

# Audit of NSF's Administratively Determined Pay System





# At a Glance

## Audit of NSF's Administratively Determined Pay System

OIG 25-02-002 | October 30, 2024

### WHY WE DID THIS AUDIT

The National Science Foundation Act (NSF Act) provides NSF the authority to hire and compensate technical and professional personnel under an excepted service compensation system. As such, NSF established five administratively determined (AD) pay bands and set the highest levels of its AD pay scale, the AD-4 and AD-5 pay bands, above the highest level of the General Schedule pay scale. Between FY 2014 and FY 2023, about 80 percent of NSF's 1,245 excepted service personnel were in the AD-4 and AD-5 pay bands. Within each AD pay band, NSF can modify the amount of basic pay annually, subject to applicable limits. We conducted this audit to determine if NSF has adequate policies and procedures to ensure staff in administratively determined positions are paid in accordance with federal regulations.

### WHAT WE FOUND

NSF did not have sufficient policies and procedures to ensure staff in certain administratively determined positions were paid within statutory salary limits and NSF's internally developed pay bands. Between 2014 and 2023, NSF did not comply with applicable laws and regulations that limit salary amounts for permanent AD employees appointed under the NSF Act. As a result, some staff in the AD-4 and AD-5 pay bands received salaries above federal limitations. In January 2024, NSF revised its AD pay bands to become compliant with certain federal limitations and waived debt collection of about \$15.5 million in overpayments incurred in FYs 2017 – 2023. However, we identified additional overpayments of \$1.6 million that NSF has not resolved. These overpayments include instances where NSF paid employees more than its internal AD pay band ceilings and other statutory limitations.

### WHAT WE RECOMMEND

We made two recommendations to NSF's Office of Information and Resource Management, in coordination with NSF's Office of the General Counsel, to strengthen its policies, processes, and procedures for NSF's excepted service pay system and to resolve the additional \$1.6 million of salary costs that were not covered by debt waivers previously issued by NSF.

### AGENCY RESPONSE

NSF agreed with the audit's recommendations. NSF's response is attached, in its entirety, to the report as Appendix B.

### CONTACT US

For congressional, media, and general inquiries, email [OIGPublicAffairs@nsf.gov](mailto:OIGPublicAffairs@nsf.gov).



**U.S. NATIONAL SCIENCE FOUNDATION**  
**Office of Inspector General**

**MEMORANDUM**

**DATE:** October 30, 2024

**TO:** Wonzie Gardner  
Office Head and Chief Human Capital Officer  
Office of Information and Resource Management  
National Science Foundation

Angel Williams  
General Counsel  
Office of the General Counsel  
National Science Foundation

**FROM:** Theresa S. Hull [REDACTED]  
Assistant Inspector General  
Office of Audits, Inspections, and Evaluations

**SUBJECT:** Final Report No. 25-02-002, *Audit of NSF's Administratively Determined Pay System*

Attached is the final report on the subject audit. We have included NSF's response to the draft report as an appendix. NSF concurred with all our recommendations. In accordance with Office of Management and Budget Circular A-50, please provide a written corrective action plan to address the report recommendations. The plan should detail specific actions and associated milestone dates. Please provide the plan within 60 calendar days.

We appreciate the courtesies and assistance NSF staff provided during the audit. If you have any questions, please contact Ken Lish, Director, Inspections, Evaluations, & Agile Products, at 703-292-7100 or [OIGPublicAffairs@nsf.gov](mailto:OIGPublicAffairs@nsf.gov).

