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NIFA Formula Grant Programs' Controls Over Fund Allocations to States

Audit Report 13601-0001-22

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OFFICE OF INSPECTOR GENERAL

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OIG reviewed controls to determine whether NIFA allocated its program funds accurately and used funding calculation methods that complied with statutory formulas.

OBJECTIVE

To determine whether NIFA has adequate internal controls over grant fund allocations to States for its capacity grant programs based on statutory formulas.

REVIEWED

We reviewed all 16 capacity grant programs' appropriation and award data and statutory requirements for FY 2015, interviewed NIFA officials, and analyzed formula calculations and input data.

RECOMMENDS

Develop and implement policies and procedures to effectively perform and review calculations for capacity grant allocations, retain supporting documentation, and periodically review formulas to make sure they remain valid; review one program's statutory formula and propose change if appropriate; determine if a violation of the Antideficiency Act occurred in another program and take appropriate action if needed; and review and update guidance, and solicit States' documentation on how to distribute funds between institutions in the same State.

WHAT OIG FOUND

The National Institute of Food and Agriculture (NIFA) administers capacity grant programs that help research institutions carry out agricultural research to solve societal challenges. To do so, participating institutions receive capacity grants—noncompetitive awards based on predetermined formulas by the legislative branch. We found that NIFA needs to strengthen its controls, including addressing assessments, for six of the nine capacity grant programs we focused on for fiscal year (FY) 2015. We found that misallocated capacity grant funds and an improperly granted waiver resulted in approximately $7.1 million in questioned costs, spread across five grant programs. This included $3.6 million in potential Antideficiency Act violations.

NIFA also needs to ensure that its funding distributions accurately reflect and fulfill the purposes of its programs. For example, we found that NIFA's funding distribution for one program that provides nutrition education to low-income individuals was established by law based on outdated poverty demographics that need revising to reflect current needs. Additionally, States were not appropriately made aware of the opportunity to direct funding to eligible historically black land-grant colleges and universities, known as 1890 Institutions. As a result, the 1890 Institutions were not considered for a share of $28 million in FY 2015 funding.

As a result of these issues, NIFA may not be allocating capacity grant funds effectively to achieve its programs' goals. NIFA generally concurred with most of our recommendations, and we were able to reach management decision on 8 of the 11 recommendations.

United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250

DATE: August 7, 2019

AUDIT NUMBER: 13601-0001-22

TO: Dr. J. Scott Angle
Director
National Institute of Food and Agriculture

ATTN: Susan Rice
Acting Policy Branch Chief
Office of Grants and Financial Management

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: NIFA Formula Grants Programs' Controls Over Fund Allocations to States

This report presents the results of the subject review. Your written response to the official draft is included in its entirety at the end of the report. We have incorporated excerpts from your response, and the Office of Inspector General's (OIG) position, into the relevant sections of the report. Based on your written response, we accept management decision on Recommendations 1, 2, 5, and 7 through 11. However we are unable to reach management decision on Recommendations 3, 4, and 6. The actions needed to reach management decision on the recommendations are described in the relevant OIG Position sections.

In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days describing the corrective actions taken or planned, and timeframes for implementing the recommendations for which management decision has not been reached. Please note that the regulation requires management decision to be reached on all recommendations within 6 months from report issuance, and final action to be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. Please follow your internal agency procedures in forwarding final action correspondence to OCFO.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publicly available information and will be posted in its entirety to our website (http://www.usda.gov/oig) in the near future.

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Background and Objectives

Background

The National Institute of Food and Agriculture (NIFA) is the Department of Agriculture's (USDA) primary extramural research funding agency with a mission to "invest in and advance agricultural research, education, and extension to solve societal challenges." To achieve this mission, NIFA's capacity grant programs provide funding to eligible institutions.[1] NIFA provides support for research and extension activities at land-grant institutions for the purpose of addressing national agricultural priorities such as fighting hunger and food insecurity in vulnerable populations, developing regional systems for sustainable production, and building energy independence. There are five major pieces of legislation governing the capacity grant programs, each intended to either establish eligibility criteria for institutions or provide a specific research or extension objective. These include:[2]

- **The Morrill Act of 1862**: Congress established land-grant colleges or universities in States, known as 1862 Institutions, to teach agriculture, science, and other subjects in order to provide for a liberal and practical education.[3]
- **The Morrill Act of 1890**: Congress provided grants to States to establish colleges and universities, known as 1890 Institutions, to provide instruction for black students. The law specified that 1890 Institutions were entitled to benefits as if included under the Morrill Act of 1862.[4]
- **Hatch Act of 1887**: Congress provided funding to participating institutions, which served as agricultural experiment stations, to foster and conduct agricultural research nationwide. The Hatch Act established that if two eligible institutions are in the same State, funding shall be divided between such institutions as the legislature of such State shall direct. The Hatch Multistate Research and Hatch Regular Research Programs are a direct result of this act.[5]
- **Smith-Lever Act of 1914**: Congress created a partnership between the Federal Government and agricultural universities to inform the public of the practical application of agricultural research. The Smith-Lever Act established that States may choose which institutions receive a portion of funding when a State has more than one land-grant

[1] Capacity grant programs are intended to ensure participating institutions can maintain the "capacity" to conduct research and extension activities. Eligibility to receive NIFA capacity grants is limited to the cooperating institutions, most of which are 1862, 1890, and 1994 (Tribal) land-grant institutions. These institutions include the State Cooperative Extension System, State agricultural experiment stations, land-grant universities and colleges, other types of State research and education institutions, and individual researchers. Capacity grants were formerly referred to as formula grants.

[2] We also reviewed the Renewable Resources Grant program, authorized under the Act of June 30, 1978, Pub. L. No. 95-306, 92 Stat. 349 (codified at 16 U.S.C. § 1671 *et seq*.), known as the Renewable Resources Extension Act of 1978; and the Animal Health and Disease Research program, authorized under the Act of September 29, 1977, Pub. L. No. 95-113, §1433 (codified at 7 U.S.C. § 3195), known as the Food and Agriculture Act of 1977.

[3] Act of July 2, 1862, ch. 130, 12 Stat. 503 (codified at 7 U.S.C. § 301 *et seq.*) (also known as the First Morrill Act).

[4] Act of August 30, 1890, ch. 841, 26 Stat. 417 (codified at 7 U.S.C. § 321 *et seq.*) (also known as the Second Morrill Act).

[5] Act of March 2, 1887, ch. 314, 24 Stat. 440 (codified at 7 U.S.C. § 361a-i) (also known as the Hatch Act of 1887).

institution, including under the Expanded Food and Nutrition Education Program (EFNEP).[6] The Smith-Lever Act also established programs such as the Smith-Lever 3(b) and (c) program.

- **McIntire-Stennis Act of 1962**: Congress made funds available to experiment stations and forestry schools for forestry research.[7] The McIntire-Stennis Forestry Research Program was a direct result of this Act.

Through NIFA capacity grant programs, participating institutions can receive capacity grants, which are noncompetitive awards based on predetermined formulas established by Congress. Mathematical formulas outlined in the Smith-Lever Act, the Hatch Act, the McIntire-Stennis Act, and other laws mandate how NIFA determines funding allotments that each State or institution may be eligible to receive under the capacity grant programs. Formulas are based on data from State and National-level rural and farm populations, amounts of timber harvested, or a statewide capacity to perform research. These data are incorporated into request for application documents. Each capacity grant program has its own criteria in laws and regulations, which are explained in full in its request for applications.

Capacity grant programs are subject to regulations established by the Office of Management and Budget (OMB) and NIFA. NIFA's budget office determines program funding after the annual appropriation bill is signed into law. The Office of Grants and Financial Management is responsible for administering the capacity grant programs authorized under various laws, which in fiscal year (FY) 2015 totaled 16 programs:

- 1890 Extension (Section 1444)
- Animal Health and Disease Research
- Evans-Allen Research (Section 1445)
- Expanded Food and Nutrition Education
- Hatch Multistate Research
- Hatch Regular Research
- McIntire-Stennis Cooperative Forestry Research
- Renewable Resources Extension Act
- Smith-Lever 3(b) and (c)
- District of Columbia Public Postsecondary Education Reorganization Act
- Cooperative Extension Programs at 1862 Land-Grant Institutions (Special Needs)
- Civil Service Retirement System Retirement Contributions
- Federal Employees Retirement System Retirement Contributions
- Tribal Colleges Endowment Interest
- 1890 Facilities Grants
- Tribal Colleges Education Equity

NIFA contracted with consultants to review capacity grant program allocations to determine whether they were complete, mathematically accurate, and complied with applicable laws,

[6] Act of May 8, 1914, Pub. L. No. 63-95, ch. 79, 38 Stat. 372 (codified at 7 U.S.C. § 341 *et seq*.) (also known as the Smith-Lever Act).
[7] Act of October 10, 1962, Pub. L. No. 87-788, 76 Stat. 806 (codified at 16 U.S.C. § 582a *et seq*.) (also known as the McIntire-Stennis Act).

regulations, and statutes. The assessment covered FY 2013 and FY 2014 activities in the first nine programs listed above, which NIFA staff identified as the most complex and therefore potentially at-risk capacity grant programs. In January 2015, the contracted consultants issued a summary report, which classified their findings into three categories: (1) compliance, (2) internal controls, and (3) training.

In FY 2015, NIFA's overall budget totaled $1.44 billion, $778 million of which was dedicated to NIFA's capacity grant programs.

Objectives

The overall objective was to determine whether NIFA's internal controls are adequate over allocating grant funds to States based on statutory formulas for research, education, and extension activities. A specific objective was to evaluate NIFA's actions to address the results of assessments performed on determining the completeness and accuracy of capacity grant allocations and their compliance with laws, regulations, and statutes.

Finding 1: NIFA Needs to Ensure Calculations for Determining Grant Amounts Are Accurate

We found that in FY 2015, NIFA used calculations that resulted in misallocations and an improper waiver of approximately $7.1 million in research and extension grant funding for six of the nine capacity grant programs we reviewed.[8] This occurred because NIFA did not have effective controls, such as processes or documentation, to validate whether its calculations for allocating funds were proper. As a result of the miscalculations, institutions did not receive the proper grant amounts to conduct research and extension activities, and $3.6 million under the Smith-Lever 3(b) and (c) Program was used for purposes other than those Congress intended, thereby violating the Purpose Statute and potentially violating the Antideficiency Act.

National Agricultural Research, Extension, and Teaching Policy Act of 1977; The Hatch Act; and the Smith-Lever Act all contain formulas to determine how each capacity grant program's funds are distributed to States and recipient institutions, as well as what portion NIFA retains for administration purposes. These formulas help ensure that programs are provided appropriate funding to carry out their purpose and function as intended. Using funds for a purpose other than those authorized by Congress violates the Purpose Statute.[9] Additionally, the Antideficiency Act prohibits expenditures that either exceed the amount appropriated or violate statutory restrictions or limitations on obligations or spending.[10]

NIFA's Insufficient Controls over Formula Calculations

We found that, in six of the nine capacity grant programs we reviewed, NIFA did not properly execute the statutory formulas when determining funding amounts in FY 2015. In all, we found and questioned approximately $7.1 million in misallocations and an improperly granted waiver. First, we found that funding was incorrectly divided between NIFA, which receives funds to administer the program, and participating institutions, which receive funding to conduct research and extension activities. For example, for the Hatch Act Research Programs, NIFA retained $18,000 more than it was entitled to spend for administrative fees rather than allocating it to institutions for research. Conversely, for the Smith-Lever Program, NIFA retained $3.6 million less than it was entitled for administrative expenses. As a result, NIFA violated the Purpose Statute by allocating Smith-Lever funds intended for administrative purposes to the States for extension purposes. Further, NIFA potentially violated the Antideficiency Act by not allocating funds within the limits set by the Smith-Lever Act.

We also found that NIFA distributed funding incorrectly between participating institutions within certain programs. For example, in the Evans-Allen Research Program, NIFA overpaid one 1890 Institution by $405,106 and underpaid another 1890 Institution

[8] Documentation indicated NIFA used different calculation methodologies since FY 2013. Officials stated the methodology used in FY 2015 was replicated in many previous years.
[9] The Purpose Statute is codified at 31 U.S.C. § 1301.
[10] 31 U.S.C. § 1341(a); 60 Comp. Gen. 440 (1981).

by $856,605.[11] We also found that a similar misallocation occurred in the 1890 Extension Program. For both of these programs, NIFA awarded funds in excess of what some grantees were entitled while awarding other grantees less than they were entitled. Finally, for the McIntire-Stennis Research Program, NIFA improperly waived a matching requirement, resulting in an overpayment to one institution of $66,103. For these three programs, NIFA should determine if almost $2.9 million of the $7.1 million in questioned amounts made to institutions can be discharged under the agency's grant rules; if amounts cannot be discharged, NIFA should recover the overpayments made to those institutions.

OIG attempted to determine how the misallocations for FY 2015 occurred. NIFA officials told us that they had calculated the 2015 allocations by taking the difference between the entire FY 2015 and FY 2014 appropriation for each program and applying that difference to the statutory formulas. The agency then added that difference—either positive or negative—to each participant's FY 2014 allocation to reflect the respective increase or decrease between 2014 and 2015. Officials also told us this same method was consistently used over the years.[12] However, NIFA could not provide adequate documentation of its validation processes for the computations. Therefore, we were unable to determine the exact calculations NIFA used. However, using the year-to-year difference method versus applying the formulas to the entire appropriation each year suggests a greater risk that computation errors may go undetected. These undetected computation errors not only result in misallocations for a single year, but result in future misallocations in succeeding years. When OIG applied the entire appropriation for FY 2015 to the formula required under statute, we found that misallocations, in addition to one improperly granted waiver, had occurred in 2015, totaling approximately $7.1 million and resulting in variances between the funding levels that should have been used and those that NIFA paid.

In addition to misallocations, NIFA could not provide support for allocations made in the McIntire-Stennis Research Program and the Renewable Resources and Extension Act (RREA) Program. For RREA, NIFA officials provided the calculations they used for allocations. However, they could not provide adequate support for the elements within the calculations, which resulted in over-allocations totaling $68,962. For the McIntire-Stennis Program, 20 States had more than one eligible institution, which in turn requires States to determine which institutions should receive funding. However, NIFA could not produce documentation for funding designations from governors in 13 of the 20 States. The total amount of these payments for which documentation was absent totaled $9,581,480.

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[11] For FY 2015, Pub. L. No. 113-235, 128 Stat. 2139 – 2140 (titled, Consolidated and Further Continuing Appropriations Act, 2015, and enacted Dec, 16, 2014) required that every 1890 Institution participating in the Evans-Allen and 1890 Extension Programs receive at least $1,000,000 from each program. In FY 2015, one 1890 Institution's allocation fell below the required minimum when applying the statutory formulas for both programs. OIG did not apply any amounts deducted from other schools to these amounts because NIFA does not have a written policy describing how to adjust funding if any school falls below the minimum.

[12] See Footnote 8.

