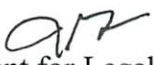


## MEMORANDUM

TO: Faculty Senate via Matthew Zacate, Faculty Senate President

FROM: Joan Gates   
Vice President for Legal Affairs and General Counsel

CC: Sue Ott Rowlands  
Provost & Executive Vice President of Academic Affairs

RE: Professional Concerns Committee (PCC) Proposed Amendments to Faculty Handbook Section 16.7-Scientific/Research Misconduct

DATE: October 11, 2019

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The following memorandum provides the legal recommendation and analysis of NKU's Legal Office regarding the additional amendments the PCC has proposed to Section 16.7 of the Faculty Handbook. This memorandum was requested by Faculty Senate during the September 30, 2019 meeting during which these additional changes were discussed.

### BACKGROUND

In early 2017, Faculty members involved in a confidential matter reached out to NKU's legal office regarding the Research Misconduct section of the faculty handbook. *See* N. Ky. Univ. Faculty Policies & Procedures Handbook (hereinafter "Handbook"), pp. 103-108 (2017). They were seeking advice and guidance in the process and in interpreting the definition of plagiarism since the Handbook did not include this definition. *See* Handbook at 104. At that time, the faculty members were provided with resources to supplement the Handbook's lack of a definition of plagiarism, including Research Compliance Policy #003 entitled "Northern Kentucky University Research Misconduct" located on the Research, Grants and Contracts website at: <https://inside.nku.edu/rgc/research-compliance/research-misconduct.html> and the federal definition. *See* 42 CFR 93.103. Unlike the Handbook, the Research Compliance Policy included the federal definition for plagiarism and also defined fabrication and falsification. *See id.*

In fall of 2017, Research Grants and Contracts began updating the Research Misconduct Policy for NKU's policy website to assure that it was compliant with federal law. *See* <https://inside.nku.edu/policy.html> and 42 CFR 93.103. NKU reviews and updates all University policies and posts them on the policy website before and after Board approval to assure on-going compliance with legal requirements as well as consistency, availability and transparency. After the proposed policy was posted for comment, objections about the updates lead to back and forth discussions between faculty and administration about the proposed amendments. When the version that PCC is proposing was first introduced, the legal office objected to the inclusion of extraneous language inconsistent with federal law and also to not including certain language that was required by law. Through a collaborative process over the summer of 2019, a version that

was consistent with federal law was drafted and proposed by Matthew Zacate, Faculty Senate President, to the Faculty Senate Executive Committee. That version is attached as Exhibit A. However, the PCC objected to this version and re-introduced a version of the policy that the legal office could not support.

## **SUMMARY AND RECOMMENDATION**

On April 19, 2019 the PCC proposed amendments to the “Scientific/Research Misconduct” requirements contained in section 16.7 of the Handbook to the Faculty Senate beyond the amendments that were previously proposed to update the policy to current law. These additional changes included adding significant language to the definition of “Research Misconduct” in section 16.7.2.5 and included language in section 16.7.3.4 that eliminated the statute of limitations for investigations of research misconduct. For the reasons explained in detail below, NKU’s Legal Office cannot support the PCC’s proposed changes as they are not consistent with federal law or widely understood standards. The language the PCC has proposed should be stricken to avoid ambiguity, vagueness, unfairness, unnecessary risk, and due process concerns.

## **PROPOSED CHANGES TO 16.7.2.5 RESEARCH MISCONDUCT**

As an initial matter, the definition the PCC has proposed for research misconduct is not consistent with current law. *See* Exhibit B, which has the definition the PCC proposed with the added language italicized. Institutions that apply for or receive Public Health Service (PHS) support, which includes NKU, must follow the federal definition for research misconduct, which is:

Research Misconduct means fabrication, falsification or plagiarism in proposing, performing, or reviewing research, or in reporting results.

- (a) Fabrication is making up data or results and recording or reporting them.
- (b) Falsification is 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.
- (c) Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research misconduct does not include honest error of differences of opinion.

*See* 42 CFR 93.103; *see also*, Questions and Answers 42 CFR Part 93, Office of Research Integrity, <https://ori.hhs.gov/sites/default/files/QandA.reg.6-06.pdf>, attached as Exhibit C.

The additional language the PCC has proposed, italicized in Exhibit B, is outside the scope of the widely understood and utilized federal definition of research misconduct. *See* 42 CFR 93.103 and Exhibit C. *See also*, various institutions definitions of research misconduct attached as Exhibit D. If the additional language being proposed is included, NKU’s definition of what constitutes research misconduct would not be accurate. *See* 42 CFR 93.103 and Exhibit C. From a legal perspective, this is problematic as it will lead to misapplication of research misconduct consequences to issues that do not rise to the level of research misconduct under law or in any other institution. Or even worse, the ambiguous and vague definition the PCC has proposed will

lead to arbitrary application of the policy, unfairness, due process issues and potential claims of discrimination. See *Booher v. Board of Regents, 1998 U.S. Dist. LEXIS 11404, \*31* (“A policy is unconstitutionally vague if members of the university community must guess at what is prohibited, *Doe v. Univ. of Michigan*, 721 F. Supp. at 866, or if interpretation and enforcement of the policy is delegated without providing guidance so that the enforcement is arbitrary. *Dambrot*, 55 F.3d at 1184”). The following clarifies why including certain language is problematic from a legal perspective.

First, the PCC’s proposed inclusion of “self-plagiarism” within the definition of research misconduct contradicts the federal definition that includes “plagiarism” as a major element of research misconduct but specifically excludes self-plagiarism. See 42 CFR 93.103(c); see also, ORI Policy on Plagiarism, attached as Exhibit E. Since plagiarism is defined as “the appropriation of **another** person's ideas, processes, results, or words without giving appropriate credit” adding the term “self-plagiarism” contradicts the meaning of “research misconduct” as federal law and other research institutions have defined. See *id.*, bold added. See Roger Billings, *Plagiarism in Academia and Beyond: What is the Role of the Courts?* Univ. of San Francisco Law Review, Vol. 38, Spring 2004 at 396 (noting that “Plagiarizers commit a moral infraction by passing off others intellectual production as their own, thereby inflating their own abilities, distorting their credentials, and hiding their inadequacies”).

The PCC’s argument of why self-plagiarism needs to be included appears to be that certain academic behaviors that were published in a 2002 research misconduct investigation report could not be policed without the inclusion of this language. See PCC FAQ on the Research Misconduct Policy Proposal, author not identified. However, as a faculty senator noted during the September faculty senate meeting, the PCC proposed added language was not part of the Handbook definition in 2002 but the faculty members were still found responsible for research misconduct. See Handbook at 97 (1994 with updates until 2010); see also, Roger Billings, *Plagiarism in Academia and Beyond: What is the Role of the Courts?* Univ. of San Francisco Law Review, Vol. 38, Spring 2004 at 405.

Most importantly, federal law regarding research misconduct changed in 2005. See 42 CFR 93.103 and Exhibit C. Consequently, NKU needs to update its policies to current law. See *id.*

For the same reasons stated above, the PCC’s inclusion of the language regarding “redundant or duplicate publications” should be rejected. It is simply not part of the federal definition of research misconduct nor any other research institution’s definition of research misconduct. See 42 CFR 93.103(b) and (c); Exhibit C and *Booher v. Board of Regents, 1998 U.S. Dist. LEXIS 11404, \*31-33* (court found sexual harassment policy which was inconsistent with Department of Education model language was void for vagueness because it gave inadequate notice of prohibited conduct and delegated enforcement of the policy with inadequate guidance for enforcement); see also Exhibit D, which contains other institutions’ definitions of research misconduct.

Moreover, including “other serious deviations from those accepted practices” in the definition of “research misconduct” as the PCC recommends is misplaced. The language should be included when making a “finding” of research misconduct versus within the definition itself. In fact, the

PCC includes this same language later in the proposed policy in section 16.7.4.3 regarding formal investigations:

A finding of research misconduct requires that acts constitute research misconduct as defined above **and** that:

- 1) There is a significant departure from accepted practices of the relevant research community;

...

See PCC Memorandum to Faculty Senate, April 19, 2019, at 9, bold added.

It simply makes no sense to include language that is meant to be part of the requirements for a finding of research misconduct within the definition of research misconduct that is referenced. See also, 42 CFR 93.104: “A finding of research misconduct made under this part requires that— (a) There be a significant departure from accepted practices of the relevant research community...” Consequently, this added language should not be included in the definition of research misconduct to avoid ambiguity, redundancy and vagueness when enforcing the policy. See *Booher v. Board of Regents*, 1998 U.S. Dist. LEXIS 11404, \*33; see also, Exhibit C.

The PCC also included the following within the definition of research misconduct: *Material failure to comply with federal requirements that are uniquely related to the conducting of research*. See PCC Memorandum to Faculty Senate, April 19, 2019, at 3, italics added. This language is overly broad and undefined and would not provide due notice to a potential violator of what is required and how to ensure they were not committing “research misconduct.” See *Booher* at \*31 citing *Doe v. Univ. of Michigan*, 721 F. Supp. at 866. Moreover, those alleging or investigating research misconduct could allege or pursue a wide variety of claims that are traditionally handled through other regulatory means with well-defined parameters. See generally, NKU’s research compliance website at: <https://inside.nku.edu/rgc/research-compliance.html>

The PCC also included the following within the definition of research misconduct: *Failure to comply with federal requirements for protection of researchers, human subjects, or the public, or for insuring the welfare of laboratory animals*. See PCC Memorandum to Faculty Senate, April 19, 2019, at 3, italics added. Including this language in the definition of research misconduct would lead to absurd results. For example, a minor infraction such as improperly labeling animal cages is a “failure to comply with federal requirements for protection of animals.” As such, if this language is included such an infraction would be considered “research misconduct” at NKU that would require an inquiry, investigation and potentially severe consequences for the alleged violator. See generally, NKU’s IACUC website at: <https://inside.nku.edu/rgc/research-compliance/iacuc.html>.

The following language is also proposed by the PCC within the definition of research misconduct: *Failure to meet other material legal requirements governing research*. See PCC Memorandum to Faculty Senate, April 19, 2019, at 3, italics added. This language is likewise overly broad and undefined which would leave one to wonder what “other material legal requirements will be considered “research misconduct.” From a legal perspective, having

such ill-defined terms would result in undue risk to individuals accused or investigating allegations and, once again, not provide adequate notice of what conduct is considered prohibited. *See Booher at \*31 citing Doe v. Univ. of Michigan, 721 F. Supp. at 866.*

Finally, the PCC has proposed the following two sentences be added to the definition section of the research misconduct policy:

*In cases of allegations involving activities submitted to or supported by a federal agency and definitions or procedures for research misconduct specified in the agency's regulations differ from those in this policy, the definitions and procedures in the agency's regulations will be used.*

*In cases of allegations involving activities not submitted to or supported by a federal agency, the definitions of research misconduct specified in this policy should be supplemented by (or interpreted in light of) applicable substantive standards of the relevant research community or the academic discipline at issue.*

*See PCC Memorandum to Faculty Senate, April 19, 2019, at 3, italics added.*

These two sentences should likewise be stricken. If the definition of research misconduct is revised in accordance with the federal definition, this language is not necessary. Further, the language would lead to multiple standards being applied depending on the funding source and a lack of consistency in how allegations of research misconduct are handled. From a legal perspective, this is a concern as it would likely lead to ambiguity and unfairness in NKU's process. *See Booher at \*31-\*33.*

#### **PROPOSED CHANGE TO 16.7.3.4 STATUTE OF LIMITATION**

The PCC has proposed the following sentence be included in section 16.7.3.4: "there is no statute of limitation on investigation of research misconduct at Northern Kentucky University." *See PCC Memorandum to Faculty Senate, April 19, 2019, at 5.* Again, this is not consistent with federal law which has a six (6) year of statute of limitations with exceptions for subsequent use and public health and safety. *See 42 CFR 93.105.*

Moreover, the unlimited statute of limitations being proposed would subject an individual and the university to greater liability since NKU will have difficulties investigating older claims. *See Questions and Answers 42 CFR Part 93, Office of Research Integrity, <https://ori.hhs.gov/sites/default/files/QandA.reg.6-06.pdf>, at 2, attached as Exhibit C.* The legal office would likewise be concerned that such unfairness could lead to lack of due process, arbitrary application of the policy and discrimination claims. Therefore, the policy should be adjusted to be consistent with federal law, as follows:

NKU will only investigate research misconduct that has occurred within six years of the date that the institution receives an allegation of research misconduct. This six year limitation does not apply to the following circumstances:

- 1) Subsequent use by the respondent by continuation or renewal of any incident of alleged research misconduct that occurred before the six (6) year limitation through the citation, republication or other use for the potential benefit of the respondent of the research record that is alleged to have been fabricated, falsified or plagiarized.
- 2) If the appropriate funding agency or the University in consultation with the funding agency, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public.  
*See 42 CFR 93.105*

For the reasons stated above, the legal office recommends that the language the PCC added to sections 16.7.2.5 and 16.7.3.4 of the proposed Research Misconduct policy in its April 19, 2019, Memorandum is stricken or revised as noted above.

**EXHIBIT A: “Executive Committee’s Proposed Revisions to Section 16.7 Compliant With Federal Law”**

EC's version (14-DEC-2018) of proposed Research Misconduct Policy  
to replace Section 16.7 of the Faculty Handbook

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**16.7. SCIENTIFIC/RESEARCH MISCONDUCT**

**16.7.1. PREAMBLE AND POLICY STATEMENT**

The preeminent principle in all research is the quest for truth. The credibility of such research must be above reproach if the public trust is to be maintained. Any compromise of the ethical standards required for conducting academic research cannot be condoned. While breaches in such standards are rare, these must be dealt with promptly and fairly by all parties in order to preserve the integrity of the research community.

A critical element of any policy on research misconduct is that it be a fair and effective process for distinguishing instances of genuine and serious misconduct from insignificant deviations from acceptable practices, technical violations of rules, or simple carelessness. The policy defined in this Handbook will allow such distinctions to be made in a manner that minimizes disruption and protects the honest researcher from false or mistaken accusations.