CC: Darío Gil, Victor McCrary, Wanda Ward, Scott Stanley, John Veysey, Ann Bushmiller, Micah Cheatham, Karen Marrongelle, Judy Hayden, Christina Sarris, Bill Malyszka, Earl Andrews, & Sarita Marshall

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## Abbreviations

AD	Administratively Determined
VSEE	Visiting Scientist, Engineer, and Educator Program
FPPS	Federal Personnel and Payroll System
HRM	Human Resource Management
OPM	Office of Personnel Management
DOJ	Department of Justice
OLC	Office of Legal Counsel
EX-III	Executive Schedule level III
EX-IV	Executive Schedule level IV
FY	Fiscal Year
NSF	National Science Foundation
OIG	Office of Inspector General
USC	United States Code

# Background

The National Science Foundation is an independent federal agency created by Congress in 1950 “[t]o promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense; and for other purposes” (Pub. L. No. 81-507). With a budget of about \$9.06 billion in FY 2024, NSF is the funding source for about 25 percent of all federally supported basic research conducted by America’s colleges and universities. Each year, NSF supports about 318,000 researchers, entrepreneurs, students, and teachers.

## NSF’s Use of its Authority to Hire Technical and Professional Personnel

The National Science Foundation Act (NSF Act)<sup>1</sup> provides NSF the authority to hire and compensate technical and professional personnel without regard to certain provisions in Title 5 of the United States Code that govern appointments in the competitive service.<sup>2</sup> Under this authority, NSF implemented an excepted service pay system comprised of five administratively determined (AD) pay bands with pay floors and ceilings. NSF establishes the highest levels of its AD pay scale, the AD-4 and AD-5 pay bands, above the highest level of the General Schedule (GS) pay scale to attract sufficiently experienced and knowledgeable personnel. The GS pay system sets the pay for most of the civilian white collar federal employees in professional, technical, administrative, and clerical positions. Between FY 2014 and FY 2023, NSF employed 1,245 excepted service personnel; 992, or 80 percent of those positions were at the AD-4 and AD-5 levels.

Within each AD pay band, NSF can modify the amount of basic pay annually, subject to applicable limits. However, locality pay for NSF’s AD employees is subject to annual renewal by the President’s Pay Agent.<sup>3</sup> Locality pay is a geographic-based percentage rate that reflects pay levels for non-federal workers in certain geographic areas. If locality pay is renewed for AD employees in a given calendar year, each AD employee must receive locality pay at the same percentage that is paid to GS employees in their same locality area, subject to applicable limits. Locality pay for NSF’s AD employees has continued each year since it was initially approved in 1994.

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<sup>1</sup> 42 USC 1873(a)(1).

<sup>2</sup> Per 42 USC 1873(a)(1), *Employment of Personnel*, only the personnel appointments made under this statutory provision are exempted from provisions in 5 USC related to “governing appointments in the competitive service” and Chapter 51 and Subchapter III of Chapter 53 relating to classification and General Schedule pay rates.

<sup>3</sup> Secretary of Labor and the Directors of OMB and OPM. See Executive order 12748 as amended.

## Limits on Excepted Service Salaries

AD appointments under the NSF Act are subject to the following statutory pay caps on basic pay and locality pay, respectively:

- 5 USC 5373,<sup>4</sup> which limits the basic pay<sup>5</sup> for AD employees appointed under the NSF Act to level IV (EX-IV) of the Executive Schedule pay table,<sup>6</sup> and
- 5 USC 5304<sup>7</sup> [implemented by 5 CFR 531.606<sup>8</sup>], which provides that when locality pay<sup>9</sup> for NSF's AD employees (appointed under the NSF Act) is approved by the President's Pay Agent and added to their basic pay, the total amount is limited to level III (EX-III) of the Executive Schedule pay table.

Since 1994, NSF has received approval from the President's Pay Agent in a memorandum regarding *Continuation of Locality Payments for Non-General Schedule Employees* (the Pay Agent Memorandum) to continue applying locality pay to NSF's "single-agency" non-GS employee categories (i.e., AD employees appointed under the NSF Act or under 5 USC 3109). However, the basic pay component of the excepted service pay system for AD appointments under the NSF Act remains subject to 5 USC 5373's EX-IV limit on basic pay.

