations. The State agency said that it had followed Federal requirements for charging compensation costs to the Program. The State agency also said that CDC had intended Program funds to be used for the dual purpose of enhancing public health infrastructure while building public health emergency preparedness and bioterrorism readiness and that efforts that benefited other public health programs were consequently appropriate and allowable under the Program.

We have included the State agency's comments, except for numerous enclosures, as the Appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

We maintain that the State agency did not follow the Federal requirement to provide certifications that employees worked solely on the Program. We recognize that some of the compensation costs for these employees may have been appropriately charged solely to the Program. However, without the required certifications, we have no assurance that the employees devoted 100 percent of their time and effort to the Program. We also maintain that CDC did not intend for the Program to fully fund employees' activities that were covered under other funding sources, nor did CDC waive Federal requirements for documenting and allocating employee compensation costs.

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INTRODUCTION

BACKGROUND

Preparedness for Bioterrorism and Other Public Health Emergencies

The Centers for Disease Control and Prevention (CDC) provides funds to State and major local health departments to improve preparedness and response capabilities for bioterrorism and other public health emergencies. From 1999 to 2005, CDC provided this funding through the Public Health Preparedness and Response for Bioterrorism Program. Since 2005, CDC has provided funding through the Public Health Emergency Preparedness Program. We refer to these two funding mechanisms collectively as “the Program.”

Requirements for Charging Employee Compensation Costs to Federal Awards

Pursuant to applicable Federal cost principles, compensation for employees’ time and effort under Federal awards includes wages, salaries, and fringe benefits. Charges for compensation for employees who work solely on a single Federal award must be supported by certifications that the employees worked solely on that program during the certification period. These certifications must be prepared at least semiannually and signed by the employee or supervisory official. In addition, the distribution of compensation for employees who work on multiple activities or cost objectives must be supported by personnel activity reports or equivalent documentation.

New Hampshire Division of Public Health Services

In New Hampshire, the Department of Health and Human Services, Division of Public Health Services (the State agency), administers the Program. Through an agreement with the State agency, employees from the Departments of Safety and Environmental Services also work on the Program.

During State fiscal years (SFY) 2004–2007 (July 1, 2003, through June 30, 2007), the State agency claimed a total of \$29,702,015 in Program funding from CDC. For each year of this period, between 50 and 58 employees charged 100 percent of their time and effort to the Program. Compensation costs for these employees represented \$9,575,753 (32 percent) of all Program costs.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency complied with Federal requirements for claiming compensation costs for employees who charged all of their time to the Program.

Scope

We reviewed the \$9,575,753 in compensation costs that the State agency claimed during SFYs 2004–2007 for employees who charged 100 percent of their time and effort to the Program. We limited our review of internal controls to the process that the State agency used to claim employee compensation costs.

We performed our fieldwork from July 2007 through February 2008 at the State agency in Concord, New Hampshire.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal regulations, cooperative agreements between CDC and the State agency, grant award terms and conditions, grant application documents, and New Hampshire’s cost allocation plan;
- reviewed the State’s chart of accounts, related descriptions, and accounting records to determine the materiality of cost elements;
- compared compensation costs that the State agency claimed for each SFY with compensation costs for each employee identified on the budget application that CDC approved for each budget year in the cooperative agreement;
- requested and reviewed signed timesheets or completed certifications to support compensation costs that the State agency claimed for employees who charged 100 percent of their time and effort to the Program;
- in the absence of completed certifications, analyzed detailed job descriptions for all employees who charged 100 percent of their time and effort to the Program and requested that CDC staff also review these job descriptions;
- surveyed 38 of the 50¹ current employees who charged 100 percent of their time and effort to the Program in 2007 to determine whether other Federal or State grants or programs had benefited from their time and effort; and
- discussed our findings with CDC and State agency officials.

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

¹Only 38 employees were available at the time of our survey.

FINDINGS AND RECOMMENDATIONS

During SFYs 2004–2007, the State agency did not always comply with Federal requirements for claiming compensation costs for employees who charged all of their time to the Program. Of the \$9,575,753 in compensation costs that we reviewed, only \$309,004 was allowable. This amount was supported by signed periodic certifications stating that the employees worked solely on the Program, and we verified that the employees worked on the Program during the claim period. The remaining \$9,266,749 in compensation costs was unallowable:

- The State agency claimed \$9,167,762 that was not supported by the required employee certifications. Without such certifications and because job descriptions and our employee survey indicated that these employees worked on other Federal and State programs in addition to the Program, we had no assurance that the employees devoted full time and effort to the Program. The State agency mistakenly believed that requirements for documenting employee compensation costs did not apply to the Program.
- The State agency claimed \$98,987 in compensation costs for an employee who had been transferred out of the Program before the claim period. The State agency attributed this inappropriate charge to clerical error.

FEDERAL REQUIREMENTS

Federal cost principles applicable to States, now codified in regulation (OMB Circular A-87, Att. B, § 8(a)(3) (2 CFR pt. 225, App. B, § 8(a)(3))) state: “Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent . . . that the total compensation for individual employees . . . [i]s determined and supported as provided in subsection h.”

Subsection 8.h states:

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation

UNALLOWABLE CLAIMS FOR EMPLOYEE COMPENSATION

Employees With Potentially Split Job Duties

The State agency claimed compensation costs totaling \$9,167,762 that were not supported by required certifications that the employees worked solely on the Program during the claim period. The job descriptions for these employees indicated that they worked on multiple activities, including some that benefited the Program.

Example: Library Associate

The job description for the library associate position stated that the employee “[o]versees the Office of Community Public Health (OCPH) institutional reference and lending library for the Community Public Health Development Program.” The job description identified numerous responsibilities in addition to maintaining and providing information on the Program, including:

- assisting all OCPH agency programs;
- maintaining library policy and recommending new policies and procedures for day-to-day library operation; and
- maintaining written and verbal communication with educators, health and human service professionals, and State educators of library resources.

In response to our survey, the employee who held the library associate position reported that her work benefited 45 Federal and State grants or programs, including Federal grants from the Food and Drug Administration (FDA) and the U.S. Departments of Agriculture and Education, as well as other CDC grants and State-funded grants and programs. However, the employee charged 100 percent of her time and effort to the Program.

Likewise, our survey of 37 other current employees who charged 100 percent of their time to the Program in 2007 found that 22 employees acknowledged working on at least one other Federal or State grant or program. Although the 15 other employees whom we surveyed stated that they worked solely on the Program, the employees’ detailed job descriptions indicated that they worked on at least one other Federal or State project. Because the State agency did not obtain the required certifications, we had no assurance that the Program received full time and effort from employees who charged the Program for 100 percent of their time and effort.

Employee Transferred Out of the Program

The State agency claimed \$98,987 in compensation costs for an employee who had been transferred out of the Program before the claim period. Thus, these costs were unallowable.

STATE EXPLANATION

During our audit, State agency officials told us that they had not used their established internal controls to ensure that employees who charged 100 percent of their time to the Program certified their time charges.² According to the officials, they believed that the intent of the Federal legislation that established the Program was to (1) build a bioterrorism response capacity and (2) rebuild the country's public health infrastructure by filling gaps in State and local public health systems. State officials thus concluded that the Program was designed to be integrated with existing operational units and that the requirements for documenting and allocating employee compensation costs did not apply to the Program. However, CDC did not waive Federal requirements for documenting and allocating employee compensation costs, and the State had no authority to unilaterally decide that such requirements did not apply to the Program.

