

Fundamentals of Conducting Referred Research Misconduct Cases

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National Science Foundation
Office of Inspector General



Office of Investigations

- Research Integrity and Administrative Investigations (RAI)

- Research Misconduct Investigations
- Regulatory and policy violations
- Non-criminal mischarges to grants

Program Integrity (PI)

- False claims
- False statements
- Misuse of grant funds
- Theft/embezzlement

Investigative Legal (IL)

- Partners in investigations
- Whistleblower Reprisal

OIG is delegated the responsibility for investigating **RM allegations** involving NSF programs.

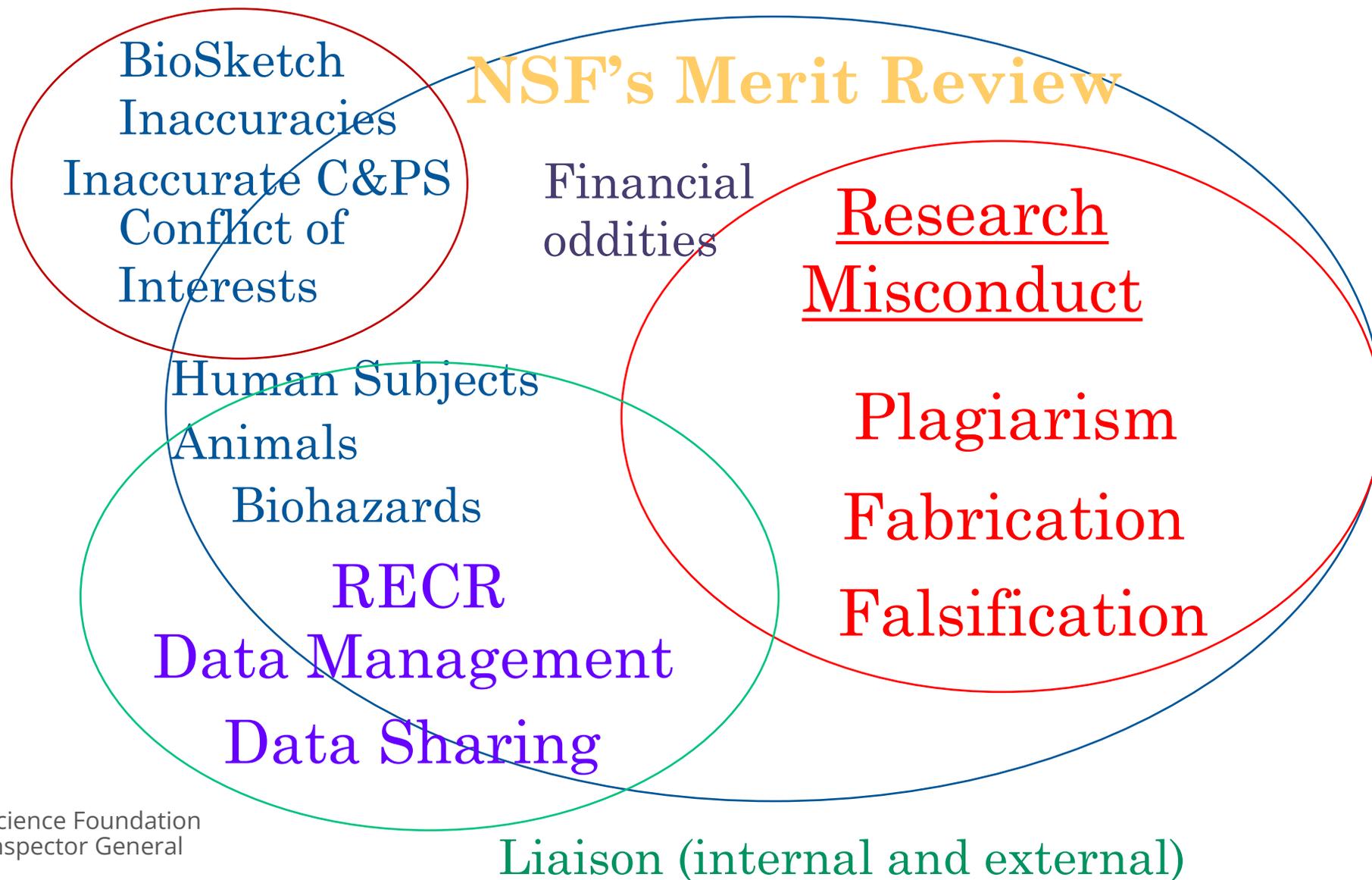
Unique among the IG Community in that **only OIG with staff dedicated** to addressing these allegations