Table 1 describes the limits of each level of NSF's excepted service AD pay bands and associated amounts for the 2023 calendar year. NSF publishes its AD pay tables with the Alexandria, VA area locality included in its pay band ranges, which OPM set to 32.49 percent of basic pay for 2023. NSF only has the authority to set basic pay up to the EX-IV limit, and apply a locality adjustment, as defined by OPM, up to the EX-III limit. To calculate the minimum and

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<sup>4</sup> 5 USC 5373(a), *Limitation of pay fixed by administrative action*, states that the head of an Executive agency or military department who is authorized to fix by administrative action the annual rate of basic pay for a position or employee may not fix the rate at more than the rate for level IV of the Executive Schedule, with limited exceptions as stated therein.

<sup>5</sup> 5 CFR 531.602, *Definitions*, states that basic pay is "the annual rate of pay fixed by law or administrative action, exclusive of any locality-based adjustments . . ."

<sup>6</sup> The Executive Schedule is a pay table used for executive and senior level federal employees.

<sup>7</sup> 5 USC 5304(h)(1)(D), *Locality-based comparability payments*, defines positions eligible for locality-based comparability payments as positions within an Executive agency not covered under the General Schedule or any of the preceding subparagraphs, the rate of basic pay for which is (or, but for this section, would be) no more than the rate payable for level IV of the Executive Schedule.

<sup>8</sup> 5 CFR 531.606(b)(3)(ii), *Maximum limits on locality rates*, states that a locality rate for an employee in a category of positions described in 5 USC 5304(h)(1)(D) may not exceed the rate for level III of the Executive Schedule, when the maximum scheduled annual rate of pay (excluding any retained rate) for such positions exceeds the maximum payable scheduled annual rate of pay for GS-15, but is not more than the rate for level IV of the Executive Schedule.

<sup>9</sup> 5 CFR 531.602, *Definitions*, states that a locality payment "means a locality-based comparability payment payable under 5 USC 5304 and this subpart. An employee's locality payment is the difference between the employee's locality rate and the employee's scheduled annual rate of pay. It also states that locality rate "means a scheduled annual rate of pay plus an applicable locality payment..."



maximum amounts NSF established for each pay band, we removed the Alexandria, VA area locality adjustment from NSF's published tables.

As shown in Table 1, the maximum AD-4 and AD-5 pay band ranges are set above the highest level of the GS pay scale. According to NSF's Personnel Manual, the AD-4 pay level is used for Program Directors and comparable positions. The AD-5 level is used to provide for the appointment of senior level individuals whom the NSF Director deems necessary for the discharge of the responsibilities of the agency. It is used to establish senior-level positions that are not included in the Senior Executive Service. Individuals serving under AD-5 appointments may not supervise other employees or exercise important policymaking, policy-determining, or executive functions.

**Table 1: Pay Limitations within NSF's AD Pay System for Calendar Year 2023**

AD Pay Level	Basic Pay Limit	Basic Plus Locality Adjustment Limit	NSF Pay Band Ranges
AD-1	EX-IV \$183,500	EX-III \$195,000	<ul style="list-style-type: none"> <li>Minimum of GS 5 Step 1, Maximum of GS 11 Step 10<sup>10</sup></li> <li>Basic: \$32,357-\$77,112</li> <li>Basic plus Alexandria, VA Locality Adjustment: \$42,870-\$102,166</li> </ul>
AD-2	EX-IV \$183,500	EX-III \$195,000	<ul style="list-style-type: none"> <li>Minimum of GS 11 Step 1, Maximum of GS 13 Step 10</li> <li>Basic: \$59,319-\$109,908</li> <li>Basic plus Alexandria, VA Locality Adjustment: \$78,592-\$145,617</li> </ul>
AD-3	EX-IV \$183,500	EX-III \$195,000	<ul style="list-style-type: none"> <li>Minimum of GS 13 Step 1, Maximum of GS 15 Step 5</li> <li>Basic: \$84,546-\$133,186</li> <li>Basic plus Alexandria, VA Locality Adjustment: \$112,015-\$176,458</li> </ul>
AD-4	EX-IV \$183,500	EX-III \$195,000	<ul style="list-style-type: none"> <li>Minimum of GS 15 Step 2, Maximum of a rate that "is in alignment with pay rates in the Senior Executive Service<sup>11</sup> to maintain a distinction in pay rates between the AD-4 and SES."</li> <li>Basic: \$121,435-\$155,694</li> <li>Basic plus Alexandria, VA Locality Adjustment: \$160,889 - \$206,279</li> </ul>

<sup>10</sup> NSF's Personnel Manual defines minimum and maximum salary amounts for the AD pay levels that are benchmarked to the General Schedule pay tables.