Research misconduct, as defined in Section 16.7.2., below, is not condoned at Northern Kentucky University and allegations of such misconduct will be investigated in accordance with the procedures described below. The policy and procedure discussed herein do not restrict or limit any legal options available to any of the parties through appropriate courts and/or administrative agencies. NKU must comply with federal regulations, and additional policies may apply to faculty engaged in federally sponsored research or submitting work to a federal agency.

**16.7.2. DEFINITIONS**

**16.7.2.1. COMPLAINANT**

Complainant means a person who in good faith makes an allegation of research misconduct.

**16.7.2.2. GOOD FAITH**

Good faith as applied to a complainant or witness, means having a belief in the truth of one's allegation or testimony that a reasonable person in the complainant's or witness's position could have based on the information known to the complainant or witness at the time. An allegation or cooperation with a research misconduct proceeding is not in good faith if made with knowing or reckless disregard for information that would negate the allegation or testimony. Good faith as applied to a committee member means cooperating with the research misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping an institution meet its responsibilities under this part. A committee member does not act in good faith if his/her acts or omissions on the committee are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the research misconduct proceeding.

**16.7.2.3. INQUIRY**

Inquiry means preliminary information-gathering and preliminary fact-finding.



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**16.7.2.4. INVESTIGATION**

Investigation means the formal collection, examination, and evaluation of all relevant facts to determine whether research misconduct has occurred.

**16.7.2.5. RESEARCH MISCONDUCT**

Research misconduct is defined as fabrication, falsification, plagiarism, or other serious deviations from those accepted practices in proposing, performing, or reviewing research, or in reporting results from research.

- Fabrication is making up data or results and recording or reporting them.
- Falsification is 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.
- Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research misconduct does not include honest error or difference of opinion.

In cases of allegations involving activities submitted to or supported by a federal agency and definitions or procedures for research misconduct specified in the agency's regulations differ from those in this policy, the definitions and procedures in the agency's regulations will be used.

**16.7.2.6. RESEARCH RECORD**

Research record means the record of data or results that embody the facts resulting from scientific inquiry, including but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and any documents and materials provided to federal agencies or institutional officials by a respondent in the course of the research misconduct proceeding.

**16.7.2.7. RESPONDENT**

Respondent means the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

**16.7.2.8. RETALIATION**

Retaliation for the purpose of this part means an adverse action taken against a complainant, witness, or committee member by an institution or one of its members in response to (a) a good faith allegation of research misconduct or (b) good faith cooperation with a research misconduct proceeding.

**16.7.3. POLICIES**

**16.7.3.1. CONFIDENTIALITY**

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All parties involved in the inquiry and investigation shall strive to maintain confidentiality of information, respondents, complainants, and research subjects that may be identified from research records or evidence.

**16.7.3.2. INTERIM ADMINISTRATIVE ACTION**

As provided by federal regulations, at any stage in the process of inquiry, investigation, formal finding and disposition, NKU may take interim administrative action to protect the welfare of human or animal subjects of research, to prevent the inappropriate use of funds, or to protect the interest of students, colleagues, or the University. A suspension or restriction of activities does not in any way imply that research misconduct has taken place. This action will be temporary and used as an interim measure prior to the conclusion of the formal investigation.

**16.7.3.3. EXTRAMURAL ASSURANCE AND REPORTING REQUIREMENTS**

If applicable, NKU will fully and continually cooperate with the appropriate federal agency during its oversight review or any subsequent administrative hearings or appeals. This may include providing research records and evidence under the institution's control, custody, or possession and access to all persons within its authority necessary to develop a complete record of relevant evidence. If required by a funding agency, the Institutional Official (IO) or designee shall submit written assurance that the institution is in compliance with the agency's requirements for handling allegations of misconduct. If the research is supported by an extramural funding agency, the IO or designee is responsible for ensuring compliance with the applicable funding agency's reporting requirements.

**16.7.3.4. STATUTE OF LIMITATION**

NKU will only investigate research misconduct that has occurred within six years of the date that the institution receives an allegation of research misconduct. This six-year limitation does not apply to the following circumstances:

- 1) Subsequent use by the respondent by continuation or renewal of any incident of alleged research misconduct that occurred before the six (6) year limitation through the citation, republication or other use for the potential benefit of the respondent of the research record that is alleged to have been fabricated, falsified or plagiarized.
- 2) If the appropriate funding agency or the University in consultation with the funding agency, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public.

**16.7.3.5. CONFLICT OF INTEREST**

Individuals responsible for carrying out any part of the research misconduct proceeding must not have any real or apparent unresolved, personal, professional, or financial conflicts of interest with the complainant, respondent, or witnesses. Any conflict of interest must be disclosed.

A conflict of interest may include, but is not limited to, co-authorship on a paper or book, a professional or personal relationship, professional or personal relationship or antagonism,

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financial ties, or contact regarding possible employment with either the respondent or the complainant.

**16.7.3.6 ABSENCE OF THE RESPONDENT OF THE ALLEGATION**

Should the respondent leave NKU before the case is resolved, the dean, on behalf of NKU, when possible, shall continue the examination of the allegation and reach a conclusion. NKU shall cooperate with the process of another institution to resolve such questions to the extent possible under state and federal law.

**16.7.3.7. RESTORING REPUTATION**

The dean, or designee, or Provost shall undertake all practical and reasonable efforts to protect and restore the reputation of the individual(s) alleged to have engaged in research misconduct but against whom no finding of research misconduct has been made, if requested by the individual(s) as appropriate. The dean, or designee, or Provost shall undertake reasonable and practical efforts to protect or restore the position and reputation of the individual(s) who in good faith, made an allegation of research misconduct, if requested by the individual(s) and as appropriate. The dean, or designee, or Provost shall undertake reasonable and practical efforts to protect or restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against these individuals.

**16.7.3.8. FALSE ACCUSATIONS**

Regardless of the outcome of an inquiry or investigation, it is the policy of the University that no individual who, in good faith, has reported apparent research misconduct shall be subject to retaliation by the University or by any member of the University community. However, if it is determined that the charges were brought against the respondent with malicious or dishonest intent such that the complainant had a clear understanding that they were probably untrue and that they were designed to harm the respondent, the dean may recommend to the provost that appropriate administrative action be taken against the complainant consistent with the University's governing and administrative regulations.

**16.7.4. PROCEDURES**

**16.7.4.1. ALLEGATIONS OF RESEARCH MISCONDUCT**

It is the policy of Northern Kentucky University to treat fairly both the complainant and the respondent. All allegations of research misconduct will be treated seriously and, to the extent possible, the confidentiality of those who submit allegations will be maintained.

Though allegations of research misconduct may be by any means of communication to an institutional or federal official, the allegation of misconduct shall initially be documented in writing by either the complainant or the person receiving the allegation. If the allegation is made through the Ethics and Compliance Helpline, the person receiving the allegation should document the allegation in writing. Any other person receiving an allegation of research misconduct should relay the information to the appropriate dean for preliminary inquiry. The Provost may receive reports of research misconduct in situations where the appropriate dean may have a conflict of interest.

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Either before or when the institution notifies the respondent of the allegation, inquiry or investigation, the institution must promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments. Respondents may be given supervised access to the research records throughout the inquiry and/or investigation.

**16.7.4.2. PRELIMINARY INQUIRY**

The purpose of the preliminary inquiry is to conduct an initial review of evidence to determine if there are sufficient grounds to warrant a formal investigation of the charge of research misconduct. The preliminary inquiry will be conducted by the dean of the college in which the respondent faculty member is appointed. If the allegation of misconduct is brought against a dean, the provost will appoint another dean to conduct the preliminary inquiry. The dean will notify university legal counsel and the provost regarding the nature of the allegations. University counsel shall determine whether the research at issue is governed by any federal legal regulations, and shall instruct the dean to ensure that the preliminary inquiry is conducted in compliance with any applicable regulations. When deemed necessary, the dean may select one or two other individuals to assist in the preliminary inquiry. Any such individuals should have no real or apparent conflict of interest related to the case in question. A conflict of interest may include, but is not limited to, co-authorship on a paper or book, professional or personal relationship or antagonism, financial ties, or contact regarding possible employment with either the respondent or the complainant.

The preliminary inquiry should begin with an informal discussion with the complainant to verify that the allegation should be classified as possible research misconduct. Within ten (10) business days after this discussion with the complainant, the dean shall begin an informal discussion with the respondent regarding the allegations. If federal or state regulations so require, the dean shall also present the respondent with a letter that states: the nature of the allegations; the focus of the inquiry; an invitation to the respondent to provide comments and other relevant information to the dean; other relevant information; and a statement that the respondent has the right to be represented by an attorney.

The preliminary inquiry should be completed within sixty (60) days of receipt of the written allegation of misconduct. If the preliminary inquiry determines that there are not sufficient grounds within the context of the definition of misconduct for a formal investigation, the respondent and the complainant will be sent letters informing them of the results. All records will be sent to the office of the provost.

A formal investigation will be found to be warranted if:

- a. A reasonable basis for concluding that the allegation falls within the definition of research misconduct; and
- b. Preliminary information-gathering and preliminary fact-finding from the inquiry indicates the allegation may have substance

If the preliminary inquiry determines that there are sufficient grounds for a formal investigation within the context of the definition of misconduct, the respondent and the complainant will be

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sent letters informing them of this decision. The letter to the respondent may include (or be deemed) the "draft preliminary inquiry report." The letter to the respondent (i.e., "the draft preliminary inquiry report") must include, but is not limited to, the following:

- The name and position of the respondent(s);
- That a formal investigation is to be conducted;
- Information pertaining to federal agencies involved including funding numbers, grant applications, contracts, etc., if applicable;
- The nature of the allegation, including a summary of all evidence that currently exists and the right to review it;
- The basis for recommending that the alleged actions warrant an investigation;
- That the respondent will have an opportunity to respond to the charges; and
- That the respondent has the right to be represented by an attorney.

The respondent shall have the opportunity to respond to this letter, in writing, within thirty (30) calendar days of the date on which the respondent receives it. The draft preliminary inquiry report, combined with any comments received from the respondent, shall constitute the preliminary inquiry report.

In the event a formal investigation is deemed to be warranted, the dean shall inform the following individuals and/or organizations: university legal counsel, chairs of any departments that may be involved, the provost, and appropriate regulatory bodies. As required by law or regulation, University counsel shall notify appropriate government agencies when a formal investigation is convened.

If a formal investigation is judged to be unwarranted and it is determined that the charges were brought against the respondent with malicious or dishonest intent such that the complainant had a clear understanding that they were probably untrue and that they were designed to harm the respondent, the dean may recommend to the provost that appropriate administrative action be taken against the complainant. Such appropriate administrative action shall be consistent with the University's governing and administrative regulations.

Any records produced during the preliminary inquiry stage, including the preliminary inquiry report, must be maintained by University Counsel for at least seven (7) years and, upon request, be provided to the applicable government agencies.

#### **16.7.4.3. FORMAL INVESTIGATION**

Before any formal investigation commences, the respondent(s) and any involved collaborators must be notified by written statement of allegations that an investigation is to be conducted. The written statement shall:

- Include a copy of the preliminary inquiry report, which includes information on the nature of the allegations and the focus of the investigation, and inform those being investigated of the opportunity to provide comments and other relevant information to the dean
- Inform the respondent(s), prior to beginning the investigation, of his or her right to be represented by an attorney in preparing and/or giving his or her response in this and all subsequent phases of the investigation.

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- Give the respondent a copy of or refer to the institution's policies and procedures related to research misconduct.
- Indicate there can be no actions that are, or could be perceived as, retaliatory against the investigation committee members, witnesses, or the person who raised an allegation or is thought to have raised an allegation.

The dean shall appoint an Investigative Body (IB) with three or more members to initiate an investigation thirty (30) calendar days after receipt of the preliminary inquiry report. IB members must be tenured faculty members with sufficient expertise in the area of investigation to insure a sound base from which to evaluate the nature of the charges. One member of the IB may be from outside the University if necessary to insure an accurate and knowledgeable evaluation of the evidence. All IB members must be free of real or apparent conflicts of interest regarding the investigation. The dean shall document the rationale for selecting IB members based on their expertise and impartiality. All IB members shall be required to sign a statement that they will maintain the confidentiality of the investigation, and that they have no interest that would conflict with those of the respondent, the complainant, the University, or the sponsoring agency for the research. Prior to the beginning of the formal investigation, the respondent shall be given the opportunity to object in writing to the appointment of any member of the IB, based on conflict of interest. If the member is appointed to the IB despite the respondent's objection, this fact shall be noted in the IB's final report.

The IB shall conduct a formal examination and evaluation of all relevant facts to determine if the allegations of misconduct are valid. In order to maintain the integrity of the review process and avoid any appearance of institutional influence over the panel's deliberations or decision-making, the IB shall be insulated from any administrative influence and any *ex parte* communications with the parties. The IB shall seek the advice of university counsel and may engage in, but is not limited to, the following investigative procedures:

- Interviewing witnesses;
- Sequestering and examining research data (both published and unpublished) and other evidence;
- Seeking expert counsel both inside and outside the University; and
- Conducting a hearing in which the respondent may respond to the charges, call witnesses, and question the complainant.

The IB shall pursue diligently all significant issues and leads discovered that are determined relevant to the investigation. A written summary or transcript of each interview conducted must be completed. A copy of the interview summary or transcript shall be provided to the interviewed party for comment.

The investigation must be completed within 120 days of beginning it, including conducting the investigation, preparing the report findings, providing the draft report for comment, and, if applicable, sending the final report to the appropriate federal agency. If a federal agency is to be involved, the IB must notify the Provost, who will facilitate arrangements for the report to be sent. If the IB is unable to complete the investigation in time, a written request for extension that includes an explanation for the delay shall be submitted to and approved by the Provost and be included in the investigation record. Except: if no federal or state regulation requires the investigation to be completed within 120 days, then the timeline for a particular

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investigation shall automatically be extended until the IB completes the investigation, without any need for written request of extension.

A finding of research misconduct requires that acts constitute research misconduct as defined above and that:

- 1) There is a significant departure from accepted practices of the relevant research community;
- 2) The misconduct is committed intentionally, or knowingly, or recklessly; and
- 3) The allegation is proven by a preponderance of evidence.