State agency officials said that the costs charged to the Program for the employee who no longer worked on the Program were attributable to clerical error.

RECOMMENDATIONS

We recommend that the State agency:

- either refund \$9,167,762 in compensation costs claimed for employees who may have worked on multiple programs or provide documentation to CDC to support these charges,
- refund \$98,987 in compensation costs for an employee who had been transferred out of the Program, and
- follow Federal requirements for charging compensation costs to the Program.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In comments on our draft report, the State agency disagreed with our findings and recommendations. The State agency said that it had followed Federal requirements for charging compensation costs to the Program and disputed our findings regarding certifications, job descriptions, surveys, the intent of the Program, and transferred employees. We summarize and respond to the State agency's comments below and include the comments, except for numerous enclosures, as the Appendix.

Certifications

State Agency Comments

In its comments on our finding that employees who charged 100 percent of their time to the Program did not have the required employee certifications, the State agency maintained that the

²Of the three State departments whose employees worked on the Program, only one (Environmental Services) used its system for ensuring that employees correctly recorded and certified their time and effort.

work that these employees performed could be sufficiently documented through daily sign-in sheets, job numbers, and the State agency's Human Resources Change Form (Form 170), which it believed together were equivalent to a certification. The State agency said that it used job numbers to ensure that all expenses, including compensation costs for employees, were paid using the appropriate funding source. The State agency also said that the job number appears on the Form 170, which is signed by both a financial manager and the appointing authority (supervisor) and used to record changes to a position, such as increases or decreases in funding.

The State agency noted that it was in the process of implementing a single-sheet certification to be completed by every employee charged to a single cost objective on a semiannual basis.

Office of Inspector General Response

We disagree that daily sign-in sheets, job numbers, and Form 170 constitute the equivalent of a certification. The sign-in sheet is merely an attendance sheet that lists employees' names and the dates and times that they arrived at and left the jobsite. The sheet contains no job numbers. All employees who charged 100 percent of their time and effort to the Program were assigned the same job number even though they performed a wide variety of activities. Therefore, the job number is not an accurate reflection of an employee's daily activity. In addition, the Form 170, which is used primarily to identify changes within a position (e.g., new hire, promotion, or transfer), is not completed periodically and does not require employees to certify that they devote 100 percent of their time to a particular program. As a result, we maintain that the State agency did not follow Federal requirements for providing certifications that an employee worked solely on a specific Federal grant award.

We recognize that the compensation costs for some of these employees may have been appropriately charged solely to the Program. However, without the required certifications, we have no assurance that the employees devoted 100 percent of their time and effort to the Program. Accordingly, the State agency should either refund \$9,167,762 or provide documentation to CDC so that CDC can determine what portion of the claim is allowable.

Job Descriptions

State Agency Comments

The State agency said that we relied heavily, in some cases exclusively, on supplemental job descriptions in concluding that employees improperly worked on other Federal and State programs in addition to the Program. The State agency emphasized that the supplemental job descriptions could not be relied on as an accurate indicator of the work that employees actually performed during a particular timeframe or, more importantly, of programs that may have benefited from the work of a particular employee.

The State agency concluded that we should not have relied on supplemental job descriptions as a basis for a refund recommendation without performing additional investigation to determine whether the job descriptions were accurate and representative of the actual jobs. The State agency said: "Neither the employees nor their supervisors were interviewed by OIG. Therefore,

one can only conclude that OIG based its recommendation that New Hampshire refund 100% of the compensation claimed for these employees, only on a review of the corresponding [supplemental job descriptions].” The State agency offered several examples of employees who were listed on its chart as working only on bioterrorism but whose salaries were included in the questioned costs, presumably based on the job descriptions.

Office of Inspector General Response

We based our finding on the State agency’s lack of required certifications, not on the supplemental job descriptions. Without these certifications or some other type of time-and-effort reports, we had no assurance that employees who charged 100 percent of their time and effort to the Program worked solely on the Program. We reviewed the job descriptions to determine whether they supported the 100-percent compensation charges. However, we were unable to make these determinations because of the broadness of the job descriptions and the number of potentially benefiting programs.

Surveys

State Agency Comments

The State agency said that our supplemental surveys of State agency and Department of Safety (DOS) employees did not support a determination that the employees’ compensation costs were improperly charged to the Program because the charts used to conduct the surveys were inconsistent, ambiguous, insufficiently detailed, and not accompanied by interviews or other followup. As one example, the State agency noted that, because the charts did not specify a time period, an “x” might mean that a benefit to another program “occurred on a given day or longer than a day, during the audit period or the then present moment.”

The State agency maintained that, because of these shortcomings, the employees who completed the charts did so based on differing best guesses as to the meaning of the ambiguous questions. The State agency said that, despite this lack of clarity, we interpreted a mark in a column labeled something other than “Bioterrorism” as an acknowledgment of an employee’s having worked on another Federal or State program and that this determination was potentially the basis of our request for repayment of compensation for the entire 4-year audit period.

The State agency noted that CDC had directed all States to closely coordinate their public health emergency preparedness activities with those of public safety and emergency management agencies, particularly with respect to activities funded by the Department of Homeland Security and/or other Federal agencies. Thus, the State agency maintained that conducting emergency drills and other exercises and responding to naturally occurring events such as snowstorms and floods was a goal or critical capacity activity required under the Program. The State agency provided several examples and two affidavits from employees to support its assertion that the work activities indicated on the charts were allowable and, in some instances, mandated under the Program.

Office of Inspector General Response

We did not base our finding on the results of our survey. Instead, we based our finding on the State agency's lack of signed, periodic certifications required to support its claim. Because of the lack of certifications, we requested timesheets or other time-and-effort reporting documentation. State agency managers advised us that they did not have timesheets and did not track employee effort for their various grants. We then looked at job descriptions, but because the job descriptions did not appear to support 100-percent time and effort charged to the Program, we requested that the State agency develop a spreadsheet that identified all Federal, State, and other grants and programs on which all current 100-percent Program employees at the State agency worked during our audit period.

We were unaware that employees were confused about the survey. Throughout the audit, we had numerous meetings with State agency and DOS managers and were in daily contact. At no time did any of the managers relate any questions or concerns regarding the requested information or indicate that their employees were confused about the time period of the activities or any other aspects of the charts. The State agency's concern that our charts did not request the amount of time that employees devoted to other grants and programs ("on a given day or longer than a day") supports our position that certifications were needed to determine whether employees who charged the Program for 100 percent of their time and effort actually worked solely on the Program.

Although some of the activities that the State agency cited may be allowable under the Program, they could also be charged to other benefiting State and Federal programs, including the State food safety program, Homeland Security, and FDA. Our position is supported by the affidavits that the State agency provided, which indicated that the employees devoted part of their time and effort to other benefiting programs. Because the State agency did not have the required certifications and did not allocate employees' time and effort, we could not determine the extent to which these employees' compensation costs may be allowable under the Program.