We invest in outreach presentations and briefings

www.nsf.gov/oig/outreach_all.jsp



Research Integrity & Administrative Investigations



Research Misconduct Regulation

45 C.F.R. Part 689

Regulations:

- Have the force of law
- Can't be modified quickly like a policy
- Based on Office of Science and Technology Policy RM Policy
- Same definitions as PHS/ORI and most other agencies
- Define roles and responsibilities of NSF, OIG, awardee institutions



RM means **fabrication**, **falsification**, or **plagiarism** in proposing or performing research, reviewing research proposals, or in reporting research funded by NSF



Role of Awardee Institutions

§ 689.4 Role of awardee institutions.

(a) Awardee institutions bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of alleged research misconduct. In most instances, NSF will rely on awardee institutions to promptly:

(1) Initiate an inquiry into any suspected or alleged research misconduct;

(2) Conduct a subsequent investigation, if warranted;

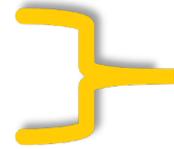
(3) Take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements or responsibilities; and

(4) Provide appropriate safeguards for subjects of allegations as well as informants.

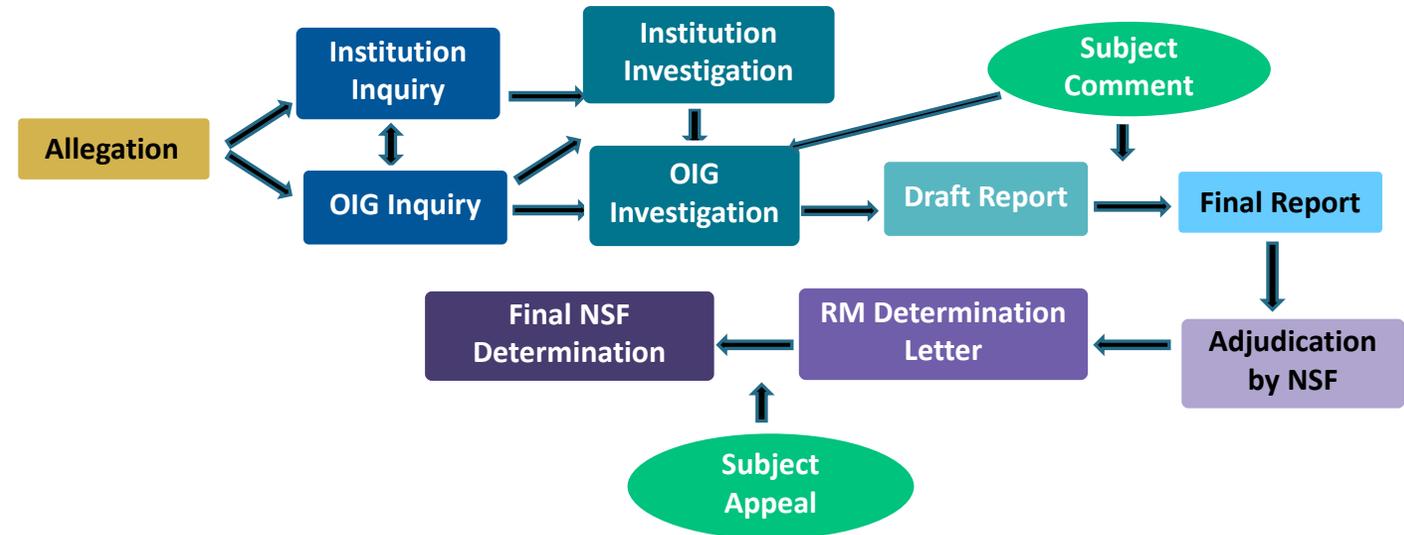


Research Misconduct Process

- Allegations
- Inquiry
- Investigation
- Adjudication
- Appeal
- Final Decision
- Closeout



Institution
Referral
Process



Allegation Review

Source: PIs, students/staff, disgruntled spouses, other scientists, PO

- Can be anonymous through our hotline
- If the allegation arises at the institution, and if the institution determines that an investigation is needed, then it **MUST notify us.**
 - But we would not mind knowing at the inquiry stage

NSF Nexus: funding, proposal, publication supported by award

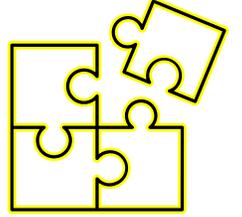
Information Sufficient to Establish Possible RM: specificity and detail

- Age of misconduct; other agency nexus and communication

Other background info on Subject, Award, Publication, etc.