The IB shall prepare a draft Investigation Report. The draft report will be sent to all respondents, and all respondents shall be afforded the opportunity to comment upon the draft report and have the comments included in the formal record of the investigation. Any comments shall be submitted in writing within thirty (30) calendar days of the date on which the respondents received the draft report. The IB shall review all respondents' comments prior to issuing the final Investigation Report.

At the completion of the investigation, the IB shall submit its findings, comments from the respondents, and recommend institutional actions (also known as the Investigation Report) in writing to the dean who shall provide a copy to the respondents of the investigation, the Provost, Legal Counsel, and chair(s) of the affected department(s). The dean shall ensure that publishers and editors of journals are informed if manuscripts emanating from fraudulent research have been submitted or published.

The Investigation Report will include the following:

- 1) Description of the nature of the allegations of research misconduct
- 2) Description and documentation of federal financial support, if applicable (e.g., grant numbers, grant applications, contracts, etc.)
- 3) Institutional charge (e.g., description of specific allegations of research misconduct for consideration in the investigation)
- 4) Copy of the institutional policies and procedures under which the investigation was conducted
- 5) Research records and evidence. Identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody but not reviewed.
- 6) Statement of findings. For each separate allegation of research misconduct identified during the investigation, provide
  - a. A finding as to whether research misconduct did or did not occur as follows:
    - i. Identify whether research misconduct was falsification, fabrication, plagiarism, or other serious deviation from accepted practices and if it was intentional, knowing, or in reckless disregard;
    - ii. A finding that serious research irregularities have occurred, but that the irregularities are insufficient to constitute misconduct; or
    - iii. A finding that no research misconduct or research irregularities were committed.
  - b. A summary of the facts and the analysis that support the conclusion and consideration of the merits of any reasonable explanation by the respondent;
  - c. Information about the specific federal support affected, if applicable
  - d. Identification of any publications in need of correction or retraction;

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- e. Identification of the person(s) responsible for the misconduct; and
  - f. Listing of any current support or known grant proposal applications that the respondent has pending with federal agencies.
- 7) Comments. Include and consider any comments made by the respondent and complainant on the draft investigation report.

The investigation must be thorough and sufficiently documented including examination of all research records and evidence relevant to reaching a decision on the merits of the allegations. The IB must ensure that it maintains and provides all records from the investigation to the Provost. This is necessary so that they can be provided to any applicable federal agencies, which may request all relevant research records and records of the institution's research misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

#### **16.7.4.4. DOCUMENTATION**

At the conclusion of an allegation assessment, inquiry, or investigation, the dean shall forward all documentation pertaining to the allegation assessment, inquiry, or investigation to the Provost who shall arrange that the documentation be maintained for seven (7) years and ensure that documentation is provided to the appropriate federal agency upon request, if appropriate. Documentation to be maintained for federal agencies must include the following, as applicable:

- 1) Allegation assessment statement
- 2) Preliminary Inquiry final report
- 3) Formal Investigation Report, including a copy of the report, all attachments, and any appeals
- 4) Findings: statement whether or not the institution accepts the investigation's findings
- 5) Final institutional action: statement if the institution found research misconduct, and if so, who committed the misconduct
- 6) Institutional administrative actions: description of any pending or completed administrative actions against the respondents

The institution must notify the relevant federal agency (if applicable), if the institution plans to close out a case at the inquiry, investigation, or appeal stage on the basis that the respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason, except the closing of a case at the inquiry stage on the basis that an investigation is not warranted.

#### **16.7.4.5. DISCIPLINARY ACTION**

If the findings of the investigation substantiate allegations of research misconduct, the Provost, in consultation with Legal Counsel, shall determine appropriate administrative action, consistent with the University's governing and administrative regulations.

#### **16.7.4.6. APPEAL**

The respondent may appeal the decision of the investigative committee in writing to the provost. The respondent shall have thirty (30) days to file an appeal. A reinvestigation of the case will be warranted if one or more of the following conditions are judged by the



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provost to exist:

- Significant omission of new evidence that was not known or reasonably available at the time of the formal investigation;
- A member of the committee had a conflict of interest; or
- A member of the committee did not accurately interpret the evidence due to lack of expertise concerning the research topic.

The provost must rule within fifteen (15) days of receipt of the respondent's written appeal on whether or not an appeal is warranted. If the provost determines that an appeal is warranted, a new investigative committee will be appointed by the Provost to reexamine the case. The provost's ruling on the issue of appeal is final. The criteria for appointing members to the original investigative committee shall also apply to the qualifications of members of the new investigative committee. The procedures that applied to the original investigative committee will also apply to the new investigative committee. The new committee shall have one hundred twenty (120) days to complete the investigation. The decision of this review committee is final.

**EXHIBIT B: PCC Proposed Language for Section 16.7.2.5 of the Faculty Handbook Not Compliant with Federal Law:**

The PCC has proposed extraneous language for the definition of research misconduct which is not consistent with federal law, as follows (added language italicized):

*The question of what constitutes a serious deviation from accepted scholarly practices must be resolved by applying the standards and norms of the particular academic discipline at issue.*

Research “misconduct,” as used herein, is defined as:

- Fabrication, falsification, plagiarism *including self-plagiarism, redundant or duplicate publications, or other serious deviations from those accepted practices* in proposing, performing, or reviewing research, or in reporting results from research.
  - Fabrication is making up data or results and recording or reporting them.
  - Falsification is 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.
  - Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
  - *Self-plagiarism occurs when some or all significant elements of a previous publication (e.g. text, data, and images) are reused in a new publication with ambiguous acknowledgement or no acknowledgement at all as to their prior dissemination. Self-plagiarism is most blatant when a previously published paper is later published again with very little or no modification.*
  - *Redundant or duplicate publications refers to publications in which a substantial portion of the work has already been published. It also includes the situation in which the work is either so similar to previously published material or so modest an extension of previously published work that it would not be viewed as significant were the previous publication acknowledged. In most academic disciplines, recycling of material in redundant or duplicate publications, without properly citing the prior work, is a serious deviation from accepted scholarly practices.*
- *Material failure to comply with federal requirements that are uniquely related to the conducting of research.*
- *Failure to comply with federal requirements for protection of researchers, human subjects, or the public, or for insuring the welfare of laboratory animals or*
- *Failure to meet other material legal requirements governing research.*

Research misconduct does not include honest error or difference of opinion.

*In cases of allegations involving activities submitted to or supported by a federal agency and definitions or procedures for research misconduct specified in the agency's regulations differ from those in this policy, the definitions and procedures in the agency's regulations will be used.*

*In cases of allegations involving activities not submitted to or supported by a federal agency, the definitions of research misconduct specified in this policy should be supplemented by (or interpreted in light of) applicable substantive standards of the relevant research community or the academic discipline at issue.*

See PCC Memorandum to Faculty Senate, April 19, 2019, pp. 3-4, italics added.

The legal office recommends that all of the italicized language is stricken or revised as described in detail in the preceding Memorandum.

**EXHIBIT C: Questions and Answers Regarding 41 CFR Part 93**

## **Question and Answers 42 CFR Part 93**

These questions and answers are intended to: (1) Assist institutional research integrity officers (RIOS), compliance officers, institutional counsel, and other institutional officials in understanding the obligations of institutions under the new regulation, to be codified at 42 Code of Federal Regulations (CFR) Part 93; (2) Assist PHS funded researchers and respondents, complainants, witnesses and other involved parties in understanding how the regulation affects them; and (3) Provide information about the new regulation to interested members of the public. For ease of reference, the answers refer to the pertinent section or sections of the regulation.

**Q: When did the new regulation become effective?**

A: The final rule became effective on June 16, 2005, 30 days after the date of its publication in the Federal Register (70 FR 28370). For any allegation received on or after June 16, 2005, the institution must comply with the new regulation.

**Q: Does the final rule apply retroactively?**

A: No, the final rule applies prospectively. The effect of that prospective application will depend upon how the provisions of the rule interact with the activities of the institution and ORI. Upon its effective date the final rule will apply to institutions that are receiving PHS support for research, research training, or activities related to that research or research training. For institutions not receiving such PHS support, the regulation will not apply until they submit an application for PHS support.

Generally, if an institution has a research misconduct proceeding pending at the time the new regulation becomes effective, ORI would expect the new procedural requirements to be applicable to the institution's subsequent steps in the proceeding, unless the institution or respondent would be unduly burdened or treated unfairly. However, the definition of research misconduct that was in effect at the time the alleged misconduct occurred would apply. If an institution to which the final rule applies on the effective date has completed an inquiry and investigation and reports to ORI after the effective date of the final rule, ORI will take further action, make findings, and provide an opportunity for a hearing in accordance with the final rule. If a request for a hearing is received by the DAB Chair after the effective date of the final rule, the hearing will be conducted in accordance with the final rule. This will ensure that respondents have the benefit of the detailed, fair hearing procedures in the final rule.

Because it is not possible to address every possible scenario relating to the prospective application of the final rule, institutions that have received allegations of misconduct, or have ongoing inquiries or investigations upon the effective date of the final rule should contact ORI to determine how the rule will apply to those ongoing activities. ORI will make every effort to minimize burdens and ensure that all parties are treated fairly.

**Q: What will an institution be expected to do upon the effective date of the final rule?**

A: As soon as practical after the effective date of the final rule, institutions should bring their policies and procedures into compliance with the new regulation.

### **Primary Changes from Old Rule**

**Q: What are the primary differences between the new regulation, 42 CFR Part 93 and the old regulation, 42 CFR Part 50, Subpart A, regarding the policies on research misconduct?**

**A:**

- **Applicability.** The new rule includes PHS intramural research programs and contracts that support research, research training or activities that are related to research or research training. The new rule applies to an allegation that PHS-supported research involving journal peer review has been plagiarized. Section 93.102.

- **Limitations period.** Because of the problems that may occur in investigating older allegations and the potential unfairness to the respondent in defending against them, the new rule is limited to research misconduct occurring within six years of the date on which HHS or the institution receives the allegation of misconduct, unless: (1) the respondent continues or renews any incident of alleged research misconduct that occurred outside the six-year limit through the citation, republication or other use for the potential benefit of the respondent of the research record that is the subject of the allegation; (2) ORI, or the institution, following consultation with ORI, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public; or (3) if HHS or the institution received the allegation before the effective date of the new rule. Section 93.105

- **Definition of Research Misconduct.** Consistent with the Office of Science and Technology Policy (OSTP) government wide definition and guidelines on research misconduct, the new rule uses the term "research misconduct" rather than "misconduct" or "misconduct in science" and, among other changes, defines this term to include a new element: misconduct occurring in connection with the "reviewing" of research. The "other practices" part of the existing definition has been dropped. Section 93.103. Falsification, fabrication, and plagiarism have also been separately defined.

- **Burden of Proof.** Consistent with the OSTP guidance that the exclusion of honest error or difference of opinion from the definition of research misconduct does not require HHS and the institutions to disprove possible honest error or difference of opinion, the new rule provides that these elements are an affirmative defense that the respondent has the burden of proving by a preponderance of the evidence. However, the institutions and HHS retain the burden of proving research misconduct by a preponderance of the evidence and any admissible, credible evidence the respondent submits to prove honest error or difference of opinion must be weighed in determining whether the institution and HHS have carried this burden. Sections 93.106(b)(1) and (2) and 93.516(b).

- **Institutional Responsibilities.** The new rule describes in greater detail the responsibilities of the institutions in responding to allegations of research misconduct. Institutions must take certain steps to ensure a fair and thorough investigation, such as securing the evidence and giving the respondent opportunities to access the evidence and comment on the investigational report. In addition, the new rule provides greater detail on ORI's oversight of the institution's investigation or other misconduct proceeding and the actions that ORI may take if an institution fails to comply with the rule. Specific institutional responsibilities are addressed in the Qs & As that follow. Subpart C, Sections 93.300 - 93.319.

- **Hearing Process.** The new rule sets forth a detailed hearing process that is modeled on the HHS Office of Inspector General (OIG) regulation, 42 CFR part 1005, that governs the hearing process for the exclusion of health care providers from Medicare and State health care programs. Among the changes from the current ad hoc hearing process is that the trier of fact will be an Administrative Law Judge, rather than a three-person panel of the Departmental Appeals Board (DAB). Subpart E, Sections 93.500 - 93.523.

• **Responsibilities of ORI and the ASH.** The new rule changes the respective responsibilities of ORI and the Assistant Secretary for Health (ASH). The ALJ's findings of fact and conclusions of law constitute a recommended decision to the Assistant Secretary for Health (ASH). Under the final rule, the ASH may let the ALJ's recommended decision stand, or take final agency action, exercising authority to affirm, reverse, or modify the ALJ's recommended decision, if it is found to be arbitrary and capricious, or clearly erroneous. If debarment or suspension from eligibility for Federal financial assistance and/or contracts is proposed, the decision of the ALJ or of the ASH, as the case may be, constitutes proposed findings of fact to the HHS Debarment Official. If the ASH takes final action on the ALJ's recommended decision and the Debarment Official concurs, the ASH decision constitutes final agency action. Section 93.523. In order to ensure a separation of this ASH responsibility from the responsibility of making a finding of research misconduct, ORI will propose initial findings of research misconduct, subject to the DAB hearing process, and recommend settlements to HHS. This change will maintain the separation between investigation and adjudication, because ORI will not conduct any inquiry or investigation on behalf of HHS. There will rarely be a need for HHS, rather than an institution, to conduct an inquiry or investigation, but if it is necessary, the OIG would carry out that responsibility. Sections 93.400, 93.404, 93.500, and 93.523.

**Q: In what way is the applicability of the new regulation more narrow than the current regulation, policies and practices?**

A: The scope of the new regulation is limited to cases in which the alleged research misconduct occurred within 6 years of the date HHS or an institution receives an allegation of research misconduct. With some exceptions, no inquiry or investigation under the regulation may proceed where the alleged misconduct occurs outside this 6 year limitation period. This standard is modeled after the limitation period used in the qui tam provision of the False Claims Act and after the procedures used by the HHS Office of the Inspector General in its Medicare and Medicaid exclusion cases.

