

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Professional Counseling DATE: December 16, 2008
Resources, Inc.
Docket No. A-08-70
Decision No. 2213

DECISION

Professional Counseling Resources, Inc. (PCR) appealed the March 10, 2008 decision of the Administration for Children and Families (ACF) disallowing \$387,970.08 charged to PCR's Community-Based Abstinence Education grant for fiscal years 2005 through 2007. The disallowed costs were for the salaries and fringe benefits of PCR's Executive Director and Financial/Human Resources Administrator and for PCR's contract with the Nonprofit Development Institute (NDI). ACF disallowed these costs based on its determination that PCR failed to comply with conflict of interest provisions in the grant terms and conditions.

For the reasons explained below, we uphold the disallowance in full.

Case Background

The following facts appear from the record and are undisputed. PCR is a nonprofit organization based in Wilmington, Delaware that operates four federally funded programs, including a Collaborative Abstinence Program. PCR Br. at 3. Funds to promote abstinence education are authorized by section 1110 of the Social Security Act (42 U.S.C. § 1310). ACF awarded a Community-Based Abstinence Education (CBAE) grant to PCR for a three-year project period beginning September 30, 2005. PCR Ex. 5. PCR submitted a separate application for each budget period. See PCR Ex. 4 (application for 1st budget period); PCR Ex. 1 (applications for 2nd and 3rd budget periods). The approved grant budget included a percentage of the salaries and fringe benefits

of PCR's Executive Director and Financial/Human Resources Administrator.¹ The approved budget also included funds for a contract with NDI. See, e.g., PCR Ex. 4, at 52, 54; compare PCR Ex. 5, at 3 (unnumbered) (award notice dated 9/14/05). PCR entered into three successive one-year contracts with NDI, dated October 1, 2005, October 1, 2006 (amended March 24, 2007), and October 1, 2007. See PCR Ex. 6. Each contract included development of an online coaching center as part of several services to be provided. Id. In December 2007, Calvin Edwards & Company conducted an on-site review of the CBAE grant for ACF. The March 2008 site visit report included a finding that grant funds were used to pay family members who are employees of PCR or NDI. PCR Ex. 7, at 12.

In a March 10, 2008 letter to PCR's Executive Director, Dr. Lulu Mae Nix, ACF stated that PCR "has failed to comply with 45 C.F.R. § 74.42, and item 3 of the SF-424B-Assurances-Non-construction programs, which outline grantees' responsibilities regarding maintaining codes of conduct for performance and prevention of conflicts of interest." PCR Ex. 8. The letter continued:

The following conflict of interest issues were identified during the site visit: Theophilus Nix, your son, is the Chairperson of PCR's Board of Directors; Jacqueline Nix, your daughter-in-law,^[2] is paid with CBAE grant funds as PCR's Financial/Human Resources Administrator; PCR has a CBAE-funded contract with the Nonprofit Development Institute (NDI) where your other son, Reverend Sheldon Nix, is the President and your daughter, Denise Nix Thompson, is an employee of NDI.

Based on these findings, the salary and fringe benefits for you and your daughter-in-law are disallowed. In addition, the costs of the contract with NDI are also disallowed. . . .

Id. at 1. The disallowance covered expenditures for the fiscal year 2005, 2006 and 2007 budget periods. Id. at 2.

¹ PCR's Executive Director is identified in the grant budgets as the "Project Director." See, e.g., PCR Ex. 5, at 52.

² Jacqueline was the wife of Lulu Mae Nix's son Sheldon Nix. See PCR Br. at 5.

The regulation cited in the disallowance letter, 45 C.F.R. § 74.42, is captioned "Codes of conduct" and provides in relevant part as follows:

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. . . . The standards of conduct shall provide for disciplinary actions to be applied to violations of such standards by officers, employees, or agents of the recipients.

The other provision cited in the disallowance letter was included on a standard form submitted with PCR's grant applications. This provision, which we refer to as Assurance 3, states that the applicant-

[w]ill establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

See, e.g., PCR Ex. 4, at 63.