NIFA officials could not provide adequate documentation to validate their allocation methods across all nine programs on which we focused. This occurred because NIFA did not have a formal procedure that required sufficient documentation to support and justify its calculations and methodologies. Although NIFA officials acknowledged this was a concern, they told OIG they believed that a USDA enterprise-wide grant management system, currently under development, would resolve the absence of formal documentation.[13]

Table 1. FY 2015 Misallocations and Improper Waivers in Six NIFA Programs[14]

Program	Funding Amount
Evans-Allen Research Program*	$1,502,141
1890 Extension Program*	$1,323,463
Hatch Act Research Programs (Regular Research and Multistate Research)[15]	$600,510
Smith-Lever 3(b) and (c) Program*†	$3,633,065
McIntire-Stennis Cooperative Forestry Research Program* [16]	$66,103
Total Misallocations	**$7,125,282**
* Grants with overpayments that NIFA should attempt to recover † Purpose Statute and potential Antideficiency Act violation	

Reviews of Funding Allocation Calculations

We determined that NIFA did not identify its incorrect funding allocation calculations due to the lack of policy or formal procedures in place to require a review of fund distribution calculations. While NIFA conducted informal supervisory reviews to verify computations in spreadsheets, we found these reviews did not analyze all components of the formulas, nor verify that NIFA staff used the correct formulas in its calculations.

Additionally, NIFA did not sufficiently address the results of its final risk assessment report dated January 31, 2015. NIFA had been aware of deficiencies in its calculation and review processes for over 3 years, but it had not fully addressed them. NIFA officials have stated that the agency has been working with USDA's enterprise-wide

[13] NIFA did not provide a specific date for when the new system would be implemented, which officials stated will comprise part of a USDA-wide grant management system. Also, officials told us work has been in progress since 2016 to automate capacity grant formula calculations for the future system.
[14] See Footnote 11. Overpayment amounts that should have been used to bring one school's funding to $1,000,000 are reflected in this table.
[15] NIFA underallocated $600,510 to research institutions participating in the Hatch Act Multistate Research Program. NIFA also overallocated $600,510–$582,510 to research institutions participating in the Hatch Act Regular Research Program and the remaining $18,000 for administering the Hatch Act Programs. For the purposes of this finding, we are only questioning the $600,510 in overallocations, and not recommending recovery.
[16] For one territory, NIFA improperly waived a matching requirement, resulting in $66,103 being granted that should not have been unless matched by the territory.

grant modernization efforts to automate correct formula calculations for the capacity programs. NIFA contracted with a consulting firm to perform this risk assessment to ensure fund distributions accurately complied with laws. The assessment revealed that:

1. NIFA's internal reviews did not evaluate the appropriateness or accuracy of its written methodologies to calculate grant awards on a regular basis.
2. NIFA did not have supporting documents to verify grant calculations.
3. NIFA did not always comply with rules or formulas in law, or have internal controls to ensure compliance, when performing grant calculations.[17]

Federal agencies are required to resolve identified control weaknesses in a timely fashion.[18] Furthermore, NIFA's Strategic Plan for FYs 2014–2018 states that NIFA will develop consistent review processes and procedures for all programs. However, more than 3 years after receiving the assessment results, NIFA has only addressed 13 of the consultant's 37 recommendations to strengthen its controls.[19]

When we asked why NIFA had not addressed the consultant's risk assessment findings and recommendations, a policy division official stated that NIFA performs reviews to address management needs with varying levels of importance within the agency, but it did not have a policy to address the results of reviews requested for internal purposes. In addition, a NIFA office director stated that NIFA lacked the staffing resources to timely address the recommendations. However, NIFA officials stated that they intend to establish a policy and procedure to resolve concerns identified in risk assessments and reviews.

Additionally, NIFA officials stated that the FYs 2016–2018 method of calculating payments was consistent with the FY 2015 method. Given the misallocations we determined for 2015, it is conceivable NIFA's consistent use of that calculation method would similarly result in misallocated NIFA payments for FYs 2016–2018.[20] NIFA may prevent incorrect payments in the future by establishing a methodology for calculating correct funding allocations and a policy to review these calculations for accuracy, as previously recommended in the consultant's report.

In summary, we question approximately $7.1 million in grant payments for FY 2015 that did not appropriately apply Congress' specific formulas or document States' decisions regarding the distribution of funds to eligible institutions. As a result, $3.6 million was not used for Congress' intended purposes, thereby violating the Purpose Statute and potentially violating the Antideficiency Act. Had NIFA established appropriate controls for calculating funding allocations and a policy to review those calculations for accuracy, it could have prevented millions of dollars in incorrect payments. NIFA should determine if it can recover $6.5 million

[17] OIG confirmed the accuracy of this assessment and its findings.
[18] OMB, *Management's Responsibility for Enterprise Risk Management and Internal Control*, Memorandum M-16-17 and Circular A-123, Section V (July 15, 2016).
[19] NIFA has informed OIG that these recommendations have been completed, but it has not provided confirming documentation.
[20] OIG did not review grant allocations for FYs 2016–2018, and therefore made no conclusions regarding those years.

of the approximately $7.1 million that was incorrectly awarded to institutions in the Evans-Allen Research Program, 1890 Extension Program, Smith-Lever 3(b) and (c) Program, and McIntire-Stennis Cooperative Forestry Research Program.[21]

Recommendation 1

Develop and implement a policy of retaining complete supporting documentation for capacity grant programs' allocation calculations, including written methodologies and calculation records.

Agency Response

In its April 17, 2019 response, the NIFA stated:

> NIFA concurs with the recommendation. NIFA utilizes Grants, Policies and Procedure Transmittals (GPPTs) to document policies for the Agency. NIFA is in [the] planning stage of developing a GPPT to capture the methodologies for capacity programs. The Department has a corporate grants management solution called USDA ezFedGrants that NIFA will utilize for calculation allocations…. EzFedsGrants generates an audit log that is stored in the system. This functionality automatically creates the funding allocation amounts for all capacity programs (Smith-Lever programs, Section 1444, Section 1445, Renewable Resources Extension Act (RREA) breakout, Hatch Regular, Hatch Multi-State, EFNEP, McIntire-Stennis Cooperative Forestry and Animal Health). NIFA will continue to validate the functionality throughout the FY 2019 cycle as we create the remaining payment actions through FY 2019 final allocations.
>
> The GPPT is scheduled to be developed by December 30, 2019 for implementation with FY 2021 awards.

OIG Position

We accept management decision for this recommendation.

Recommendation 2

Develop and implement policy and procedures for effectively performing and reviewing calculations of funding allocations to ensure accuracy.

Agency Response

In its April 17, 2019 response, NIFA stated:

> NIFA concurs with the recommendation. NIFA will include policy and procedures for reviewing the funding allocations in the GPPT that is being developed to address Recommendation # 1 listed above. The GPPT will include a matrix that delineates the

[21] See Footnote 15.

responsibility for reviewing both manual and ezFedGrants allocations, either by NIFA personnel or third-party experts, as well as timelines for the frequency of the reviews.

The GPPT will be completed by December 30, 2019 with testing of the related internal controls to take place in the FY 2021 testing cycle.

OIG Position

We accept management decision for this recommendation.

Recommendation 3

Determine whether $2,825,604 paid to institutions in the Evans-Allen Research Program and 1890 Extension Program; $3,633,065 in the Smith-Lever 3(b) and (c) Program; and $66,103 in the McIntire-Stennis Cooperative Forestry Research Program should be discharged under applicable laws. If the amounts cannot be discharged, seek recovery of overpayments to those institutions.

Agency Response

In its April 17, 2019 response, NIFA stated that it does not concur with the recommendation, or agree with our audit determination that $3,633,065 of Smith-Lever 3(b) and (c) funding was overpaid to 1862 land-grant institutions, or $2,825,604 of Evans-Allen Research and 1890 Extension funding was overpaid to some 1890 land-grant institutions. NIFA concluded its FY 2015 methodology was valid to determine capacity grant funding in the Smith-Lever 3(b) and (c), Evans-Allen Research, and 1890 Extension programs, yet it also concluded that the audit's methodologies to determine funding amounts in these programs will be appropriate for future years' calculations. As a result, NIFA believes it does not have to discharge or seek recovery of any Smith-Lever 3(b) and (c), Evans-Allen Research, or 1890 Extension Program funds allocated for FY 2015. The Agency plans to implement new formula methodologies for these programs for FY 2021 grant allocations.

NIFA concurred with the recommendation to recover overpayment of $66,103 in the McIntire-Stennis Cooperative Forestry Research Program, due to an improperly granted waiver. The impacted institution was notified that NIFA will recover the funds by December 31, 2020.

Additionally, a portion of NIFA's response to Recommendation 6 is relevant. In its response to Recommendation 6 of this report, NIFA stated:

> NIFA continues to employ the same process it has used for decades to calculate distributions under Smith-Lever 3(b) and (c). Historically, the process began with NIFA determining the amount to keep for administrative costs. The remainder of funds were available for the program formula distributions to states according to the census information available at the time the amounts were first appropriated. Once that process was completed, those amounts set-aside for NIFA Federal administration and provided to each 1862 land-grant institution and established a distribution base. The next fiscal year,

NIFA started the calculation by comparing the appropriation for the current fiscal year to the previous fiscal year and determining the change – increase or decrease – in the total program appropriation. NIFA then multiplied that appropriation amount change by the Federal administration rate and adjusted the prior year Federal administration amount and state distributions to establish the current year base.…

This process served two purposes. First, it enabled the Agency to quickly and easily calculate changes to formula distributions once Congress appropriated amounts for the program. Second, and more importantly, it established an accumulating base that adheres to the formula requirement that any increase/decrease be subject to the decennial census current at the time an increase/decrease is first appropriated. This accumulating base maintains the integrity of the application of then current decennial census data as older census data is not simply deleted (e.g., 1970 and 1980 census data continue to apply to their respective increases within the accumulating base)….

In fact, Congress went so far as to revise other statutory formula to mimic the formula interpretation and calculations under Smith-Lever. Specifically, the methodology for Smith-Lever was in stark contrast with the process used to calculate allocations under sections 1444 [1890 Extension program] and 1445 [Evans-Allen program] of NARETPA….

However, sections 1431(3) and 1432(a)(2) of the Agriculture and Food Act of 1981, Pub. L. No. 97-98, amended both sections 1444 and 1445, respectively, to insert "current at the time each such additional sum is first appropriated" following "the last preceding decennial census." As stated by the Senate, "this amendment ties the formula for allocation of funds applicable to amounts appropriated in excess of the amount appropriated for this program in fiscal year 1978 ... to the census data that is current at the time each additional sum is first appropriated." S. Rep. No. 97-126, at 197 (1981) (referring to research language; contains similar description of extension amendment), reprinted in 1981 U.S.C.C.A.N. 1965, 2161.

OIG Position

We agree with NIFA's actions taken and proposed actions to address part of this recommendation related to the McIntire-Stennis Program. However, we do not accept management decision for this recommendation, as NIFA needs further action to address the part of the recommendation related to the Smith-Lever 3(b) and (c) Program, the Evans-Allen Research Program, and the 1890 Extension Program.

In analyzing NIFA's statement that its calculations utilized an "accumulating base" methodology, OIG considered the statutory language and legislative history in regard to the grant formulas. We found that Congress appeared concerned about changes in prior allotments caused by changes in the census every 10 years. To offset such changes, Congress amended the program statutes so that current census data would only impact allocations based on year-to-year changes in appropriations, made while the census data remained current. However, the statutory language and the legislative history do not appear to support an accumulating base across the

entire formula. The accumulating base language is only tied to the subsections that contain the language incorporating the census.

Based on this analysis, it appears that NIFA's calculations considering an "accumulating base" may have limited merit as it applies to certain subsections in the Evans-Allen Research and 1890 Extension statutory formula. NIFA provided informal procedures as to how it made the calculations, but this information does not show that they followed the accumulating base with each successive census as described. Therefore, OIG continues to maintain that NIFA has not provided adequate documentation demonstrating that capacity grant amounts for FY 2015 complied with statutory formulas. For that reason, OIG still questions the $2,825,604 in misallocations made for these two grant programs in FY 2015. In order for NIFA to demonstrate the calculation methodology put forward in its response, the agency would need to recalculate the FY 2015 allocations under the Evans-Allen and 1890 Extension Programs. Otherwise, NIFA needs to determine whether $2,825,604 paid to institutions in the Evans-Allen Research Program and 1890 Extension Program should be discharged under applicable laws. If the amounts cannot be discharged, NIFA should seek recovery of overpayments to those institutions. To reach management decision, NIFA should provide a copy of the bill for collection and documentation to support that the amounts have been entered as a receivable in the agency's accounting system from each applicable recipient under the programs.

OIG also concluded that the "accumulating base" methodology is not applicable to our findings within the Smith-Lever 3(b) and (c) and Hatch Act Research Programs. The misallocations we identified within these two programs occurred due to erroneous calculations that are unaffected by any census. Administrative allocations retained by NIFA in the Smith-Lever 3(b) and (c) Program are based on a flat percentage of the appropriation, not on any census data. In order to reach management decision, NIFA should determine whether overpayments in the Smith-Lever 3(b) and (c) Program can be discharged under applicable laws. If the overpayments cannot be discharged, NIFA should provide a copy of the bill for collection and documentary support that the amounts have been entered as a receivable in the agency's accounting system from each applicable recipient under the program. Furthermore, NIFA should provide a copy of the bill for collection and evidence of a receivable in the agency's accounting system for the one recipient that was allocated an additional $66,103 under the McIntire-Stennis Cooperative Forestry Research Program.

Recommendation 4

Review FYs 2016–2018 grant allocations for accuracy and correct erroneous distributions as appropriate.

Agency Response

In its April 17, 2019 response, NIFA stated:

> NIFA does not concur with this recommendation. Based on the justification in the NIFA response to Recommendation #3, the review of the FY 2016 through FY 2018 grant allocations for accuracy and correct[ing] erroneous distributions, as appropriate, does not

apply. As mentioned above, NIFA appreciates the work of the OIG Auditors in identifying several improvements in NIFA's administration of the Capacity grant programs, particularly as it applies to internal controls; risk assessments; business applications which calculate and maintain Capacity grant allocations and adjustments, including census data; and written documentation supporting the actual steps and mechanics of calculating the Capacity grant allocations. This Audit was conducted at a critical time for NIFA, as USDA was launching ezFedGrants, a module of the Financial Management Modernization Initiative.

NIFA also stated it plans to include testing of grant allocations for accuracy in the agency semi-annual internal control testing cycle beginning in October 1, 2020, for the FY 2021 testing cycle.

OIG Position

We do not accept management decision for this recommendation. As stated in OIG position for Recommendation 3, we do not believe that NIFA used a methodology that complied with statutory formulas for these grant programs. Additionally, during our audit fieldwork, NIFA was unable to provide documentation showing that capacity grant amounts for FY 2015 were in compliance with statutory formulas for payments made to institutions in the Hatch Act Research Program, Evans-Allen Research Program, 1890 Extension Program, and Smith-Lever 3(b) and (c) Program. Methodologies utilized by NIFA to compute grant amounts did not follow steps specified by formulas in statutes governing how to determine the amounts, nor will NIFA's methodologies prevent errors when prior years' errors carry forward and cause incorrect allocations for the following year(s). Most importantly, NIFA has told us that the same methodology used in FY 2015 was used in the period FYs 2016–2018. As such, OIG contends that grant payment calculations for those years also did not follow steps specified by formulas in statutes governing how to determine the amounts, nor prevented errors for the following year(s).

In order to reach management decision, NIFA should review FYs 2016–2018 capacity grants allocated by the same calculation method used in FY 2015, and correct any erroneous distributions found.

Recommendation 5

Develop and implement a policy to evaluate and address recommendations from risk assessments and reviews determined to have significant potential impact on agency operations.