## Finding Research Misconduct

**Q: What is research misconduct?**

A: Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research or in reporting research results. Fabrication is making up data or results and recording or reporting them. Falsification is 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. Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit. Research misconduct does not include honest error or differences of opinion. Section 93.103.

**Q: Does plagiarism include disputes about authorship or credit among collaborators?**

A: No. In keeping with PHS and OSTP policies, such disputes are not included in the definition of research misconduct in the new regulation, as explained in more detail in the preamble of the Notice of Proposed Rulemaking (69 FR 20778, 20780 April 16, 2005). Also, see ORI's policy statement on plagiarism at <http://ori.dhhs.gov/policies/plagiarism.shtml>

**Q: What is necessary for a finding of research misconduct?**

A: (1) There must be a significant departure from accepted practices of the relevant research community.

(2) The misconduct must have been committed intentionally, knowingly, or recklessly.

(3) The allegation must be proven by a preponderance of the evidence. Section 93.104.

**Q: What is a preponderance of the evidence?**

A: A preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not. Section 93.219.

**Q: Whom has the burden of proving research misconduct?**

A: The institution or HHS has the burden of proving research misconduct. Section 93.106(b)(1). However, the respondent must prove by a preponderance of the evidence that honest error or difference of opinion occurred. In determining whether HHS or the institution has carried its burden of proving research misconduct, the finder of fact must give due consideration to admissible, credible evidence of honest error or difference of opinion presented by respondent. Section 93.106(b)(2).

**Q: Is the destruction, absence of, or the respondent's failure to provide research records adequately documenting the research that is the subject of an allegation of research misconduct evidence of research misconduct?**

A: Yes, if the institution or HHS establishes by a preponderance of the evidence that: (1) the respondent intentionally, knowingly, or recklessly had research records and destroyed them, had the opportunity to maintain the records but did not do so, or maintained the records and failed to produce them in a timely manner; and (2) the respondent's conduct constitutes a significant departure from accepted practices of the relevant research community. Section 93.106(b)(1).

## **Institutional Responsibilities**

### Assurances and Administration

**Q: In general, what must institutions do to comply with the new rule?**

A: The responsible institutional official for each institution that applies for or receives PHS support for biomedical or behavioral research, research training, or activities related to that research or research training must assure that the institution: (1) has written policies and procedures, in compliance with the rule, for inquiring into and investigating allegations of research misconduct; (2) complies with those policies and procedures; and (3) complies with the requirements of the rule. Section 93.301.

ORI considers an institution to be in compliance with its assurance if the institution: (1) Establishes the required policies and procedures, keeps them in compliance with the rule, and provides them to ORI and to other authorized HHS personnel, upon request; (2) Takes all reasonable and practical steps to foster a research environment that promotes the responsible conduct of research, discourages research misconduct, and responds promptly to allegations or evidence of possible research misconduct, including the specific steps of complying with its policies and procedures and informing its research members involved with PHS supported research of those policies and procedures and its commitment to compliance with them; (3) Submits an annual report to ORI that contains information specified by ORI on the institution's compliance with the rule; and, (4) Upon request, provides to ORI with its assurance or annual report such other aggregated information as ORI may request on the institution's research misconduct proceedings and compliance with the rules. Section 93.302.

Section 93.304 sets forth what the institutional policies and procedures must include.



**Q: What if the awardee institution for PHS research funds is a cooperative clinical group (or other research group or an institution with subcontractors) and some misconduct is alleged at one of the other members of the groups or a subcontractor - who is supposed to conduct the inquiries and investigations and report to ORI?**

A: "The Public Health Service Policies on Research Misconduct at 42 CFR Part 93 do not directly address this issue. Section 93.214 defines "institutional member" to include contractors, subcontractors, and subawardees and their employees. Section 93.300(f) requires institutions to take all reasonable and practical steps to ensure the cooperation of institutional members with research misconduct proceedings, but neither that section nor any other section addresses who is responsible for conducting research misconduct proceedings if the misconduct is alleged against an employee of a contractor or subawardee of a grantee institution.

The NIH Grants Policy Statement provides, in its discussion of Public Policy Requirements and Objectives, that the grantee is responsible for establishing and maintaining the necessary process to monitor its compliance and that of its employees, consortium participants and contractors with the requirements of the grant. The grantee is responsible for compliance with its research misconduct assurance for all awarded funds, including those made available to subawardees and contractors. In order for a grantee to meet its responsibility, the contract or subaward must bind the contractor or subawardee and its employees to comply with the requirements of the PHS Policies on Research Misconduct and provide how an allegation of research misconduct involving one of those employees will be handled. The contractor or subawardee may be in a better position to carry out inquiries and investigations, because they have control over the respondent and the pertinent records. However the grantee institution must also consider whether the contractor or subawardee has the resources and capability to carry out inquiries and investigations. If the grantee institution determines that contractor or subawardee does not have the ability to promptly carry out inquiries and investigations in accordance with the PHS Policies, it should take that responsibility or utilize the services of a consortium or other qualified person in accordance with Section 93.306.

Grantee officials involved in cooperative groups or other contractor or subawardee arrangements are encouraged to talk to ORI Staff about such matters (phone 240-453-8800), as well as report to the central group and to any federal or other monitoring groups as appropriate when issues of discrepancies in cooperative group trial records arise.

**Q: Is there an exception from the assurance requirements for small institutions?**

A: Yes, a limited exception. If an institution is too small to handle research misconduct proceedings, it may file a "Small Organization Statement" with ORI in place of having written policies and procedures for addressing research misconduct. By submitting that statement the institution agrees to report all allegations of research misconduct to ORI. ORI will work with the institution to develop and implement a process for handling allegations of research misconduct in a manner that is consistent with the rule. The Small Organization Statement does not relieve the institution from complying with any other provision of the rule. Section 93.303.

**Q: May an institution contract with an outside organization for the conduct of a research misconduct proceeding at the institution?**

A: Yes, an institution may use the services of a consortium or person that the institution reasonably determines to be qualified by practice and experience to conduct a research misconduct proceeding. A consortium may be a group of institutions, professional organizations, or mixed groups that will conduct research misconduct proceedings for other institutions. A consortium or person acting on behalf of the institution must comply with the final rule and the institution remains responsible for complying with its assurance and the rule. Section 93.306.

**Q: May an institution have different standards and definitions for research misconduct than those in the final rule?**

A: Yes. Although an institution must apply the regulatory definitions, standards, and requirements in evaluating an allegation of research misconduct reported to ORI, it may also apply its internal definitions or standards in determining whether misconduct has occurred at the institutional level. An institution may find misconduct under its internal standards and impose administrative sanctions based on that finding, regardless of whether the institution or ORI makes a finding of research misconduct under the HHS standard. Section 93.319.

**Q: What actions may ORI and HHS take if an institution is deficient in complying, or fails to comply with its assurance and the requirements of the final rule?**

A: ORI may address institutional deficiencies through technical assistance if the deficiencies do not substantially affect compliance with the final rule. If an institution fails to comply with its assurance and the requirements of the final rule HHS may take some or all of the following compliance actions: (1) issue a letter of reprimand; (2) direct that research misconduct proceedings be handled by HHS; (3) place the institution on special review status; (4) place information about the institutional noncompliance on the ORI web site; (5) require the institution to take corrective actions; (6) require the institution to adopt and implement an institutional integrity agreement; (7) debar or suspend the institution; and (8) any other action appropriate to the circumstances.

**Q: What does ORI consider in making decisions on institutional noncompliance?**

A: ORI may decide that an institution is not compliant with the final rule if it shows a disregard for, or inability or unwillingness to implement and follow the requirements of the final rule and its assurance. In making this decision, ORI may consider, but is not limited to the institution's:

- Failure to establish and comply with policies and procedures required by the final rule.
- The existence of institutional policies and procedures that conflict with, or substantially impede compliance with, requirements of the final rule.
- Failure to respond appropriately when allegations of research misconduct arise.
- Failure to report to ORI all investigations, admissions, findings of misconduct, and proposed settlements at any stage of the process in compliance with the final rule.
- Failure to cooperate with ORI's review of research misconduct proceedings.
- Acts or omissions that have a material, adverse effect on reporting and responding to allegations of research misconduct. Section 93.412.

**Reporting**

**Q: In summary, what must institutions report or submit to ORI?**

A:

- An annual report containing the information specified by ORI on the institution's compliance with the final rule. Section 93.302(b).
- A Small Organization Statement, if the institution believes it is too small to handle research misconduct proceedings. Section 93.303.

- Within 30 days of finding that an investigation is warranted, the written finding of the responsible official and a copy of the inquiry report. Sections 93.304(d), 93.309(a), and 93.310(a) and (b).
- Where the institution has found that an investigation is warranted, the institution must provide to ORI upon request: (1) the institutional policies and procedures under which the inquiry was conducted; (2) the research records and evidence reviewed, transcripts or recordings of any interviews, and copies of all relevant documents; and (3) the charges for the investigation to consider. Section 93.309.
- Periodic progress reports, if ORI grants an extension of the time limits on investigations or appeals and directs that such reports be submitted. Sections 93.311(c) and 93.314(c).
- Following completion of the investigation report or any appeal: (1) a copy of the investigation report with all attachments and any appeals; (2) the findings of research misconduct, including who committed the misconduct; (3) a statement of whether the institution accepts the findings of the investigation; and (4) a description of any pending or completed administrative actions against the respondent. Section 93.315.
- Upon request, custody or copies of records relevant to the research misconduct allegation, including research records and evidence. Section 93.317(c).
- Notify ORI immediately of the existence of any of the special circumstances specified in Section 93.318.
- Any information, documentation, research records, evidence or clarification requested by ORI to carry out its review of an allegation of research misconduct or the institution's handling of such an allegation. Section 93.400(b).

**Q: What is a "research misconduct proceeding" as defined in the final rule?**

A: Any actions related to alleged research misconduct taken under the final rule, including but not limited to, allegation assessments, inquiries, investigations, ORI oversight reviews, hearings, and administrative appeals. Section 93.223.

**Q: What must an institution report to ORI during the research misconduct proceeding?**

A: At any time during the research misconduct proceeding an institution must notify ORI immediately if it has reason to believe any of the following special circumstances exist:

- Health or safety of the public is at risk, including an immediate need to protect human or animal subjects.
- HHS resources or interests are threatened.
- Research activities should be suspended.
- There is a reasonable indication of possible violation of civil or criminal law.
- Federal action is required to protect the interests of those involved in the research misconduct proceeding.
- The research misconduct proceeding may be made public prematurely.

- The research community or public should be informed. Section 93.318

Respondents, Complainants, Witnesses and PHS funded Researchers

**Q: What information must institutions provide to PHS funded researchers?**

A: The institution must inform researchers involved with PHS supported biomedical or behavioral research, research training or activities related to that research or research training, including those applying for PHS support, about the institutional policies and procedures for responding to allegations of research misconduct, and the institution's commitment to compliance with those policies and procedures. Section 93.302(a)(2)(i).

**Q: What information and opportunities must an institution provide to a respondent in the course of a research misconduct proceeding?**

A: The institution must:

- Make a good faith effort to notify the respondent in writing at the time of or before beginning an inquiry. Sections 93.304(c), 93.307(b).
- Provide the respondent an opportunity to comment on the inquiry report and attach to the report any comments from the respondent. Sections 93.304(e), 93.307(f).
- Notify the respondent of the outcome of the inquiry. The notice must include a copy of the inquiry report and include a copy of, or refer to, the final rule and the institution's policies and procedures. Section 93.308(a).
- Within a reasonable amount of time after determining that an investigation is warranted, but before the investigation begins (the investigation must begin within 30 days after the determination that it is warranted), notify the respondent in writing of the allegations to be investigated. The institution must give the respondent written notice of any new allegations within a reasonable time after deciding to pursue allegations not addressed in the inquiry or in the initial notice of investigation. Section 93.310(c).
- Interview the respondent during the investigation, provide the recording or transcript to the respondent for correction, and include it in the record of the investigation. Section 93.310(g).
- Interview during the investigation any witness who has been reasonably identified by the respondent as having information on relevant aspects of the investigation, provide the recording or transcript to the witness for correction, and include it in the record of investigation. Section 93.310(g).
- Give the respondent a copy of the draft investigation report and, concurrently, a copy of, or supervised access to the evidence on which the report is based. Any comments must be submitted within 30 days of the date on which the respondent received the draft report and must be considered by the institution and included in the final report. Sections 93.304(f), 93.312(a).

**Q: Does a respondent have a right to continue his/her research after allegations of research misconduct have been made?**

A: The final rule does not address this issue directly. Section 93.305 requires the institution to: (1) promptly obtain custody of and sequester all research records and evidence needed to conduct the research misconduct proceeding; and (2) where appropriate, give the respondent copies of, or reasonable, supervised access to the research records. There are at least two

reasons for providing such access: to enable the respondent to prepare a defense against the allegation; and/or to continue the research.

The determination of when it would be inappropriate to provide respondent copies of or access to the research records is left to the discretion of the institution. In exercising this discretion, institutions should consider separately the issues of whether the respondent should continue the research and whether and under what circumstances the respondent should be given copies of or access to the research records. In considering the former issue, institutions should weigh, among other factors, the special circumstances listed in Section 93.318, the importance of continuing the research, and whether the expertise of the respondent is unique. Institutions must also be cognizant of the interests of the PHS funding agency and the need to confer with that agency about suspension or discontinuation of the research or to obtain approval if the Principal Investigator is being replaced. If the respondent does not continue the research, he or she would still have the right of reasonable, supervised access to the records for the purpose of preparing a defense to the allegation. In order to ensure that the respondent has this opportunity at the investigation stage, Section 93.312(a) requires the institution to give the respondent a copy of, or supervised access to the evidence upon which the draft investigation report is based concurrently with the provision of the draft report for comment by the respondent. Sections 93.305, 93.312(a) and 93.318.