Part 74 of 45 C.F.R. and the assurances in the grant applications were part of the terms and conditions of the grant award.³ Section 74.62(a) of 45 C.F.R. provides:

If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a

³ Part 74 of 45 C.F.R. is applicable to grants to nonprofit organizations such as PCR. See 45 C.F.R. §74.1(a)(1). In addition, ACF notified PCR of the applicability of Part 74 in both the grant announcement and the grant award. See 70 Fed. Reg. 29,318, 29,328 (May 20, 2005); PCR Ex. 5, at 3 (unnumbered).

Federal statute or regulation, an assurance, an application, or a notice of award, the HHS awarding agency may . . . take one or more of the following actions:

* * * * *

- (2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

* * * * *

Analysis

In its response to the appeal, ACF makes several arguments in support of the disallowance. First, ACF argues that PCR failed to comply with section 74.42 and Assurance 3 because PCR did not maintain the type of written standards of conduct required by section 74.42 or establish the type of safeguards required by Assurance 3. Second, ACF argues that conflicts of interest that violated section 74.42 and Assurance 3 existed in relation to NDI as well as within PCR. Third, ACF argues that PCR's violation of the grant terms and conditions regarding conflicts of interest resulted in mismanagement of CBAE grant and PCR's violation of other grant terms and conditions.

As discussed below, we uphold the disallowance based on our conclusion that the existence of conflicts of interest in relation to the NDI contract and within PCR constituted a material failure to comply with section 74.42 and Assurance 3. In reaching that conclusion, we also conclude that the policies on conflicts of interest that PCR had in place were not adequate to meet the requirements of section 74.42 and Assurance 3. We do not reach the question of whether PCR violated other grant terms and conditions as a result of the conflicts of interest. As ACF asserts, and PCR does not dispute, it is not necessary to find that the conflicts of interest adversely impacted the grant in order to uphold the disallowance. ACF Br. at 21, citing Bullock County Health Service, Inc., DAB No. 360, at 3 (1982) ("While the federal requirements pertaining to less-than-arms-length transactions [at 45 C.F.R. Part 74, App. F. Sec. G.38(d)] were certainly meant to prevent individual pecuniary gain, they clearly also have a broader purpose. Underlying the limitations

is the idea that there should be no possibility that decisions made in management of a grant-supported project could be influenced by conflicts of interest and concerns not related to the best interests of that project.")

Below, we first discuss whether there were conflicts of interest in relation to NDI that violated section 74.42 and Assurance 3. We then discuss whether there were conflicts of interest within PCR that violated these grant terms and conditions.

A. Conflicts of interest in relation to NDI

ACF takes the position that PCR failed to comply with section 74.42 and Assurance 3 because PCR Board member Theophilus Nix, PCR Executive Director Lulu Mae Nix, and PCR Finance/Human Resources Administrator Jacqueline Greenidge (referred to in the disallowance letter as Jacqueline Nix) were each related to both NDI President Sheldon Nix and NDI employee Denise Nix, but nevertheless participated in the selection, award, or administration of the NDI contract. As a result of the conflicts of interest created by the family relationships between PCR and NDI personnel, ACF states, there was "an apparent funneling of Federal grant funds from PCR to NDI benefitting the interests of the various members of [the Nix] family." ACF Br. at 10. ACF therefore disallowed all the NDI contract costs charged to PCR's CBAE grant, totalling \$209,699.61. See id. at 1.

PCR argues that it satisfactorily addressed any conflicts of interest by following the procedures in its Board policy manual regarding conflicts of interest.⁴ The Board policy manual addresses situations where a "director or officer" of PCR has a "personal interest" in any "concern," defined as "any . . . entity other than" PCR, or has "an immediate family member who holds such an interest." PCR Ex. 1, Tab B. The manual goes on to state:

⁴ PCR also had conflict of interest provisions in its employee manual (PCR Ex. 1A). PCR states, however, that these provisions are irrelevant here because "all of the alleged conflicts were approved at the Board level, under the policy in place for the Board." PCR Reply Br. at 27.