<sup>11</sup> For 2023, the amount NSF could pay members of the SES ranged from \$141,022 through \$212,100.

AD-5	EX-IV \$183,500	EX-III \$195,000	<ul style="list-style-type: none"> <li>• The minimum and maximum salary levels are determined and published annually.</li> <li>• Basic: \$140,610-\$155,892</li> <li>• Basic plus Alexandria, VA Locality Adjustment: \$186,294-\$206,541</li> </ul>
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Source: Summary of auditor analysis of the NSF Personnel Manual, OPM 2023 Pay Schedules, and NSF Bulletin No. 23-02, *2023 Pay Adjustments for NSF Employees*.

## Audit Objective

The objective of this audit was to determine if NSF has adequate policies and procedures to ensure staff in administratively determined positions are paid in accordance with federal regulations. A full description of the audit's objective, scope, and methodology is included in Appendix A.

## Results of Audit

NSF did not have sufficient policies and procedures to ensure staff in certain administratively determined positions were paid within statutory salary limits and NSF's internally developed pay bands.

Between FY 2014 and Calendar Year 2023, NSF did not comply with applicable laws and regulations that limit salary amounts for AD employees appointed under the NSF Act.<sup>12</sup> As a result, some employees in the AD-4 and AD-5 pay bands received salaries above federal limitations. In January 2024, NSF revised its AD pay bands to become compliant with certain federal limitations and waived debt collection of \$15,481,362 in overpayments incurred in FYs 2017 – 2023. Additionally, NSF initiated steps to update internal controls, Standard Operating Procedures, and policies related to its excepted service employees. However, we identified additional overpayments of \$1,636,333 million that NSF has not resolved. These overpayments include instances where NSF paid employees more than its internal AD pay band ceilings and other statutory limitations.

NSF could further strengthen policies, processes, and procedures within its excepted service pay system to ensure AD employees' salaries remain compliant with applicable pay band and statutory limitations.

<sup>12</sup> This audit did not review the salaries of Expert employees appointed under the NSF Act.



## NSF Paid Some Employees in Excess of the EX-III Limit for Basic Pay Plus Locality Pay

NSF adjusts its AD pay bands annually by applying the same general and locality adjustments as approved for GS employees throughout the federal government. However, when NSF calculated individual salaries for AD employees, it did not ensure that the total of each employee's basic pay plus the locality adjustment was limited to level III (EX-III) of the Executive Schedule pay table. As a result, 633, or 64 percent, of AD employees in NSF's AD-4 and AD-5 pay bands received a total of \$16,570,205 above the EX-III limit between FYs 2014 and 2024.

We compared AD basic pay plus locality pay to the EX-III limit from FYs 2014 – 2024 to identify overpayments. Although overpayments were found in each year, the amount rose substantially starting in 2017 (see Table 2).

**Table 2: Amounts Paid Above the EX-III Limit for Basic Pay Plus Locality Pay**

<b>Fiscal Year</b>	<b>Amount Paid Above the EX-III Limit for Basic Plus Locality Pay</b>
FY 14	\$18,931
FY 15	\$16,861
FY 16	\$19,479
FY 17	\$599,856
FY 18	\$1,097,373
FY 19	\$1,586,629
FY 20	\$2,385,178
FY 21	\$2,690,097
FY 22	\$3,229,046
FY 23	\$3,909,638
FY 24 (Oct – Dec 2023) <sup>13</sup>	\$1,017,117
<b>Total</b>	<b>\$16,570,205</b>

Source: Summary of auditor analysis.

<sup>13</sup> NSF incurred \$3,051,351 in salary payments above the EX-III level from January 2023 through September 2023, for an average of \$339,039 per month. This average amount applied to the months of October 2023 through December 2023 equates to an estimated \$1,017,117 in salary payments above the EX-III level.