Agency Response

In its April 17, 2019 response, NIFA stated:

> NIFA concurs with the recommendation. NIFA will develop and implement a GPPT to address the routing and review of all reports generated by external sources. All external reports will ultimately be reviewed by the NIFA's Executive Council, which will determine any action necessary to address the results of the report. The GPPT will

include guidance addressing the maintenance of supporting documentation relating to the review process. NIFA's Executive Council consist[s] of Agency leadership, such the Director, Associate Directors, Deputy Director and Office Directors, etc.

The GPPT will be completed by January 31, 2020, with testing of the related internal controls to take place in the FY 2021 testing cycle.

OIG Position

We accept management decision for this recommendation.

Recommendation 6

Determine whether a violation of the Antideficiency Act occurred in the Smith-Lever 3(b) and (c) Program. If an Antideficiency Act violation occurred, report to the President and Congress all relevant facts and a statement of actions taken to address the violation.

Agency Response

In its April 17, 2019 response, NIFA stated that it concurred with the recommendation, and determined that an Antideficiency Act violation did not occur in the Smith-Lever 3(b) and (c) Program.

NIFA explained that its methodology to determine grant allocations for FY 2015 had accumulated a base amount for the annual allocation to institutions that complied with the following sentence in a subsection of the program's statutory formula: "Any appropriation made hereunder shall be allotted in the first and succeeding years on the basis of the decennial census current at the time such appropriation is first made, and as to any increase, on the basis of decennial census current.at the time such increase is first appropriated. *See* 7 U.S.C §343(c)."

NIFA stated if there was a change in appropriated amounts between fiscal years, then its allocation methodology applied part of the formula to the difference in appropriations. This process to apply the statutory formula has been in place for decades, NIFA stated, with an accumulating base helping maintain the integrity of the application of then current decennial census data as older census data is not simply deleted.

NIFA further stated that Congress, institutions, and other stakeholders were aware of its methodology. NIFA also discussed a legal doctrine that courts can apply when reviewing challenges to agency actions, which involves determining whether a statute is silent or ambiguous with respect to the specific issue and, if so, giving deference to the agency's reasonable interpretation of the statute. Finally, NIFA stated that, given this deference and NIFA's longstanding interpretation and application of the statutory formula in the Smith-Lever 3(b) and (c) Program, it concluded no Antideficiency Act violation occurred with program funds.

NIFA also concluded that improvements may be made in its current methodology for applying the program's formula. NIFA plans to eliminate the accumulating base methodology in order to

better reflect the Nation's current demographics, starting in FY 2021 and utilizing the 2020 census data.

OIG Position

We do not accept management decision for this recommendation. As we noted in OIG position to Recommendation 3, the statutory language and the legislative history applicable to the Smith-Lever 3 (b) and (c) Program does not appear to support an accumulating base across the entire formula. The accumulating base language is only tied to the subsections that contain the language incorporating the census. The basis for the potential Antideficiency Act violation discussed here is that program expenditures exceeded the 96 percent permitted in the remainder subsection of the statute (relatedly underallocating 4 percent for administration), and is not impacted by the "accumulating base" argument presented by NIFA. Instead the 4 percent administrative allocation occurs before the accumulating base has any impact on further allocations, and does not explain an underallocation in the administrative provision and an overallocation in the program provision. Therefore, OIG believes that NIFA's response to Recommendation 6 does not adequately explain why an Antideficiency Act violation did not occur. OIG characterizes this as a "potential violation" because of the possibility to cure a potential Antideficiency Act violation, such as through the availability of funds to correct the error.

Finally, to the extent the legal doctrine regarding deference to an agency is relevant, OIG did not find that the statute was silent or ambiguous on this issue. During the audit, the OIG conducted a literal reading of the program statutes, as well as recognized provisos in fiscal year appropriations legislation. To the extent Congress, institutions, and other stakeholders were aware of NIFA's methodology, in lieu of Congress having explicitly stated otherwise, such as in a statute or in appropriations legislation, OIG concludes that the program statute itself controls the allocations.

In order to reach management decision, NIFA should make a determination as to whether a violation of the Antideficiency Act occurred resulting from an overpayment to recipient institutions in the Smith-Lever 3 (b) and (c) Program. If there is a violation, NIFA should report to the President and Congress all relevant facts and a statement of actions taken to address the violation.

Recommendation 7

For years where appropriations include additional allocation requirements, develop and implement written procedures to assure each institution receives no less than the established minimum.

Agency Response

In its April 17, 2019 response, NIFA stated:

> NIFA concurs with this recommendation. As OIG references in its footnote (footnote 11, page 7), in FY 2015, Pub. L. No. 113-235, 128 Stat. 2139 – 2140 (titled, Consolidated and Further Continuing Appropriations Act, 2015, and enacted Dec. 16, 2014) required that every 1890 institution participating in the Evans-Allen and 1890 Extension programs receive at least $1,000,000 from each program. This requirement has been included in each appropriations bill since FY 2015. As part of NIFA's efforts to automate the allocation of funds for its capacity grant programs, including the Evans-Allen and 1890 Extension programs, NIFA is developing consistent policies and implementing them with allocation coding that is flexible enough to accommodate these types of annual requirements, as well as any other changes to the legislative formulas that may be made through farm bills. Automation will reduce the potential for allocation errors, while accompanying policies will ensure NIFA staff verify allocations meet all legislative requirements on an annual basis.
>
> NIFA's allocation methodology includes an algorithm built into the formula calculations that assures each institution receives no less than the established legislatively mandated minimums. The new methodology would require further secondary allocation calculations to ensure each institution receives the required minimums. Any institutions that fall below the mandated minimums will be adjusted upward by proportional reductions on institutions that receive above the mandated minimums. NIFA will develop a GPPT outlining the process for reviewing appropriation language for additional allocation requirements and the process for ensuring they are met. The GPPT will outline the process with the current calculation methodology to ensure appropriation minimums are met by December 31, 2019. In addition, NIFA will develop, document, and build similar algorithm into the OIG alternative methodology in ezFedGrants systems to ensure the established minimums are met. NIFA will add that procedure to the GPPT by September 2020.

OIG Position

We accept management decision for this recommendation.

Finding 2: NIFA Needs the Ability to Adjust EFNEP Allocations Based on Recent Poverty Data

NIFA has been unable to adjust approximately 80 percent of its Expanded Food and Nutrition Education Program (EFNEP) funding to reflect changing poverty demographics in the United States. This occurred because, when Congress established the EFNEP allocation formula, it set the ratio of funding for States according to demographic data available in 1981 and did not permit changes in that ratio as poverty rates among the States changed over time. If NIFA had been able to distribute these funds based on updated poverty demographics, then States with increased poverty rates since 1981 would have received about $9.8 million more during FY 2015, which could have helped those States provide more nutrition education resources to their growing proportion of families in poverty.

In 1977, the original law establishing EFNEP provided that each State's EFNEP funding would be equal to the State's percentage of all people living in poverty nationwide.[22, 23] Subsequent legislation locked in part of these funding ratios based on the demographic data available in 1981. The language in the law prevented NIFA from adjusting its funding allocations among States that have experienced shifts in proportional poverty since 1981. However, the *Standards for Internal Control in the Federal Government* state that, in an effective internal control system, management should respond to significant environmental changes that affect the program.[24] More generally, OMB requires agencies to annually evaluate the effectiveness of their controls based on the Standards, and identify opportunities to improve the effectiveness of government operations.[25]

We reviewed how NIFA calculated EFNEP funding allocations in FY 2015 and compared how its funding was allocated, based on 1981 data, with how the funding would be allocated using the most recently available census data from 2010. Based on the most recent data, 16 States and Puerto Rico would have received $9.8 million more funding, while 34 States would have received less money when compared to their original FY 2015 distributions. In 2010 as opposed to 1981, these 16 States and Puerto Rico experienced an increase in their poverty rates. Conversely, the other 34 States experienced a decrease in poverty rates, both in proportion to nationwide poverty.

When we discussed with NIFA officials the possibility of working with Congress to update EFNEP calculations using more recent poverty data, NIFA officials expressed concern with the limitations included in the current law. Officials also stated the possible implications of changing the current formula, including potential job losses in some localities and the disruption

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[22] National Agricultural Research, Extension, and Teaching Policy Act of 1977, Pub. L. No. 95-113, title XIV § 1425(b) (codified at 7 U.S.C. § 3175).

[23] Specifically, funds "shall be allocated to each State in an amount which bears the same ratio to the total amount to be allocated as the population of the State living at or below 125 per centum of the income poverty guidelines prescribed by the Office of Management and Budget…[bear] to the total population of all the States living at or below 125 per centum of the income poverty guidelines."

[24] GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G, section 7.04 (Sep. 10, 2014).

[25] OMB, *Management's Responsibility for Enterprise Risk Management and Internal Control*, Memorandum M-16-17 and Circular A-123 (July 15, 2016).

of programs that are currently serving their communities.[26] Officials stated that they were planning to gather stakeholder input on how EFNEP may improve its program delivery and they were waiting to receive recommendations from a planned internal review regarding how the program's allocation formula might be revised. We also found that in March 2014, NIFA performed a review of EFNEP that noted outdated poverty data was used for distributing the majority of funds.[27] In its FY 2017 budget notes, NIFA reported to Congress it planned to further review EFNEP and its formula for distributing funds, and officials say this review is underway.

While we recognize NIFA's responsibility to properly evaluate significant changes in funding distributions, the primary purpose of EFNEP is to provide education to low-income persons and families on how to purchase and prepare nutritious food. If Congress were to direct NIFA to use the most recent poverty data to distribute future funds, we believe it would better support the program's purpose to benefit those in need.

OIG recognizes that only Congress has the authority to make changes in EFNEP's allocation. However, NIFA has a responsibility to administer the program to effectively meet its program goals. NIFA can improve the program by bringing matters such as this disparity in State-allocated funding to Congress' attention. OIG concluded that it would be prudent for NIFA to perform an analysis of the EFNEP formula, and if warranted, take action to suggest adjustments to EFNEP funding levels to States, based on the most recent demographic data available. Because the language in the law limited 80 percent of NIFA's EFNEP funding allocations to the demographic data from 1981, if an analysis concludes a change would make EFNEP more effective, NIFA should seek legislative change enabling the agency to allocate funds using the most recent demographic data from the decennial Census. NIFA's nutrition education grants and resources could then be more equitably allocated, based on the most recent demographic data available.

Recommendation 8

Perform an analysis and make a recommendation on whether to submit a legislative proposal to revise the EFNEP's statutory formula that would allow the use of the most recent decennial Census poverty data to calculate its distribution of funds to States. Also, take the actions needed to implement the decision made on the recommendation.

Agency Response

In its April 17, 2019 response, NIFA stated:

> NIFA generally concurs with this recommendation. NIFA will complete an analysis for review by USDA policy officials. The initial analysis of this issue will be completed by December 31, 2019. The results of the analysis and any subsequent recommendation by NIFA officials will be forwarded to the Department by June 30, 2020.

[26] OIG notes that overall funding would not change under this proposal. NIFA did not provide justification that job shifts should be a consideration of EFNEP.
[27] However, NIFA officials did not explain nor produce documentation of the results of this review.

OIG Position

We accept management decision for this recommendation.

Recommendation 9

Develop and implement a policy to periodically review funding calculation formulas for individual capacity grant programs, including EFNEP, to determine whether their formulas remain valid and continue to meet the intent of the programs.

Agency Response

In its April 17, 2019 response, NIFA stated:

> NIFA concurs with this recommendation. Beginning October 1, 2020, NIFA will develop and implement a GPPT that holds staff responsible for annually reviewing the validity of funding calculation formulas for individual capacity grant programs, including EFNEP, as compared with legislative requirements. This GPPT will describe NIFA's policies and procedures for adjusting payments to States/institutions receiving capacity grant funds, should that be necessary and within the bounds of the statutory formulas. In addition to validating the formula calculations, these annual reviews will provide an opportunity for staff to identify capacity grant programs that have changes to overall funding levels or allocations that could significantly impact the audiences served. Where a program is identified as having such a change, NIFA's GPPT will require that staff further assess the program to determine whether the formula continues to meet the intent of that program. NIFA will communicate with stakeholders regarding changes to formulas or assessments of particular capacity grant programs through Requests for Applications, webinars, conferences, and the NIFA Policy Guide.
>
> The preliminary GPPT detailing the annual review completed on the individual capacity grant program formulas will be completed by February 2020. The additional assessment on whether the formula continues to meet the intent of the programs will be added to the annual review GPPT by October 2020. The annual assessments will be noted in the RFA's starting in July 2020 for FY 2021 funding, the annual reviews will be added to the Policy Guide after the GPPT is finalized in October 2020.

OIG Position

We accept management decision for this recommendation.

Finding 3: NIFA Needs to Ensure that States are Cognizant of their Authority to Allocate EFNEP Funding to Both 1862 and 1890 Institutions

For those 17 States with both 1862 Institutions and 1890 Institutions,[28] the Smith-Lever Act provides that the States themselves may choose which institutions receive a portion of EFNEP funds. We found, however, that NIFA officials did not inform these States of their authority to direct those EFNEP funds to both 1862 and 1890 Institutions. This occurred because NIFA officials followed historical precedent and noted that 1890 Institutions were funded from other sources, meaning NIFA effectively prevented the legislatures of the 17 States from exercising their authority to direct EFNEP funds to both 1862 and 1890 Institutions. As a result, in FY 2015, 1890 Institutions were not considered in the allocation of $28 million in EFNEP funding.

Both 1862 and 1890 Institutions are eligible for EFNEP funding. The Smith-Lever Act states that where two or more eligible land-grant institutions have been established in any State, territory, or possession, each legislature has the authority to direct a portion of EFNEP funds to its eligible institutions. The EFNEP statute also states, "[t]he Secretary shall ensure the complementary administration of the expanded food and nutrition education program by 1862 Institutions and 1890 Institutions in a State."[29]

However, in the 17 States with both 1862 and 1890 Institutions, we found that NIFA distributed the portion of these funds exclusively to 1862 Institutions.[30] While both NIFA's internal and external guidance in *EFNEP 2015 Request for Applications*, the *NIFA Federal Assistance Policy Guide*, and desk procedures state that a portion of EFNEP State funds go to 1862 Institutions, none of these mention the possibility of also allocating these funds to 1890 Institutions. NIFA did not advise the States of their ability to designate funding, nor did it ask the 17 States to submit documentation stating their desired funding.

When we asked NIFA officials why their instructions did not ensure that the States were cognizant of their authority to direct a portion of EFNEP funds to both 1862 Institutions and 1890 Institutions, the officials stated that their instructions reflect NIFA's understanding that a distribution to "States" refers to 1862 Institutions and not 1890 Institutions. The officials further explained that they developed this understanding from historical precedent and that the 1890 Institutions were funded under two other parts of the formula.[31] NIFA did not provide evidence to support that 1890 Institutions were not eligible for EFNEP funding under other parts

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[28] 1862 Institutions are colleges and universities eligible to receive funds under the Morrill Act of 1862. 1890 Institutions are colleges and universities—founded to instruct black students—eligible to receive funds under the Morrill Act of 1890. In order to receive funding under the Morrill Act of 1890, States with racially segregated public higher education systems were required to provide a land-grant institution for black students whenever a land-grant institution was established and restricted for white students.

[29] 7 U.S.C. § 3175.