Intent of Program

State Agency Comments

The State agency said that the Federal legislation that created the Program "set forth the 'dual purpose' intent to build a bioterrorism response capacity and to rebuild the country's public health infrastructure and fill in gaps in state and local public health systems." The State agency maintained that CDC, in its ongoing discussions with the States, continued to validate the important dual purpose of building public health infrastructure with Program funds. The State agency remarked that it had applied for the Program with this dual purpose in mind.

The State agency also said that it had "fully disclosed and been transparent in its activities to CDC under the Grant" and that CDC had "monitored New Hampshire's grant activities and consistently found New Hampshire to be in compliance." Thus, according to the State agency, to the extent that New Hampshire had enhanced its public health infrastructure while building

public health emergency preparedness and bioterrorism readiness, this consequence was appropriate and allowable under the Program.

Office of Inspector General Response

CDC may have intended the Program funds to help build public health infrastructure and increase coordination between CDC and other emergency preparedness programs and grants. However, we are confident that CDC did not intend for the Program to fully fund employees' activities that were covered under other funding sources.

In response to the State agency's assertion that CDC was fully aware of the activities being funded through the Program, we note that the job descriptions that the State agency provided to CDC contained only the portions of the employees' positions that related directly to the Program. CDC approved the funding level for these positions based on the limited information that it received from the State. When we provided CDC with some of the full job descriptions, CDC indicated that the compensation costs for these positions should have been allocated and not charged solely to the Program. Furthermore, CDC did not waive Federal requirements for documenting and allocating employee compensation costs, and the State agency had no authority to decide that such requirements were not applicable to the Program.

Transferred Employees

State Agency Comments

In its comments on the recommendation in our draft report to refund \$114,135 in compensation costs for two employees who had been transferred out of the Program, the State agency said that the erroneous charges were the result of clerical errors and that it had already reimbursed CDC for the related funds. The State agency maintained that we should remove this recommendation from our report.

Office of Inspector General Response

During our audit, we found \$114,135 in charges for compensation costs for two employees who no longer worked on the Program. The State agency agreed that compensation for these two employees had been improperly charged to the Program. The State agency refunded compensation totaling \$15,147 for one of these employees during our audit period, so we have removed the \$15,147 from the finding and recommendation in our final report. However, because the State agency did not refund the remaining \$98,987 for the second employee until after our audit period, we have retained the finding and recommendation for that amount in our final report.

APPENDIX



Nicholas A. Toumpas
Commissioner

STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES

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July 23, 2008

Mr. Michael J. Armstrong
Regional Inspector General for Audit Services
Office of Audit Services
Region 1
John F. Kennedy Federal Building
Boston, MA 02203

Report Number: A-01-07-01502

Dear Mr. Armstrong:

I am writing in response to the Office of Inspector General (OIG) draft report entitled "Review of New Hampshire's Bioterrorism and Emergency Preparedness Funds for the period of July 1, 2003 through June 30, 2007." OIG has made a preliminary finding in its draft report that employees who were charged 100% to the Public Health Emergency Preparedness Program Grant (Public Health Emergency Preparedness Grant or the Grant)¹ may have improperly worked on or benefited other state and federal programs and recommends that 100% of all such employee compensation for the four year audit period, \$9,167,761, be refunded or alternatively that New Hampshire document that the employees devoted full time and effort to the program.

Brief Response

The OIG erred in its conclusion that employee compensation costs were incorrectly charged to the Grant and that the State should refund \$9,167,761. Contrary to the OIG's finding, the compensation costs were for employees who worked entirely on programs and activities allowable under the Grant. The OIG did not obtain sufficiently detailed information about the job activities of New Hampshire employees who work under the Grant. The OIG also appears to have failed to consider the Grant's objectives, CDC guidance and the terms and conditions of the federal award. A full review of these factors illustrates that, contrary to the draft report's conclusion, the New Hampshire Department of Health and Human Services (NH DHHS or the Department) does indeed follow federal requirements for charging compensation costs to the Public Health Emergency Preparedness Grant. With regard to certifications of employees charged 100%, the Department is in the process of implementing a single sheet certification to be completed by every employee charged to a single cost objective on a semi-annual basis.

The Department also objects to the OIG's conclusion that the Department owes a refund of \$114,135 for compensation costs for employees who were transferred out of positions funded 100% by the Grant. The Department has already reconciled and refunded the necessary amount to the Center for

¹ Public Health Preparedness and Response to Bioterrorism Program for SFY 2004 and 2005, and the Public Health Emergency Preparedness Program for SFY 2006 and 2007.

Disease Control (CDC). As discussed in more detail below and as supported by Attachments, the improper claim of compensation was the result of clerical error and has already been repaid. Thus, the

Department requests that this finding and the corresponding recommendation be removed from the final report.

Introduction

We strongly believe that New Hampshire has designed, built and continues to maintain a Public Health Emergency Preparedness Program in accordance with CDC guidance, our Grant award terms and conditions, and cooperative agreements between CDC and New Hampshire, and is well within both the spirit and letter of the federal legislation that created the Public Health Emergency Preparedness Grant. New Hampshire has complied with the fundamental premise that these federal funds be administered in a manner consistent with underlying agreements, program objectives and the terms and conditions of the federal award.

New Hampshire has worked to develop an emergency-ready public health system capable of responding to public health emergencies, outbreaks of infectious disease, pandemic influenza, bioterrorism and other public health threats by appropriately integrating, collaborating, evaluating and building upon the public health infrastructure. It has properly used Grant funded positions to meet the goals of the Public Health Emergency Preparedness Grant.

Activities of New Hampshire staff under the Grant are consistent with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. 247d-3. Moreover, New Hampshire has fully disclosed and been transparent in its activities to CDC under the Grant. CDC, in turn, has monitored New Hampshire's grant activities and consistently found New Hampshire to be in compliance. Both senior management and programmatic staff at CDC have come to New Hampshire on a number of occasions to conduct site reviews at the programmatic and administrative level and they have examined New Hampshire's Public Health Emergency Preparedness Grant program in detail. CDC representatives have spent time not only with the paper, but have met and spent time with the individuals working on New Hampshire's Public Health Emergency Preparedness Grant, including those who are charged 100% to the Grant.

The CDC has been well satisfied with the result of their oversight reviews. For example, the CDC Fiscal/Admin report related to the site visit of March 2005 from Program and Grants Office Branch Chief Rebecca O'Kelley states as follows:

Fiscal (Rebecca O'Kelley, CDC, PGO, Branch Chief Team A)

General Observations:

- Extremely well prepared for the visit and had previously made copies of fiscal documents related to the grant; i.e. MOU, contracts in progress, positions funded from CDC/HRSA BT Grants, Fiscal Year Appropriation Statement and other expenditure reports.
- Each of those reports were reviewed and found to be in order and provided a thorough explanation of the obligation and expenditure of funds by the DOH.
- The State of New Hampshire fiscal year is from 1 July – 30 June, rather than like the Federal Government 1 Oct -30 Sep.
- There were no deficiencies noted in the fiscal and business aspects of management of the cooperative agreement.