According to NSF, the significant increase began in 2017 as the result of an opinion from its former General Counsel. During a review of the proposed 2017 AD pay bands, NSF's General Counsel stated that salary limits related to NSF's AD pay bands were self-imposed by NSF.

However, the Pay Agent Memorandum indicated that AD employees were subject to the EX-III cap when locality pay is authorized. Each year the President's Pay Agent issues the Pay Agent Memorandum to Agency Heads, Chief Human Capital Officers, Deputy Chief Human Capital Officers, and Human Resource Directors. This memorandum explains the process of continuing locality pay for non-GS categories of employees—both governmentwide and “single-agency” categories— including NSF's category for AD employees appointed under the NSF Act. The memo explains that, except for the specified categories, the locality rate for all non-GS categories may not exceed (1) level EX-IV when that category's “maximum scheduled annual rate of pay” is less than or equal to the maximum rate payable for GS-15 positions; or (2) level EX-III when that category's “maximum scheduled annual rate of pay” exceeds the maximum rate payable for GS-15 positions.<sup>14</sup> Because the maximum rate for NSF Act-appointed AD employees exceeds the GS-15 maximum, those employees are subject to the EX-III cap when locality pay is authorized.

Additionally, in October 2020, officials from NSF's Division of Human Resource Management asked OPM for clarification related to restructuring the AD pay bands and the application of locality pay. OPM responded that it does not have a role in authorizing NSF's AD pay structure and referred NSF to the annual Pay Agent Memorandum. NSF ultimately did not change the structure of the AD pay bands at that time.

In early 2023, NSF's pay bands drew media attention after NSF initially announced and reversed plans to implement a 1 percent pay raise for AD-4 employees, which was below the 4.6 percent average increase available to other NSF staff. As a result of media reports, OPM contacted NSF in February 2023 regarding its compliance with the Title 5 pay limitations for its AD employees appointed under the NSF Act. In response, NSF sought views from the Department of Justice's (DOJ) Office of Legal Counsel on 1) whether the governmentwide pay cap at 5 USC 5373 applied to pay for NSF AD appointments under 42 USC 1873(a)(1) (“NSF Act”); and 2) if the cap does apply, “can NSF lawfully continue paying above-cap salaries for a finite period in order to lessen the impact of bringing these employees' pay in line with the cap, based on theories of equitable discretion, detrimental reliance, or otherwise.” In September 2023, DOJ's Office of Legal Counsel provided an oral opinion followed by a formal written opinion in November that: 1) the 5 USC 5373 pay cap applies to NSF employees appointed under the NSF Act, and 2) there is “no authority that would permit NSF to exceed the pay cap based on a desire (no matter how understandable) to lessen the impact on employees who have been receiving more than the pay cap statute permits” [and as such,] “NSF's authority stretches no further than taking the time necessary to implement the pay cap in an orderly fashion.”

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<sup>14</sup> See Pay Agent Memorandum (dated Nov. 30, 2022).

NSF continued to pay employees amounts that exceeded the EX-III limit through December 2023. In January 2024, when calendar year 2024 federal pay tables became applicable, NSF revised its AD pay bands to become compliant with the EX-III limit on basic pay plus locality pay and modified employee salaries accordingly. NSF also issued debt waiver notices for the total estimated overpayments from FYs 2017 – FY 23. Additionally, NSF initiated steps to update internal controls, Standard Operating Procedures, and policies related to its excepted service employees.

## Debt Waiver

NSF calculated that it paid AD employees \$15,481,362 above the EX-III limits in FYs 2017 - 2023 (October 1, 2016 – September 30, 2023) and used this amount as an estimate for total overpayments. NSF elected to waive the collection of these overpayments from current and former employees (see Table 3). NSF noted that “the [prior] adjustments to pay scales were made in good faith, in reliance on a legal determination from NSF General Counsel, and it would be against equity and good counsel to require employees to reimburse the government for payments received in excess of allowable amounts.” NSF did not conduct a review of salary payments prior to FY 2017 or calculate overpayments incurred in the first quarter of FY 2024 (between October and December 2023).