**Q:**

**What opportunities does a respondent have following the institution's finding of research misconduct?**

**A:** The respondent has the opportunity to:

- Participate in any appeal offered under the institution's policies and procedures. Section 93.314(a).
- Admit guilt or seek to settle the case with the institution, but to finally resolve the allegation, the acceptance of such an admission or any proposed settlement must be approved by ORI. Section 93.316.
- Be notified of an ORI finding of research misconduct and proposed HHS administrative actions in an ORI charge letter sent by certified mail or a private delivery service to the respondent's last known address or the last known principal place of business of the respondent's attorney. Section 93.405.
- Admit guilt or seek to settle the case with ORI. Section 93.404.
- Within 30 days of receipt of the charge letter, request a hearing in writing, in accordance with the requirements of Section 93.501.
- If the Administrative Law Judge (ALJ) grants the hearing request, respondent may waive the opportunity for an in-person proceeding and the ALJ may review and decide the case on the basis of the administrative record. Sections 93.503(d) and 93.511(b)(3).
- During the hearing, the rights afforded to the parties under Section 93.505.

**Q: What is the role of a person who alleges research misconduct under the new regulation?**

**A:** The new regulation uses a new term, "complainant," defined as a person who in good faith makes an allegation of research misconduct. The role of the complainant is limited. Once the complainant has made an allegation of research misconduct, that person does not participate

in the proceeding other than as a witness. A complainant is not the equivalent of a "party" in a private dispute. In conformance with the OSTP policy, the HHS internal review group, and current agency practice, an institution has an obligation to pursue allegations of research misconduct independent of the complainant's role. Sections 93.203, 93.300(b), and 93.307(a).

**Q: What interactions does an institution have with the complainant in the course of a research misconduct proceeding?**

A: The institution:

- May notify the complainant whether the inquiry found an investigation to be warranted and provide relevant portions of the inquiry report to the complainant for comment. Section 93.308(b).
- Must interview the complainant during the investigation, provide the recording or transcript to the complainant for correction, and include it in the record of investigation. Section 93.310(g).
- May provide the complainant a copy of the draft investigation report or relevant portions of it and, if so, require that comments be submitted within 30 days of the date on which the complainant received the document. Section 93.312(b).
- Must consider any comments made by the complainant on the draft report and include those comments in the final investigation report. Section 93.313(g).

**Q: What confidentiality protections must institutions provide respondents and complainants?**

A: Disclosure of the identity of respondents and complainants in research misconduct proceedings is limited, to the extent possible, to those who need to know, consistent with a thorough, competent, objective, and fair research misconduct proceeding and as allowed by law, but the institution must disclose the identity of respondents and complainants to ORI pursuant to an ORI review of the research misconduct proceeding under Section 93.403 and pursuant to other requirements of the final rule. Section 93.108(a).

Research Records and Evidence of Research Misconduct

**Q: What is the responsibility of an institution for maintenance and custody of research records and evidence?**

A: An institution must:

- Either before or when the institution notifies the respondent of the allegation, inquiry or investigation, promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except that where scientific instruments shared by a number of users are involved, custody may be limited to copies of the data or evidence from such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.
- Where appropriate, give the respondent copies of, or reasonable, supervised access to the research records.

- Undertake all reasonable and practical efforts to take custody of additional research records or evidence that is discovered during the course of a research misconduct proceeding.
- Maintain the research records, evidence, and other records of the research misconduct proceeding in a secure manner for seven years after completion of the proceeding or any HHS proceeding, whichever is later, unless custody of the records has been transferred to HHS or ORI has notified the institution that it no longer needs to retain the records. Section 93.305.

### Inquiries

#### **Q: When must an institution conduct an inquiry?**

A: When there is a written or oral statement or other communication to an institutional or HHS official that alleges misconduct in connection with the institution's application for PHS support for biomedical or behavioral research, research training, or activities related to that research or research training, or the institution's PHS supported projects or products of such research, if: (1) the allegation is within the definition of research misconduct in the rule; (2) the rule applies to the allegation under Section 93.102; and (3) the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified. Sections 93.201 and 307.

The process of evaluating an allegation to determine if it meets the three criteria listed above is referred to as an allegation assessment. An institution is also required to conduct an allegation assessment if ORI forwards an allegation to the institution for that purpose. If ORI decides that an inquiry is warranted it forwards the matter to the appropriate institution to conduct the inquiry. Section 93.402(a) and (c).

#### **Q: How should institutions deal with bad faith allegations?**

A: The handling of bad faith allegations is left to the discretion of the institutions. The final rule does not define "bad faith," but under the definition of "good faith" in Section 93.210, a bad faith allegation is one that the complainant does not believe to be true or whose belief that the allegation is true is unreasonable, based on what a reasonable person in the complainant's position would believe on the basis of information known to the complainant. The definition of "good faith" makes it clear that an allegation can lack sufficient credibility and specificity so that potential evidence of research misconduct cannot be identified (Section 93.307(a)(3)), but not be a bad faith allegation. Thus, if institutions exercise their discretion to address bad faith allegations, fair procedures for determining whether there has been a bad faith allegation should be included. ORI is prepared to work collaboratively with the research community to develop guidance in this area if research institutions and associations desire to do so. Sections 93.210, and 93.307(a)(3).

#### **Q: What is the purpose of an inquiry?**

A: To conduct an initial review of the evidence to determine if an investigation is warranted. An investigation is warranted if the following determinations are made:

- There is a reasonable basis for concluding that the allegation falls within the definition of research misconduct and involves PHS supported biomedical or behavioral research, research training, or activities related to that research or research training.
- Preliminary information-gathering and preliminary fact-finding from the inquiry indicates that the allegation may have substance. Section 93.307.

#### **Q: What are the requirements for the inquiry report?**

A: The report must be in writing and include: (1) the name and position of the respondent, (2) a description of the allegations of research misconduct and a description of the PHS support, including grant or contract numbers, applications and publications listing PHS support; (3) the basis for recommending or not recommending that an investigation is warranted; and (4) any comments the respondent has made on the report after being afforded an opportunity to do so. The inquiry report is to be completed within 60 calendar days of the initiation of the inquiry, but if that deadline is not met the inquiry record must include documentation of the reasons for exceeding the 60-day period. Sections 93.307 and 93.309.

The inquiry report must be provided to the respondent as part of the notification of the results of the inquiry. That notification must also include the institution's research misconduct policies and include a copy of, or refer to the HHS the final rule on research misconduct. Section 93.308.

**Q: Does the complainant have a right to comment on, and receive a copy of the inquiry report?**

A: No, the final rule does not require the institution to give the complainant an opportunity to comment on the inquiry report or to notify the complainant of the outcome of the inquiry. An institution may provide these opportunities, if it chooses. Section 93.308(b).

**Q: Must all inquiry reports be submitted to ORI?**

A: No. Inquiry reports that provide the basis for an institutional finding that an investigation is warranted must be submitted to ORI. In addition, the report must be provided to ORI when the inquiry report makes a finding of research misconduct, such as when the respondent makes an admission, or when the institution otherwise proposes to settle the case, in which case ORI must be notified. When ORI has referred the allegation to the institution and has asked for an inquiry report or has otherwise learned of the allegation and requests further information, ORI must also be notified. Where it is concluded that an investigation is not warranted, institutions must keep sufficiently detailed documentation of inquiries to permit a later assessment by ORI of the institution's decision. Consistent with Section 93.317, institutions must retain those records in a secure manner for at least seven years after the termination of the inquiry, unless custody has been transferred to ORI or ORI has advised the institution that the records no longer need to be retained. Upon request, the institution must provide the records to ORI or other authorized HHS personnel. Section 93.309.

#### Investigations

**Q: What are the requirements for reporting to ORI on the decision to initiate an investigation?**

A: Within 30 days of finding that an investigation is warranted, the institution must provide ORI with: (1) a written finding by the responsible institutional official; and (2) a copy of the inquiry report.

In addition, the institution must provide the following information to ORI upon request: (1) the institutional policies and procedures under which the inquiry was conducted; (2) the research records and evidence reviewed, transcripts or recordings of any interviews, and copies of all relevant documents; and (3) the charges for the investigation to consider. Section 93.309.

**Q: What are the requirements for the conduct of an investigation?**

A: Institutions must:

- Initiation. Begin the investigation within 30 days after determining that it is warranted.



- Notice to ORI. Notify the ORI Director on or before the date the investigation begins.
- Notice to Respondent. Notify the respondent in writing of the allegations before the investigation begins and of any new allegations within a reasonable time after the decision to pursue an allegation that was not addressed in the inquiry or the initial notice of the investigation.
- Custody of the records. To the extent they have not already done so at the allegation or inquiry stages, obtain custody of and sequester in a secure manner all the research records and evidence needed to conduct the research misconduct proceeding. Whenever possible, the institution must: (1) take custody of the records before or at the time the institution notifies the respondent; and (2) whenever additional items become known or relevant to the investigation.
- Documentation. Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research records and evidence relevant to reaching a decision on the merits of the allegation.
- Fair Investigation. Take reasonable steps to ensure an impartial and unbiased investigation, including participation of individuals with appropriate scientific expertise who do not have unresolved personal, professional, or financial conflicts of interest with those involved in the inquiry or investigation.
- Interviews. Interview each respondent, complainant, and any other available person who has been reasonably identified as having information on relevant aspects of the investigation, including witnesses identified by the respondent, and record or transcribe each interview, provide the recording or transcript to the interviewee for correction, and include the recording or transcript in the record of the investigation.
- Pursue leads. Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of additional instances of possible research misconduct, and continue the investigation to completion. Section 93.310.
- Completion. Complete all aspects of the investigation, including sending the final report to ORI under Section 93.315, within 120 days of beginning it, unless ORI grants an extension on the basis of the institution's written request. If an extension is granted, ORI may direct the submission of periodic progress reports. Section 93.311.

**Q: Must the institution give the respondent and complainant an opportunity to comment on the draft investigation report?**

A: Respondent. The institution must give the respondent a copy of the draft report and, concurrently, a copy of, or supervised access to, the evidence on which the report is based. The comments of the respondent on the draft report, if any, must be submitted within 30 days of the date on which respondent received the draft report. Section 93.312(a).

Complainant. The institution has discretion as to whether or not to give the complainant a copy of the draft report or relevant parts of it. The comments of the complainant, if any, must be submitted within 30 days of the date on which the complainant received the draft report for comment. Section 93.312(b).

**Q: What must the institutional investigation report contain?**

A: The report must include:

- **Allegations.** Describe the allegations of research misconduct.
- **PHS support.** Describe and document the PHS support, including grant numbers, grant applications, contracts, and publications listing PHS support.
- **Institutional charge.** Describe the specific allegations of research misconduct that the institution considered in the investigation.
- **Policies and procedures.** If not already provided to ORI with the inquiry report, include the institutional policies and procedures under which the investigation was conducted.
- **Research records and evidence.** Identify and summarize the research records and evidence reviewed, and any evidence taken into custody but not reviewed.
- **Statement of findings.** For each allegation or research misconduct identified during the investigation, provide a finding as to whether research misconduct did or did not occur and, if so:
  - Identify whether it involved falsification, fabrication, or plagiarism, and if it was intentional, knowing, or in reckless disregard;
  - Summarize the facts and analysis that support the conclusion and consider the merits of any reasonable explanation by the respondent;
  - Identify the specific PHS support;
  - Identify any publications that need to be corrected or retracted; and,
  - List any current support or known applications or proposals for support the respondent has pending with non-PHS Federal agencies.
- **Comments.** Include and consider any comments made by the respondent and complainant on the draft investigation report.
- **Maintain and provide records.** Maintain and provide to ORI upon request all relevant research records and evidence, including results of all interviews and transcripts or recordings of such interviews. Section 93.313.

**Q: Must an institution provide for an appeal from its findings of research misconduct in an investigation?**

A: No, but if the institution provides for an appeal that could result in a reversal or modification of the findings of the investigation report, it must complete the appeal within 120 days of its filing or, if unable to complete the appeal within that time period, the institution must request an extension in writing from ORI and provide an explanation for the request. ORI may grant extensions for good cause and, if an extension is granted, direct the institution to submit periodic progress reports. This time period does not apply to institutional termination proceedings. Section 93.314.

**Q: What must an institution provide to ORI after an investigation and any appeal has resulted in a final finding of research misconduct?**

- A: (1) The investigation report, including all attachments and any appeals.
- (2) A statement of whether the institution found research misconduct, and, if so, who committed the misconduct.
- (3) A statement of whether the institution accepts the findings of the investigation.

(4) A description of any pending or completed administrative actions against the respondent. Section 93.315.

### Settling and Closing Cases

**Q: Does the new regulation permit the current practice of resolving cases of research misconduct through settlement agreements?**

A: Yes. HHS may settle a research misconduct proceeding at any time it concludes that settlement is in the best interests of the Federal Government and the public health or welfare. Settlement agreements are publicly available, regardless of whether ORI makes a finding of research misconduct. Section 93.409.

**Q: May an institution close a case at the inquiry, investigation, or institutional appeal stage (e.g., admission of guilt or proposed settlement)?**

A: Yes, but it must notify ORI in advance of any planned closure, including any proposed settlement with the respondent, except for the closing of a case after the inquiry on the basis that an investigation is not warranted or a finding of no misconduct after completion of an investigation or appeal, which nevertheless must be reported to ORI under Section 93.315. Many institutions contact ORI in advance when they are considering settlement. Sometimes ORI, the institution, and the respondent will join in a three-way agreement settling the proceeding. Any settlement action undertaken by the institution, without prior ORI approval, which contravenes the regulatory requirements may result in an ORI compliance action.

After consulting with the institution on its basis for closing a case, ORI may conduct an oversight review and take appropriate action including: (1) approving or conditionally approving closure of the case; (2) directing the institution to complete its process; (3) referring the matter for further investigation by HHS; or (4) taking compliance action. Section 93.316.

## **Authorities of ORI and HHS**

**Q: What does ORI do when it receives the institution's final finding of research misconduct?**

A: ORI reviews the institution's research misconduct proceedings. In conducting this review, ORI may:

- Determine whether there is HHS jurisdiction under the final rule.
- Consider any reports, institutional findings, research records, and evidence.
- Determine if the institution conducted the proceedings in accordance with the final rule, in a timely and fair manner, and with sufficient expertise, thoroughness, objectivity, and competence to support the conclusions.
- Obtain additional information or materials from the institution, the respondent, complainant, or other persons or sources.
- Conduct additional analyses and develop the evidence.
- Decide whether research misconduct occurred, and, if so, who committed it.