[30] The 17 States with 1890 institutions are: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

[31] Only one of these parts of the formula, representing 0.9 percent of program funding, allocates funds exclusively to 1890 Institutions. Taken together, both parts represented 3.58 percent of EFNEP funding in FY 2015 directed to 1890 Institutions.

of the formula. However, for States with both 1862 and 1890 Institutions, the Smith-Lever Act requires that the State should decide its funding distribution in cases where there are two or more eligible institutions within the State.[32]

In FY 2015, NIFA distributed $28 million in EFNEP funds entirely to the 1862 Institutions in the 17 States with both types of institutions, and did not ensure that the States were cognizant of their authority to designate funds to both types of institutions. NIFA has already implemented a program to gauge State allocation decisions in another of its capacity grant programs—McIntire-Stennis Cooperative Forestry Research Program—to address a similar issue. According to NIFA, in FY 2015, "USDA contacted the Governor of each [S]tate in which an eligible 1890 institution is located and has received … the proportionate amount of the [S]tate's funding that is to be allocated to each [institution]" for the McIntire-Stennis Forestry Research Program.[33] NIFA could carry out a similar process in the 17 States to determine distributions of State funding for EFNEP that reflect the Smith-Lever Act and EFNEP statutes.

In conclusion, OIG believes that NIFA should provide the States with clear guidance concerning their authority to choose to provide portions of EFNEP funding to both 1862 Institutions and 1890 Institutions, and to collect documentation of each State's distribution.

Recommendation 10

Conduct a review of internal and external guidance to determine whether they conform to applicable laws; where warranted, revise and issue updated guidance to States and institutions that ensures the States are cognizant of their authority to allocate EFNEP funding between 1862 institutions and 1890 institutions.

Agency Response

In its April 17, 2019 response, NIFA stated:

> NIFA concurs with this recommendation.
>
> NIFA will explore whether there are internal or external guidance and applicable laws and if warranted, will revise and update guidance to States and institutions to ensure that EFNEP allocations are appropriately allocated between 1862 and 1890 institutions. NIFA will review EFNEP funding legislation and consult OGC to determine the appropriate guidance to issue States on their authority to allocate EFNEP funds to eligible institutions within the state. This review and determination will be completed by February 2020. Once a determination is made on an allowable State entity to designate the allocation of EFNEP funds within the state, guidance will be provided in the RFA, the Policy Guide, and through additional outreach to the institutions beginning in October 2020.

[32] 7 U.S.C. § 341; 7 U.S.C. § 3175(d).
[33] NIFA provided OIG with letters from governors for 7 of the 20 States with more than one eligible institution for the McIntire-Stennis allocation in FY 2015. All 7 States for which NIFA provided letters had an 1890 Institution.

OIG Position

We accept management decision for this recommendation.

Recommendation 11

For parts of the formula that require State funding allocations, routinely require and maintain documentation from States designating EFNEP funding allocations when two or more eligible institutions are located in the same State.

Agency Response

In its April 17, 2019 response, NIFA stated:

> NIFA concurs with this recommendation. For EFNEP payments, for States that have two or more eligible institutions located in the same State, NIFA will require and maintain electronic documentation from these States designating EFNEP funding allocations by institution. Routinely (5 year cycle) thereafter, NIFA will request that these States validate the funding levels to be allocated to each eligible institution. NIFA will develop a draft GPPT for this process dependent on the results of the review and determination made in Recommendation 10, by March 30, 2020. NIFA will implement the policies and processes to adjust for changes requested by the States prior to making FY 2021 awards.

OIG Position

We accept management decision for this recommendation.

Scope and Methodology

NIFA supports research, education, and extension activities through three primary funding mechanisms—competitive grants, capacity grants, and noncompetitive grants. Our review focused on assessing the adequacy of NIFA's controls over allocating capacity grant funds to eligible recipients in accordance with statutory formulas.

Our scope focused on the allocations of FY 2015 capacity grant funds. We reviewed 16 capacity programs and focused on a non-statistically selected sample of the 9 most complex and therefore potentially at-risk capacity grant programs, as identified by the Capacity Grant Branch staff:[34]

- 1890 Extension (Section 1444)
- Animal Health and Disease Research
- Evans-Allen Research (Section 1445)
- Expanded Food and Nutrition Education
- Hatch Multistate Research
- Hatch Regular Research
- McIntire-Stennis Cooperative Forestry Research
- Renewable Resources Extension Act
- Smith-Lever 3(b) and (c)

We conducted fieldwork at NIFA's headquarters in Washington, D.C., from October 2015 through August 2018. We interviewed NIFA's national program leaders, Office of Grants and Financial Management officials, and budget office staff.

We reviewed NIFA's October 2017 action plan to implement recommendations reported in the FY 2015 risk assessment of the capacity grant programs and determined whether actions had been accomplished. We also tested NIFA's allocation computations for accuracy and compliance with the formulas and statutory requirements.

We identified and assessed whether adequate control processes for allocating capacity grant funds were established. We conducted tests to determine if NIFA had allocated program funds accurately and if the methodology used was in compliance with the statutory formulas.

To accomplish our objectives, we:

- Obtained and documented capacity grant programs' budgetary, appropriation, and award data and statutory requirements.

- Obtained and reviewed laws, regulations, policies and procedures, agency handbooks, and grant programs published request for applications, and other published guidance governing the capacity grants' allocations to determine key controls and weaknesses over allocating capacity grants' funds.

[34] NIFA does not classify the 1890 Facilities Grants and the Tribal Colleges Education Equity programs as capacity grants (formerly formula grants), but those grant programs were also allocated using formulas.

- Interviewed NIFA officials to identify and assess controls for determining formula funding allocations to individual States or statutorily specified recipients.

- Reconciled 15 capacity grant programs' FY 2015 and FY 2016 appropriations to (1) obligations and available authority and (2) Cooperative State Research, Education, and Extension Service Budget Control Tables.[35]

- Reviewed assessments of the capacity grants and resulting recommendations by outside consultants.

- Analyzed 16 capacity grant programs' formula calculations and input data for accuracy and transparency, as well as allocation methodologies for compliance with statutory formulas.

- Analyzed the EFNEP allocation formula for relevance to current populations used as the basis for allocating funds.

- Traced funding amounts to appropriations legislation, or the interest calculation done by the Agricultural Research Service for the Tribal Colleges Endowment Interest Program.

To conduct this audit, we tested NIFA's internal controls in calculating and allocating grant funds across grant programs, including calculations by personnel using NIFA spreadsheet programs, and by reperforming calculations and comparing the results to those produced by those programs. Additionally, we tested appropriations entered into NIFA's Cooperative Research, Education, and Extension Management System for accuracy. Any discrepancies we found are noted in this report. We make no representation regarding the adequacy of any other NIFA computer systems, or information generated by them, because those information systems were not used to make allocation calculations and therefore were not part of the audit objectives.

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

[35] OIG did not reconcile the Tribal Colleges Endowment Interest Program because amounts were not available at the time of our fieldwork.

Abbreviations

EFNEP ……..Expanded Food and Nutrition Education Program
FY …….fiscal year
GAO …….Government Accountability Office
GPPT…… Grants, Policies and Procedure Transmittals
NIFA ……National Institute of Food and Agriculture
OIG …….....Office of Inspector General
OMB ……....Office of Management and Budget
RREA ...……Renewable Resources Extension Act
USDA ……..United States Department of Agriculture

Exhibit A: Summary of Monetary Results

Exhibit A summarizes the monetary results for our audit report by finding and recommendation number.

Finding	Recommendation	Description	Amount	Category
1	2	Amount of incorrect allocations in Hatch Act Research programs for FY 2015[36]	$600,510	Questioned Costs, No Recovery
1	3	Amount of incorrect allocations in Evans-Allen Research Program and 1890 Extension Program for FY 2015	$2,825,604	Questioned Costs, Recovery Recommended
1	3	Amount of incorrect allocations in the Smith-Lever 3(b) and (c) Program for FY 2015[37]	$3,633,065	Questioned Costs, Recovery Recommended
1	3	Amount of incorrect allocations in McIntire-Stennis Cooperative Forestry Research Program due to improperly granted waiver	$66,103	Questioned Costs, Recovery Recommended
Total			**$7,125,282**	

[36] Comprised of Hatch Act Regular Research and Multistate Research Programs. To prevent duplication in reporting Questioned Costs, only the overpayments to one program, Hatch Act Regular Research, and administrative funds are included. See Footnote 15.

[37] Representing a violation of the Purpose Statute and a potential Antideficiency Act violation.

AGENCY'S
RESPONSE TO AUDIT REPORT

United States Department of Agriculture
Research, Education, and Economics
National Institute of Food and Agriculture
1400 Independence Avenue SW
Washington, DC 20250

AGENCY RESPONSE

TO: Gil Harden
Assistant Inspector General

FROM: Dr. J. Scott Angle
Director
National Institute of Food and Agriculture

DATE: April 17, 2019

SUBJECT: NIFA Formula Grant Programs' Control Over Fund Allocations to States (13601- 0001-22)

The following narrative is in response to the Office of Inspector General memorandum issued on December 17, 2018, requesting NIFA's written response to the official draft of the subject audit, specifying corrective actions taken or planned on each audit recommendation and proposed completion dates for implementing such actions.

The National Institute of Food and Agriculture (NIFA) appreciates the opportunity to review and comment on the Office of Inspector General (OIG) draft report on the subject audit. As stated in the draft report, the review's objective was to determine whether the agency allocated program funds accurately utilizing funding calculation methods that complied with statutory formulas for fiscal year (FY) 2015. The draft report identified three findings and included eleven recommendations to address those findings.

The agency has implemented many improvements since this audit began in September 2015. As reflected in the responses, NIFA has launched efforts to improve the overall accountability and transparency of the formula calculations for the Capacity Grant Programs and will implement the modified methodology outlined by the OIG for all capacity grants by FY 2021. The adoption of this new modified methodology will impact numerous institutions and stakeholders, and the agency will need sufficient time to provide outreach and education.

While the agency agrees that the OIG interpretation of the formula methodologies offers an updated alternative to make calculations, the agency does not concur that the previous formula methodologies were inaccurate or inappropriate. Consequently, the agency has determined that there was no violation of the Anti-Deficiency Act in the Smith-Lever Act 3(b) and (c) Program as the funds were properly allocated according to the previously established methodology adopted by the agency.

The agency appreciates all the time and effort contributed by the OIG team in conducting this detailed audit. Several areas of improvement in policy and procedure were identified as well as

requirements for supporting documentation. The agency has initiated action on several of the identified issues as indicated in the following response.

Background

NIFA's mission is to invest in and advance agricultural research, education, and extension to solve societal challenges. NIFA's investments in transformative science directly support the long-term prosperity and global preeminence of U.S. agriculture. NIFA links the research and education resources and activities of USDA with academic institutions and land-grant universities throughout the Nation. NIFA's partnership with the land-grant universities is critical to the effective shared planning, delivery, and accountability for research, higher education, and extension programs to support a growing and thriving American economy.

The First Morrill Act of 1862 provided for the establishment of the 1862 land-grant institutions that are located in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the insular areas. The Second Morrill Act of 1890 provided for the support of the 1890 land-grant institutions, including Tuskegee University, West Virginia State University, and Central State University, which are located in 18 States.

Capacity funds are provided to 1862 institutions and agricultural experiment stations under the Hatch Act of 1887; extension funds are provided to 1862 land-grant institutions under sections 3(b) and 3(c) of the Smith-Lever Act and section 208(c) of the District of Columbia Postsecondary Education Reorganization Act; agricultural extension and research funds are provided to 1890 institutions under sections 1444 and 1445 of National Agricultural Research, Extension, and Teaching Policy Act (NARETPA); Expanded Food and Nutrition Education Program (EFNEP) funds are allocated to eligible 1862 and 1890 institutions under Smith-Lever Section 3(d); research funds are provided to forestry schools under the McIntire-Stennis Act of 1962; and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA. EFNEP funds are allocated to eligible 1862 and 1890 institutions under Smith-Lever Section 3(d); research funds are provided to forestry schools under the McIntire-Stennis Act of 1962; and animal health and disease research funds provided to veterinary schools and agricultural experiment stations under section 1433 of NARETPA.

NIFA provides capacity grant funds to the 1862 land-grant institutions for cooperative extension work under Sections 3(b) and (c) of the Smith-Lever Act (7 U.S.C. 343(b) and (c)) and to the 1890 land-grant institutions, including Tuskegee University, West Virginia State University, and Central State University, for cooperative extension work under Section 1444 of NARETPA. The District of Columbia receives extension funds under the District of Columbia Public Postsecondary Education Reorganization Act, Pub. L. No. 93-471.

Funds are allocated to the land-grant institutions based on specified formulas. These formulas are based on the farm and rural populations of each state and include an equal portion distributed to all eligible institutions. Formula funds are also provided to the 1862 and 1890 land-grant institutions under Section 3(d) of the Smith-Lever Act for EFNEP, which is authorized under Section 1425 of NARETPA. These funds are made available to the 1862 and 1890 land-grant institutions to enable low-income individuals and families to engage in nutritionally sound food

purchasing and preparation practices. EFNEP provides for employment and training of professionals to engage in direct nutrition education of low-income families and in other appropriate nutrition education programs. Section 7403 of the 2008 Farm Bill amended Section 3(d) of the Smith-Lever Act to provide 1890 institutions and the 1862 institution in the District of Columbia full eligibility to receive funds authorized under Section 3(d) of the Smith-Lever Act (7 U.S.C. 343(d)), including EFNEP funds.

Capacity grant applications are reviewed to determine if all program, financial, and administrative requirements have been met and are current. NIFA is statutorily required to award capacity funds when applicants meet the legislatively determined eligibility requirements. Eligible recipients do not compete for the Capacity (formerly referred to as Formula) funds. Through capacity grants, NIFA provides a broad suite of support activities, including research and extension, to 1862 and 1890 land-grant institutions, schools of forestry, and schools of veterinary medicine.

Finding 1: NIFA Needs to Ensure Calculations for Determining Grant Amounts Are Accurate

Recommendation 1

Develop and implement a policy of retaining complete supporting documentation for capacity grant programs' allocation calculations, including written methodologies and calculation records.

Agency Response:

NIFA concurs with the recommendation. NIFA utilizes Grants, Policies and Procedure Transmittals (GPPTs) to document policies for the agency. NIFA is in planning stage of developing a GPPT to capture the methodologies for capacity programs. The Department has a corporate grants management solution called USDA ezFedGrants that NIFA will utilize for calculation allocations. EzFedGrants currently only services formula based capacity grants.. NIFA began a phased approach in deploying ezFedGrants starting with the FY17 awards and continuing through the current budget periods. Presently, NIFA has its 13 capacity programs in the ezFedGrants system. EzFedsGrants generates an audit log that is stored in the system. This functionality automatically creates the funding allocation amounts for all capacity programs (Smith-Lever programs, Section 1444, Section 1445, Renewable Resources Extension Act (RREA) breakout, Hatch Regular, Hatch Multi-State, EFNEP, McIntire-Stennis Cooperative Forestry and Animal Health). NIFA will continue to validate the functionality throughout the FY 2019 cycle as we create the remaining payment actions through FY 2019 final allocations.

The GPPT is scheduled to be developed by December 30, 2019 for implementation with FY 2021 awards

Recommendation 2

Develop and implement policy and procedures for effectively performing and reviewing calculations of funding allocations to ensure accuracy.