**Table 3: NSF Debt Waiver Amounts**

Pay Limit	Amount Waived	Explanation
EX-III FY 2017-2023	\$12,908,815	Waived for current employees
EX-III FY 2017-2023	\$2,572,547	Waived for former employees
<b>Total Waved</b>	<b>\$15,481,362</b>	

*Source:* Summary of auditor analysis.

Our comparison of the EX-III limits to the basic pay plus locality adjustments for NSF Act-appointed ADs in FYs 2017 - 2023 indicated that there were \$15,497,817 in over payments. As the difference between our and NSF’s calculation is only \$16,455 (a difference of 0.1 percent), we found NSF’s estimate to be reasonable.

## NSF Paid Some Employees Above AD Pay Band Ceilings and the EX-IV Limit for Basic Pay

NSF publishes modifications to its AD pay bands annually in its Pay Adjustment Memorandum. These pay bands define the minimum and maximum amounts of salary that NSF’s AD employees may be paid within each band. Under 5 USC 5373, basic pay for NSF Act-appointed AD employees is limited to EX-IV. Although NSF set the maximum basic pay rates for all its AD pay bands below the EX-IV level, it did not always set or maintain individual AD-4 and AD-5

employees' basic salaries within the appropriate pay band limits or within the statutory EX-IV limit. This resulted in NSF paying salaries above the maximum thresholds in the following scenarios:

- setting basic pay above the appropriate pay band ceiling when appointing an employee,
- applying performance-related adjustments that increased basic pay above the appropriate pay band ceiling, and
- applying mid-year adjustments that increased basic pay above the appropriate pay band ceiling.

We identified 15 AD-4 and AD-5 employees that received a total of \$617,633 in salary payments that exceeded NSF's pay band ceilings in FYs 2014 – 2021. Further, about 35 percent of that amount (\$216,157), which was paid to 6 of the 15 employees, also exceeded the EX-IV limit for basic pay. Table 4 details the total overpayments for each year, including the amounts that exceeded the EX-IV limit.

**Table 4: Amounts Paid Above NSF's Internally Established AD Pay Ceilings and the EX-IV Limit for Basic Pay**

<b>Fiscal Year</b>	<b>Total Amount Exceeding NSF's Internally Established AD Pay Band Ceilings</b>	<b>Subset Exceeding the EX-IV Basic Pay Limit</b>
FY 14	\$109,565	\$43,526
FY 15	\$119,403	\$46,011
FY 16	\$160,083	\$56,159
FY 17	\$156,502	\$52,074
FY 18	\$61,223	\$18,387
FY 19	\$1,993	\$0
FY 20	\$4,589	\$0
FY 21	\$4,275	\$0
<b>Grand Total</b>	<b>\$617,633</b>	<b>\$216,157</b>

Source: Summary of auditor analysis.

This occurred because NSF did not establish controls in its payroll system to ensure that employees' basic pay did not exceed applicable pay band limits. We also noted that NSF lacked specific policies to ensure pay bands complied with EX-IV limits and employee salaries were established within applicable pay bands.

## Some Overpayments Remain Unresolved

NSF waived the debt collection of \$15,481,362 in overpayments resulting from basic pay plus locality adjustments that exceeded the EX-III limit in FYs 2017 – 2023. However, we identified

additional unresolved overpayments of AD salary outside of that period. Specifically, NSF has not addressed an additional \$1,636,333 in overpayments related to all salary limits during FYs 2014-2023 and the estimated EX-III overpayments from October through December of 2023, as shown in Table 5.

## Summary of Overpayments

We identified \$17,117,695 in total overpayments, including \$1,636,333 in unresolved overpayments. We compared NSF's salary payments for NSF Act-appointed ADs to applicable EX-III, EX-IV, and AD pay band limits to calculate the total salary amount NSF overpaid. Because some salary payments exceeded more than one of these limits, we adjusted our overpayment calculation to ensure salary payments were not double counted in our total (see Table 5). Specifically, the \$216,157 noted in Table 4 that exceeded the EX-IV limit is included in the \$617,633 total that NSF paid above the AD pay band ceilings (rather than listed separately). Also, we subtracted \$70,143 in salary payments that exceeded the EX-III, EX-IV and/or pay band limits.