- Make appropriate research misconduct findings and take any other actions necessary to complete the review. Section 93.403.

**Q: What does ORI do after completing its review of the institution's research misconduct proceeding?**

A: After completing its review, ORI may:

- Close the case if ORI decides that research misconduct did not occur.
- Make findings of research misconduct and make settlement recommendations to HHS.
- Propose and obtain HHS approval of administrative actions based upon the institution's records and any other information obtained during the ORI review. Section 93.404.
- Upon receiving HHS approval of the administrative actions, send a charge letter by certified mail or private delivery service to the last known address of respondent or the last known principal place of business of the respondent's attorney. (If debarment or suspension from eligibility for federal financial assistance is proposed, the HHS debarring official issues the notice for that action as part of the charge letter.) Section 93.405.

**Q: What administrative actions may HHS impose as part of a settlement or propose in a charge letter to the respondent?**

A: The administrative actions include:

- Return the case to the institution for additional proceedings necessary to comply with the requirements of the final rule.
- Correction or retraction of the research record.
- Letters of reprimand.
- Imposition of special certification or assurance requirements to ensure compliance with applicable regulations or terms of PHS funding awards.
- Suspension or termination of a PHS funding award.
- Restriction on specific activities or expenditures under an active PHS funding award.
- Special review of all requests for PHS funding.
- Imposition of supervision requirements as part of the terms of a PHS funding award.
- Certification of attribution or authenticity in all requests for support and reports to the PHS.
- No participation in any advisory capacity to the PHS.
- Suspension or debarment under 45 CFR Part 76, 48 CFR Subparts 9.4 and 309.4, or both.
- If the respondent is a Federal employee, adverse personnel action in compliance with relevant Federal personnel laws and policies.

- Recovery of PHS funds spent in support of the activities that involved research misconduct. Section 93.407.

**Q: What mitigating and aggravating factors will HHS consider in proposing and imposing administrative actions?**

A: The purpose of HHS administrative actions is remedial. The appropriate administrative action is commensurate with the seriousness of the misconduct, and the need to protect the health and safety of the public, promote the integrity of the PHS supported research and research process, and conserve public funds. In determining appropriate administrative actions and their terms, HHS considers the following factors as appropriate in each case:

- Were the respondent's actions knowing or intentional, or was the conduct reckless?
- Was the research misconduct an isolated event or part of a continuing or prior pattern of dishonest conduct?
- Did the misconduct have a significant impact on the proposed or reported research record, research subjects, other researchers, institutions, or the public health or welfare?
- Has the respondent accepted responsibility for the misconduct by: (1) Admitting the conduct? (2) Cooperating with the research misconduct proceeding? (3) Demonstrating remorse and awareness of the significance and seriousness of the research misconduct? and, (4) Taking steps to correct or prevent the recurrence of the research misconduct?
- Does the respondent blame others rather than accepting responsibility for the actions?
- Did the respondent retaliate against complainants, witnesses, committee members, or other persons?
- Is the respondent presently responsible to conduct PHS supported research?
- Are there other factors appropriate to the circumstances of the particular case?

**Q: When does the ORI finding of research misconduct and the proposed HHS administrative actions become final?**

A:

- If the respondent does not contest the charge letter by requesting a hearing within the 30-day period prescribed in Section 93.501, the finding of research misconduct becomes final and the proposed administrative actions become final and will be implemented, except that the debarring official's decision is the final HHS action on any proposed debarment or suspension. Section 93.407.
- Upon the approval by both parties of a settlement agreement containing the findings and the administrative actions (settlement agreements are publicly available). Section 93.409.
- If the request for a hearing is granted, the proposed findings of fact and conclusions of law of the Administrative Law Judge (ALJ) become the final HHS action on all matters except a proposed debarment or suspension, if the Assistant Secretary for Health (ASH) does not notify the parties of an intention to review the ALJ's recommended decision within 30 days after service of that decision upon the ASH. Section 93.523(b).

- If the request for a hearing is granted, and the ASH reviews the ALJ's recommended decision and modifies or rejects it in whole or in part on the basis that it is arbitrary and capricious or clearly erroneous, the decision of the ASH is the final HHS action, if the debarring official concurs with the ASH decision. Section 93.523(b).

- The decision of the ALJ, as it may be modified by the ASH, shall constitute findings of fact to the debarring official and the debarring official's decision on the debarment or suspension is the final HHS action on those administrative actions. Section 93.523(c).

**Q: What notification of the final HHS action does the respondent receive?**

A: Normally, ORI will notify the respondent in writing. Sections 93.409 and 93.410.

**Q: When may ORI respond to an allegation of research misconduct?**

A: ORI may respond directly to any allegation of research misconduct at any time, including before, during, or after an institution's response to the matter. The ORI response may include, but is not limited to:

- Conducting an allegation assessment, including determining independently if jurisdiction exists under the final rule. If ORI decides that an inquiry or institutional assessment is not warranted, it will close the case and, where the allegation is not within the jurisdiction of the final rule, forward the allegation to the appropriate HHS component, Federal or State agency, institution or other appropriate entity.

- Forwarding allegations of research misconduct to the appropriate institution or HHS component for an allegation assessment, inquiry, or investigation.

- Recommending that HHS should perform an inquiry or investigation or issue findings and take all appropriate actions in response to the inquiry, investigation, or findings.

- Notifying or requesting assistance and information from PHS funding components or other affected Federal and state offices and agencies or institutions.

- Reviewing an institution's findings and process.

- Making a finding of research misconduct.

- Proposing administrative actions to HHS. Sections 93.400 and 93.402.

## Hearing Process

**Q: Does the final rule prescribe a formal hearing process for reviewing ORI findings of research misconduct?**

A: Yes. The hearing process is modeled upon the current regulation, at 42 CFR 1005, governing the Office of Inspector General hearing process for the exclusion of health care providers, with modifications to reflect current practice, knowledge, and experience in research misconduct proceedings. The hearing process has the following key features:

- Administrative Law Judge. The hearing is conducted by a single ALJ appointed from the Departmental Appeals Board (DAB) Administrative Law Judges. This is a change from the current practice of using a panel of three members of the DAB. Section 93.502(a), (c)-(e).

- **Recommended Decision.** The ALJ's findings of fact and conclusions of law constitute a recommended decision to the Assistant Secretary for Health (ASH). Under the final rule, the ASH may let the ALJ's recommended decision stand, or take final agency action, exercising authority to affirm, reverse, or modify the ALJ's recommended decision, if it is found to be arbitrary and capricious, or clearly erroneous. If debarment or suspension from eligibility for Federal financial assistance and/or contracts is proposed, the decision of the ALJ or of the ASH, as the case may be, constitutes proposed findings of fact to the HHS Debarring Official. Section 93.523.

- **Scientist Experts.** The ALJ is authorized to engage an expert in the relevant area of science to advise the ALJ and must employ such an expert, if requested by either party. Section 93.502(b)-(d).

- **De Novo Proceedings.** The final rule codifies the current practice of providing a de novo hearing to consider challenges to the ORI findings of research misconduct and proposed administrative actions. Section 93.517. A respondent is permitted to waive an in-person hearing and have the case decided on the basis of the administrative record. Section 93.503(d).

- **Standardization of Requirements.** The final rule provides more detail on how the hearing process works. The rule includes requirements for the content of the hearing request, time frames for conducting preliminary conferences, discovery, submission of witness lists and exhibits, and the post-hearing process. 42 CFR Part 93, Subpart E

- **Limited Discovery.** Consistent with the Administrative Procedure Act and other HHS hearing procedures, discovery is limited to an exchange of relevant and material documents and other tangible items for inspection and copying. Following discussion at a prehearing conference, the ALJ may order the parties to develop stipulations and admissions of fact. Section 93.512.

**Q: When does the new hearing process for respondent appeals from ORI findings of research misconduct and HHS administrative actions become effective?**

A: The new hearing process described in Subpart E of the regulation is in effect for any hearing request made after June 16, 2005.

**Q: What is the procedure for the appointment of an ALJ?**

A: Within 30 days of receiving a request for a hearing, the Chair of the Departmental Appeals Board (DAB), in consultation with the Chief Administrative Law Judge, must designate an ALJ to determine whether the hearing request should be granted, and if so, to make recommended findings in the case after a hearing or review of the administrative record in accordance with the final rule. No ALJ may serve if he or she has any real or apparent conflict of interest, bias, or prejudice that might reasonably impair his or her objectivity in the proceeding. Section 93.502(a) and (c).

**Q: What are the grounds for dismissing a hearing request?**

A: The ALJ must dismiss a hearing request if the respondent:

- Does not file the request within 30 days after receiving the charge letter.
- Does not raise a genuine dispute over facts or law material to the findings of research misconduct or the proposed administrative actions in the hearing request or any extension to supplement granted by the ALJ under Section 93.501(d).

- Does not raise any issue that may properly be addressed in a hearing.
- Withdraws or abandons the hearing request.
- Fails to provide ORI with notice of the request for a hearing in the form and manner required by Section 93.501. Section 93.504.

**Q: Will an in-person hearing always occur after the granting of a hearing request?**

A: No. After the request for a hearing is granted, the respondent may waive the opportunity for an in-person hearing and the ALJ may review and decide the case on the basis of the administrative record. The ALJ may grant a respondent's request that the waiver be conditioned upon the opportunity for respondent to file additional pleadings and documentation. ORI may also supplement the administrative record. Sections 93.503(d) and 93.511(b)(3).

In addition, the parties might reach a settlement before or during the hearing or the ALJ may dismiss the hearing request on the motion of a party.

**Q: What are the rights of the parties (ORI and the respondent) to the hearing?**

A: The parties may:

- Be accompanied, represented, and advised by an attorney.
- Participate in any case-related conference held by the ALJ.
- Conduct discovery of documents and other tangible items.
- Agree to stipulations of fact or law that must be made part of the record.
- File motions in writing before the ALJ.
- Present evidence relevant to the issues at the hearing.
- Present and cross-examine witnesses.
- Present oral arguments.
- Submit written post-hearing briefs, proposed findings of fact and conclusions of law, and reply briefs within reasonable time frames established by the ALJ or agreed upon by the parties.
- Submit materials to the ALJ and other parties under seal, or in redacted form when necessary to protect the confidentiality of information. Section 93.505.

**Q: What is the first formal proceeding in the hearing process?**

A: The initial prehearing conference which must be scheduled within 30 days of the DAB Chair's assignment of the case. Section 93.511(a).

**Q: When is the hearing scheduled?**



A: The hearing is normally scheduled during the initial prehearing conference or subsequent prehearing conferences. Section 93.511(b)(8).

**Q: When must the final prehearing conference be held?**

A: No later than 15 days before the scheduled hearing date, the ALJ must hold a final prehearing conference to resolve to the maximum extent possible all outstanding issues about evidence, witnesses, stipulations, motions and all other matters that may encourage the fair, just, and prompt disposition of the proceedings. Section 93.511(f).

**Q: Is the hearing limited to the findings of research misconduct in the initial charge letter received by the respondent?**

A: No. The ORI may amend the findings of research misconduct in the initial charge letter up to 30 days before the scheduled hearing. The ALJ may not unreasonably deny a respondent's motion to postpone all or part of the hearing to allow sufficient time to prepare and respond to the amended findings. Section 93.514.

In addition, a hearing is not limited to the findings and evidence set forth in the charge letter or the respondent's request for a hearing. Additional evidence and information may be offered at the hearing by either party during its case-in-chief unless the offered evidence is:

- Privileged, including but not limited to those protected by the attorney-client privilege, attorney-work product doctrine, or Federal law or regulation.
- Otherwise inadmissible under Sections 93.515 (ALJ actions for violating an order or disruptive conduct including prohibiting a party from introducing certain evidence) or 93.519 (ALJ decides the admissibility of evidence at the hearing, subject to the requirements for specific evidence in this section).
- Not offered within the times or terms of Sections 93.512 (discovery) and 93.513 (submission of witness lists, witness statements and exhibits). Section 93.517(c).

**Q: Must the respondent appear at the hearing?**

A: The respondent may appear at the hearing in person or by an attorney of record in the proceeding, but the respondent must always appear in person to present testimony and for cross-examination. Sections 93.517(f) and 93.518(c).

**Q: Is the hearing open to the public?**

A: The hearing must be open to the public, unless the ALJ orders otherwise for good cause shown. Even if the hearing is closed to the public, the ALJ may not exclude a party or party representative, persons whose presence a party shows to be essential to the presentation of its case, or expert witnesses. Section 93.517(g).

**EXHIBIT D: Various Institutions Definitions of Research Misconduct**

# The Office of Research Integrity



## Definition of Research Misconduct

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

- (a) Fabrication is making up data or results and recording or reporting them.
- (b) Falsification is 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.
- (c) Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- (d) Research misconduct does not include honest error or differences of opinion.

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**Source URL:** <https://ori.hhs.gov/definition-misconduct>

# FEDERAL POLICY

FEDERAL POLICY ON RESEARCH MISCONDUCT<sup>11</sup>**I. Research<sup>12</sup> Misconduct Defined**

*Research misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.*

- *Fabrication* is making up data or results and recording or reporting them.
- *Falsification* is 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.<sup>3</sup>
- *Plagiarism* is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- Research misconduct does not include honest error or differences of opinion.

**II. Findings of Research Misconduct**

A finding of research misconduct requires that:

- There be a significant departure from accepted practices of the relevant research community; and
- The misconduct be committed intentionally, or knowingly, or recklessly; and
- The allegation be proven by a preponderance of evidence.

**III. Responsibilities of Federal Agencies and Research Institutions<sup>4</sup>**

Agencies and research institutions are partners who share responsibility for the research process. Federal agencies have ultimate oversight authority for Federally funded research, but research institutions bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institution.