Agency Response:

NIFA concurs with the recommendation. NIFA will include policy and procedures for reviewing the funding allocations in the GPPT that is being developed to address Recommendation # 1 listed above. The GPPT will include a matrix that delineates the responsibility for reviewing both manual and ezFedGrants allocations, either by NIFA personnel or third-party experts, as well as timelines for the frequency of the reviews.

The GPPT will be completed by December 30, 2019 with testing of the related internal controls to take place in the FY 2021 testing cycle.

Recommendation 3

Determine whether $2,825,604 paid to institutions in the Evans-Allen Research program and 1890 Extension program; $3,633,065 in the Smith-Lever 3(b) and (c) program; and $66,103 in the McIntire-Stennis Cooperative Forestry Research program should be discharged under applicable laws. If the amounts cannot be discharged, seek recovery of overpayments to those institutions.

Agency Response:

NIFA does not concur with the recommendation. NIFA does not agree with the determination that $3,633,065, of Smith-Lever Act funding was overpaid to the 1862 land-grant institutions, due to an improper application of the set-aside for administrative costs. NIFA also does not agree that $2,825,604, was overpaid to some 1890 land-grant institutions, for failure to apply the most recent decennial census to all funding increases since FY 1978. As discussed earlier, NIFA supported the methodology used to calculate payments to states for Evans-Allen Research, 1890 Extension and Smith Lever. NIFA acknowledges that the OIG's recommended methodology is appropriate for future calculations. Consequently, NIFA intends to apply the full four percent set-aside for administrative costs for the Smith-Lever Act funds and apply the most recently available decennial census to all funds available for distribution under the Evans-Allen Research Program in FY 2021 and thereafter.

Previously, for the Smith-Lever Act program, NIFA had only added to (or subtracted from) the administrative cost set-aside according to incremental increases (or decreases) in the amount of funds appropriated and the legislative changes to the Act since its enactment. For the Evans-Allen Research Program, NIFA had applied the most recent decennial census that was available at the time of the funding increase. The Smith-Lever Act and Evans-Allen Research Program allocations and the set-aside for administrative costs were clearly identified each year in the Agency's Explanatory Notes and were considered by the Congressional Committees during the appropriations process. In addition, the Capacity allocation methodologies were often considered by Congressional Committees during the reauthorization of the Farm Bill. During the last three decades, NIFA has administered these legislative formula methodologies. NIFA believes that its

application of the set-aside for the Smith-Lever Act funds was valid during FY 2015, as well as the validity of the formula distributions for the Evans-Allen Research Program. Consequently, NIFA does not have to discharge or seek recovery of $3,633,065 for Smith-Lever Act funds or $2,825,604 for Evans-Allen Research Program funds.

As mentioned above, NIFA plans to implement the new formula methodologies in FY 2021. NIFA has been working with contractors on two efforts: (1) development and implementation of an electronic process to calculate all NIFA formula allocations, based on the OIG formula methodologies, while maintaining the census data and the actual distribution results in ezFedGrants, and (2) preparation of charts and other materials on individual institutions for each capacity grant program (i.e., the increase or decrease from the previous formula methodologies). Depending on the impact of the modified methodology, institutions with significant increases may need to secure additional matching funds from their State legislatures and amend their existing 5-Year Plans of Work, while other institutions with significant decreases may need to amend their 5-Year Plans of Work to reduce programming levels. NIFA will conduct an extensive outreach program that includes a combination of national, regional, and individual meetings (onsite and remotely) with the institutions, as well as briefings and meetings with other external stakeholders. NIFA's plan for outreach will be published within 5 business days of the issuance of the report.

NIFA concurs with the McIntire Stennis Cooperative Research program questioned cost due to an improperly granted waiver. The agency has already begun addressing this recommendation; NIFA notified the impacted institution of the appropriate matching requirements for McIntire-Stennis Cooperative Forestry Research Funds on August 31, 2018. NIFA will recover the $66,103 by December 31, 2020.

Recommendation 4

Review FY 2016–2018 grant allocations for accuracy and correct erroneous distributions as appropriate.

Agency Response:

NIFA does not concur with this recommendation. Based on the justification in the NIFA response to Recommendation #3, the review of the FY 2016 through FY 2018 grant allocations for accuracy and correct erroneous distributions, as appropriate, does not apply. As mentioned above, NIFA appreciates the work of the OIG Auditors in identifying several improvements in NIFA's administration of the Capacity grant programs, particularly as it applies to internal controls; risk assessments; business applications which calculate and maintain Capacity grant allocations and adjustments, including census data; and written documentation supporting the actual steps and mechanics of calculating the Capacity grant allocations. This Audit was conducted at a critical time for NIFA, as USDA was launching ezFedGrants, a module of the Financial Management Modernization Initiative (FMMI).

NIFA will include testing of grant allocations for accuracy in the agency semi-annual internal control testing cycle beginning in October 1, 2020, for the FY 2021 testing cycle.

Recommendation 5

Develop and implement a policy to evaluate and address recommendations from risk assessments and reviews determined to have significant potential impact on Agency operations.

Agency Response:

NIFA concurs with the recommendation. NIFA will develop and implement a GPPT to address the routing and review of all reports generated by external sources. All external reports will ultimately be reviewed by the NIFA's Executive Council, which will determine any action necessary to address the results of the report. The GPPT will include guidance addressing the maintenance of supporting documentation relating to the review process. NIFA's Executive Council consist of agency leadership, such the Director, Associate Directors, Deputy Director and Office Directors, etc.

The GPPT will be completed by January 31, 2020, with testing of the related internal controls to take place in the FY 2021 testing cycle.

Recommendation 6

Determine whether a violation of the Anti-deficiency Act occurred in the Smith-Lever 3(b) and (c) program. If an Anti-deficiency Act violation occurred, report to the President and Congress all relevant facts and a statement of actions taken to address the violation.

Agency Response:

NIFA concurs with this recommendation. NIFA has determined that Anti-deficiency Act violation did not occur in the Smith-Lever 3(b) and (c) program.

Capacity funds for research and extension are distributed to land-grant colleges using calculations that are set in statute. For example, under the Smith-Lever Act, funding for the Cooperative Extension Programs at 1862 Land-Grant Institutions is authorized under Smith-Lever 3(b) and (c) based on a legislatively determined formula. Each state receives a base amount at the 1962 funding level. The remainder is distributed as follows: 20 percent to the states in equal proportion, 40 percent to the states based on rural population, and the balance of 40% to the states based on farm population.

> Any sums made available by the Congress or further development of cooperative extension work in addition to those referred to in subsection (b) hereof shall be distributed as follows:
>
> > (1) Four per centum of the sum so appropriated for each fiscal year shall be the Secretary of Agriculture for administrative, technical, and other services, and for coordinating the extension work of the Department and the several States, Territories and possessions.

> (2) Of the remainder so appropriated for each fiscal year 20 per centum shall be paid to the several States in equal proportions, 40 per centum shall be paid to the several States in the proportion that the rural population of each bears to the total rural population of the several States as determined by the census, and the balance shall be paid to the several States in the proportion that the farm population of each bears to the total farm population of the several States as determined by the census. *Any appropriation* made hereunder *shall be allotted* in the first and succeeding years *on the basis of the decennial census current at the time such appropriation is first made*, and as to any increase, on the basis of decennial census current at the time such increase is first appropriated.

7 U.S.C. 343(c) (emphasis added).

NIFA continues to employ the same process it has used for decades to calculate distributions under Smith-Lever 3(b) and (c). Historically, the process began with NIFA determining the amount to keep for administrative costs. The remainder of funds were available for the program formula distributions to states according to the census information available at the time the amounts were first appropriated. Once that process was completed, those amounts set-aside for NIFA Federal administration and provided to each 1862 land-grant institution and established a distribution base. The next fiscal year, NIFA started the calculation by comparing the appropriation for the current fiscal year to the previous fiscal year and determining the change – increase or decrease – in the total program appropriation. NIFA then multiplied that appropriation amount change by the Federal administration rate and adjusted the prior year Federal administration amount and state distributions to establish the current year base. The descriptions for the mathematical calculations for Federal administration and payments to states distributions are shown below.

Mathematical Calculation of the Federal Administration Amount, Year to Year								
X		20PY (previous year) Enacted	Total appropriation for Smith-Lever 3(b) and (c)					
Y		20CY (current year) Enacted						
Y-X		Decrease						
4%		Federal Admin. Rate applied to difference from base						
=4%*(Y-X)		Change in Fed. Admin. Applied to Base Fed. Admin. Amount						
A		20PY (previous year) FA (federal admin)						
=4%*(Y-X)		Change in Fed. Admin. Applied to Base Fed. Admin. Amount						
=A+Change		20CY (current year) FA (federal admin)						

Program (Payments to States) Formula Calculation Overview

Prior to the 3b &3c Smith Lever formula calculation, funds are removed from the overall Smith Lever appropriation for the University of the District of Columbia and Special Needs (projects; non-formula Capacity) portions of the program in the following manner:

- University of the District of Columbia (UDC) is allocated its previous fiscal year appropriation plus an additional $7,800
- The Special Needs Formula (SNF) and the Special Needs Project (SNP) are both allocated their previous fiscal year appropriations

Funds are then allocated by allotting $100,000 to each eligible institution located in an Insular Area (American Samoa, Puerto Rico, Guam, Micronesia, Northern Mariana Islands, and the US Virgin Islands). Remaining funds are then allotted based on the previous fiscal year appropriation. If these remaining funds are in excess or deficit of the previous fiscal year appropriation, they are added or subtracted in the following manner:

- 20% of funds allotted in equal proportions to eligible institutions
- 40% of funds allotted to eligible institutions in proportion to the rural population within the state in which the institution resides
- 40% of funds allotted to eligible institutions in proportion to the farm population within the state in which the institution resides

This process served two purposes. First, it enabled the agency to quickly and easily calculate changes to formula distributions once Congress appropriated amounts for the program. Second, and more importantly, it established an accumulating base that adheres to the formula requirement that any increase/decrease be subject to the decennial census current at the time an increase/decrease is first appropriated. This accumulating base maintains the integrity of the application of then current decennial census data as older census data is not simply deleted (e.g., 1970 and 1980 census data continue to apply to their respective increases within the accumulating base).

NIFA's interpretation of the formula and its process for calculating Capacity grant distributions was readily available and known by Capacity grant fund stakeholders. Indeed, this process was memorialized as far back as 1977. ("Hence, it must be concluded that allotments to States of yearly increases in Smith-Lever funds in the future are required to be based on the most recent data available from either the decennial census or the mid-decade census." William J. Stokes, Director Research and Operations Division, to Donald F. Joseph, Chief, Extension Service, July 28, 1977.)

This methodology was apparent to all stakeholders. NIFA utilized the methodology when calculating amounts under the formulas for allocation to States, and those amounts are relayed to the states annually. Congress was aware of the methodology NIFA employed for distributing funds under Smith-Lever and even went so far as to note it when amending the underlying legislation for formulas for 1890 Institutions. The 1862 and 1890 Institutions were aware of the methodology based on legislative history of the formulas and the yearly allocations for states based on the formulas. Although the statutory formulas and their implementation is complex, all

of the stakeholder annually engage in a coordinated routine based on past practice and calculations, and incorporate current changes to statutes, appropriated amounts, and census data.

In fact, Congress went so far as to revise other statutory formula to mimic the formula interpretation and calculations under Smith-Lever. Specifically, the methodology for Smith-Lever was in stark contrast with the process used to calculate allocations under sections 1444 and 1445 of NARETPA. For those programs, the Office of the General Counsel (OGC) noted "there would be no accumulating base for each institution based on incremental increases to which the decennial census current at the time the increase was first appropriated would apply." See Kenneth E. Cohen, Assistant General Counsel, to Charles W. Laughlin, Administrator, CSREES, January 21, 2000 ("2000 Memo") at 11. However, sections 1431(3) and 1432(a)(2) of the Agriculture and Food Act of 1981, Pub. L. No. 97-98, amended both sections 1444 and 1445, respectively, to insert "current at the time each such additional sum is first appropriated" following "the last preceding decennial census." As stated by the Senate, "this amendment ties the formula for allocation of funds applicable to amounts appropriated in excess of the amount appropriated for this program in fiscal year 1978 ... to the census data that is current at the time each additional sum is first appropriated." S. Rep. No. 97-126, at 197 (1981) (referring to research language; contains similar description of extension amendment), reprinted in 1981 U.S.C.C.A.N. 1965, 2161. OGC specifically noted that "[t]his amendment conformed the methods of 1890 formula allocation to that for the 1862 land-grant institutions under the Smith-Lever and Hatch Acts, allowing for the accumulation of a base for each institution based on each increase/decrease of funding to be allocated based on the decennial census current when the increase was first appropriated." 2000 Memo at 12. After the amendments to 1444 and 1445, NIFA continued to utilize this historical methodology when Central State University was designated as an 1890 Institution by the Agricultural Act of 2014.

NIFA's historical interpretation and implementation of the statutory formula is legal, logical, defensible, and deserves deference. As an analog, Congress and the courts have long recognized that an agency entrusted with implementing a federal statute is authorized to interpret the statute's ambiguous terms to fill any gaps left by Congress. See Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843-45 (1984); see also Food & Drug Admin. v. Brown & Williamson, 529 U.S. 120, 159 (2000) ("Deference . . . to an agency's construction of a statute that it administers is premised on the theory that a statute's ambiguity constitutes an implicit delegation from Congress to the agency to fill in the statutory gaps") (citing Chevron, 467 U.S. at 844). Under this basic tenet, "Congress is well aware that the ambiguities it chooses to produce in a statute will be resolved by the implementing agency." AT&T Corp. v. Iowa Util. Bd., 525 U.S. 366, 397 (1999). Thus, "[u]nder the familiar Chevron framework, [courts] defer to an agency's reasonable interpretation of a statute it is charged with administering." Amazing Spaces, Inc. v. Metro Mini Storage, 608 F.3d 225, 238 n.11 (5th Cir. 2010) (quoting Cuomo v. Clearing House Ass'n, 129 S. Ct. 2710, 2715 (2009)). As the agency charged with administration of capacity funds, NIFA has authority to interpret and implement the statute, including any ambiguities. Given this deference and NIFA's longstanding interpretation of the formula, there is no Anti-deficiency Act violation from NIFA's application of its interpretation in year 2015 or prior.

Chevron reflects the Court's recognition that an agency's administration of any statute often entails the interpretation of ambiguous statutory provisions. Chevron "established a

'presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows.' " National Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 982 (2005) (quoting Smiley v. Citibank (S.D.), N.A., 517 U.S. 735, 740-741 (1996)).

Agency interpretations are not static, however. "An initial agency interpretation is not instantly carved in stone." Chevron at 863. Rather, "in the context of implementing policy decisions in a technical and complex arena … the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis." Id. at 863-64; Rust v. Sullivan, 500 U.S. 173, 186 (1991).

Changing circumstances may necessitate an agency revising its statutory interpretation. Rust at 186-187 (citing Motor Vehicle Mfrs. Assoc. of United States, Inc. v. State Farm Mut. Auto. Ins. Cos., 463 U.S. 29, 42 (1983)). This is the situation experienced now as a result of the OIG audit. USDA has consistently applied its interpretation of the statutory formula for allocating funds under the capacity formula. As noted previously, this is a complex area. Indeed, even after a 3 year audit, OIG was unable to develop one process that correctly applied all of the various statutory overlays that govern capacity funding. Under the OIG developed methodology some state allocations would fail to meet the mandated minimums and would require further deviation from the statutory formulas and secondary allocations to ensure each institution received the required $1 million minimum allocation. Despite that failure, OIG has identified areas that NIFA agrees may improve the application of capacity formulae by increasing transparency and reproducibility. Accordingly, NIFA believes that eliminating the accumulating base methodology will better reflect the Nation's current demographics, and it plans to do so starting in fiscal year 2021 and utilizing the 2020 census data.