**Table 5: Total Overpayments**

Pay Limit	Overpayment	Explanation
EX-III FYs 2014-2016	\$55,271	Basic pay plus locality pay above the EX-III limit (See Table 2).
EX-III FYs 2017-2023	\$15,497,817	Basic pay plus locality pay above the EX-III limit (See Table 2).
EX-III FY 2024 (Oct-Dec 2023)	\$1,017,117 <sup>15</sup>	Basic pay plus locality pay above the EX-III limit in the first quarter of FY 2024 (See Table 2).
EX-IV and NSF AD Pay Band FYs 2014-2021	\$617,633	Basic pay above the AD pay band ceiling, including the \$216,157 that also exceeded the EX-IV limit (See Table 4).
Adjustment for Payments in Multiple Categories	(\$70,143)	Adjustment to avoid double counting salary payments that exceeded EX-III, EX-IV and/or pay band limits.
<b>Total Overpayments</b>	<b>\$17,117,695</b>	
Debt Waiver	(\$15,481,362)	NSF's Debt Waiver for FYs 2017 -2023.
<b>Unresolved Overpayment</b>	<b>\$1,636,333</b>	Total overpayments minus NSF's Debt Waiver for FYs 2017 – 2023.

Source: Summary of auditor analysis.

<sup>15</sup> NSF incurred \$3,051,351 in salary payments above the EX-III level from January 2023 through September 2023, for an average of \$339,039 per month. This average amount applied to the months of October 2023 through December 2023 equates to an estimated \$1,017,117 in salary payments above the EX-III level that NSF did not include within its debt collection waivers.

## Recommendations

We recommend that the Office Head of the Office of Information and Resource Management, U.S. National Science Foundation, in coordination with the General Counsel:

1. Strengthen policies, processes, and procedures within NSF's excepted service pay system to ensure administratively determined pay bands for AD appointments under the NSF Act are established in accordance with the EX-III and EX-IV statutory limits and to ensure employee salaries are established and maintained in compliance with applicable pay band limits.
2. Assess and resolve the additional \$1,636,333 in past salary payments above applicable salary limitations that were not included in NSF's prior debt collection waivers, in accordance with applicable law.

## OIG Evaluation of Agency Response

NSF agreed with the audit's recommendations. NSF's response is attached, in its entirety, to the report as Appendix B.



# Appendix A: Objective, Scope, and Methodology

## Objective

The objective of this performance audit was to determine if NSF has adequate policies and procedures to ensure staff in administratively determined positions are paid in accordance with federal regulations.

## Scope and Methodology

We conducted this performance audit between June 2023 and August 2024 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.

The scope of our audit included salary payments made to temporary and permanent administratively determined excepted service employees as well as Visiting Scientist, Engineer and Educator (VSEE) employees between FY 2014 and FY 2023. During this period, NSF paid \$854 million to 1,245 excepted service personnel; 992, or 80 percent, of those positions were at the AD-4 and AD-5 levels which NSF paid a total of \$784 million. This audit did not review payments made to Expert employees appointed under the NSF Act.

To achieve our objective, we reviewed communications between OPM and NSF from February to May 2023, when OPM contacted NSF regarding its application of the Title 5 pay limitations. We also reviewed pertinent external resources such as federal laws and regulations, DOJ's legal opinion, NSF's guidance to AD employees, and relevant media reports.

We gained an understanding of NSF's excepted service compensation system by reviewing available NSF Personnel Manuals, Standard Operating Procedures for setting pay of excepted service positions, NSF AD pay tables, and NSF's Standard Operating Procedure for Debt Waiver. We also interviewed relevant NSF Human Resource Management staff, including the Division Director, the Branch Chief for Staffing and Classifications, the Branch Chief for Pay and Benefits Services, the Branch Chief for Strategic Human Capital Planning, and the Section Chief for Excepted Service. Additionally, we evaluated NSF's use and applicable controls related to the Federal Personnel and Payroll System (FPPS).