No director or officer of the organization shall be disqualified from holding any office in the organization by reason of any interest in any concern. . . . No transaction of the organization shall be voidable by reason of the fact that any director or officer of the organization has an interest in the concern with which such transaction is entered into, provided:

1. The interest of such officer or director is fully disclosed to the board of directors.
2. Such transaction is duly approved by the board of directors not so interested or connected as being in the best interests of the organization.

* * * * *

4. No interested officer or director may vote or lobby on the matter or be counted in determining the existence of a quorum at the meeting at which such transaction may be authorized.

The minutes at which such votes are taken shall record such disclosure, abstention, and rationale for approval.

Id.⁵

PCR asserts that, pursuant to these provisions, the terms of the contract with NDI were fully disclosed to, and approved by, "the non-interested members of the Board without any lobbying, influence, or voting by any member of the Nix family."

⁵ ACF questions whether the undated conflict of interest provisions in the Board policy manual were in effect during the relevant time period based on a finding in the site visit report that "[t]he board does not have a conflict of interest policy." PCR Ex. 7, at 11. PCR responded that these provisions were in effect but were not produced at the site visit because no request for such a policy was made. PCR Reply Br. at 23, citing PCR Ex. 9 (Supp. Decl of Lulu Mae Nix) and PCR Ex. 2 (Declaration of Eugene Wheeler). We therefore presume that the policy existed throughout the term of the grant.

PCR Br. at 12; PCR Reply Br. at 26. As discussed below, we conclude that PCR failed to show that it followed all of the procedures set out in the manual for addressing a conflict of interest. We further conclude that even if PCR had followed all of these procedures, they were not sufficient to bring PCR into compliance with grant terms and conditions regarding conflicts of interest.

1. PCR failed to show that it followed the procedures in its Board policy manual.

To support its assertion that the NDI contract was approved without the participation of interested family members, PCR provided the declaration of Eugene Wheeler, a former Chair of the PCR Board, and copies of the minutes of the five Board meetings that were held during the period May 2005 through May 2007. PCR Ex. 2, 2A. Mr. Wheeler states that he was Board Chair when the "subgrant" to NDI was "ratified."⁶ PCR Ex. 2, at 3. Mr. Wheeler further states that whenever the Board voted to approve the salaries of PCR employees or to ratify contracts with PCR's "subcontractors," "all Nix family members - including Theophilus Nix, who was also a Board member, and Lulu Mae Nix, who attended Board meetings as Executive Director of PCR - would recuse themselves from the Board decision." *Id.* According to Mr. Wheeler, the minutes of the Board meetings "memorialize these recusals." *Id.* However, the only minutes for a Board meeting in 2007 are dated May 5, 2007 and do not refer to the NDI contract, the CBAE grant, or even to PCR's Collaborative Abstinence Program, which was funded by the CBAE grant. *See* PCR Ex. 2A, at 1 (unnumbered). Thus, PCR failed to show that there was any consideration by the Board of the March

⁶ Mr. Wheeler's declaration states both that he was Chair "from January, 2002 to December, 2007" and that his "tenure as Board Chair ended on April 30, 2007." PCR Ex. 2, at 1, 3. The December 2007 date is incorrect since the minutes of the May 5, 2007 meeting show that Theophilus Nix was Chair at that point. PCR Ex. 2A, at 1 (unnumbered); see also PCR Ex. 9 (Supp. Decl. of Lulu Mae Nix), at 7.

4, 2007 NDI contract amendment or the October 1, 2007 NDI contract with NDI.⁷

The Board policy manual further requires that the non-interested members of the Board who approve a contract determine that the contract is "in the best interest of the organization," and that the "rationale for approval" be recorded in the minutes of the meeting at which the contract is approved. None of the minutes in the record contain any indication of a rationale for the Board's approval of any NDI contract. Mr. Wheeler's declaration asserts that "[s]everal factors went into the Board's consideration of whether it should approve the selection of NDI as a subcontractor on the CBAE grant," including that "Delaware has very few subcontractors in the field with federal grant experience" and that "NDI has worked as a subcontractor for PCR on a number of matters, and the Board has always been pleased by that relationship." PCR Ex. 2, at 4. However, Mr. Wheeler does not specifically state that the Board relied on this rationale in approving each of the contracts with NDI. Even if that were the case, PCR failed to comply with the requirement in the Board policy manual that the minutes of the Board meetings "record . . . the rationale for approval."