- The health department has a very good record keeping and reporting system and all costs could be tracked.
- They were very organized and their response to inquiries was impressive

Periodic Certifications

The draft audit report contains a finding that certain employees charged 100% to New Hampshire's Public Health Emergency Preparedness Grant \$9,167,761 "...[were] not supported by the required employee certifications. Without such certifications and because job descriptions and our employee survey² indicated that these employees worked on other Federal and State programs in addition to the Program, [OIG] had no assurance that the employees devoted full time and effort to the Program."³

The work performed by employees charged at 100% to New Hampshire's Public Health Emergency Preparedness Grant can be sufficiently documented. DHHS employees sign in on a daily basis at their assigned work area. (See Documents attached). The DHHS maintains documentation of "job numbers." Job numbers are used to ensure that all expenses, including compensation costs for employees, are paid using the appropriate funding source. Each job number is particularly described in the database. For example, job number 90077120 is described as follows: "Strategic National Stockpile (SNS): Activities in this area focus on establishing and exercising the procedures and materials to successfully deploy the federal Strategic National Stockpile in the event of a public health emergency/mass casualty event." The job number appears on the NH DHHS Human Resources Form 170 for the individual occupying the particular position along with the information that ties the individual to their position. When there are changes in a particular position relative to funding or other changes such as the position being vacated, the Form 170 is used to record that change.⁴ The Form 170 is signed both by a financial manager and the appointing authority (supervisor). Thus, the Form 170, job number database and the daily sign in sheet constitute the equivalent of the certification giving assurance that an employee is properly charged to a single cost objective.

New Hampshire Department of Safety (DOS), Office of Emergency Management, maintains timesheets that include specific job code information. Similar to DHHS, DOS maintains job code information for employees charged at 100% to New Hampshire's Public Health Emergency Preparedness Grant.

Again, going forward New Hampshire is committed to and is in the process of implementing a single sheet certification to be completed by every employee charged to a single cost objective on a semi-annual basis.

OIG Was Not Able to Make Reasonable Conclusions About Work Activities Based On Job Charts

² New Hampshire requested the OIG conducted survey from OIG by letter dated July 3, 2008, but did not receive such a survey. New Hampshire believes that the OIG reference is to two charts listing a total of a number of positions funded 100% by the New Hampshire's Public Health Emergency Preparedness Grant. The chart labeled "DOS Positions funded by BT Grant" contains a field that reads "Benefiting Programs - What other grants/projects do these employees work on." The other chart (DHHS employees) is a matrix listing a number of programs with spaces to insert an "X" as an indicator that the position "benefited" another program. The charts are discussed in more detail within this response.

³ OIG draft report, Summary of Findings at i.

⁴ The clerical error identified by OIG that led to an inappropriate claim of Public Health Emergency Preparedness Grant funds discussed in this response was a clerical error in the manual processing of the Form 170.

OIG's preliminary finding that employees may have improperly worked on or benefited other state and federal programs is not supported. In forming its conclusion, OIG relied on two charts related to 37 employees and job descriptions. OIG draft report at 4.⁵ However, the charts and job descriptions do not form a reasonable or reliable foundation to support a determination that the staff was improperly charged to the Grant for the following reasons. The OIG draft report failure to identify any particular positions, classes of positions, time periods, or particular work activities as being outside the scope of the grant makes it difficult to provide a narrowly tailored response.

OIG states that it surveyed staff, 22 of whom acknowledged working on other benefiting programs. To understand why OIG is mistaken in its conclusions, one must understand that the process employed was not actually a survey but instead consisted of two job charts, which contained inconsistent and confusing information.

At OIG's request, NH personnel created and sent out two charts about employees charged 100% to the Grant. One related to employees located at NH DHHS and the other to employees located at the NH Department of Safety (DOS). The question asked about employees' work activities was different depending upon which chart was received. See attached charts. Managers located at NH DHHS were asked with respect to "staff directly charged to the BT grant," to "identify, if any, other programs the staff may work on or benefit." NH DHHS email November 2007. Forty-two listed items were provided from which to select, by putting an x mark in the appropriate column. The emphasis on the NH DHHS chart – benefits arising from the work – was aligned with an earlier OIG query requesting Public Health bureau managers to identify what programs benefit from the duties performed by the position[s].⁵ See NH DHHS and OIG emails dated August 2007.

Managers at DOS were asked regarding "DOS positions funded by BT Grant" "benefiting programs – what other grant/projects do these individuals work on." DOS chart. The DOS chart had a small space in a column in which to put a few words listing the applicable activity or program(s).

For both charts, the question regarding work activity was ambiguous and no context was provided. No directions were given on how to complete either chart, except that they should be completed promptly. No explanations were provided as to what was meant by "other programs the staff may benefit" or by "benefiting programs – what other grants or projects individuals work on." For the NH DHHS chart, no definition or explanations were given as to what the 42 listed "programs" encompassed.

The charts did not seek comprehensive or detailed response and no space was available to put an explanation. After the charts were turned in to OIG, the auditors did not seek further detail or verify responses in the two charts. Employees were not interviewed; and no follow up questions were directed to any NH staff by the federal auditors to NH DHHS or DOS staff to elicit an understanding of what the x marks on one chart or the few words on the other chart actually meant. No time frames were requested or given. Further, no time periods were specified with the charts, an x might mean a benefit to another program occurred on a given day or longer than a day, during the audit period or the then present moment.

The NH DHHS and NH DOS individuals, who completed the charts, did so based on their various but differing best guesses as to the meaning of the ambiguous questions. Confusion existed. However, OIG, did not proceed further in its review if there was a mark in a column labeled something other than

⁵ NH requested all materials upon which OIG based its conclusion. New Hampshire performed a careful review of the discovery materials provided OIG as well as the OIG draft report.

“Bioterrorism.” OIG determined that such chart notation was an “acknowledgement” of the employee’s having worked on another Federal or State program. Unrebutted, this would potentially be OIG’s basis for repayment of compensation for the entire four-year audit period.

For the purposes of this response, NH will show that on closer examination, examples from the charts reveal that the work activities were properly allowable and, in some instances, mandated under the Grant. NH reserves the right to provide additional and further detailed information at a later time as appropriate.

OIG interpreted the chart notations as indicating that 22 employees improperly worked on another Federal or State grant or program. For 10 of these positions, or 45% of the 22 questioned positions, the work on another benefiting grant or program,” which OIG considered unallowable was “State EOC activations.” OIG is incorrect in this conclusion, as work performed on State Emergency Operation Center (EOC) activations falls squarely and properly within the Public Health Emergency Preparedness Grant. See attached Affidavit.

The majority of these EOC activations consisted of drills on nuclear regulatory events, strategic national stockpile deployments, pandemic flu response, and food contaminations exercises. These events are all directly covered under the Grant as Public Health Emergency Preparedness activities. Additionally, there were four sessions on orientation and operation of the EOC. Learning to operate the EOC in advance of an actual emergency is necessary. Together these activities comprise approximately 75% of the 34 EOC activations in which they participated. See attached spreadsheet.

Regarding the other 8 EOC activations, staff responded to actual emergencies such as floods and snowstorms. See spreadsheet. Responding to naturally occurring actual emergencies is an appropriate and allowable activity under the Public Health Emergency Preparedness Grant. Actual emergencies provide participants with valuable hands on experience and create a more accurate test of the effectiveness of the State EOC. It allows the participants to identify gaps, duplication and needed improvements for emergency preparedness. Public health issues also occurred during these naturally occurring emergencies. During the floods, NH DHHS needed to investigate and respond to food contamination concerns. Mold issues needed to be addressed. Concerns about possible hepatitis exposure from sewage overflow were raised. For naturally occurring emergencies, populations with functional challenges required specialized responses. Additionally, checks were made of nursing homes’ status related to snow loads. Assessment and triage of displaced residents was necessary. And evacuation routes for Seabrook Station and Yankee nuclear plants were determined.