- Agency Policies and Procedures. Agency policies and procedures with regard to intramural as well as extramural programs must conform to the policy described in this document.
- Agency Referral to Research Institution. In most cases, agencies will rely on the researcher's home institution to make the initial response to allegations of research misconduct. Agencies will usually refer allegations of research misconduct made directly to them to the appropriate research institution. However, at any time, the Federal agency may proceed with its own inquiry or investigation. Circumstances in which agencies may elect not to defer to the research institution include, but are not limited to, the following: the agency determines the institution is not prepared to handle the allegation in a manner consistent with this policy; agency involvement is needed to protect the public interest, including public health and safety; the allegation involves an entity of sufficiently small size (or an individual) that it cannot reasonably conduct the investigation itself.
- Multiple Phases of the Response to an Allegation of Research Misconduct. A response to an allegation of research misconduct will usually consist of several phases, including: (1) an inquiry – the assessment of whether the allegation has substance and if an investigation is warranted; (2) an investigation – the formal development of a factual record, and the examination of that record leading to dismissal of the case or to a recommendation for a finding of research misconduct or other appropriate remedies; (3) adjudication – during which recommendations are reviewed and appropriate corrective actions determined.

- **Agency Follow-up to Institutional Action.** After reviewing the record of the investigation, the institution's recommendations to the institution's adjudicating official, and any corrective actions taken by the research institution, the agency will take additional oversight or investigative steps if necessary. Upon completion of its review, the agency will take appropriate administrative action in accordance with applicable laws, regulations, or policies. When the agency has made a final determination, it will notify the subject of the allegation of the outcome and inform the institution regarding its disposition of the case. The agency finding of research misconduct and agency administrative actions can be appealed pursuant to the agency's applicable procedures.
- **Separation of Phases.** Adjudication is separated organizationally from inquiry and investigation. Likewise, appeals are separated organizationally from inquiry and investigation.
- **Institutional Notification of the Agency.** Research institutions will notify the funding agency (or agencies in some cases) of an allegation of research misconduct if (1) the allegation involves Federally funded research (or an application for Federal funding) and meets the Federal definition of research misconduct given above, and (2) if the institution's inquiry into the allegation determines there is sufficient evidence to proceed to an investigation. When an investigation is complete, the research institution will forward to the agency a copy of the evidentiary record, the investigative report, recommendations made to the institution's adjudicating official, and the subject's written response to the recommendations (if any). When a research institution completes the adjudication phase, it will forward the adjudicating official's decision and notify the agency of any corrective actions taken or planned.
- **Other Reasons to Notify the Agency.** At any time during an inquiry or investigation, the institution will immediately notify the Federal agency if public health or safety is at risk; if agency resources or interests are threatened; if research activities should be suspended; if there is reasonable indication of possible violations of civil or criminal law; if Federal action is required to protect the interests of those involved in the investigation; if the research institution believes the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved; or if the research community or public should be informed.
- **When More Than One Agency is Involved.** A lead agency should be designated to coordinate responses to allegations of research misconduct when more than one agency is involved in funding activities relevant to the allegation. Each agency may implement administrative actions in accordance with applicable laws, regulations, policies, or contractual procedures.

#### **IV. Guidelines for Fair and Timely Procedures**

The following guidelines are provided to assist agencies and research institutions in developing fair and timely procedures for responding to allegations of research misconduct. They are designed to provide safeguards for subjects of allegations as well as for informants. Fair and timely procedures include the following:

- **Safeguards for Informants.** Safeguards for informants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as informants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for informants who make good faith allegations, fair and objective procedures for the examination and resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith.
- **Safeguards for Subjects of Allegations.** Safeguards for subjects give individuals the confidence that their rights are protected and that the mere filing of an allegation of research misconduct against them will not bring their research to a halt or be the basis for other disciplinary or adverse action absent other compelling reasons. Other safeguards include timely written notification of subjects regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct (if any).

- **Objectivity and Expertise.** The selection of individuals to review allegations and conduct investigations who have appropriate expertise and have no unresolved conflicts of interests help to ensure fairness throughout all phases of the process.
- **Timeliness.** Reasonable time limits for the conduct of the inquiry, investigation, adjudication, and appeal phases (if any), with allowances for extensions where appropriate, provide confidence that the process will be well managed.
- **Confidentiality During the Inquiry, Investigation, and Decision-Making Processes.** To the extent possible consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and informants is limited to those who need to know. Records maintained by the agency during the course of responding to an allegation of research misconduct are exempt from disclosure under the Freedom of Information Act to the extent permitted by law and regulation.

## V. Agency Administrative Actions

- **Seriousness of the Misconduct.** In deciding what administrative actions are appropriate, the agency should consider the seriousness of the misconduct, including, but not limited to, the degree to which the misconduct was knowing, intentional, or reckless; was an isolated event or part of a pattern; or had significant impact on the research record, research subjects, other researchers, institutions, or the public welfare.
- **Possible Administrative Actions.** Administrative actions available include, but are not limited to, appropriate steps to correct the research record; letters of reprimand; the imposition of special certification or assurance requirements to ensure compliance with applicable regulations or terms of an award; suspension or termination of an active award; or suspension and debarment in accordance with applicable government-wide rules on suspension and debarment. In the event of suspension or debarment, the information is made publicly available through the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the U.S. General Services Administration. With respect to administrative actions imposed upon government employees, the agencies must comply with all relevant federal personnel policies and laws.
- **In Case of Criminal or Civil Fraud Violations.** If the funding agency believes that criminal or civil fraud violations may have occurred, the agency shall promptly refer the matter to the Department of Justice, the Inspector General for the agency, or other appropriate investigative body.

## VI. Roles of Other Organizations

This Federal policy does not limit the authority of research institutions, or other entities, to promulgate additional research misconduct policies or guidelines or more specific ethical guidance.

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<sup>[1]</sup> No rights, privileges, benefits or obligations are created or abridged by issuance of this policy alone. The creation or abridgment of rights, privileges, benefits or obligations, if any, shall occur only upon implementation of this policy by the Federal agencies.

<sup>[2]</sup> Research, as used herein, includes all basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals.

<sup>3</sup> The research record is the record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.



<sup>4</sup>The term “research institutions” is defined to include all organizations using Federal funds for research, including, for example, colleges and universities, intramural Federal research laboratories, Federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes. Independent researchers and small research institutions are covered by this policy.

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**UNIVERSITY OF KENTUCKY**



UNIVERSITY OF  
**KENTUCKY**  
Regulations

**Administrative Regulation 7:1**

Responsible Office: Provost / Vice  
President of Research

Date Effective: 2/19/2007

Supersedes Version: 6/28/2004

## Research Misconduct

### Major Topics

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[Reporting Alleged Research Misconduct](#)

[Statute of Limitation](#)

[Inquiry](#)

[Investigation](#)

[Formal Findings, Actions Following the Investigation and Disposition](#)

### I. Introduction

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Any compromise of the ethical standards required for conducting academic research cannot be condoned. Even though breaches in such standards are rare; they must be dealt with promptly and fairly by all parties in order to preserve the integrity of the research community. The objectives of this regulation are to maintain the integrity of University research, to conform to the expectations of extramural sponsors or regulators, and to describe the University's procedure for handling allegations of research misconduct.

In order to preserve the integrity of the overall process of assessing potential misconduct, the process involves multiple steps. The process begins with an allegation, which shall first be assessed to determine whether it meets the criteria for research misconduct. If those criteria are met, there shall be an inquiry into the allegation to determine whether there are enough facts to warrant an investigation. If an investigation is warranted, a formal examination and evaluation of all relevant facts shall determine if the allegation of misconduct is valid. If the allegation is valid, the process shall be concluded with an adjudication procedure.

### II. Definition of Research Misconduct

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- A. "Research misconduct" is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.
- B. Fabrication is making up data or results and recording or reporting them.
- C. Falsification is 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.
- D. Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving

appropriate credit.

- E. In cases of allegations involving activities submitted to or supported by a federal agency, the definition and procedures for research misconduct specified in the agency's regulations will apply.

### III. Confidentiality

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All parties involved in the inquiry and investigation shall strive to maintain confidentiality of information to the extent consistent with a fair and thorough process and as allowed by law, including applicable federal and state freedom of information and privacy laws.

### IV. Reporting Alleged Research Misconduct

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- A. Concerns about potential research misconduct should be communicated immediately to the senior administrator of the area in which the alleged incident(s) occurred, e.g. the dean of the college or school or the director of a research institute or center. Concerns may also be reported to the Office of Research Integrity (ORI) which will refer them to the appropriate administrator.
- B. The allegation of misconduct shall be submitted in writing to the appropriate senior administrator and the ORI. If the informant declines to make a written allegation, and the senior administrator believes that there is sufficient cause and sufficient evidence to warrant an inquiry, he or she shall submit a written allegation to the ORI.

### V. Absence of the Subject of the Allegation

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Should the subject of the allegation leave the University before the case is resolved, the senior administrator on behalf of the University, when possible, shall continue the examination of the allegation and reach a conclusion. The University shall cooperate with the process of another institution to resolve such questions to the extent possible under state and federal law.

### VI. Interim Administrative Action

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As provided by federal regulations, at any stage in the process of inquiry, investigation, formal finding and disposition, the University may take interim administrative action to protect the welfare of human or animal subjects of research or to prevent the inappropriate use of funds.

### VII. Extramural Assurance and Reporting requirements

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- A. If required by a funding agency, the Vice President for Research (VPR) or his or her designee shall submit written assurance that the institution is in compliance with the agency's requirements for handling allegations of misconduct.
- B. If the research is supported by an extramural funding agency, the VPR or his or her designee is responsible for ensuring compliance with the applicable agency's reporting requirements. The senior administrator shall keep the VPR informed of any developments which must be reported to the agency.

### VIII. Statute of Limitation

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- A. Because of the difficulties of investigating old claims and unfairness to the subject of the allegation, allegations regarding research data exceeding six (6) years after publication or submission of the final report on a project for which data was collected, will not be pursued unless circumstances indicate that the alleged conduct was not reasonably discoverable earlier.
- B. Exceptions to the six (6) year limitation are as follows:
1. Subsequent use by the subject of allegation by continuation or renewal of any incident of alleged research misconduct that occurred before the six (6) year limitation through the citation, republication or other use for the potential benefit of the subject of allegation of the research record that is alleged to have been fabricated, falsified or plagiarized.
  2. If the appropriate funding agency or the University, in consultation with the funding agency, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public.

## IX. Inquiry

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### A. Allegation Assessment

Upon receiving a written allegation of research misconduct, the senior administrator shall promptly assess the allegation to determine whether the alleged conduct falls within the definition of research misconduct and whether there is sufficient information to initiate an inquiry and document the determination. The senior administrator shall notify the VPR and the appropriate Executive Vice President or Provost, Legal Counsel, and the ORI that a written allegation has been received.

### B. Inquiry Initiation

The senior administrator or designee shall initiate an inquiry if, after consultation with Legal Counsel and the Office of Research Integrity (ORI), the allegation is determined to be sufficiently credible and specific so that potential evidence of research misconduct may be identified. The senior administrator shall notify the VPR and the appropriate Executive Vice President or Provost, Legal Counsel, and the ORI that an inquiry has been initiated. If appropriate, the original research records should be sequestered from the subject of the allegation and other individuals such as co-authors, collaborators or informants. The senior administrator and his or her designee(s) shall use the advice of Legal Counsel on procedures and other matters pertaining to the inquiry.

### C. Notifying the Subject of the Inquiry

The senior administrator or his or her designee shall inform in writing the individual(s) about whom allegations have been made and any involved collaborators that an inquiry has been initiated and shall present to them a statement of the allegations as soon as possible. This statement shall include information on the nature of the allegations and the focus of the inquiry and shall inform the individual(s) of the opportunity for the subject of the inquiry to provide comments and other relevant information to the inquiring body. This statement shall also inform them of (a) their right to be represented by an attorney in preparing and/or giving their response in this and all subsequent phases of the inquiry and (b) that under no circumstances shall the person, against whom an allegation is made, attempt to discover the identity of the person who raises the allegation. Also, this statement shall indicate there can be no actions that are, or could be perceived as, retaliatory against a person who raises an allegation or is thought to have raised an allegation, or against inquiry committee members or witnesses.

### D. Inquiry Body

In consultation with the VPR and ORI, the senior administrator shall appoint a minimum of two tenured faculty members for the inquiry body, with appropriate scientific or scholarly expertise on the issues in question. Precautions against real or perceived conflicts of interest shall be taken when selecting individual(s) to conduct the inquiry. The senior administrator shall identify one member as chair of the body.

#### E. Inquiry Process

In the inquiry stage, factual information is gathered by the inquiry body and reviewed to determine if an investigation is warranted. The inquiry is designed to separate allegations deserving further investigation from unsubstantiated or frivolous allegations. In conducting the inquiry, the inquiry body shall consult with the subject of the allegation and provide the subject of the allegation with the opportunity to respond to the allegations. Once sufficient information is obtained to decide whether an investigation is warranted, the inquiry process shall conclude and an inquiry report shall be submitted to the senior administrator. The inquiry body shall complete the initial inquiry and draft a report within sixty (60) calendar days. Any extension of the inquiry beyond the sixty (60) calendar days requires a request for an extension, which includes an explanation for the delay, to be submitted to the senior administrator and approved by the VPR.

#### F. Inquiry Report

The inquiry body shall submit a written report summarizing the findings of the inquiry to the senior administrator. The subject of the allegation shall have the opportunity to comment on the draft report and the comments will become part of the final record. Any comments must be submitted in writing within thirty (30) calendar days of the date on which the subject of the allegation receives the draft report. The VPR, Legal Counsel and the ORI shall review the report and the subject's comments. The senior administrator in consultation with the VPR shall make the determination of whether findings from the inquiry justify conducting an investigation. The inquiry report, comments from the subject of the allegation, and the determination by the senior administrator shall constitute the final inquiry determination. The final inquiry determination of the senior administrator shall be completed within thirty (30) calendar days of receiving final comments from the subject of the allegation on the inquiry process. If required, the VPR shall inform the agency sponsoring the research of the findings of the inquiry. A copy of the final inquiry determination shall be provided if requested by the agency

## X. Investigation

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#### A. Investigation Initiation

If findings from the inquiry provide sufficient basis for conducting an investigation, the senior administrator shall request the Provost or appropriate Executive Vice President to initiate an investigation as soon as possible but no later than thirty (30) calendar days after receipt of the final inquiry determination. The VPR shall notify the applicable federal regulatory or funding agency, if any, that an investigation is warranted, within thirty (30) calendar days of initiation of the investigation and provide the agency a copy of the inquiry report. The VPR may also notify other non-federal funding agencies, if any, that an investigation is warranted, within a reasonable time or in accordance with the agency's policies.