Recommendation 7

For years where appropriations include additional allocation requirements, develop and implement written procedures to assure each institution receives no less than the established minimum.

Agency Response:

NIFA concurs with this recommendation. As OIG references in its footnote (footnote 11, page 7), in FY 2015, Pub. L. No. 113-235, 128 Stat. 2139 – 2140 (titled, Consolidated and Further Continuing Appropriations Act, 2015, and enacted Dec. 16, 2014) required that every 1890 institution participating in the Evans-Allen and 1890 Extension programs receive at least $1,000,000 from each program. This requirement has been included in each appropriations bill since FY 2015. As part of NIFA's efforts to automate the allocation of funds for its capacity grant programs, including the Evans-Allen and 1890 Extension programs, NIFA is developing consistent policies and implementing them with allocation coding that is flexible enough to accommodate these types of annual requirements, as well as any other changes to the legislative formulas that may be made through farm bills. Automation will reduce the potential for allocation errors, while accompanying policies will ensure NIFA staff verify allocations meet all legislative requirements on an annual basis.

NIFA's allocation methodology includes an algorithm built into the formula calculations that assures each institution receives no less than the established legislatively mandated minimums. The new methodology would require further secondary allocation calculations to ensure each institution receives the required minimums. Any institutions that fall below the mandated minimums will be adjusted upward by proportional reductions on institutions that receive above the mandated minimums.

NIFA will develop a GPPT outlining the process for reviewing appropriation language for additional allocation requirements and the process for ensuring they are met. The GPPT will outline the process with the current calculation methodology to ensure appropriation minimums are met by December 31, 2019. In addition, NIFA will develop, document, and build similar algorithm into the OIG alternative methodology in ezFedGrants systems to ensure the established minimums are met. NIFA will add that procedure to the GPPT by September 2020.

Finding 2: NIFA Needs the Ability to Adjust EFNEP Allocations Based on Recent Poverty Data

Recommendation 8

Perform an analysis and make a recommendation on whether to submit a legislative proposal to revise the EFNEP's statutory formula that would allow the use of the most recent decennial Census poverty data to calculate its distribution of funds to States. Also, take the actions needed to implement the decision made on the recommendation.

Agency Response:

NIFA generally concurs with this recommendation. NIFA will complete an analysis for review by USDA policy officials. The initial analysis of this issue will be completed by December 31, 2019. The results of the analysis and any subsequent recommendation by NIFA officials will be forwarded to the Department by June 30, 2020.

Until legislation is changed NIFA will continue to allocate funds based on the fiscal year 1981 appropriation baseline for 1862 Land-Grant Institutions ($54,017,000). Funds in excess of the 1981 baseline are allocated in the following manner:

- 4% of funds above the 1981 baseline allotted to administrative expenses
- $100,000 allotted to each 1862 Land-Grant Institution (including the University of the District of Columbia) and 1890 Land-Grant Institution

If the appropriated amount exceeds levels appropriated for EFNEP in FY 2007 ($63,197,160), funds will be further allocated in the following manner:

- 85% of funds above the FY 2007 appropriation allotted to each 1862 Land-Grant Institutions in proportion to the population living at or below 125 percent of the poverty level within the state in which the institution resides compared to the sum of the

population living at or below 125 percent of the poverty level for all eligible states with 1862 Land-Grant Institutions

- 15% of funds above the FY 2007 appropriation allotted to the 1890 Land-Grant Institutions in proportion to the population living at or below 125 percent of the poverty level within the state in which the institution resides compared to the sum of the population living at or below 125 percent of the poverty level for all eligible states with 1890 Land-Grant Institutions

Recommendation 9

Develop and implement a policy to periodically review funding calculation formulas for individual capacity grant programs, including EFNEP, to determine whether their formulas remain valid and continue to meet the intent of the programs.

Agency Response:

NIFA concurs with this recommendation. Beginning October 1, 2020, NIFA will develop and implement a GPPT that holds staff responsible for annually reviewing the validity of funding calculation formulas for individual capacity grant programs, including EFNEP, as compared with legislative requirements. This GPPT will describe NIFA's policies and procedures for adjusting payments to States/institutions receiving capacity grant funds, should that be necessary and within the bounds of the statutory formulas. In addition to validating the formula calculations, these annual reviews will provide an opportunity for staff to identify capacity grant programs that have changes to overall funding levels or allocations that could significantly impact the audiences served. Where a program is identified as having such a change, NIFA's GPPT will require that staff further assess the program to determine whether the formula continues to meet the intent of that program. NIFA will communicate with stakeholders regarding changes to formulas or assessments of particular capacity grant programs through Requests for Applications, webinars, conferences, and the NIFA Policy Guide.

The preliminary GPPT detailing the annual review completed on the individual capacity grant program formulas will be completed by February 2020. The additional assessment on whether the formula continues to meet the intent of the programs will be added to the annual review GPPT by October 2020. The annual assessments will be noted in the RFA's starting in July 2020 for FY 2021 funding, the annual reviews will be added to the Policy Guide after the GPPT is finalized in October 2020.

However, as noted above in responses to other findings and recommendations, these statutory formulas are set by Congress. As evidence of Congress' continuing oversight of the distribution of these funds, section 7116 of the 2018 Farm Bill it required the Secretary to submit an annual report by September 30 each year on the allocation of these funds to 1862 and 1890 institutions under the Smith-Lever Act, Hatch Act, and sections 1444 and 1445 of NARETPA, including the State matching contributions for these funds. These reports will assist Congress in determining whether the statutory formulas "remain valid and continue to meet the intent of the programs" as recommended by OIG.

Finding 3: NIFA Needs to Ensure that States are Cognizant of their Authority to Allocate EFNEP Funding to Both 1862 and 1890 Institutions

Recommendation 10

Conduct a review of internal and external guidance to determine whether States conform to applicable laws; where warranted, revise and issue updated guidance to States and institutions that ensures the States are cognizant of their authority to allocate EFNEP funding between 1862 institutions and 1890 institutions.

Agency Response:

NIFA concurs with this recommendation. The process that drives funding allocations for programs like McIntire-Stennis are prescribed by the authorizing legislation. No such language currently exists for EFNEP.

NIFA will explore whether there are internal or external guidance and applicable laws and if warranted, will revise and update guidance to States and institutions to ensure that EFNEP allocations are appropriately allocated between 1862 and 1890 institutions.NIFA will review EFNEP funding legislation and consult OGC to determine the appropriate guidance to issue States on their authority to allocate EFNEP funds to eligible institutions within the state. This review and determination will be completed by February 2020. Once a determination is made on an allowable State entity to designate the allocation of EFNEP funds within the state, guidance will be provided in the RFA, the Policy Guide, and through additional outreach to the institutions beginning in October 2020.

Recommendation 11

For parts of the formula that require State funding allocations, routinely require and maintain documentation from States designating EFNEP funding allocations when two or more eligible institutions are located in the same State.

Agency Response:

NIFA concurs with this recommendation. For EFNEP payments, for States that have two or more eligible institutions located in the same State, NIFA will require and maintain electronic documentation from these States designating EFNEP funding allocations by institution. Routinely (5year cycle) thereafter, NIFA will request that these States validate the funding levels to be allocated to each eligible institution. NIFA will develop a draft GPPT for this process dependent on the results of the review and determination made in Recommendation 10, by March 30, 2020. NIFA will implement the policies and processes to adjust for changes requested by the States prior to making FY 2021 awards.

United States Department of Agriculture

Office of the General Counsel

Washington, D.C. 20250-1400

JAN 21 2000

MEMORANDUM FOR CHARLES W. LAUGHLIN
ADMINISTRATOR
COOPERATIVE STATE RESEARCH, EDUCATION,
AND EXTENSION SERVICE

FROM: Kenneth E. Cohen
Assistant General Counsel
General Law Division

SUBJECT: Legal Opinion Regarding the Designation of West Virginia State College as an Eligible Institution for Receipt of 1890 Research and Extension Formula Funds

This is in response to your December 10, 1999, memorandum in which you ask several questions regarding the status of West Virginia State College. Your questions are prompted by the fact that the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, Pub. L. No. 106-78, contained two provisions with respect to West Virginia State College ("WVSC"):

> payments for cooperative extension work by the colleges receiving the benefits of the Second Morrill Act (7 U.S.C. 321-326 and 328) and Tuskegee University, $26,843,000, of which $1,000,000 shall be made available to West Virginia State College in Institute, West Virginia, which for fiscal year 2000 and thereafter shall be designated as *an eligible institution under section 1444 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977* (7 U.S.C. 3221); . . . .

"Extension Activities" account, 113 Stat. 1141 (emphasis added).

> $30,676,000 for payments to the 1890 land-grant colleges, including Tuskegee University (7 U.S.C. 3222), of which $1,000,000 shall be made available to West Virginia State College in Institute, West Virginia, which for fiscal year 2000 and thereafter shall be designated as *an eligible institution under section 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977* (7 U.S.C. 3222); . . . .

"Research and Education Activities" account, 113 Stat. 1140 (emphasis added).

Senator Byrd of West Virginia inserted an amendment during the floor debate on the Senate agriculture appropriations bill to add this language. Senator Byrd explained the purpose of his amendment was to reinstate the prior land-grant status held by WVSC under the Second Morrill Act until repealed by the State of West Virginia in 1957. But, as Senator Byrd explained, his purpose was not to establish WVSC as an 1890 college for all programs:

> I have authored an amendment that would provide $2 million in additional funds for 1890 Institution entitlements to be used for base line funding for [WVSC]. *This amendment does not grant full 1890 land-grant funding privileges to State College, but provides a $2 million entitlement.* The amendment does not cut into the current 1890 entitlement accounts. It adds additional funding with an offset from the National Research Initiative account.

145 Cong. Rec. S10,199 (daily ed. August 4, 1999) (emphasis added).

"The 'strong presumption' that the plain language of the statute expresses congressional intent is rebutted only in 'rare and exceptional circumstances,' when a contrary legislative intent is clearly expressed." Ardestani v. I.N.S., 502 U.S. 129, 135-36 (1991). The appropriations language quoted above does not use the phraseology, "established [or designated, or eligible to receive funds,] under the Act of August 30, 1890 [a.k.a, the Second Morrill Act]," that is used to refer to those institutions that have full benefits as an 1890 land-grant college or university, nor does the language add WVSC as a tag-along beneficiary of all 1890 land-grant programs as is done in almost all cases with Tuskegee University. Instead, it is clear that the emphasized language in the above-quoted appropriations line items establishes WVSC as an eligible institution solely under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 ("NARETPA"), as amended (7 U.S.C. 3221 and 3222).

The emphasized language in Senator Byrd's statement as to the purpose of his amendment is consistent with the plain language; the amendment was intended only to provide WVSC access to the entitlements available to 1890 colleges and universities and not to the full range of benefits that are available to an institution as a result of its designation as an eligible institution under the Act of August 30, 1890 ("the Second Morrill Act"). Sections 1444 and 1445 of NARETPA establish formula distribution of funds to the 1890 institutions that may be construed as entitlements, in some sense, because not only do these sections simply authorize appropriations of funds, but they also purportedly mandate an appropriation of funds to the 1890s each fiscal year in an amount equal to a specified fixed percentage of the funds provided in that fiscal year to the 1862 land-grant institutions under the Hatch Act of 1887 and the Smith-Lever Act.

Thus, given the plain language of the statute, and Senator Byrd's statement regarding entitlements, I conclude that the amendment does provide, and was intended only to provide, WVSC with a designation as an eligible institution under sections 1444 and 1445. Further, the phrase "fiscal year 2000 and thereafter" is used in the statutory language as a predicate to the designations under 1444 and 1445. "Thereafter" is a word of futurity that makes permanent law provisions in an appropriation act that would otherwise expire at the end of a fiscal year. See To

the Administrator, Housing and Home Finance Agency, 36 Comp. Gen. 434 (1956). Accordingly, these designations are effective prospectively for future fiscal years.

Having set forth these conclusions about the statute as a preliminary matter, I now turn to the questions posed about these statutory provisions in your December 10, 1999, memorandum.

Institution Status

> Is WVSC considered an 1890 land-grant institution? If not, is its eligibility for funding under sections 1444 and 1445 of NARETPA for cooperative extension work and agricultural research similar to that of Tuskegee University? In other words, to be eligible for any program that is targeted for the 1890 land-grant institutions, either the authorizing legislation or appropriation language would have to state: ". . . . 1890 land-grant institutions, including Tuskegee University or West Virginia State College"?

As stated above, WVSC is not considered to be an 1890 land-grant institution. It also is not precisely similar to Tuskegee University because, unlike Tuskegee, it is not a tag-along institution added to the statutory language for virtually every program for which an institution established, designated, or eligible for benefits under the "Act of August 30, 1890" or the "Second Morrill Act" is made eligible through reference to those Acts. Instead, since the statutory language designates WVSC as an eligible institution under sections 1444 and 1445, WVSC, in addition to being specifically eligible for the research and extension formula funds, would be eligible for any other program where eligibility is defined by reference to "eligible institutions under sections 1444 or 1445" or similar language that is a reference for those provisions of NARETPA.

For example, section 1404(16) of NARETPA, as amended (7 U.S.C. 3103(16)), includes in the definition of "State cooperative institutions" "institutions . . . designated by-- . . . (B) the Act of August 30, 1890 (7 U.S.C. 321 et seq.), commonly known as the Second Morrill Act, including Tuskegee University; . . ." This language does not include WVSC. However, the same definition also includes "institutions . . . designated by--. . . (F) subtitles E, G, L, and M of this title." Subtitle G includes sections 1444 and 1445, and therefore, by virtue of reference to those provisions, WVSC does fall within the definition of a "state cooperative institution."

Matching Requirements

> Is WVSC subject to the matching requirements of section 1449 of NARETPA?

No. The matching requirements of section 1449 of NARETPA (7 U.S.C. 3222d) are applicable to "eligible institutions" (7 U.S.C. 3222d(c)), which are defined as "a college eligible to receive funds under the Act of August 30, 1890 . . . , including Tuskegee University" (7 U.S.C. 3222d(a)(1). As explained above, this language does not include WVSC.

Plan of Work Requirements

> Since section 226 of the Agricultural Research, Extension, and Education Reform Act of 1998 ("AREERA"), Pub. L. No. 105-185, amended sections 1444 and 1445 of NARETPA to require new plan of work reporting requirements, should the Cooperative State Research, Education, and Extension Service ("CSREES") assume that the same plan of work reporting requirements apply to WVSC?

Yes. All provisions of sections 1444 and 1445 apply to WVSC in the same manner as they apply to the 1890 land-grant institutions and Tuskegee.

Stakeholder Input Requirements

> Is WVSC subject to the stakeholder input requirements promulgated by 7 CFR 3418?