Our Inquiry



- Establishes substance of allegation
- Confidential, may close w/o institution ever knowing
- May contact Subject by letter
- May interview Subject or witnesses
- 90 days to complete
- If close: [If deemed not actionable under RM Reg]
 - potential Questionable Research Practices (QRP) letter
- Plagiarism: Usually completed internally
- Data fabrication/falsification: Usually referred to institution



Our Investigation

Referred Investigation:

- Substantive matters referred unless institution conflicted
- 180 days to complete
- Institution can start at Investigation Stage
- Ways we can assist: subpoena, plagiarism detection software, access to NSF records
- Ways we cannot assist: “Ask your General Counsel”
- Final product:
 - Institution report with attachments: basis for our investigation
 - Adjudication Determination: Should protect your interests



The Referral Process

Referral Call:

- Call w/o case specifics to get institution acceptance, then

Referral Letter:

- Describes process, our criteria, allegations
- Provides Resources
- Sets Deadlines
 - Committee CVs (for COI check)
 - Provide OIG your RM Policy
 - Provide copy of letter to Subject(s)
 - Date Report due to OIG



The Referral Letter

- Explains our inquiry and findings, if any
- Provides evidence we've gathered to date
- Securing research records
- Determination of RM
 - Act, degree of intent, significant departure
 - All elements proven by preponderance of the evidence
- Additional Considerations
 - Pattern, significant impact, RECR training
- Your investigation report
 - Transcripts, supporting documents
- Offers Committee briefing



Committee Briefing

Mode: videoconference

Participants:

- University: Committee members, RIO/University officials, University Counsel
- NSF: Investigative Scientist, Investigative Attorney

Discuss content of referral letter and address questions/concerns



Items to Remember During Referral

Institutions must promptly notify us if become aware of:

1. risk to public health/safety
2. need to protect NSF's resources, reputation or other interests
3. potential violations of civil or criminal law
4. need to suspend research activities;
5. need for Federal action to protect subjects'/others' interests;
and/or
6. need to inform scientific community/public (45 C.F.R. 689.4.c)

Maintain Communication with OIG

- Don't be a stranger; ask early and often
- Once a month status update might be requested



Items to Remember During Referral

Independent Processes:

- Follow your RM policy and consult with your General Counsel

Report Deadline and Extensions

- Reasonable extensions can be granted
- Communicate need for extension and reason in writing

Information We Cannot Provide

- Identity of Complainant(s)
- Status updates prior to case closing



The Investigation Process

OIG investigation:

- Independent of yours – additional 180 days
- We assess your report's accuracy and completeness and whether the institution followed reasonable procedures
- We can:
 - Adopt the findings in whole or in part
 - Conduct supplemental investigation
 - Ask you to address unanswered questions

Comment Letter: to Subject upon receipt of your report

Our Draft Report: 30 days for Subject to comment

Final Report: Submit to NSF for Adjudication



Our Adjudication

Adjudication:

- OIG makes recommendations to protect federal interests
- NSF Deputy Director or Designee adjudicates, not OIG
- May accept or modify our recommendations
- 120 days

Appeal:

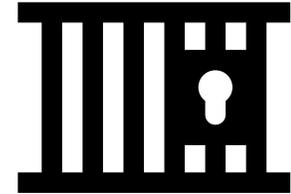
- NSF Director is final appeal authority
- 30 days



Investigative Outcomes

Administrative matters may result in:

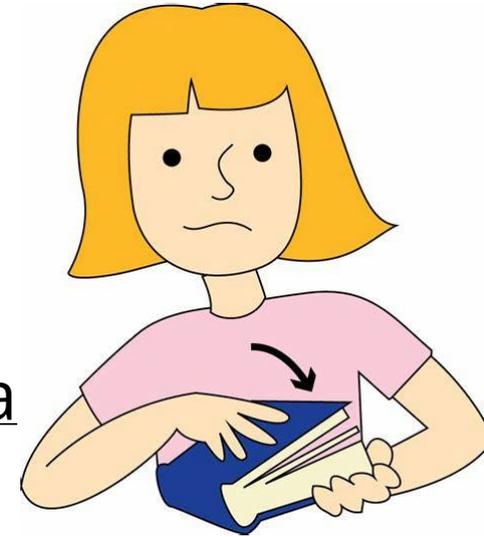
- Reprimands
- Certifications / assurances
- Training
- Prohibit participation as reviewer, advisor, or consultant
- Termination / restrictions on awards
- Suspensions / debarments (public)
- Correction of research record
- Questionable Practice (QP) letters
 - Research/Administrative/Financial/Responsible and Ethical Conduct of Research



