

DEPARTMENTAL GRANT APPEALS BOARD

THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

DATE: November 1, 1974

RE: Tulane University, Docket No. 2, Grant Nos. SRS-296T-69-0
and VRA-44-P-30043/6-08 - Decision No. 7

This is an appeal pursuant to 45 CFR Part 16 from a determination made by the Social and Rehabilitation Service after reviewing HEW audit-AC #06-30046 to sustain the findings of improper transfer of salary charges to avoid overdrafts. The undersigned members of the Grant Appeals Board have been designated as a panel of three for the disposition of the instant case. This decision is made on the basis of documents submitted to the Board.

BACKGROUND

On January 8, 1973 the HEW Audit Agency transmitted to Tulane University a copy of its report on the review of DHEW grants and contracts for the period July 1, 1968 through June 30, 1971 to Tulane University. The purpose of the audit was to determine that costs claimed were reasonable, allowable and allocable under the applicable cost principles, OMB Circular A-21.

The auditors concluded that the University was transferring salary and other costs between Federal grants in order to avoid deficiencies caused by overruns or for other reasons of convenience.

As a result of this audit, the Director of the Division of Project Grants Administration, SRS, wrote the grantee on June 20, 1973 disallowing \$576 of costs on grant SRS-296T-69-0 for improper transfer of salary charges and \$1,844 of costs on grant VRA-44-P-30043/6-08 for improper transfer of salary charges. The University is appealing this SRS determination on the basis that retroactive transfers, per se, do not constitute a deliberate effort to avoid overdrafts. The University does not dispute the fact that retroactive transfers were made.

FACTS

1. The auditors contend that \$1,844 was transferred from a PHS grant to a VRA grant three months after the PHS grant had expired.

2. The grantee contends that the retroactive transfer was made because of an internal breakdown related to the changing of account numbers and that the PHS grant was not overdrawn but was underspent by \$3,878 which was returned to the government. In addition the grantee states that the figure for the transfer given is incorrect and should be \$1,956.57.
3. The auditors contend that \$576 was transferred from an OE grant to an SRS grant three months retroactively and two months after both grants had expired.
4. The grantee contends that during budget preparation clerical error resulted in salary being charged to an OE grant that should have been charged to the SRS grant. The error caused the overdraft and the correction of the error eliminated the overdraft. In addition the grantee states that the amount transferred was \$383.98, not \$576.
5. Section C4.b of Circular A-21 provides that any cost allocable to a particular research agreement under the standards provided in the circular may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement or for other reasons of convenience.

DISCUSSION

Applicable cost principles provide essentially that costs charged to a project must be allocable to that project. One means of assuring this is contained in Section C.4.b. of Circular A-21 which prohibits the shifting of cost to other agreements to avoid overruns or for other reasons of convenience. Any rebudgeting therefore, especially retroactive, which results in the avoidance of cost overruns must be carefully considered.

The two disallowances involve two different grants and essentially different circumstances.

In one case, grant 44P30043/6-08, the retroactive transfer of approximately \$1,844 was made from a grant on which \$3,878 was returned. This does not seem to indicate that the transfer was made to avoid an overdraft on the PHS grant. Even if the transfer were not made, no overdraft would result.

In the case of SRS-29T-69-0 however, the retroactive transfer did result in an overdraft being avoided. In such cases we believe the burden of proof is on the grantee to establish that the purpose of the transfer was not to avoid the overdraft. Any other position on our part would render section C.4.b. of Circular A-21 almost meaningless and certainly unenforceable.

DECISION

The appeal as it relates to grant 44P-30043/6-08 is sustained. The appeal as it relates to grant SRS-296T-69-0 is denied and after verification of amount by SRS the appropriate amount shall be returned to the government in the manner prescribed by SRS.

/s/ William Van Orman, Chairman

/s/ Thomas Malone

/s/ David Dukes