No. The stakeholder input regulations at 7 CFR part 3418 implement section 102(c) of AREERA which require "each 1862 Institution, 1890 Institution, and 1994 Institution" to establish a stakeholder input process. Section 2(2) of AREERA defined an 1890 Institution for purposes of that Act as "a college or university eligible to receive funds under the Act of August 30, 1890, . . . including Tuskegee University." For the reasons stated above, this language does not include WVSC. However, as was done for other outlier institutions receiving formula funds, CSREES could by rule (i.e., amendment of the soon to be published 7 CFR part 3418) apply this requirement to WVSC for the reasons stated in the preamble to the proposed 7 CFR part 3418. See 64 FR 18,534 (April 14, 1999); Kenneth E. Cohen, Assistant General Counsel, to Colien Hefferan, Acting Administrator, CSREES, October 9, 1998 at fn. 5.

Merit Review Requirements

> Is WVSC subject to the merit review requirements in section 103(e) of AREERA?

No. As with the stakeholder input requirement, the merit review requirement is applicable to an "1890 Institution" which, as defined in AREERA, does not include WVSC.

Eligibility for Other Programs

> Is WVSC eligible for funding under section 1417(b) of the NARETPA for the 1890 Institution Teaching and Research Capacity Building Grants Program and under section 1447 of NARETPA for the 1890 Facilities Grants Program? If not, to be eligible would the appropriate sections of either the authorizing legislation or the appropriation language have to be amended to state: "1890 land-grant institutions, including Tuskegee University and WVSC?"

Eligibility for the 1890 Facilities Grants Program is limited to "institutions eligible to receive funds under the Act of August 30, 1890, including Tuskegee University." Section 1447(a) of NARETPA, as amended (7 U.S.C. 3222b). Hence, WVSC is not eligible for 1890 Facilities Grants. The easiest way to make it eligible would be to add the words "and West Virginia State College" after "Tuskegee University," either alone in the appropriations language, or to section 1447(a) which also would require a corresponding amendment to the appropriations language for this program. See "Extension Activities" account, Pub. L. No. 106-78, 113 Stat. 1141.

The 1890 Institution Teaching and Research Capacity Building Grants Program ("Capacity Grants Program") presents a slightly different posture, but at this time WVSC is ineligible for that program. The authorizing legislation for the Capacity Grants Program in section 1417(b)(4) of NARETPA, as amended (7 U.S.C. 3152(b)(4)) authorizes grants "to design and implement food and agricultural programs to build teaching and research capacity at colleges and universities having significant minority enrollments." If WVSC has a significant minority enrollment, it would fall within the range of eligibility under the authorizing language.[1]

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[1]Section 1417(b), as amended (7 U.S.C. 3152(b)), authorizes the Secretary to make grants generally to 1) "land-grant colleges and universities," 2) "colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences," and 3) "to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences." Although section 1417(b)(4), the specific paragraph cited as authority for the Capacity Grants Program, could be viewed as a limitation of this grant authority to institutions only in the second category of eligibility, it is possible although unlikely that grants could be made to the first and second category of institutions in order to design and implement programs to build teaching and research capacity at *other* institutions having significant minority enrollments, rather than making the grants directly to such institutions themselves.

If not an institution with significant minority enrollment, I must determine whether WVSC potentially could qualify as an eligible recipient under the first and second categories. With respect to the first category of "land-grant college or university," WVSC does not fall within the definition of a "land-grant college or university." Section 1404(10) of NARETPA, as amended (7 U.S.C. 3103(10)) defines "land-grant colleges and universities" to mean "institutions eligible

(continued...)

However, the appropriations language for the program limits eligible recipients to "colleges eligible to receive funds under the Act of August 30, 1890, . . . including Tuskegee University," and thereby excludes WVSC. Further, the Capacity Grants Program regulations at 7 CFR part 3406 limit eligibility to the institutions established under the Second Morrill Act and Tuskegee University. The easiest way to make WVSC eligible would be to add "and West Virginia State College" after "Tuskegee University" in the appropriations language. Such an amendment would supersede the regulatory language, although a corresponding amendment should be made to the regulation as soon as possible after a statutory change in order to avoid confusion.

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[1](...continued)
to receive funds under the [First Morrill Act] *or* the [Second Morrill Act], including Tuskegee University" (emphasis supplied). This implies that an institution designated under either Act could be a land-grant institution for purposes of NARETPA.

While the Office of Legal Counsel ("OLC"), Department of Justice, concluded that West Virginia could designate WVSC as a beneficiary of appropriated funds under the Second Morrill Act, it also concluded that such designation did not make it eligible for programs designed specifically for the 16 existing 1890 land-grant institutions and Tuskegee University. See Walter Dellinger, Assistant Attorney General, to James S. Gilliland, General Counsel, Department of Agriculture, December 23, 1993. One of the reasons cited by OLC in its determination that WVSC did not qualify for the 1890 programs was that Congress explicitly named Tuskegee University -- which is not eligible for Second Morrill Act funding -- as a beneficiary of the 1890 programs. See id. at fn. 17. The NARETPA definition similarly specially includes Tuskegee, and I further note that this definition was adopted in NARETPA along with a number of the 1890-specific programs that OLC found to be established solely for the benefit of the 16 historically black land-grant institutions and Tuskegee. Accordingly, I find that the definition in section 1414(10) was meant to distinguish between the 1862 institutions and the understood group of sixteen 1890 institutions, including Tuskegee, and therefore, WVSC does not fall within the definition of land-grant college or university for purposes of NARETPA, including section 1417.

Accordingly, if WVSC is *not* an institution with significant minority enrollment and is *not* a "land-grant college," then the only way it could otherwise receive funding under section 1417(b)(4) for the purpose of designing and implementing programs to build capacity at *another* institution *having* significant minority enrollment is if it is a college "having a demonstrable capacity to carry out the teaching of food and agricultural sciences." (Further assuming that WVSC qualifies as a "college or university" as that term is defined in section 1404(4) of NARETPA, as amended (7 U.S.C. 3103(4)).

Of course, this point is moot unless, as explained below, the appropriations language is changed.

Formula Calculations

1. For fiscal year 2000, is WVSC eligible for $1,000,000 under section 1444 of NARETPA or for $1,000,000 less the administrative costs of four percent?

2. For fiscal year 2000, is WVSC eligible for $1,000,000 under section 1445 of NARETPA or for $1,000,000 less the administrative costs of three percent or $970,000? Would the Small Business Innovation Research ("SBIR") and Biotechnology Risk Assessment Program ("BRAP") apply to these funds?

Going back to the appropriations statutory language, it provides for extension,"26,843,000, *of which* $1,000,000 shall be made available to [WVSC]," and for research, "$30,676,000 . . ., *of which* $1,000,000 shall be made available to [WVSC]" (emphasis supplied). The plain language makes a specific allocation of $1,000,000 of the lump sum available to WVSC. It is a reservation or earmark of a sum within an appropriation. Only WVSC receives a specific institutional allocation, all others are determined by application of the formulas.

Decisions of the Comptroller General provide no clear rule on whether the simple phrases "shall be available" or "available only" in an earmark establishes a minimum or maximum amount available for the particular purpose of the earmark. See United States General Accounting Office, Principles of Federal Appropriations Law, II:6-7 (2d ed. 1992). Instead, the Comptroller General has applied the following test:

> "It is a general rule of statutory construction that an appropriation for a specific object is available for that object to the exclusion of a more general appropriation and that the exhaustion of a specific appropriation does not authorize charging the excess payment to a more general appropriation. However, whether language making part of a larger appropriation 'available only' for a particular purpose constitutes a maximum limitation on the amount which properly may be used for the particular purpose or whether it merely earmarks the part of the appropriation so as to assure the availability of the smaller sum for the particular purpose would depend on the intent of Congress in using the language."

Earmarking of Funds for the United Nations Children's Fund, 53 Comp. Gen. 695, 696 (1974) (citation omitted). Cf. 13 Op. Off. of Legal Counsel 54 fn. 3 (1989) (citing with approval the general rule).

As discussed above, Senator Byrd's stated purpose in offering the amendment was to provide an entitlement to WVSC and not to cut into the current entitlements for the 1890 institutions. However, we have no indication of any legislative intent with respect to how the entitlement for WVSC would affect the entitlements of the 1890 institutions with respect to deductions for administrative expenses or for other mandatory programs, like the SBIR. This is further

complicated by the fact that, as explained below, the point at which the administrative expenses are allocated in the formulas are different in sections 1444 and 1445.

In a decision to the Library of Congress, the Comptroller General applied the test from 53 Comp. Gen. 695 to the following earmark in a lump sum: "Provided further, That of the total amount appropriated, $9,619,000 is to remain available until expended for acquisition of books, periodicals, newspapers, and all other materials." Comp. Gen. Dec. B-278121, 1997 U.S. Comp. Gen. LEXIS 381. This earmark was $774,000 in excess of the amount that the Library had requested for this purpose, requiring it to reduce its spending on other programs and activities covered in the lump sum of fiscal year money in order to accommodate the earmark. The Library argued that the conference report provided for no reduction in fiscal year money in the amount of $774,000, and therefore had intended the earmark only to be a maximum, and not a minimum and a maximum of expenditure.

The Comptroller General disagreed, finding that the plain language of the earmark was clear providing "no basis to resort to assumptions or inferences drawn from inexplicit statements contained in the conference report." 1997 U.S. Comp. Gen. LEXIS 381 at *4. Citing 53 Comp. Gen. 695, the Comptroller General found that if Congress had intended the earmark to be only a maximum level of expenditure, it would have so stated in the law. While the decision sharply criticizes the use of legislative history and appears at first glance to be inapposite to the test cited in 53 Comp. Gen. 695, in reality it is not, for the extensive legislative history relied upon in 53 Comp. Gen. 695 supported the plain reading of the statute at issue in that decision.

In the case of the appropriation for WVSC, the plain language of the statute makes clear that $1,000,000 is earmarked for WVSC as a minimum. Senator Byrd's statement supports an interpretation that this is a maximum as well, given the fact that it was not intended to cut into the entitlements of the other 1890 institutions and as a budgetary matter the $1,000,000 had been obtained as an offset from the National Research Initiative. Since the three percent for research administrative expenses comes out of the lump sum appropriation, the addition of $1,000,000 to the lump sum in actuality would result in a reduction of entitlements to the current 1890 institutions, in a manner as happened in the Library of Congress situation discussed above. However, unlike in that case, Senator Byrd's statement does make explicit that the amendment was not intended to reduce the funds available to the current 1890 institutions. Further, given the fact that diverse statutory formulas make it difficult to apply easily the $1,000,000 earmark, the more plausible harmonization *for fiscal year 2000* of the statutory designation of WVSC as an eligible recipient for 1890 formula funds with the statutory formulas in sections 1444 and 1445 is that the $1,000,000 is to pass to WVSC as a matter separate and apart from the statutory formulas. (See the related discussion below under questions 3 and 4.)

Accordingly, the funds for the 1890 institutions and Tuskegee University should be allocated pursuant to the formulas without including the $1,000,000 for WVSC; in short, for FY 2000, subtract $1,000,000 from the lump sums and apply the formulas to the balances. Since the $1,000,000 is to be allocated separate and apart from the formulas, then it is not subject to the formulas, including the allocations for administrative expenses, and therefore no deductions may be made from the $1,000,000 for administrative expenses.

On the other hand, there is no indication either in the statute or the legislative history that the $1,000,000 for WVSC should be exempt from generally applicable assessments provided for under other law, such as for the SBIR Program and BRAP. The set-aside requirements of the SBIR Program, 15 U.S.C. 638, and the BRAP, 7 U.S.C. 5921, apply to later-created programs. Therefore, these set-aside requirements apply to the $1,000,000 allocated to WVSC for research for the reasons discussed below.

SBIR Program

SBIR Program assessments are based on a Federal agency's extramural budget for research or research and development. Congress specifically addressed USDA SBIR funding in Section 630 of the 1987 Agriculture Appropriation Act, Pub. L. No. 99-591, providing that:

> All funds appropriated for this fiscal year and all funds appropriated hereafter by this or any other Act that are determined to be part of the "extramural budget" of the Department of Agriculture for any fiscal year for purposes of meeting the requirements of section 9 of the Small Business Act (15 U.S.C. 638), as amended by the Small Business Innovation Development Act of 1982, Public Law 97-219, shall be available for contracts, grants or cooperative agreements with small business concerns for any purpose in furtherance of the small business innovation research program. Such funds may be transferred for such purpose from one appropriation to another or to a single account.

Subjecting "all funds appropriated hereafter" to Section 630 qualifies it as permanent legislation. Matter of: Permanency of Weapon Testing Moratorium Contained in Fiscal Year 1986 Appropriations Act, B-222097, 65 Comp. Gen. 588 (1986). The language "all funds appropriated hereafter by this or any other Act . . ." is broad enough to include subsequent acts, including the FY 2000 agriculture appropriations act.

Two elements then must be present to subject the WVSC research funds to the SBIR Program set-aside: (1) the funds must be for research or research and development; and (2) the funds must be part of the extramural budget. The first element obviously is met. The extramural budget determination is more complex.

USDA conducts its SBIR Program on a Department-wide basis, individually assessing each agency fund within the extramural budget its share of the Department-wide assessment. Due to the similarity in the definitions of "research" and "research and development" used in 15 U.S.C. 638(e)(5) and in the instructions for completing the National Science Foundation (NSF) Annual Survey of Federal Funds for Research and Development, the Secretary elected to calculate the extramural budget the same for the SBIR Program as under the survey. Accordingly, if amounts provided for the section 1445 research grant program are reported on the NSF survey, then the $1,000,000 provided to WVSC should be reported as part of that amount and is therefore part of the extramural budget subject to the SBIR Program assessment of 2.5 %. 15 U.S.C. § 638(f)(1)(C).

BRAP

BRAP requires the Secretary to "withhold from outlays of the Department of Agriculture for research on biotechnology, as defined and determined by the Secretary, at least one percent of such amount" for BRAP grants. 7 U.S.C. 5921(g)(2). The legislative history of BRAP provides no insight into the meaning of "outlays" or the extent of the statute's applicability.[2] In the absence of additional guidance, the plain meaning of the text suggests that the assessment applies to all "outlays," regardless of under what program or when established. Therefore, any expenditures by WVSC of its $1,000,000 research allocation for biotechnology research would be considered "outlays" for BRAP purposes and subject to the one percent (1%) withholding. Non-biotechnology research expenditures by WVSC would not be subject to the BRAP assessment.

3. For FY 2001, what would WVSC be eligible for if an amount is not specified for section 1444 funds for **cooperative extension** work at WVSC if the funding level remained the same as in FY 2000? Decreased from FY 2000? Increased from FY 2000?

4. For FY 2001, what would WVSC be eligible for if an amount is not specified for section 1445 funds for **agricultural research** if the funding level remained the same as in FY 2000? Decreased from FY 2000? Increased from FY 2000?[3]

On October 28, 1980, this office issued an opinion in response to your predecessor agency's questions regarding how funds were to be allocated among the 1890 institutions pursuant to the formulas set forth in sections 1444 and 1445. William J. Stokes, Assistant General Counsel, to Richard R. Rankin, Associate Deputy Director, Administrative Management, Science and Education Administration (attached). At that time, we opined that sections 1444(b)(1) and 1445(b)(2)(A) established minimum entitlements to each institution of an amount proportionally equal to that received by each institution in FY 1978. For extension, of any funds appropriated in excess of the FY 1978 base, section 1444(b)(2) provided a formula under which 4% was to be used for administration, 20% was to be allotted equally among the institutions, 40 percent was to be allotted among the institutions "in the proportion that the rural population of the State in which each institution is located bears to the total rural population of all the States in which eligible institutions are located, *as determined by the last proceeding decennial census*," and the balance was to be allotted "in the proportion the farm population of the State in which each eligible institution is located bears to the total farm population of all the States in which the

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[2]Section 1668 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101-624, established BRAP.