Moreover, CDC in the Public Health Emergency Preparedness Grant has directed all states to ensure that their “public health emergency preparedness activities should be coordinated closely with those of public safety and emergency management agencies, particularly with respect to activities funded by the Department of Homeland Security and/or other federal agencies.” See CDC Continuation Guidance Budget Year 5 at Attachment H page 1. Such coordination includes “incorporation of lessons learned from performance during bioterrorism drills, simulations, other exercises, events and evaluations of those exercises.” See Guidance Budget Year 5, Attachment G at page 2. See also citations listed in the paragraph above. As part of the EOC activation process, Public Health Emergency Preparedness staff collaborated with Homeland Security and other stakeholders, using the National Incident Management System (NIMS) structure. Waiting until the State is in the midst of a public health emergency, before developing these skills does not make sense. The failure to form relationships, collaborate and evaluate the effectiveness of such joint efforts would leave a community flatfooted and at risk of avoidable harm in direct contravention of the purpose of the Grant.

For these reasons, the CDC cooperative agreements, grant application documents, and interim reports consistently and repeatedly refer to the State Emergency Operations Plan (SEOP), and the joint trainings, exercises, drills, actual events and reviews conducted of the State EOC. See, e.g., 2004 Cooperative Agreement Annual Report for New Hampshire, CC3 provisions RA1, RA2, RA3, RA4, RA7, and RA8; EC3 provision EA1; CC4 provision RA4 and RA6; CC6 provision RA8; CC8 provision RA2; and CC16, provision RA6. Conducting drills, tabletop and other exercises, and responding to naturally occurring events through the State Emergency Operation Center is a goal or critical capacity activity required under the CDC Grant.

Thus, CDC mandated that NH DHHS engage in precisely such cross cutting and collaborative emergency preparedness operations of the State EOC with Homeland Security, Hospital Preparedness, and other programs. See e.g., CDC Continuation Guidance Budget Year 5, Attachment A, Focus Area A at pages 4 and 5; Attachment B at pages 7 and 8; Attachment G at pages 2 and 3; and Attachment H at page 1. NH reported the response to naturally occurring emergency activity to CDC in the 2005 Cooperative Agreement Annual Progress Report for NH under Goal 1: Prevent, at 1A:CT1 - Support incident response operations according to the all-hazards plan, Evaluation Progress, "During major flooding in May 2006, many PHNs [Public Health Networks] did participate in local response activities . . ."

While the collaboration of Public Health Emergency Preparedness staff with Homeland Security may have a positive effect on another program, the activities are, nonetheless, proper and allowable under the Grant.

Another "benefiting program listed on the DOS chart was "Hospital preparedness grant, minor amount of Homeland." If OIG had inquired further, this staff member would have described the assistance he provided on the purchase of pharmaceutical supplies under the Hospital Preparedness program. See Affidavit of M. A. M. A. explains that the pharmaceutical cache is intended to protect front line hospital employees, families and patients from biological attacks.

Anti-viral caches are core to the Public Health Emergency Preparedness Grant. Assisting in their acquisition is clearly allowable, as emphasized in the Grant Guidance and related documents. "Hospital-based pharmaceutical caches also could house antiviral drugs to protect public health professional, another critical part of the human resources needed to combat an influenza pandemic. Funds allocated through the CDC Bioterrorism cooperative agreement could be used to acquire appropriate quantities of antiviral . . . funded by the HRSA [Health Resources and Services Administration] cooperative agreement." Grant Guidance for State and Local Official, Notice of Award, August 31, 20045, at page 11 of 69. See also other Grant documents, including record of BT conference call between CDC and the states, dated May 18, 2005 at page 1. See also Program Announcement 99051, May 2, 2003, Section D, Work Plan Content, "Recipients must coordinate planning and program implementation activities to ensure that state, local health departments, hospitals, and other health care entities are able to mount a collective response featuring seamless interaction of their event-specific capabilities. The guidance provides the specific example of distribution of antibiotic prophylaxis, pharmaceutical cache. See also Continuation Guidance – Budget Year Four, Grant Attachment X, Cross Cutting Activities, at page 4 of 11.

The other benefiting area identified by this individual was a minor amount of work related to the Homeland Security grant. In the attached affidavit, M.A. describes this activity, as obtaining funding for medical strike teams. This activity clearly support the Public Health Emergency Preparedness Grant, Target Capability 6E (Mass Prophylaxis), 6F (Medical Surge) and 6G (Mass Care) in the CDC Public Health and Emergency Preparedness Grant. The affiant also coordinated with Homeland Security relative to purchase of caches of respiratory personal protection equipment (masks) for statewide use. Again, this activity relates to the Public Health Emergency Preparedness Grant: Target Capability 6C (Responder

Safety and Health), 6E (Mass Prophylaxis), 6F (Medical Surge) and 6G (Mass Care) in the CDC Public Health and Emergency Preparedness grant and are labeled by CDC as cross cutting activities.

The General Accounting Office (GAO) seeks increased coordination between CDC and HRSA and other emergency preparedness programs. GAO-07-485R Public Health and Hospital Emergency Preparedness dated March 23, 2007. However, OIG apparently views such activities as questionable under the Grant. It suggests reimbursement may be required where the Public Health Emergency Preparedness Grant activities work in concert with other programs such as HRSA Hospital Preparedness and Homeland Security emergency preparedness efforts.

The NH DHHS chart was even more limited in its usefulness than the DOS chart as it asked what “other programs the staff may work on or benefit.” The chart was further flawed in that it separately listed activities that properly fell within the Public Health and Emergency Preparedness Grant. If a column other than Bioterrorism was marked, OIG rejected these clearly allowable functions without any discussion or review. However, bioterrorism is only one subset of the Public Health Emergency Preparedness Grant.

For example, an x marked in the column labeled “PH Lab” was discounted as disqualifying work on another benefiting program. However, an x under the PH Lab column simply meant the person physically worked at the Public Health Lab; the Public Health Lab was not another benefiting program. The notation indicating being employed at the Public Health Lab lead to OIG disqualifying the work of the Toxicologist whose only job function is related to chemical terrorism as improperly benefiting another program. Similarly, the microbiologist who tests food products for bioterrorist threat agents but for whose job was noted to provide a benefit under FERN [Food Emergency Response Network] or Food Protection resulted in an immediate recommendation of disallowance.

If there had been a follow up question, OIG would have been informed that testing food samples for biological agents necessarily benefits the Food Emergency Response Network (FERN). The Public Health Emergency Preparedness Grant guidance explicitly validates funding of such work and encourages collaboration with FERN. “Development of food testing capabilities within public laboratories is eligible for support under the CDC Cooperative agreement because food is being recognized increasingly as a medium for biological and chemical terrorism. The Food and Drug Administration (FDA) will collaborate with CDC in integrating food safety considerations into state and local public health emergency preparedness and response.”