Closeout

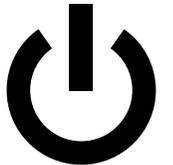
Final Decision/Closeout:

- Letters to Subject, complainant, institution
- Anonymized case closeout memos available online
oig.nsf.gov/investigations/case-closeout-memoranda

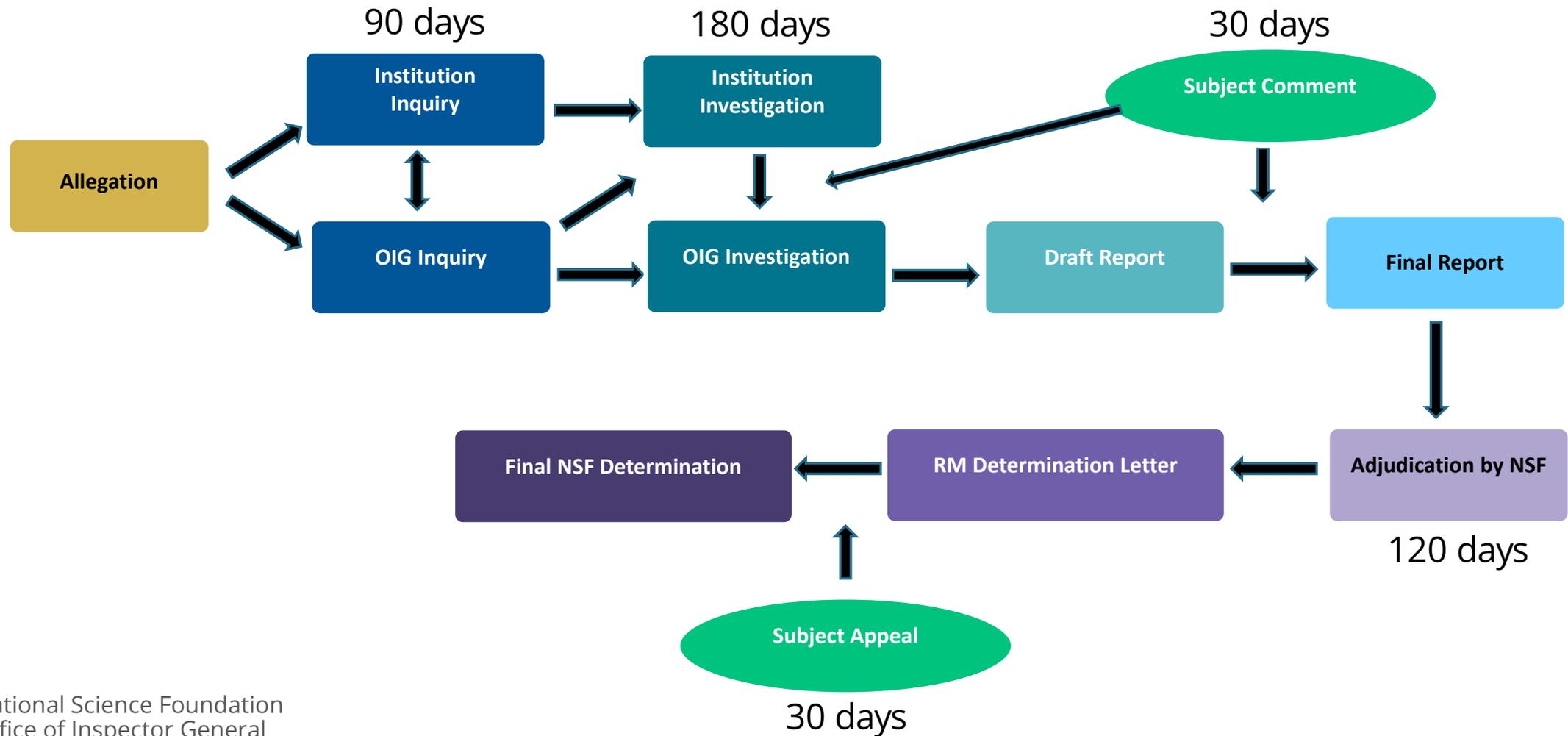


Obtaining Full Memo for Your Referred Case:

- Submit a written request to your OIG POC:
 - Identify your position
 - State that request is in accord with OIG's routine use #1
 - i.e., you are the entity "charged with the responsibility of investigating or prosecuting such violation or potential violation, or charged with enforcing, implementing, or complying with such statute, regulation, rule, order, contract, or ethical practices or norms" at the university.