2. The procedures allegedly followed by PCR did not address conflicts of interest in the administration of a contract.

Even if each NDI contract had been approved only by non-interested Board members as being in the "best interest" of PCR, PCR still violated the prohibition in section 74.42 on the participation by an employee, officer, or agent of the grantee "in the selection, award, or administration of a contract . . .

⁷ The statement "CAP [Collaborative Abstinence Program] budget revisions reviewed and authorized (Nixes recused)" in the minutes for the October 1, 2005 Board meeting (PCR Ex. 2A, at 1 (unnumbered)) can arguably be read to refer to approval of the October 1, 2005 NDI contract. ACF appears to agree that the minutes for the October 14, 2006 Board meeting (PCR Ex. 2A, at 5 (unnumbered)) showed that the Board approved the October 1, 2006 NDI contract while the Nixes were recused. See ACF Br. at 14. Recusal alone, however, is not sufficient to meet the terms of the PCR policy, much less the grant terms and conditions.

if a real or apparent conflict of interest would be involved." To the extent that the Board approved the NDI contracts (and amendment) pursuant to the procedures in the Board policy manual, that would presumably have ensured that no one in PCR with a conflict of interest participated in the "award" of the contract.⁸ This approval, however, had no bearing on the "administration" of the contract. ACF asserts that Theophilus Nix, Lulu Mae Nix, and Jacqueline Greenidge all had "the authority to administer PCR's contract with NDI." ACF Br. at 8. ACF asserts in particular that-

[e]ven if Lulu Mae Nix didn't handle day-to-day administrative matters with respect to the NDI contract, as Executive Director, she would have oversight authority over those who did and would be the final authority over any decisions that were to be made regarding the NDI contract. Additionally, the Site Visit Report notes that Lulu Mae Nix and her son, Theo[philus] Nix. . . are the only two people authorized to draft checks on behalf of PCR, which would be an integral task in the administration of the NDI contract. As Financial/Human Resources Administrator, Jacqueline Greenidge Nix would be responsible for receiving invoices from NDI, making sure payments were made in accordance with the NDI contract, and completing other tasks related to the financial administration of the NDI contract.

Id. at 8 (internal citations omitted). Since Theophilus Nix, Lulu Mae Nix, and Jacqueline Greenidge were each related in some way to NDI President Sheldon Nix and NDI employee Denise Nix, their participation in the administration of the NDI contract violated section 74.42. In addition, the fact that PCR's Board policy manual does not require PCR to take reasonable steps to prevent such an entanglement in the administration of a contract where a conflict of interest has been identified by the Board indicates that the policy itself violated the grant terms and conditions.

PCR does not dispute ACF's description quoted above of how Nix family members were involved in the administration of the CBAE grant. PCR nevertheless argues that ACF's interpretation of the

⁸ ACF does not allege that the procedures in PCR's Board policy manual failed to address participation in the "selection" of a contract, as distinguished from the "award" of a contract.

term "administration" in section 74.42 "cannot have the broad meaning that ACF now seeks to ascribe to it." PCR Reply Br. at 26. This argument is not persuasive. The regulation on its face treats the administration of a contract as separate and distinct from the selection or award of a contract. In arguing that family members did not participate in the administration of the NDI contracts because they were excluded when the PCR Board voted to approve those contracts, PCR in effect reads the term "administration" as having the same meaning as "award." PCR's interpretation is therefore inconsistent with the plain language of the regulation.