See also CDC Continuation Guidance – Budget Year Four, Grant Attachment X, Cross cutting Activities, at page 6 of 11; and 2004 Cooperative Agreement Annual Report, Section CC6:RA 5. Food borne illnesses are properly an area of focus under the CDC Grant. Consider the 1987 Rajneeshee bioterror attack, which resulted in several convictions related to intentional food contamination in the restaurants in Dalles, Oregon. (See 15 Törörk TJ, Tauxe RV, Wise RP, et al. A large community outbreak of Salmonellosis caused by intentional contamination of restaurant salad bars. JAMA 1997; 278: 389–95.)

As a final example of how the NH DHHS chart did not support OIG’s conclusion, the work of one employee, K.D., indicated “biomonitoring.” K.D. is a bioterrorism surveillance specialist who is responsible for the review of certain current health data, such as emergency room admission symptoms, reports of infectious diseases, and sales of certain over the counter drugs. Knowledge of trends in these areas is critical to Early Warning Infectious Disease Surveillance (EWIDS). Biosurveillance, which seeks to identify emerging bioterrorism or infectious disease events, is the sole focus of the particular individual’s work activities. His work activities are completely and properly within the Grant. See CDC Continuation Guidance – Budget Year Five, Attachment I, pages 1 through 4, Early Warning Infectious Disease Surveillance. See also 2004 Cooperative Agreement Annual Report, Section CC54:RA1

(develop and maintain system to receive and evaluate urgent disease reports), and see sections, CC5:RA 3, 4 and 5; CC6:RA4; EC4:EA1; and EC5:EA3 and 4.

The two job charts do not provide a reasonable foundation to question the allowability of the work activity. The x marks and notations contained within them were not intended to be an acknowledgement of working on other benefiting programs. To the extent that other programs may have benefited, CDC sought such collaboration and benefit.

OIG's Reliance On Supplemental Job Descriptions Is Misplaced

The OIG auditors also relied heavily, in some cases exclusively, on supplemental job descriptions (SJDs) in reaching their conclusion that employees improperly worked on other federal and state programs in addition to the Public Health Emergency Preparedness Program. OIG stated that as part of their methodology they "...analyzed detailed job descriptions for all employees who charged 100 percent of their time and effort to the Program."⁶

OIG's heavy reliance on SJDs is misplaced. The SJD is not necessarily reflective of what an individual employee does on a day-to-day basis. Moreover, SJDs have absolutely no relation to funding streams nor are SJDs intended to describe benefiting programs. SJDs are for the benefit of Human Resources and management purposes. The SJD is used to define the potential duties and work assignments for each position or group of positions in the New Hampshire state classified service. However, an SJD cannot be relied upon as reasonable or even credible evidence of the work that is actually performed during a particular time frame, or more important, any program that may benefit from the work of a particular employee.

Rather, the SJD is used to support where a particular position or group of positions fits within state classified service. For example, when an employee seeks to have their position reclassified to a higher labor grade, a proposed SJD is submitted to support the upgrade within the state classification system.

SJDs are not part of the required documentation associated with filling state vacancies. The SJD is signed by the employee and by the supervisor when the employee is hired into the position and is filed with the Human Resources Bureau along with several other documents used in the hiring process. In the absence of a precipitating event, it is possible for an SJD to exist for several years without amendment even though an amendment would be appropriate due to changes in the job or the structure of the organization over time. In fact, in the present case several SJDs for Public Health Emergency Preparedness Program positions originating with DHHS were not modified when the positions were transferred to DOS. The fact that the SJDs were not updated is not indicative of the work performed by the employees in question. Accordingly, OIG should not have relied on SJDs as a basis to make a refund recommendation of such magnitude without performing additional investigation to determine whether the SJD was accurate and representative of the actual job.

In a number of instances, OIG seemingly relied exclusively on a paper review of SJDs in reaching the conclusion that employees worked on or benefited other programs and in recommending a total refund of the federally charged compensation for individual employees for the entire audit period. Thirteen of the twenty-four employees listed on the DHHS chart were indicated as only working on "bioterrorism."⁷ Neither the employees nor their supervisors were interviewed by OIG. Therefore, one

⁶ OIG draft report at page 2.

⁷ The term "bioterrorism" was used on the DHHS chart to indicate an employee worked on the "Program." The Program, however is more broadly and properly defined in the draft report to include preparedness and response

can only conclude that OIG based its recommendation that New Hampshire refund 100% of the compensation claimed for these employees, only on a review of the corresponding SJD.

Education and Training Coordinator, position #42879

An example of an employee whose duties are not fairly represented in OIG's preliminary findings is T. F., Education and Training Coordinator (position #42879).⁸ He works 100% on the Public Health Emergency Preparedness Program as indicated on the chart supplied to OIG by DHHS. (See Attachment). The OIG auditors never interviewed, surveyed or even talked to T.F. nor did they talk to his supervisor to either verify or disprove that this person and this position benefited only "bioterrorism."

OIG reviewed SJDs of persons who purported to work only on the Grant, including the SJD for position #42879. (See Attachment). The SJD for position number #42879 did not contain the word "bioterrorism" and the position title, Education and Training Coordinator, is general. However, this position serves as the Education and Training Coordinator to develop and implement the overall emergency preparedness and response training plan, coordinate training and education activities funded by the Public Health Emergency Preparedness Grant. A brief required description of the position was submitted annually to CDC in the Cooperative Agreement Work Plan for New Hampshire and was approved by the CDC.

This position, which is critical to New Hampshire's emergency preparedness, works exclusively on educational and training issues for Public Health Emergency Preparedness. It is responsible for developing and delivering vital training that is central to emergency preparedness. The CDC Cooperative Agreement Work Plan for Budget Year 2005, Goal 1 requires New Hampshire to increase the use and development of interventions known to prevent human illness from chemical, biological, radiological agents, and naturally occurring health threats. This position is directly responsible for Critical Task 5 under that goal.⁹

Position #42879 educates and trains in New Hampshire's 19 All Health Hazard Regions working with fire, police, health officers, community leaders and others. This position educates and trains in accordance with NIMS to ensure that New Hampshire is ready to respond to an event. This position organizes New Hampshire's annual Emergency Preparedness Conference. This position acts as the Administrator of New Hampshire TRAIN, which is a database used to register and track individuals and their various certifications, trainings and qualifications with regard to the Public Health Emergency Preparedness Grant.

While the SJD associated with this position from a personnel perspective was relatively accurate, from a funding perspective it did not clearly indicate that the sole scope of work is entirely within the Public Health Emergency Preparedness Grant. The SJD stated, "...coordinates all training and educational needs for the Office of Community and Public Health." The insertion of the phrase "for the public health emergency preparedness grant" would have captured the precise nature of the work more

capabilities for bioterrorism and other public health emergencies funding for which is now provided through the Public Health Emergency Preparedness Grant. The use of the term bioterrorism is too narrow and conflates the issue.

⁸ The SJD for position #42879 is identical to the SJD for position #OCPH107. OIG reviewed the copy of the SJD bearing position # OCPH107.