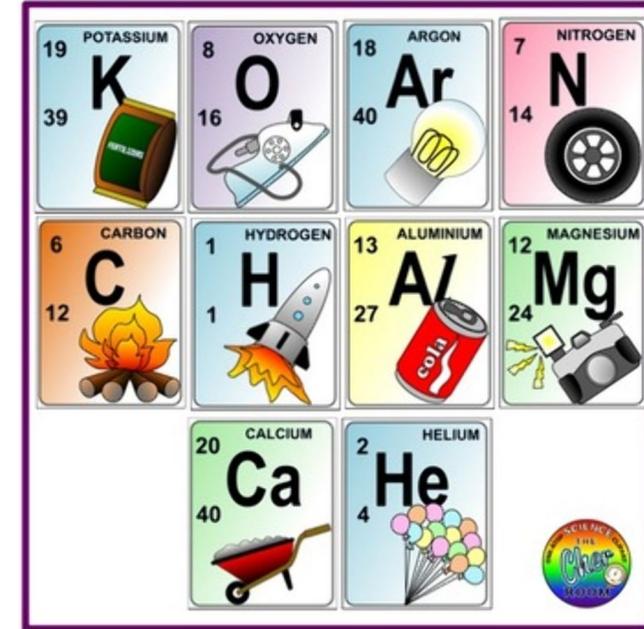
Research Misconduct Process



Elements of a RM Finding

- 1) Does the act meet the definition?
- 2) Was it committed with a culpable intent?
e.g., intentional, knowing, or reckless
- 3) Was the act a significant departure from accepted practices of the relevant research community?

Does a preponderance of the evidence prove each element?



Preponderance of the Evidence

Which way does the evidence tip the scales??

51% is a preponderance

Please use this standard in addition
if you use another



Definition

Plagiarism: appropriation of another person's ideas, processes, results or words without giving appropriate credit

- Verbatim, paraphrase, structural, conceptual, intellectual theft

Fabrication: making up data or results and recording or reporting them

- Dream it, was going to do it, I know the results will look like this

Falsification: manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record

- Fudge it, alter it, swap one figure for another, adjust the equipment to get desired outcome



Intent (Culpable)

- Was act “culpable”?
- Culpable necessary for a finding
 - reckless, knowing, or intentional (purposeful)
 - “honest error” is non-culpable intent in RM reg

Not culpable	Culpable		
Honest Error	Reckless	Knowing	Intentional
Reasonable Person Standard No conscious awareness	Individual Standard Awareness of action		

[RM LINK](#)

[PLAGIARISM LINK](#)



Intent (Degree)

Reckless: Lacking proper caution; indifferent to the risk; lacking care about the consequences; reasonable person standard

Knowing: Consciously; awareness of actions

Intentional: Specific purpose; purposeful; willful

Not intent to deceive or motive; need to prove only intent to commit the Act



Significant Departure

Determine accepted practices of the relevant research community

- University,
- academic department,
- discipline,
- Journal,
- Society,
- NSF



Multi-Agency Cases

- Follow the policies of each agency regarding when and whom to contact regarding allegations
- Determine process for routine communication
- May need to consider accommodating different policies
 - Timelines (e.g., ORI 120 days)
 - Intent
 - e.g., NSF: singular per act, vs ORI: any of the above
 - USDA special reporting process
 - ORI evidence handling



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NSF OIG and ORI



- Responsible for intake/assessment of allegations
- Refer matters to university for investigation
- Make recommendations regarding administrative actions
- Work together on matters of joint jurisdiction

But there are some subtle differences

ORI

- Negotiates Voluntary Exclusions (VE)
- Oversees grantee investigations
- Not a law enforcement agency

- Division of Education/Integrity
- Publishes all findings/VEs with names

NSF

- Refers exclusion requests to NSF
- Ability to independently investigate
- LE agency with subpoena, search warrant authority
- Limited outreach by investigative staff
- All closeouts online but anonymized



Questions you might want to ask

Is your RM policy current?

How does your policy link / have consistency with other policies?

- Academic Misconduct?
- Scientific Integrity?

Do faculty understand the process?

How does your policy handle an admission of guilt?

- Do you get it in writing? With details?

Is your GC involved?

- Can be helpful explaining intent

How do you secure evidence (particularly digital data)?

How do you document interviews? Notes? Record? Transcribe?



Questions?