PCR also argues that "it is apparent from ACF staff's own conduct and advice to PCR, that [ACF] has not previously interpreted" section 74.42 "as prohibiting family members from working together under any circumstances - the position which it now seeks to enforce." PCR Reply Br. at 31. PCR argues that ACF should not be permitted "to alter its interpretation of federal regulations mid-course and then penalize federal grant recipients for not following an interpretation that is contrary to what was previously communicated." *Id.* PCR argues in particular that since PCR's grant applications specified that PCR would be contracting with NDI and that Sheldon Nix was NDI's president, PCR's approval of the applications was evidence that ACF saw nothing wrong with that arrangement. PCR Br. at 12. While the grant applications did not specify that Sheldon Nix was related to PCR's Executive Director Lulu Mae Nix (who was also identified by name), PCR contends that "because Nix is an unusual family name, . . . it is apparent that there is a familial relationship[.]" PCR Ex. 1 (Declaration of Lulu Mae Nix), at 7. This is simply a matter of speculation, however, since PCR submitted no evidence that the ACF officials who approved the applications were in fact aware of the relationship. PCR also states that "various Nix family members met together several times with ACF grant officers, and the family relationship was never a secret." PCR Reply Br. at 12. Two of the meetings identified by PCR were with ACF project officers for grants other than the CBAE grant. The third meeting, a press conference on the occasion of another grant award, was with the Director of ACF's Office of Community Services, which does not administer the CBAE grant. PCR does not explain why any knowledge of the family relationships on the part of other ACF personnel should be attributed to ACF personnel who approved the CBAE grant applications. Even if ACF had approved these applications with knowledge of the family

relationships, however, that would not necessarily mean that ACF would approve of the functional relationships, as PCF structured them, without adequate safeguards to avoid real or perceived conflicts of interest.⁹

PCR also alleges that the ACF project officer for the Responsible Fatherhood grant (which was separate from the CBAE grant) advised Lulu Mae Nix that the conflict of interest provisions would not be implicated if Sheldon Nix reported to her as a "subcontractor" rather than as an employee of PCR, and that ACF approved PCR's application for that grant after PCR revised its application to move Sheldon from the PCR budget to the NDI budget. PCR Br. at 12; see also PCR Ex. 1 (Declaration of Lulu Mae Nix), at 7-8. PCR further alleges that ACF project officer for the Compassionate Capital Fund grant similarly advised Lulu Mae Nix that it was permissible for Denise Nix "to be on the grant" as long as Denise was employed by NDI and not PCR. PCR Reply Br. at 12, citing PCR Ex. 14 (Declaration of Denise Nix Thompson) and PCR Ex. 9 (Supp. Decl of Lulu Mae Nix). Even assuming PCR received such oral advice, however, PCR could not reasonably rely on it. Part 74 is a Departmentwide regulation, not an ACF program regulation which ACF has authority to waive or interpret.

PCR argues additionally that section 74.42 "cannot have the broad meaning that ACF now seeks to ascribe to it" because under that interpretation, the "Executive Director of a nonprofit organization could never arrange for a contract in which he or she would potentially have an interest, but where goods and services are provided far below cost, even after ratification by disinterested board members, because he or she would ultimately have the final authority over the 'administration' of the contract." PCR Reply Br. at 26. PCR's argument is predicated on the assumption that a grantee would be able to obtain more favorable contract terms where its executive director has an interest in the contractor. However, it is also plausible that

⁹ PCR denies that it is arguing that ACF is estopped from enforcing the grant terms and conditions. See PCR Reply Br. at 31. We note in any event that there would be no basis for estoppel even if ACF had approved the CBAE grant applications with knowledge of the family relationships. See, e.g., Northwest Tennessee Economic Development Council, DAB No. 2200 (2008) (stating that ACF's approval of grant budgets that clearly included the questioned costs would not have constituted affirmative misconduct by ACF, a necessary element of estoppel).

an executive director might steer a grantee to a contract with less favorable terms in order to benefit a contractor in which the executive director has an interest. Indeed, the requirement in PCR's Board policy manual that the Board determine that the contract is in PCR's best interest appears to be designed to protect PCR from the possibility that an officer or employee of PCR with an interest in a contractor would do the latter.