⁹ Critical Task 5 provides as follows: "Increase all-hazard incident management capacity by conducting regional, jurisdictional and State training to: Include the Emergency Management Independent Study Program, IS 700, National Incident Management System: An introduction in the training plan for all staff expected to report for duty following activation of the public health emergency response plan and/or staff who have emergency response roles documented in their job descriptions."

accurately. Regardless, a closer review by the OIG would have revealed that this position and the everyday activities associated with it are 100% committed to the Public Health Emergency Preparedness Grant.

Emergency Response Nurse, position # 43066

OIG also recommends a refund for the entire audit period for the position of S. K. , Emergency Response Nurse (#43066). This position is listed on the NH DHHS chart as only working for the benefit of "bioterrorism." The OIG auditors never interviewed, surveyed or spoke with S. K. nor did they talk to her supervisor to either verify or disprove that this person and this position benefited only "bioterrorism."

This position is assigned to the Bureau of Communicable Disease Control as a mission critical public health nurse who is an active and integral part of the infectious disease emergency response team. This position is part of the critical coverage provided by the response team for infectious disease emergencies, either naturally occurring or human made. This position is responsible for working with infection control practitioners, physicians, and other organizations to promote enhanced reporting and surveillance and to develop expertise concerning bioterrorism related disease and emergency interventions, such as immunizations or emergency chemoprophylaxis.

The CDC Cooperative Agreement Work Plan for Budget Year 2005, Goal 2 requires New Hampshire to "Decrease the time needed to classify health events as terrorism or naturally occurring in partnership with other agencies." Critical Task 1b within that goal requires New Hampshire to develop and maintain systems to receive disease reports 24 hours a day, 7 days a week, 365 days a year. This position is absolutely essential in fulfilling that requirement. The person in this position is on duty to receive and triage disease reports and then investigate the report. This is an obvious necessity in a Public Health Emergency Preparedness Program. Without this capacity there is no early warning system in place to detect a bioterrorism or other public health emergency event. The SJD is completely consistent with this function. Nevertheless, as noted above, this position was indicated on the chart as only working for the benefit of "bioterrorism." It appears that OIG did not understand that the job function was a goal and critical element under the Grant.

Systems Developer, position # 42873

OIG also recommends refund for the entire audit period for the position of J. S. , Systems Developer (#42873). This position is indicated on the chart as only working for the benefit of "bioterrorism." Again, the OIG auditors never interviewed, surveyed or spoke with J.S. or his supervisor to either verify or disprove that this person and this position benefited only "bioterrorism."

Position #42873, Systems Developer is the lead application development specialist with respect to application and database design for hospital reporting systems; the position performs analysis design and translation of programming functions into information systems solutions to achieve health statistics objectives pertaining to the State's need for timely acquisition around bioterrorism related public health objectives. This position is critical to bioterrorism surveillance.

This position is responsible for the Automated Hospital Emergency Development Data (AHEDD) systems developer and as such is primarily responsible for implementing technical development of the AHEDD system, specifically overseeing quality and design integrity of programming including analysis, coding, testing and debugging. Additionally, the systems developer serves as a technical resource for staff in other units and assists with the development of databases that enhance disease control response and capacity.

The person in this position has been and continues to be instrumental in the building and implementation of the AHEDD systems. He continues to work on and refine the AHEDD System

including the take over of technical maintenance by State Office of Information Technology staff from a contractor. The person in this position works to ensure that new emergency rooms coming on line are able to successfully transmit surveillance data to the State.

As noted above, the CDC Cooperative Agreement Work Plan for Budget Year 2005, Goal 2 requires New Hampshire to “Decrease the time needed to classify health events as terrorism or naturally occurring in partnership with other agencies.” The AHEDD system is critical in establishing and maintaining that goal. Critical Tasks 1 and 1a of that goal specifically list the AHEDD System as part of the Grantee Activity. Specifically, “the AHEDD project will impact capacity to receive real time data from four (there are currently 11) hospital Emergency Departments.” Without this capacity, there is no early warning system in place to detect a bioterrorism or other public health emergency event.

Again, it appears that the OIG is recommending a refund of the federally charged compensation for this position based solely on a paper review of the SJD. During the audit, OIG made requests for the SJDs of employees for whom compensation was charged 100% to the Public Health Emergency Preparedness Grant.

OIG’s review of SJDs was limited. During the audit, one of the auditors returned a “marked up” version of an SJD to DHHS staff. NH DHHS staff, via email, informed the OIG auditor that DHHS would document questioned items highlighted on the SJD. NH DHHS also observed: “I think that this would be a good way to start and then you can interview if you feel you need more information...”

Unfortunately, OIG auditors did not follow up with interviews to gain a meaningful understanding of whether the SJD matched the actual work performed by any individual employee.

To The Extent That Positions Benefited Public Health Emergency Preparedness Infrastructure, This Was Appropriate Under The Grant.

The federal legislation that created the Public Health Emergency Preparedness Grant set forth the “dual purpose” intent to build a bioterrorism response capacity and to rebuild the country’s public health infrastructure and fill in gaps in state and local public health systems.

In enacting the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, 42 U.S.C. 247d-3, Congress directed that the Secretary develop and implement a coordinated strategy, *building upon the core public health capabilities*, for carrying out health-related activities to prepare for and respond effectively to bioterrorism and other public health emergencies. *Id.* (emphasis added).

Prior to the actual passage of the Act, CDC officials described what was necessary to be done to develop public health preparedness for biological terror in the USA. “Investment in our public health system provides the best defense against bioterrorism and may also act as a deterrent. Fortunately, the tools we develop in response to bioterrorism threats are “dual use” tools that will capitalize on advances in technology, epidemiology and laboratory staff in our public health departments. The new epidemiology and laboratory staff in our public health departments are also available for communicable disease and public health-health problems and improve our ability to detect and identify rare or unusual cases.” Review of Bioterror Preparedness and Response Program, A.S Khan MD, S Morse PhD, National Center for Infectious Disease, Centers for Disease Control and Prevention, Atlanta, The Lancet, Vol. 356, September 30, 2000, at 1181.

Upon passage of the law, and consistent with this dual purpose, as President Bush announced funding, he observed that public health had been neglected at the federal level over the years and required significant investment. CDC reemphasized stating, “ Secretary Thompson is taking steps to make the resources available to states as quickly as possible, just as we did last year when this kind of funding was

first approved. We are building on President Bush's unprecedented commitment to bolstering the public health infrastructure." Announcement letter from CDC Regional Director Brian Cresta to NH Public Health Director Dunn dated March 24, 2003.

Testimony before Congress reflected the intent to build public health infrastructure as a means to develop the nation's ability to respond to public health emergencies. GAO testified "States are planning to use funds from these assistance programs to build the dual-purpose public health infrastructure and core capacities that the recently enacted Public Health Security and Bioterrorism Preparedness and Response Act of 2002. States plan to expand laboratory capacity, enhance their ability to conduct infectious disease surveillance and epidemiological investigations, improve communication among public health agencies, and develop plans for communicating with the public. States also plan to use these funds to hire and train additional staff in many of these areas, including epidemiology." Testimony of Janet Heinrich, Director, Health Care—Public Health Issues United States General Accounting Office before the House Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, on June 25, 2002.

