What to Know When the NSF OIG Calls

National Science Foundation Office of Inspector General

ARIO Conference

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Office of Inspector General (OIG)

- Independent office at each federal agency that:
  - Promotes economy, efficiency, and effectiveness . . .
  - Prevents and detects fraud, waste, and abuse . . .
  - . . . in agency programs and operations.
  - Has full access to records and subpoena power
  - Reports to head of agency (e.g., NSB) and Congress
OIG works with NSF and research community

• We investigate allegations of:
  • Fraud, waste, and abuse
  • Research misconduct
  • Violations of law, regulation, directive, or policy

• We conduct audits:
  • Financial
  • Performance

• We invest in outreach:
  • Presentations
  • Briefings

• www.nsf.gov/oig/outreach_all.jsp
NSF OIG Investigations

Research Integrity and Administrative
• Regulatory and policy violations
• WB Retaliation

Civil/Criminal (Program Integrity)
• False claims
• False statements
• Misuse of grant funds
• Theft/embezzlement

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

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

Where does research integrity fit in?
The Basic RM Process (45 CFR Part 689)

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

If the allegation arises at the institution, and if the institution determines that an investigation is needed, then it **MUST notify NSF**.

- But we would not mind knowing at the inquiry stage
The Inquiry/Investigation Process

• **Inquiry**: Confidential; establishes substance; 90 days; may close w/o institution ever knowing; potential QRP letter; data fabrication usually referred

• **Investigation**: Substantive matters referred unless institution conflicted; 180 days to complete; we use institution report as basis for our investigation; OIG investigation independent – additional 180 days; may come back to you to address unanswered questions
  • **Draft Report**: 30 days for comment

• **Adjudication** - Institution should act only to protects its interests; OIG makes recommendations to protect federal interests; NSF adjudicates, not OIG; 120 days

• **Appeal**: Director is final appeal; 30 days

• **Final Decision/Closeout**: all case closeout documents are available online http://www.nsf.gov/oig/closeouts.jsp
NSF Research Misconduct Reg

45 C.F.R. Part 689  April 17, 2002

Allegation

90 days
Institution Inquiry

OIG Inquiry

180 days
Institution Investigation

OIG Investigation

30 days
Subject Comment

Draft Report

Final Report

120 days
Letter of RM determination

+/-

Adjudication by NSF DD

30 days
Letter of proposed debarment

30 days
Subject Appeal/Comment

Final NSF decision
Investigation Referral

Explains our inquiry and findings
Provides evidence we’ve gathered
Securing research records

Determination of RM
  • Act, level of intent, significant departure, preponderance of the evidence

Additional Considerations
  • Pattern, significant impact, RCR training

Your investigation report
  • Transcripts, Supporting documents

Committee briefing
Committee Briefing

Mode: In-person, videoconference, teleconference

Participants: Committee members, RIO/University officials, University Counsel

Discuss content of referral letter and address questions/concerns
Elements of RM Finding

1) Does the act meet the definition?
2) Was it committed with a culpable intent?
3) Was the act a significant departure from accepted practices of the relevant research community?
4) Does a preponderance of the evidence prove it?
Element: Definition

- **Plagiarism**: appropriation of another person’s ideas, processes, results or words without giving appropriate credit
  - Verbatim, paraphrase, structural, conceptual, intellectual theft
  - QCR: Quotation, Citation, Reference

- **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
Element: Intent

No more careless; instead “honest error” non-culpable intent in RM reg

Element of RM finding: was act “culpable”?

Culpable comprises all degrees of intent (reckless, knowing, intentional (purposeful) necessary for a finding); excludes honest error

<table>
<thead>
<tr>
<th>Not culpable</th>
<th>Culpable</th>
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<tbody>
<tr>
<td>Honest Error</td>
<td>Reckless</td>
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<tr>
<td>Reasonable Person Standard</td>
<td>No conscious awareness</td>
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</table>
Element: Intent

- **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

Same standard of proof: certainty not required – preponderance of evidence

Knowing degree of intent assumed for plagiarism (QCR)

Element: Significant Departure

• Determine accepted practices of the relevant research community
  • University, academic department, discipline, journals
Element: Preponderance of the Evidence

- Which way does the evidence tip the scales
- 51%
Questions you might want to ask

- Is your RM policy current?
  - Is it > 10 years old and never been used?
- How does your policy link with other policies?
  - Consistent with Academic Misconduct policy?
- 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)?
- Do you document interviews? Record? Transcribe?
### 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

<table>
<thead>
<tr>
<th>ORI</th>
<th>NSF</th>
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<tr>
<td>Negotiates Voluntary Exclusions (VE)</td>
<td>Refers exclusion requests to NSF OGC</td>
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<td>Oversees grantee investigations</td>
<td>Ability to independently investigate</td>
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<td>Not a law enforcement agency</td>
<td>LE agency with subpoena authority</td>
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<td>Division of Education/Integrity</td>
<td>Search warrant capability</td>
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<td>Publishes all findings/VEs with names</td>
<td>Limited outreach by investigative staff</td>
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<td></td>
<td>All closeouts online but are redacted/anonymized</td>
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NSF OIG referred an investigation to me. What could possibly go wrong?
Policy Issues

• Bibbidi! Bobbidi! Policy!

• I’m expected to read and know this thing!?  
  (Remember this person)
Timeliness is Goodliness

• I’ll get to this eventually...

• I can take my time with this

• Maybe we should do an inquiry, too
Let’s Make This Go Away

• “I’m guessing you probably just...”

• “Let me ask that again because I think you meant...”

• I want to define RM this way instead (That person)

• You hired a lawyer?
We Don’t Need a Briefing

• Report lacks necessary information

• “He can figure out the meaning of reckless and knowing and whatever”
Potpourri

- Student RM handled as academic misconduct
- Didn’t interview Subject or relevant witnesses
- Just accepted the Subject’s explanation
- Interviews not documented
- Inquiry=Investigation
- Mixed intents
You Can’t Make This Stuff Up

- The adjudicator was on the committee
- A minority and majority report
- The vigilante PI
- Pre-written admission
- The Subject taught ethics
Whistleblower Protection

• A core value of OIG is protecting NSF employees, contractors, award recipients, and subrecipients who step forward to identify potential wrongdoing

• Federal law prohibits retaliation for providing information reasonably believed to evidence
  o a violation of law, rule, or regulation;
  o gross mismanagement;
  o gross waste of funds;
  o abuse of authority; or
  o a substantial and specific danger to public health and safety.
Whistleblower Protection

- **NSF Federal employees** are protected if they make a whistleblower disclosure to the U.S. Office of Special Counsel, the OIG, or a supervisor.

- **Employees of NSF contractors and award recipients (and subcontractors/subrecipients)** are protected if they make a whistleblower disclosure to their management, an OIG, or an official responsible for investigating misconduct.

- **All of the above** are also protected for communications to Congress.

- **Additional information** on Whistleblower Protection available at:
  - [http://www.osc.gov](http://www.osc.gov)
Whistleblower Protection Ombudsman

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