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(2) Less than 5 percent of the total outstanding amounts of the same classes of securities of the second institution, and

(3) Less than would be needed to obtain effective control of the second institution,

then the interest is too remote and inconsequential to affect the integrity of the employee's services to the Government.

(d) *Policy determinations.* Where a general policy determination of the Government might constitute a ''particular matter'' under 18 U.S.C. 208(a) and might affect the home institution of an NSF officer or employee, but only in the same manner as all similar institutions, the officer or employee may participate in that determination.

(e) *Support services for National Science Board tasks and responsibilities.* A member of the National Science Board may need professional, clerical, and administrative services to support the member's personal efforts to carry out Board tasks and responsibilities. With the approval of the Director and the Chairman of the National Science Board and in accordance with other laws and regulations, the NSF may contract with the home insitution of the member to provide such services. The institution may receive reimbursement of all allowable costs, but no profit or fee. In such circumstances any financial interests the institution might have are normally too inconsequential to affect the integrity of the services provided by the Board member to the Government.

[47 FR 32131, July 26, 1982. Redesignated at 61 FR 59839, Nov. 25, 1996]

PART 689—MISCONDUCT IN SCIENCE AND ENGINEERING

Sec.

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AUTHORITY: Sec. 11(a), National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

SOURCE: 56 FR 22287, May 14, 1991, unless otherwise noted.

§689.1 General policies and responsibilities.

(a) *Misconduct* means

(1) Fabrication, falsification, plagiarism, or other serious deviation from accepted practices in proposing, carrying out, or reporting results from activities funded by NSF; or

(2) Retaliation of any kind against a person who reported or provided information about suspected or alleged misconduct and who has not acted in bad faith.

(b) The NSF will take appropriate action against individuals or institutions upon a determination that misconduct has occurred in proposing, carrying out, or reporting results from activities funded by NSF. It may also take interim action during an investigation. Possible actions are described in §689.2.

(c) NSF will find misconduct only after careful inquiry and investigation by an awardee institution, by another Federal agency, or by NSF. An ''inquiry'' consists of preliminary information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of misconduct has substance. An investigation must be undertaken if the inquiry determines the allegation or apparent instance of misconduct has substance. An ''investigation'' is a formal examination and evaluation of relevant facts to determine whether misconduct has taken place or, if misconduct has already been confirmed, to assess its extent and consequences or determine appropriate action.

(d) Before NSF makes any final finding of misconduct or takes any final action on such a finding, NSF will normally afford the accused individual or institution notice, a chance to provide comments and rebuttal, and a chance to appeal. In structuring procedures in individual cases, NSF may take into account procedures already followed by other entities investigating the same allegation of misconduct.

(e) Debarment or suspension for misconduct will be imposed only after further procedures described in applicable debarment and suspension regulations, as described in §§ 689.7 and 689.8, respectively. Severe misconduct, as established under these regulations, is an independent cause for debarment or suspension under the procedures established by the debarment and suspension regulations.

(f) The Office of Inspector General (OIG) oversees and coordinates NSF activities related to misconduct, conducts any NSF inquiries and investigations into suspected or alleged misconduct, and except where otherwise provided, speaks and acts for NSF with affected individuals and institutions.

§ 689.2 Actions.

(a) Possible final actions listed below for guidance range from minimal restrictions (Group I) to the most severe and restrictive (Group II). They are not exhaustive and do not include possible criminal sanctions.

(1) Group I Actions.

(i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period an individual, department, or institution obtain special prior approval of particular activities from NSF.

(iii) Require for a specified period that an institutional official other than those guilty of misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) Group II Actions.

(i) Restrict for a specified period designated activities or expenditures under an active award.

(ii) Require for a specified period special reviews of all requests for funding from an affected individual, department, or institution to ensure that steps have been taken to prevent repetition of the misconduct.

(3) Group III Actions.

(i) Immediately suspend or terminate an active award.

(ii) Debar or suspend an individual, department, or institution from participation in NSF programs for a specified period after further proceedings under applicable regulations.

(iii) Prohibit participation of an individual as an NSF reviewer, advisor, or consultant for a specified period.

(b) In deciding what actions are appropriate when misconduct is found, NSF officials should consider:

(1) How serious the misconduct was;

(2) Whether it was deliberate or merely careless;

(3) Whether it was an isolated event or part of a pattern;

(4) Whether it is relevant only to certain funding requests or awards involving an institution or individual found guilty of misconduct.