It was with this dual purpose in mind that New Hampshire planned and applied for the Public Health Emergency Preparedness Grant.¹⁰ Then Governor Jeanne Shaheen, responded to Secretary Thompson's vision, "I share with you the concern and need to strengthen our public health infrastructure, health care, and community emergency response systems that will be called upon to respond..." April 2002 NH grant application cover letter from Governor Jeanne Shaheen to then-DHHS Secretary Tommy G. Thompson.

CDC in its ongoing discussions with the states continued to validate the important dual purpose of building public health infrastructure with the Public Health Emergency Preparedness Grant funds. At a CDC Telebriefing titled "CDC's Terrorism Preparedness: One Year Later" August 27, 2002, a CDC official stated: ".....So this concept of dual functionality is not only a good way for us to exercise, but it really is how we've evolved our whole program. We are building terrorism capacity on the foundation of public health, but we are also using the new investments in terrorism to strengthen the public health foundation. And these two programs are inextricably linked, and I think both will benefit from the efforts and the investments that we intend to make on an ongoing basis."

Language in the Grant documents further underscores this point. For example, see "Enhanced Capacity #1, "To ensure public health emergency preparedness and response through the development of necessary public health infrastructure." CDC Continuance Guidance Budget Year Five, Focus Area A, June 14, 2004 at page 2 of 6.

Throughout the Grant audit period, CDC encouraged New Hampshire to fill gaps in public health infrastructure by developing necessary lab capacity. "The goal is to expand chemical laboratory capacity . . ." See CDC Continuation Guidance Budget Year Four Program Announcement, May 2, 2003, at page 4 of 17. CDC further urged, "Ensure that all state public health laboratories have the capacity to measure chemical threat agents in human specimens." CDC Continuation Guidance Budget Year Four Program Announcement, May 2, 2003, at page 9 of 17. Toward this goal of supporting public health emergency readiness, CDC advised New Hampshire to "ensure the availability of at least one operational Biosafety Level Three facility in your jurisdiction for testing of biological agents." See

¹⁰ The legislative history and public comments from the federal government including CDC and the President of the United States make clear the dual purpose of the Public Health Emergency Preparedness Grant. See Attached letter from Mary Ann Cooney to George A. Nedder dated December 20, 2007.

Public Health Emergency Preparedness Grant Announcement dated August 2005, Under Goal Three Detect/Report at page 18 of 69.¹¹

In its management of the Grant, CDC specifically observed the importance of improving the public health infrastructure. Thus after one site review, CDC stated “we do have a serious concern regarding the potential harm that could occur from separating public health emergency preparedness and response from the day to day work that goes on in detecting and investigating non-emergency types of public health challenges (i.e. food borne illness outbreaks, flu, West Nile, and Meningitis outbreaks.). Many states have found that the funding and effort being applied to improve public health readiness is having a profound impact on core public health activities such as disease detection and reporting, outbreak investigation and containment strategies...If this funding and critical effort were separated from the day to day public health activity, it is possible that this could result in delayed detection, stalled responses to outbreaks, and confusion regarding containment of an outbreak...” Letter from CDC Associate Director for Terrorism Preparedness and Emergency Response to New Hampshire dated November 25, 2003.

To the extent that New Hampshire has enhanced its public health infrastructure while building public health emergency preparedness and bioterrorism readiness, this consequence was appropriate and allowable under the Grant. Moreover, New Hampshire has been completely transparent in its Grant application to the extent that it sought to fill gaps or improve the public health infrastructure. In its grant application, New Hampshire detailed its work plan to respond to a public health emergency in a unified and professional manner that would help build both local and state public health systems. CDC reviewed and approved New Hampshire’s plan. New Hampshire reported on its grant approved activities and CDC monitored its performance under the Grant.

Compensation of employees in question was therefore appropriately claimed at 100% despite the lack of a semi annual certificate. New Hampshire complied with the intent of OMB A-87 as employees did work exclusively on the Grant and in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award. In any event, to the extent that OIG concludes that recommended action is appropriate to address the semi annual certifications, at most, the appropriate course of action would be to recommend that New Hampshire supplement its certifications and take steps to implement a system for completion of the semi annual certifications in the future. Reimbursement of Grant funds is wholly unwarranted.

Clerical Error Involving Transferred Employees

As noted above, OIG is recommending that New Hampshire refund \$114,135 in compensation costs for two employees who had been transferred out of positions funded by the Grant. New Hampshire submits that this mistaken claim of compensation was the result of clerical error and related funds have already been repaid. Accordingly, the recommendation should be removed from the final OIG report.

One of the two incidents of clerical error was detected by DHHS, corrected and repaid in advance of the OIG auditors being on-site. Effective May 30, 2006, an employee transferred from a position funded by the Public Health Emergency Preparedness Grant to a position funded by the Hospital

¹¹ With respect to the library associate position discussed by OIG, when NH sought CDC approval of funding for this position, it acknowledged that the individual would also support other subject areas. “Library Associated facilitates cataloguing, ordering and distribution of material equipment related to emergency preparedness and other subjects through the Division of Public Health’s Library.” Detailed Budget Request for NH dated 7/30/2004. The position provided education and training to Emergency preparedness stakeholders under Focus Area G of the Grant.

Preparedness Grant (position #43068). When the DHHS Human Resources change form (Form 170) was completed to effectuate the transfer, the individual's prior job number/appropriation information (Public Health Emergency Preparedness Grant) inadvertently was not changed. Subsequently, in October 2006, the DHHS discovered this error and executed a second Form 170 to correct the appropriation retroactive to June 2006. In November 2006, a transfer was made to the Public Health Emergency Preparedness Grant to reimburse the \$15,147.29 improperly charged. (See Attachment).

The other incident of clerical error was discovered by OIG auditors. NH DHHS refunded the Public Health Emergency Preparedness Grant in the amount of \$98,987.38 on November 16, 2007. The individual in this position had changed jobs in September 2005, however when the Form 170 was processed due to a manual processing error, the appropriation was not changed until discovered in August 2007.

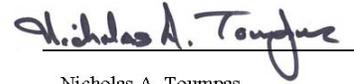
New Hampshire is in the process of converting to a new combined Human Resources and payroll system (Enterprise Resource Planning) that will have the ability to compare and validate a personnel and financial change which will greatly reduce the chance of a recurrence of such a clerical error.

Conclusion

New Hampshire maintains that we are following all requirements for charging compensation costs to the Public Health Emergency Preparedness Grant. OIG's draft report should be amended to reflect this compliance, and the OIG recommendation that New Hampshire refund \$9,167,761 in compensation costs claimed for employees who charged 100% of their time to the Public Health Emergency Preparedness Grant should be withdrawn. In order to address OIG's concern regarding employee certifications, the Department commits to implementing a single sheet certification to be completed by every employee charged to a single cost objective on a semi-annual basis. A refund is therefore neither appropriate nor necessary.

Finally, the OIG recommendation that New Hampshire refund \$114,135 in compensations costs for employees who had been transferred out of the Program should be removed as moot.

Mr. Michael J. Armstrong
Regional Inspector General for Audit Services

A handwritten signature in black ink that reads "Nicholas A. Toumpas". The signature is written in a cursive style and is positioned above a horizontal line.

Nicholas A. Toumpas
Commissioner

Enclosure

Cc: Jose Montero, M.D., Director, Division of Public Health
James Fredyma, Controller