We then evaluated NSF's application of its AD pay limits for FY 2014 through FY 2023 by comparing each employee's:

- Total salary (basic pay plus locality pay) per month to the amount established by OPM for EX-III for the corresponding period.

- Basic salary per month to the amount established by OPM for EX-IV for the corresponding period.
- Basic salary per month to the amount established by NSF's AD pay bands for excepted service employees for the corresponding period.

Our work required us to rely on computer-processed data obtained from NSF. NSF's data included employee salary amounts and locality payments paid to each employee by month. NSF manages its employee salary data in the FPPS. We found NSF's computer-processed data to be sufficiently reliable for the purposes of this audit.

We assessed the reliability of the salary data by (1) verifying the amounts reported with personnel actions in the FPPS, and (2) reviewing the parameters that NSF used to extract transaction data from the FPPS. We did not review or test whether further data contained in NSF's databases or the controls over NSF's databases were accurate or reliable; however, the independent auditor's report on NSF's financial statements for FY 2023 found no reportable instances in which NSF's financial management systems did not substantially comply with applicable requirements.

### **Internal Control Assessment**

In planning and performing this audit, we considered NSF's internal controls within the audit's scope solely to understand the policies and procedures NSF has in place to ensure compliance with relevant federal regulations. We obtained and reviewed policies and procedures, external reports and legal opinions, and other relevant information that NSF provided. We summarized our review of federal regulations and NSF policies and procedures related to excepted service compensation. We assessed the five components of internal control: control environment, risk assessment, information and communication, monitoring activities, and existing control activities.

# Appendix B: Agency Response



U.S. National Science Foundation  
Office of Information and Resource Management

## MEMORANDUM

DATE: October 24, 2024

TO: Theresa S. Hull, Assistant Inspector General for Audits, Inspections, and Evaluations, NSF

FROM: Wonzie L. Gardner, Head, Office of Information & Resource Management and Chief Human Capital Officer, NSF **WONZIE L GARDNER JR**

SUBJECT: NSF's Response to the OIG's Official Draft Report, "Audit of NSF's Administratively Determined Pay System"

Digitally signed by WONZIE L GARDNER JR  
Date: 2024.10.24 13:46:27 -04'00'

The National Science Foundation ("NSF") recognizes the professionalism and diligence of the Office of the Inspector General ("OIG") in conducting its audit of NSF's Administratively Determined Pay System. NSF agrees with the two recommendations arising from the audit. We appreciate that the OIG recognized that NSF has already initiated steps to update internal controls, Standard Operating Procedures, and policies related to the pay system for employees whose pay is administratively determined.

cc: Angel R. Williams, General Counsel, NSF

2415 Eisenhower Avenue | Alexandria, VA 22314

# National Defense Authorization Act General Notification

Pursuant to Pub. L. No. 117-263 § 5274, business entities and non-governmental organizations specifically identified in this report have 30 days from the date of report publication to review this report and submit a written response to NSF OIG that clarifies or provides additional context for each instance within the report in which the business entity or non-governmental organizations is specifically identified. Responses that conform to the requirements set forth in the statute will be attached to the final, published report.

If you find your business entity or non-governmental organization was specifically identified in this report and wish to submit comments under the above-referenced statute, please send your response within 30 days of the publication date of this report to [OIGPL117-263@nsf.gov](mailto:OIGPL117-263@nsf.gov), no later than December 4, 2024. We request that comments be in .pdf format, be free from any proprietary or otherwise sensitive information, and not exceed two pages. Please note, a response that does not satisfy the purpose set forth by the statute will not be attached to the final report.

## About Us

NSF OIG was established in 1989, in compliance with the *Inspector General Act of 1978* (5 USC 401-24). Our mission is to provide independent oversight of NSF to improve the effectiveness, efficiency, and economy of its programs and operations and to prevent and detect fraud, waste, and abuse.

## Contact Us

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