(c) Interim actions may include, but are not limitd to:

(1) Totally or partially suspending an existing award;

(2) Totally or partially suspending eligibility for NSF awards in accordance with debarment-and-suspension regulations;

(3) Proscribing or restricting particular research activities, as, for example, to protect human or animal subjects;

(4) Requiring special certifications, assurances, or other, administrative arrangements to ensure compliance with applicable regulations or terms of the award;

(5) Requiring more prior approvals by NSF;

(6) Deferring funding action on continuing grant increments;

(7) Deferring a pending award;

(8) Restricting or suspending use of individuals as NSF reviewers, advisors, or consultants.

(d) For those cases governed by the debarment and suspension regulations, the standards of proof contained in those regulations shall control. Otherwise, NSF will take no final action under this section without a finding of misconduct supported by a preponderance of the relevant evidence.

§ 689.3 Role of awardee institutions.

(a) Awardee institutions bear primary responsibility for prevention and detection of misconduct. In most instances, NSF will rely on awardee institutions to promptly;

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

(2) Conduct a subsequent investigation, if warranted; and

(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.

(b) If an institution wishes NSF to defer independent inquiry or investigation, NSF expects it to;

(1) Inform NSF immediately if an initial inquiry supports a formal investigation.

(2) Keep NSF informed during such an investigation.

(3) Notify NSF even before deciding to initiate an investigation or as required during an investigation

(i) If the seriousness of apparent misconduct warrants;

(ii) If immediate health hazards are involved;

(iii) If NSF's resources, reputation, or other interests need protecting;

(iv) If Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or

(v) If the scientific community or the public should be informed.

(4) Provide NSF with the final report from any investigation.

(c) If an institution wishes NSF to defer independent inquiry or investigation, it should complete any inquiry and decide whether an investigation is warranted within 90 days. It should similarly complete any investigation and reach a disposition within 180 days. If completion of an inquiry or investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(d) Awardee institutions should maintain and effectively communicate to their staffs appropriate policies and procedures relating to misconduct, which should indicate when NSF must or should be notified.

§689.4 Initial NSF handling of misconduct matters

(a) NSF staff who learn of alleged misconduct will promptly and discreetly inform OIG or refer informants to OIG.

(b) To the extent possible the identify of informants who wish to remain anonymous will be kept confidential. To the extent allowed by law, documents and files maintained by NSF during the course of an inquiry or investigation of misconduct will be treated as investigative files exempt from mandatory pubic disclosure upon request under the Freedom of Information Act.

(c) If alleged misconduct may involve a crime, OIG will determine whether any criminal investigation is already pending or projected. If not, OIG will determine whether the matter should be referred to the Department of Justice.

(d) Otherwise OIG may:

(1) Inform the awardee institution of the alleged misconduct and encourage it to undertake an inquiry;

(2) Defer to inquiries or investigations of the awardee institution or of another Federal agency;

(3) At any time proceed with its own inquiry.

(e) If OIG proceeds with its own inquiry it will normally complete the inquiry no more than 60 days after initiating it.

(f) On the basis of what it learns from an inquiry and in consultation as appropriate with other NSF offices, OIG will decide whether a formal NSF investigation is warranted.

§689.5 Investigations

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, OIG may defer an NSF inquiry or investigation until it receives the results of that external investigation. If it does not receive the results within 180 days, OIG will ordinarily proceed with its own investigation.

(b) If OIG decides to initiate an NSF investigation, it must give prompt written notice to the individual or institutions to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. if notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is underway or under active consideration by these agencies or the NSF, OIG will determine what information, if any, may be disclosed to the subject of the investigation or to other NSF employees.

(d) An NSF investigation may include:

(1) Review of award files, reports, and other documents already readily available at NSF or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with parties or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies;

(6) Opportunity for the subject of the investigation to be heard; and

(7) Full adjudicatory hearings or other formal proceedings, as described in appropriate regulations.

(e) NSF may invite outside consultants or experts to participate in an NSF investigation. They should be appointed in a manner that ensures the official nature of their involvement and provides them with legal protections available to federal employees.

(f) OIG will make every reasonable effort to complete an NSF investigation and to report within 120 days after initiating it. If OIG cannot report within 120 days, it should submit to the Deputy Director within 90 days an interim report and an estimated schedule for completion of the final report.

§ 689.6 Pending proposals and awards.

(a) Upon learning of alleged misconduct OIG will identify potentially implicated awards or proposals and when appropriate, will ensure that program, grant, and contracting officers handling them are informed (subject to § 689.5(c)).