PCR further argues that there is "varying opinion among public interest groups and federal agencies regarding what standard terms or provisions should be included in nonprofit conflict of interest policies[.]" PCR Reply Br. at 38, citing PCR Ex. 17 (Panel on the Nonprofit Sector Convened by Independent Sector, Principles for Good Governance and Ethical Practice/A Guide for Charities and Foundations, Oct. 2007), at 9. The publication to which PCR cites is irrelevant, however, since it does not address what types of provisions would be necessary in order for nonprofit organizations that are funded by federal grants to comply with the particular terms and conditions of their grants. Similarly, it is irrelevant that, as PCR points out, the conflict of interest provisions in PCR's Board policy manual "were based on a model policy developed by a law firm that primarily serves nonprofits[.]" PCR Reply Br. at 3, citing PCR Ex. 15 (Sample Bylaw Provision: Conflicts of Interest, Hurwit & Associates Nonprofit Law Resource Library).

Finally, PCR argues that this case is distinguishable from the facts of the previous Board decisions upholding a disallowance on the basis of section 74.42. See PCR Br. at 12. PCR states that in those cases, "the interested party was present on both sides of the transaction, or the grantee violated its own conflict of interest policies." PCR Br. at 12-13, citing Marie Detty Youth and Family Services Center, Inc., DAB No. 2024 (2006); Kansas Advocacy & Protective Services, DAB No. 2079 (2007); All Indian Pueblo Council, Inc., DAB No. 976 (1988); see also PCR Reply Br. at 30-31. PCR contends that neither of these situations is present here. As discussed in detail above, however, we conclude that PCR failed to follow the conflict of interest provisions in its Board policy manual. Moreover, ACF alleges in further support of the disallowance that some of the individuals in question worked for both PCR and NDI. See, e.g., ACF Br. at 9-10 (alleging "double-dealing" on the part of Theophilus Nix, Jacqueline Greenidge, and Sheldon Nix). We need not determine whether this was the case, however, since nothing in the Board's holdings in the cited decisions and similar decisions implies

that conflicts of interest with respect to a contract exist only where some of the same people are officers or employees of both the grantee and the contractor.

Accordingly, we agree with ACF that PCR failed to comply with the conflict of interest provisions in section 74.42 and Assurance 3 because a member of its Board and two key PCR employees were in a position to influence PCR's activities in a way that could have benefitted their relatives in NDI but was contrary to PCR's best interests. We therefore conclude that ACF properly disallowed the NDI contract costs charged to the CBAE grant.¹⁰

B. Conflicts of interest within PCR

ACF takes the position that PCR failed to comply with Assurance 3 due to the family relationships between PCR Board member Theophilus Nix, PCR Executive Director Lulu Mae Nix, and PCR Finance/Human Resources Administrator Jacqueline Greenidge. ACF therefore disallowed all of the charges to PCR's CBAE grant for the salary costs (including fringe benefits) of Lulu Mae Nix (\$121,980.80) and Jacqueline Greenidge (\$56,289.67). See ACF Br. at 1.

PCR argues that it did not violate Assurance 3 because, following the procedures in PCR's Board policy manual, Nix family members were recused from the PCR Board's decisions approving Lulu Mae Nix's and Jacqueline Greenidge's salaries and because the salary amounts were set based on industry benchmarks. PCR Br. at 15; PCR Reply Br. at 31.¹¹ In support of its argument, PCR relies on the Wheeler Declaration and the minutes of the PCR Board meetings

¹⁰ PCR does not argue that the disallowances taken by ACF were not appropriate remedies for a material failure to comply with section 74.42 and Assurance 3.