[3]Answers to these two questions were requested via electronic mail after receipt of your December 10, 1999 memorandum per Philip Carter in order to assist CSREES in preparation of its FY 2001 budget.

eligible institutions are located, *as determined by the last preceding decennial census.*" Section 1444(b)(2) of NARETPA (emphasis supplied). Research had a slightly different twist, as 3% of the total appropriation, including the 1978 base, was tapped for administrative expenses, but the balance of the 97% in excess of the 1978 base was to be allocated in a manner identical to that for extension. Section 1445(b) of NARETPA.

Referring to the decennial census phrase, the agency in 1980 questioned "whether amounts in excess of the established minimum are always to be distributed according to the census information available at the time an excess amount is first appropriated or if the excess amounts are to be distributed *as a whole* in light of the most recent census information available at the time of each years' appropriation" (emphasis added). We concluded that the latter method of distribution was the correct one; in other words, each year the formula was to be applied to the excess funds based on the current census, meaning that the distribution of the whole amount would change upon receipt of new census data. Once the 1980 census data was received, the 1970 census data would not be used for any purpose. In short, there would be no accumulating base for each institution based on incremental increases to which the decennial census current at the time the increase was first appropriated would apply (i.e., 1970 census applying to one pot of money, the 1980 census applying to another, etc.). The attached memorandum provides a numeric example.

The agency did not ask questions about, and we did not address directly, how the 20% for equal distribution would be handled. However, our determination that the formulas would have to be applied anew each fiscal year to the total amount in excess of the 1978 base naturally implies that the 20% amount would be determined anew every year and divided equally among the institutions eligible under sections 1444 and 1445 *during that fiscal year.*

Sections 1431(3) and 1432(a)(2) of the Agriculture and Food Act of 1981, Pub. L. No. 97-98, amended both sections 1444 and 1445, respectively, to insert "current at the time each such additional sum is first appropriated" following "the last preceding decennial census". As stated by the Senate, "this amendment ties the formula for allocation of funds applicable to amounts appropriated in excess of the amount appropriated for this program in fiscal year 1978 . . . to the census data that is current at the time each additional sum is first appropriated." S. Rep. No. 97-126, at 197 (1981) (referring to research language; contains similar description of extension amendment), reprinted in 1981 U.S.C.C.A.N. 1965, 2161. This amendment conformed the methods of 1890 formula allocation to that for the 1862 land-grant institutions under the Smith-Lever and Hatch Acts, allowing for the accumulation of a base for each institution based on each increase of funding to be allocated based on the decennial census current when the increase was first appropriated.

The 1981 amendment did not affect, however, the implication in our 1980 opinion that the statutory requirement for 20% to be divided equally was to be applied to the entire amount in excess of the FY 1978 base *each* fiscal year. The 20% is in no way tied to any census, nor is there any implication in the statute that it is to be accumulated:

> (2) any funds appropriated annually under this section in excess of an amount equal to the amount appropriated under section 343(d) of this title, for the fiscal year ending September 30, 1978, for eligible institutions, shall be distributed as follows:
>
> (A) A sum equal to 4 per centum of the total amount appropriated each fiscal year under this section shall be allotted to the Extension Service of the Department of Agriculture for administrative, technical, and other services, and for coordinating the extension work of the Department of Agriculture and the several States.
>
> (B) Of the remainder, **20 per centum shall be allotted among the eligible institutions in equal proportions;** 40 per centum shall be allotted among the eligible institutions in the proportion that the rural population of the State in which each eligible institution is located bears to the total rural population of all the States in which eligible institutions are located, *as determined by the last preceding decennial census current at the time each such additional sum is first appropriated*; and the balance shall be allotted among the eligible institutions in the proportion that the farm population of the State in which each eligible institution is located bears to the total farm population of all the States in which the eligible institutions are located, *as determined by the last preceding decennial census current at the time each such additional sum is first appropriated.*

Section 1444(b)(2), as amended (7 U.S.C. 3221(b)(2)) (extension formula, language for research is almost identical) (emphasis supplied).

As I have tried to illustrate graphically above, the phrase, "as determined by the last preceding decennial census current at the time each such additional sum is first appropriated" (in italics) does not modify the statutory language providing for the 20% to be allocated equally (in bold). For extension, after subtracting the 1978 base from the annual appropriated amount, and for research, after subtracting the 1978 base from 97% of the annual appropriated amount (i.e., less 3% for administration), 20% of the balance must be split equally among the institutions in that fiscal year.

The addition of WVSC to the list of eligible institutions for the 1890 formula programs means that, in the absence of any statutory language to the contrary, for FY 2001 the 20% piece of the pie must be divided among 18 institutions instead of 17.[4] Thus, for example, based on our rough

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[4]Assuming, of course, that Congress does not provide a specific allocation to WVSC in the appropriations statutory language as it did for FY 2000. The FY 2000 statutory language and

(continued...)

calculations with data provided to us in August by Don Prindle of CSREES, out of the 20% pot, WVSC would have been entitled to $187,592 for extension and $172,477 for research in FY 1999. For the rural and farm population portions of the formula allocation, hypothetically assuming WVSC would have been eligible for 1890 formula funds in FY 1999 for the first time, based on the FY 1998-1999 increase in the 1890 formula appropriations and lacking any base, for the rural and farm population portions of the allocation WVSC would have received an amount less than $59,099 in research funds and less than $23,790 in extension funds.[5]

As for FY 2001, WVSC would be entitled at a minimum to 1/18 of the 20% allocation. It also would be eligible to receive its share of the farm and rural population allocations, based on the 1990 census, for any increase in 1890 formula funds from FY 2000-2001. Although WVSC received a specific appropriation of $1,000,000 for FY 2000, the statutory language designates it as an eligible recipient for FY 2000 and thereafter.[6] Accordingly, while not entitled to its farm and rural population share of the general appropriation increase from FY 1999-2000, it would be eligible to receive that portion as part of its base for FY 2001, provided it does not again receive a more specific appropriation. Therefore, if funding for FY 2001 is level with that of FY 2000, WVSC would receive funds for rural and farm populations in an amount equal to what it would have received in FY 2000 but for the $1,000,000 appropriation. If the amount of appropriations in FY 2001, or any later year, is less than that provided in FY 2000, then WVSC will have lost its "increase" basis and thus would receive no portion of that fiscal year's rural and farm population allocation.[7]

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[4](...continued)
legislative history are not sufficient legal authority to establish a $1,000,000 base prospectively for WVSC research and extension formula funds.

[5]This is a ballpark high figure presented solely for purposes of illustration because there are some additional variables that would reduce this amount.

[6]Technically speaking, the plain language of the statute could be read to provide WVSC with 1/18 of the 20% for FY 2000 as well. I conclude that the language here does not have that operative effect for two reasons. First, a specific appropriation for a particular object generally is available for that object to the exclusion of a general appropriation also available for that object, and this general rule applies to earmarks, such as the $1,000,000 for WVSC, within a general appropriation with perhaps more vigor. See 20 Comp. Gen. 739 (1941). Second, as explained above under question #2, whether or not this type of earmark constitutes a maximum limitation or a reserved minimum depends upon the intent of Congress, and the intent of Congress in this instance for FY 2000 was not to detriment the allocations to the current 1890 institutions and Tuskegee University.

[7]This conclusion assumes that this would be the result applied to all institutions in the event the funding in any year is decreased from the prior year.

Administrative Requirements

> Would all the administrative requirements under sections 1444 and 1445 of NARETPA apply to these funds, including the carryover limitations of 20 percent for section 1444 funds and five percent for section 1445 funds?

Yes. See the answer under "Plan of Work Requirements" above.

If you have any further questions, please contact Benny Young on 720-4076.

Attachment

United States Department of Agriculture

Office of General Counsel

Washington, D.C. 20250

IN REPLY REFER TO: MMANDELKORN: 447-6046

SUBJECT: "1890" Land-Grant Colleges and Tuskegee Institute Funding

TO: Richard R. Rankin
Associate Deputy Director
Administrative Management
Science and Education Administration

OCT 28 1980

This replies to your memorandum of July 1, 1980, requesting our opinion on a number of questions concerning the allocation of funds for "1890" Land-Grant Colleges and Tuskegee Institute. Your questions and our comments are set out in sequence below.

Section 1444

1. "In the event that (the) 1980 census data on rural and farm population becomes available for use in distributing the next fiscal year appropriations, would we:

   (1) Distribute the increase only on the basis of the decennial census current at the time such increase is first appropriated?

   (2) Use the 1980 census data to redistribute all increases appropriated beginning with the fiscal year ending September 30, 1979?

Section 1444 of Public Law 95-113 creates a minimum or floor which each eligible institution would receive under this section. This minimum is equivalent to the amount made available for the fiscal year ending September 30, 1978, under Section 3(d) of the Smith-Lever Act. Amounts appropriated in excess of this minimum are to be distributed in accordance with Section 1444(b)(2). It is our understanding that you question whether amounts in excess of the established minimum are always to be distributed according to the census information available at the time an excess amount is first appropriated or if the excess amounts are to be distributed as a whole in light of the most recent census information available at the time of each years' appropriation.

It is clear from the language of this Section that the latter method of distribution is the correct one. This method is best demonstrated through example. Suppose fifteen million

dollars had been appropriated in 1978. If in fiscal year 1979 seventeen million dollars had been appropriated, the excess amount (2 million dollars) would have been distributed using the 1970 decennial census information. If in fiscal year 1980 eighteen million dollars had been appropriated and the 1970 census information was all that was available at the time the appropriation was made, once again the excess amount (3 million dollars) would be distributed using it. However, if in fiscal year 1981 twenty million dollars were appropriated and the 1980 decennial census information was available at the time of this appropriation the entire excess amount (5 million dollars) would be distributed using this new information. The 1970 census information would no longer be used.

Section 1445

(1) Is it the intent of Congress, in section (a), to establish the allocations made in fiscal year 1978 as a base amount such as is provided in section 1444 (b)(1)?

(2) Would increases only be distributed utilizing the decennial census current at the time such increase is first appropriated?

(3) Would we utilize the 1980 census data to redistribute all increases appropriated beginning with the fiscal year ending September 30, 1979?

Section 1445(a) of Public Law 95-113 provides in pertinent part:

> . . . Beginning with the fiscal year ending September 30, 1979, there shall be appropriated under this section for each fiscal year an amount not less than 15 per centum of the total appropriations for such year under section 3 of the Act of March 2, 1887 (24 Stat. 441, as amended; 7 U.S.C. 361c); Provided, That the amount appropriated for fiscal year ending September 30, 1979, shall not be less than the amount made available in the fiscal year ending September 30, 1978, to such eligible institutions under the Act of August 4, 1965 (79 Stat. 431, 7 U.S.C. 450i). . . . (emphasis added)

The above language establishes that an amount equal to 15 percent of the amount appropriated for cooperative research under the Hatch Act is the minimum amount to be appropriated under this section. The underscored language established a minimum amount to be appropriated for FY 1979

under this section. Unlike the base amount established in Section 1444(b)(1), the floor amounts established in Section 1445(a) apply to the total appropriation only and not to the amounts apportioned to each eligible institution. However, in 1978, Section 1445(b) of P.L. 95-113 was amended by Public Law 95-547. It amended 1445(b) to read in pertinent part as follows:

> (b) Beginning with the fiscal year ending September 30, 1979, the funds appropriated in each fiscal year under this section shall be distributed as follows:
>
> "(1) Three per centum shall be available to the Secretary for administration of this section.
>
> "(2) The remainder shall be allotted among the eligible institutions as follows:
>
> "(A) Funds up to the total amount made available to all eligible institutions in the fiscal year ending September 30, 1978, under section 2 of the Act of August 4, 1965 (79 Stat. 431; 7 U.S.C. 450i), shall be allotted among the eligible institutions in the same proportion as funds made available under section 2 of the Act of August 4, 1965, for the fiscal year ending September 30, 1978, are allocated among the eligible institutions.

The amended Section 1445(b)(2)(A) creates a minimum benefit amount for each eligible institution in a similar manner to that provided in Section 1444(b)(1).

In regard to the questions (2) and (3) the 1980 census information, upon its availability, would be applied to the formula of Section 1445(b)(2)(B) to determine the distribution of all funds appropriated in excess of the amount appropriated in fiscal year 1978.

WILLIAM J. STOKES

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Assistant General Counsel
Research and Operations Division

cc: Kelly/Chrono/Mandelkorn
OGC:ROD:MMandelkorn;hlj;10/22/80;EXT:76946;RO-679

DEC 1 0 1999

TO: Kenneth E. Cohen
Assistant General Counsel
Research and Operations Division
Legislation, Litigation, Research,
and Operations
Office of the General Counsel

FROM: Charles W. Laughlin
Administrator

SUBJECT: Request for Legal Opinion

The Cooperative State Research, Education, and Extension Service (CSREES) is seeking clarification of issues regarding funding for West Virginia State College. Public Law 106-78 which made appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2000, provided that $1,000,000 be made available to West Virginia State College as an eligible institution under section 1444 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) for cooperative extension work and that $1,000,000 be made available to West Virginia State College as an eligible institution under section 1445 of NARETPA for agricultural research. Provided below are the issues:

Institution Status

1. Is West Virginia State College considered an 1890 land-grant institution? If not, is its eligibility for funding under sections 1444 and 1445 of NARETPA for cooperative extension work and agricultural research similar to that of Tuskegee University? In other words, to be eligible for any program that is targeted for the 1890 land-grant institutions, either the authorizing legislation or appropriation language would have to state: "....1890 land-grant institutions, including Tuskegee University and West Virginia State College"?

Matching Requirements

1. Is West Virginia State College subject to the matching requirements of section 1449 of NARETPA?

Plan of Work Requirements

1. Since section 226 of AREERA amended sections 1444 and 1445 of NARETPA to require new plan of work reporting requirements, should CSREES assume that the same plan of work reporting requirements apply to West Virginia State College?

Stakeholder Input Requirements

1. Is West Virginia State College subject to the stakeholder input requirements promulgated by 7 CFR 3418?

Merit Review Requirements

1. Is West Virginia State College subject to the merit review requirements in section 103(e) of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA)?

Eligibility for other Programs

1. Is West Virginia State College eligible for funding under section 1417(b) of NARETPA for the 1890 Institution Teaching and Research Capacity Building Grants Program and under section 1447 of NARETPA for the 1890 Facilities Grants Program? If not, to be eligible would the appropriate sections of either the authorizing legislation or the appropriation language have to be amended to state: "...1890 land-grant institutions, including Tuskegee University and West Virginia State College" ?

Formula Calculations

1. For fiscal year 2000, is West Virginia State College eligible for $1,000,000 under section 1444 of NARETPA or for $1,000,000 less the administrative costs of four percent?

2. For fiscal year 2000, is West Virginia State College eligible for $1,000,000 under section 1445 of NARETPA or for $1,000,000 less the administrative costs of three percent or $970,000? Would the Small Business Innovation Research and Biotechnology Risk assessments apply to these funds?

Administrative Requirements

1. Would all the administrative requirements under sections 1444 and 1445 of NARETPA apply to these funds, including the carryover limitations of 20 percent for section 1444 funds and five percent for section 1445 funds?

Questions may be directed to Ellen Danus, Policy Specialist, at 202-401-4325.

CSREES:CRGAM:OEP:PPLS:EDanus:emd:11/22/99
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