(b) Neither a suspicion or allegation of misconduct nor a pending inquiry or investigation will normally delay review of proposals. To avoid influencing reviews, reviewers or panelists will *not* be informed of allegations or of ongoing inquiries or investigations. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Assistant Director may, in consultation with OIG, either defer review or inform reviewers of the status of the matter.

[56 FR 22287, May 14, 1991, as amended at 59 FR 37438, July 22, 1994]

§ 689.7 Interim administrative actions.

(a) After an inquiry or during an external or NSF investigation the Deputy Director may order that interim actions (as described in § 689.2(c)) be taken to protect Federal resources or to guard against continuation of any suspected or alleged misconduct. Such an order will normally be issued on recommendation from OIG and in consultation with the Division of Contracts, Policy, and Oversight or Division of Grants and Agreements, the Office of the General Counsel, the responsible Directorate, and other parts of the Foundation as appropriate.

(b) When suspension is determined to be appropriate, the case will be referred to the suspending official pursuant to 45 CFR 620.410(a), and the suspension procedures of 45 CFR part 620 will be followed, but the suspending official (see § 620.105(t)) will be either the Deputy Director or an official designated by the Deputy Director.

(c) Such interim actions may be taken whenever information developed during an investigation indicates a need to do so. Any interim action will be reviewed periodically during an investigation and modified as warranted. An interested party may request a review and modification of any interim action.

(d) The Deputy Director will make and OIG will retain a record of interim actions taken and the reasons for taking them.

(e) Interim administrative actions are not final agency actions subject to appeal.

[56 FR 22287, May 14, 1991, as amended at 59 FR 37439, July 22, 1994]

§ 689.8 Dispositions.

(a) After receiving a report from an external investigation by an awardee institution or another Federal agency, OIG will assess the accuracy and completeness of the report and whether the investigating entity followed usual and reasonable procedures. It will either recommend adoption of the findings in whole or in part or, normally within 30 days, initiate a new investigation.

(b) When any satisfactory external investigation or an NSF investigation fails to confirm alleged misconduct and the Deputy Director concurs,

(1) OIG will noitfy the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.

(2) Any interim administrative restrictions that were imposed will be lifted.

(c) When any satisfactory investigation confirms misconduct,

(1) In cases in which debarment is considered by OIG to be an appropriate disposition, the case will be referred to the debarring official pursuant to 45 CFR 620.311, and the procedures of 45 CFR part 620 will be followed, but:

(i) The debarring official (see § 620.105(g)) will be either the Deputy Director, or an official designated by the Deputy Director.

(ii) Except in unusual circumstances, the investigation report will be included among the materials provided to the subject of the investigation as part of the notice of proposed debarment (see § 620.312).

(iii) The notice of the debarring official's decision (see § 620.314(d)) will include instructions on how to pursue an appeal to the Director.

(2) In all other cases,

(i) Except in unusual circumstances, the investigation report will be provided by OIG to the subject of the investigation, who will be invited to submit comments or rebuttal. Comments or rebuttal submitted within the period allowed, normally thirty days, will receive full consideration and may lead to revision of the report or of a recommended disposition.

(ii) Normally within 45 days after completing an NSF investigation or receiving the report from a satisfactory external investigation, OIG will submit to the Deputy Director the investigation report, any comments or rebuttal from the subject of the investigation, and a recommended disposition. The recommended disposition will propose any final actions to be taken by NSF. Section 689.2 lists possible final actions and considerations to be used in determining them.

(iii) The Deputy Director will review the investigation report and OIG's recommended disposition. Before issuing a disposition the Deputy Director may initiate further hearings or investigation. Normally within thirty days after receiving OIG's recommendations or after completion of any further proceedings, the Deputy Director will send the affected individual or institution a written disposition, specifying actions to be taken. The decision will include instructions on how to pursue an appeal to the Director.

§ 689.9 Appeals.

(a) An affected individual or institution may appeal to the Director in writing within 30 days after receiving the Deputy Director's written decision. The Deputy Director's decision becomes a final administrative action if it is not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will inform the appellant of a final decision within 30 days after receiving the appeal. That decision will be the final administrative action of the Foundation. Findings from completed investigations may be shared with scientific review groups if the information bears directly on an investigator's scientific integrity or if necessary to provide an accurate account of relevant facts.

PART 690—PROTECTION OF HUMAN SUBJECTS

Sec.

690.101 To what does this policy apply?
690.102 Definitions.
690.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.