¹¹ PCR asserts that its Board policy manual applied to employees as well as members of the Board of directors and officers of the organization. See PCR Reply Br. at 25 (stating that the term "officer" in the Board policy manual includes employees). ACF argues that the Board policy manual "applies only to Board members" (ACF Br. at 11), but fails to recognize that the manual also applies to "officers." We see no reason why PCR could not have read the term "officers" to include Lulu Mae Nix and Jacqueline Greenidge, if not all PCR employees.

referred to above. PCR Exs. 2, 2A. As already noted, Mr. Wheeler states that all Nix family members were recused when the PCR Board voted to approve the salaries of PCR employees. See PCR Ex. 2, at 3. According to Mr. Wheeler, moreover, "[t]he salaries of all PCR personnel-- . . . including the salaries of Lulu Mae Nix and Jacqueline [Greenidge] Nix . . . -- were based on benchmarks established in the region by the respected research-based HR benchmarking organization, Salary.com." Id. Following these procedures would presumably have ensured that Lulu Mae Nix's and Jacqueline Greenidge's salaries were set without regard to their family relationship to Theophilus Nix or to each other and were reasonable in amount.¹²

As we noted with respect to the Board's alleged approval of the NDI contracts, however, there are no minutes for 2007. Thus, PCR did not show that the Board approved Lulu Mae Nix's and Jacqueline Greenidge's salaries for the budget period beginning October 1, 2007.¹³

Even if the PCR Board had approved their salaries for all of the budget periods in accordance with the procedures in the Board policy manual, however, that would not have addressed the possible effect of these family relationships on the oversight of individuals in key management positions. As a Board member and then Board Chair, Theophilus Nix was responsible for overseeing Lulu Mae Nix's work as PCR's Executive Director. Because Lulu Mae Nix was his mother, Theophilus Nix might have provided less oversight than if the Executive Director had not been related to

¹² One of the additional grounds for the disallowance advanced by ACF (which, as previously indicated, we do not address) is that the percentage of Lulu Mae Nix's and Jacqueline Greenidge's salaries charged to all grants totalled more than 100%. See ACF Br. at 21-22. ACF does not allege that the salary levels were excessive, however.

¹³ The statement "CAP budget revisions reviewed and authorized (Nixes recused)" in the minutes for the October 1, 2005 Board meeting can arguably be read to refer to approval of the salaries for the budget period beginning October 1, 2005 (as well as approval of the NDI contract). ACF agreed that the minutes for the October 14, 2006 Board meeting showed the requisite approval of the salaries for the budget period beginning October 1, 2006 and the Nixes' recusal. See ACF Br. at 14.

him. Lulu Mae in turn was responsible for overseeing the work of PCR's Financial/Human Resources Administrator, Jacqueline Greenidge. Because Jacqueline was her daughter-in-law, Lulu Mae might have provided less oversight than if the Financial/Human Resources Administrator had not been related to her. In addition, Jacqueline might have been derelict in performing her duties if she thought that Lulu Mae would be lax in her oversight due to their family relationship. Thus, the family relationships between these individuals constituted conflicts of interest that could potentially lead to mismanagement of the grant.

PCR nevertheless takes the position that its employment of these three family members did not violate Assurance 3 because their names and the amounts paid to them "were disclosed to ACF and approved as part of the grant budget." PCR Reply Br. at 31. There is simply no evidence in the record that the ACF personnel who approved PCR's applications for the CBAE grant were aware that Sheldon Nix, Lulu Mae Nix and Jacqueline Greenidge were related to each other, however. Nothing in the grant applications states that Lulu Mae Nix and Sheldon Nix were related, and, as PCR admits, Jacqueline Greenidge is not even identified in the applications by the last name of her husband (Sheldon Nix). See PCR Reply Br. at 10. In addition, as noted earlier, PCR alleges that the ACF project officers for the Responsible Fatherhood and Compassionate Capital Fund grants advised it that grant funds could be used to pay Sheldon Nix and Denise Nix if they were NDI employees but not if they were PCR employees. Assuming this advice was, in fact, given, PCR could not reasonably have understood ACF's approval of the CBAE grant applications as showing that ACF would not view its employment of related individuals as a violation of Assurance 3.

Accordingly, we conclude that ACF properly disallowed the salary and fringe benefit costs of PCR's Executive Director and Financial/Human Resources Administrator based on conflicts of interest within PCR.

Conclusion

For the foregoing reasons, we uphold the disallowance in full.

 /s/
Judith A. Ballard

 /s/
Constance B. Tobias

 /s/
Stephen M. Godek
Presiding Board Member