#### B. Notifying the Subject of the Investigation

The Provost or appropriate Executive Vice President shall inform, in writing, the individual(s) about whom allegations have been made and any involved collaborators that an investigation is to be conducted and shall present to them a statement of the allegations. This statement shall include information on the nature of the allegations and the focus of the investigation and shall inform those being investigated of the opportunity to provide comments and other relevant information to the

investigative body. This statement shall also inform the individual(s) of his or her right to be represented by an attorney in preparing and/or giving his or her response in this and all subsequent phases of the investigation. Also, this statement shall indicate there can be no actions that are, or could be perceived as, retaliatory against a person who raises an allegation or is thought to have raised an allegation, investigation committee members or witnesses.

**C. Investigative Body**

In consultation with the VPR and the ORI, the Provost or appropriate Executive Vice President shall appoint an investigative body to conduct a formal examination and evaluation of all relevant facts to determine whether research misconduct has taken place. The investigative body shall include at least three (3) tenured faculty members. Other members may be appointed to provide necessary expertise. Precautions against real or perceived conflicts of interest shall be taken in appointing the investigative body. The subject of the investigation shall be given the opportunity to comment in writing on the membership of the investigative body. The Provost or appropriate Executive Vice President shall inform the University's Legal Counsel and the chief administrative officer of the organizational unit of each individual under investigation and of any other organizational unit in which the event may have occurred that an investigation is under way.

**D. Investigation Process**

The investigative body shall conduct a formal examination and evaluation of all relevant facts to determine if the allegations of misconduct are valid. The investigative body shall use advice of the Legal Counsel on procedures and other matters pertaining to the investigation. The investigative body may call witnesses, sequester and examine research data (both published and unpublished) and other evidence, and seek expert counsel both inside and outside the University to aid in the investigation. The investigative body shall prepare a written summary of each interview conducted or have a transcript of the interview prepared, and a copy shall be provided to the interviewed party for comment. The investigative body shall keep the Provost or appropriate Executive Vice Presidents, VPR and the ORI apprised of the investigation. The investigative body shall complete its investigation including submission of the investigation report in the shortest feasible period of time but no later than one hundred and twenty (120) calendar days after its formation. If the investigative body is unable to complete the investigation in time, a request for extension which includes an explanation for the delay shall be submitted to and approved by the VPR.

**E. Finding of Research Misconduct**

A finding of research misconduct requires that the events constitute research misconduct as defined in Section II, above, and that:

1. There is a significant departure from accepted practices of the relevant research community; and
2. The misconduct is committed intentionally, or knowingly, or recklessly; and
3. The allegation is proven by a preponderance of evidence.

**F. Investigation Report**

1. All subjects of the investigation shall be afforded the opportunity to comment upon the report and have such comments included in the formal record of the investigation. Any comments shall be submitted in writing within thirty (30) calendar days of the date on which the subjects of the investigation received the draft report.
2. At the completion of the investigation, the investigative body shall submit its findings, comments from the subjects, and recommended institutional actions in writing to the Provost or appropriate

Executive Vice President who shall provide a copy to the subjects of the investigation, VPR, Legal Counsel, and the ORI.

3. The Provost or appropriate Executive Vice President shall provide the person(s) who raised the allegation with those portions of the report that address their role and opinions in the investigation, and their written comments, if any, shall be included in the formal record.
4. Based on the preponderance of the evidence, the Provost or appropriate Executive Vice President in consultation with the VPR shall make the decision whether or not to accept the investigation report, its findings, and the recommended institutional actions. The VPR shall provide the sponsoring agency, if any, with a copy of the final investigation determination upon request by that agency.

## XI. Documentation

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At the conclusion of an allegation assessment, inquiry or investigation, the senior administrator or Provost or appropriate Executive Vice President shall forward all documentation pertaining to the allegation assessment, inquiry or investigation to the ORI. The ORI shall maintain documentation for seven (7) years and shall be responsible for providing the documentation to the VPR, Legal Counsel, and appropriate federal agency upon request.

## XII. Restoring Reputation

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- A. If the findings of an inquiry fail to confirm an instance of misconduct, all participants in the inquiry, including the VPR and ORI, shall be so informed in writing by the senior administrator.
- B. If the findings of an investigation fail to confirm an instance of misconduct, all participants in the investigation, including the senior administrator and the VPR, shall be so informed in writing by the Provost or appropriate Executive Vice President.
- C. The senior administrator, Provost or appropriate Executive Vice President shall undertake all practical and reasonable efforts to protect and restore the reputation of the individual(s) alleged to have engaged in research misconduct but against whom no finding of research misconduct shall be made, if requested by the individual(s) and as appropriate
- D. The senior administrator, Provost or appropriate Executive Vice President shall undertake reasonable and practical efforts to protect or restore the position and reputation of the individual(s) who in good faith, made an allegation of research misconduct, if requested by the individual(s) and as appropriate.

## XIII. Formal Findings, Actions Following the Investigation and Disposition

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- A. If the findings of the investigation substantiate the allegations of research misconduct, the Provost or appropriate Executive Vice President in cooperation with the VPR and the senior administrator shall determine which institutional actions are appropriate. This decision is final.
- B. Appropriate institutional action taken against those faculty, staff, postdoctoral scholars, graduate students, and undergraduate students directly involved in misconduct consistent with the University of Kentucky Governing Regulations and Administrative Regulations and staff and student policy manuals include, but are not limited to, the following:
  1. Verbal warning;
  2. Special monitoring of future work;



3. Formal reprimand which is filed in the employee or faculty member's personnel file;
  4. Termination of grant support;
  5. Termination of fellowship support;
  6. Adjustment of research space allocation;
  7. Adjustment of salary;
  8. Mandated actions to redress the consequences of the misconduct;
  9. Withdrawal of specific privileges;
  10. Removal from a special position of privilege or prestige (such as a titled professorship or an endowed chair);
  11. Mandated restitution of funds that were used to perform the research in which the conduct occurred;
  12. Partial or total suspension from duties for a specified time with or without concomitant loss of pay; or
  13. Termination of employment or student status.
- C. The outcome of the investigation may be communicated to parties internal or external to the University such as:
1. Sponsoring or funding agencies;
  2. Appropriate legal and governmental authorities;
  3. Co-authors, co-investigators, collaborators;
  4. Editors of journals in which fraudulent research or erroneous findings were published or officials in charge of conferences in which fraudulent research or erroneous findings were presented;
  5. Professional licensing boards;
  6. Editors of journals or other publications, other institutions, sponsoring agencies and funding sources with which the individual has been affiliated in the past; or
  7. Professional societies.
- D. The senior administrator is responsible for ensuring that the appropriate institutional actions are enforced.

## IVX. References and Related Materials

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The University of Kentucky's administrative regulation regarding research misconduct is based on the OSTP (Office of Science and Technology Policy) "The Federal Policy of Research Misconduct" which became effective December 6, 2000. DHHS (Department of Health and Human Services) adopted the policy on June 15, 2005 (42 CFR 93). The OSTP policy has been adopted by multiple federal agencies and other federal agencies are in the process of adopting it with the goal that all government agencies that fund research use the policy.

### Revision History

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II-4.0-2: 5/20/1990, 5/7/1992, 6/22/1999, 6/28/2004  
AR 7:1: 2/19/2007

For questions, contact: [Office of Legal Counsel](#)

**JOHN HOPKINS UNIVERSITY**



# University Research Integrity

Responsible Executive:  
Provost & Senior Vice President  
for Academic Affairs  
Responsible Office:  
Office of the Provost  
Approved by: Senior Planning  
Group  
Effective: July 1, 2017

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## Policy Statement

As an institution committed to the creation of new knowledge through research, The Johns Hopkins University (“University” or “JHU”) seeks to ensure integrity in the design, conduct and reporting of research results. Misconduct in research endangers public trust and the pursuit of scientific truth, and the University has an obligation to deal promptly with allegations or evidence of research misconduct. These procedures provide a fair and orderly means of handling allegations or suspicions of research misconduct, in compliance with applicable federal regulations for research institutions. The University Research Integrity Policy (“Policy”) applies to all University faculty, trainees, students and staff engaged in the proposing, performing, reviewing or reporting of research, regardless of funding source.

## University Research Integrity

Responsible Executive: Provost & Senior Vice President for Academic Affairs

Responsible Office: Office of the Provost

Approved by: Senior Planning Group

Effective: July 1, 2017

This Policy does not apply to allegations or complaints that do not fall within the definition of research misconduct set forth below or to matters that fall exclusively under other policies, including violations of conflict of interest policies, violations of Institutional Review Board or Institutional Animal Care and Use Committee policies, or violations of fiscal or other University policies, which shall be directed to the offices responsible for such matters. Where an allegation includes matters that may be partly within the scope of this Policy and also within the scope of another policy, the Research Integrity Officer shall coordinate as necessary with other offices.

It is not intended that proceedings under this Policy be adversarial. Rather, all phases of the procedure should be conducted in the spirit of peer review. As a peer review activity, committees of the faculty should be free to meet directly with a member of the academic community regarding matters raised under this Policy, without legal counsel present. No Complainant, Respondent or witness may appear before these internal review committees with legal counsel.

## Purpose

This Policy sets forth the policies and procedures to be followed in reporting, assessing, inquiring into, and investigating allegations of research misconduct. This Policy is intended to comply with the regulatory requirements of federal funding agencies related to research misconduct.<sup>1</sup>

## Definitions

<b>Allegation</b>	A disclosure of possible research misconduct through any means of communication directly to a Deciding Official or the Research Integrity Officer ("RIO") or to the Deciding Official or RIO via other University or School officials.
<b>Complainant</b>	A person who makes a good faith allegation of research misconduct.
<b>Deciding Official</b>	Under this Policy, the deciding official is the Dean (or the Dean's designee) of the school in which the Respondent has his or her primary appointment or employment. Where an allegation is brought that involves a Deciding Official as a potential Respondent or witness, the RIO shall consult with the Provost, who shall appoint a non-conflicted Deciding Official for such matter.
<b>Evidence</b>	Any document or data in any medium (including but not limited to electronic and digital files), tangible item, or testimony offered or obtained during a research misconduct proceeding that tends to prove or disprove the existence of an alleged fact. The destruction, absence of, or

<sup>1</sup> The applicable regulations include 42 C.F.R. Part 93 (for Public Health Service funded research), 45 C.F.R. Part 689 (for National Science Foundation funded research), 14 C.F.R. Part 1275 (for National Aeronautics and Space Administration funded research), EPA Order 3120.5, issued March 16, 2006 (for Environmental Protection Agency funded research), DoD Instruction No. 3210.7, issued May 14, 2004 (for Department of Defense funded research), 70 Fed. Reg. 66371 (for Department of Education funded research), DOT Implementation Guidance, issued February 2002 (for Department of Transportation funded research), 68 Fed. Reg. 53861 (for Department of Labor funded research), 70 C.F.R. 37010 (for Department of Energy funded research), National Endowment for the Humanities Research Misconduct Policy (available on the National Endowment for the Humanities website).

University Research Integrity

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	Respondent's failure to provide Research Records accurately documenting the questioned research may constitute evidence of research misconduct.
<b>Fabrication</b>	Making up data or results and recording or reporting them.
<b>Falsification</b>	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.
<b>Good Faith</b>	<ol style="list-style-type: none"><li>1) With respect to a Complainant or witness, having a belief in the truth of one's allegation or testimony that a reasonable person in the Complainant's or witness' position could have, based on the information known to the Complainant or witness at the time. An allegation of research misconduct or testimony in a research misconduct investigation is not considered to be provided in good faith if it is made with knowing or reckless disregard for information that would disprove the allegation or testimony; and</li><li>2) With respect to a committee member, carrying out the duties assigned in an honest and impartial manner, free of influence from personal, professional, or financial conflicts of interest which may compromise, or appear to compromise, the committee member's objectivity.</li></ol>
<b>Plagiarism</b>	The appropriation of another person's ideas, processes, results, or words without giving appropriate credit. Plagiarism does not include authorship disputes.
<b>Preponderance of the Evidence</b>	Proof by information, compared with that opposing it, that a matter at issue is more probably true than not.
<b>Research</b>	A systematic experiment, study, evaluation, demonstration or survey designed to develop or contribute to general knowledge (basic research) or specific knowledge (applied research) in all fields.
<b>Research Integrity Officer ("RIO")</b>	The person appointed by the Provost who has primary responsibility for implementing this Policy. The RIO may delegate certain duties to School RIOs appointed by the Deciding Official for the relevant School. In such cases, references to RIO in this Policy shall include the School RIO. The RIO shall serve as a non-voting, ex officio member solely to provide procedural guidance to Inquiry and Investigation committees. The RIO shall 1) receive allegations, 2) conduct (in coordination with the Deciding Official) assessments of allegations, 3) ensure that potential evidence of research misconduct is collected and sequestered in a timely manner, 4) ensure that regulatory requirements and timelines are met, 5) ensure that decisions made under this Policy are appropriately documented, 6) maintain confidentiality during the pendency of assessments, inquiries and investigations, and 7) complete all regulatory recordkeeping and reporting obligations set forth in this Policy and applicable federal regulations.

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University Research Integrity

Responsible Executive: Provost & Senior Vice President for Academic Affairs

Responsible Office: Office of the Provost

Approved by: Senior Planning Group

Effective: July 1, 2017

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<b>Research Misconduct</b>	Falsification, fabrication or plagiarism in the proposing, performing, reviewing or reporting of research. Research misconduct does not include honest error or differences of opinion.  Each of the following must be proven by a preponderance of the evidence to support a finding of research misconduct: a. There has been a significant departure from the accepted practices of the scientific community; and b. The misconduct was committed intentionally, knowingly, or recklessly.
<b>Research Record</b>	The record of data or results that embody the facts resulting from scientific and other forms of inquiry, including but not limited to, research proposals, laboratory records (physical or electronic), physical samples, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and correspondence that transmits data or results.
<b>Respondent</b>	The person against whom an allegation of research misconduct is made.

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## Policy

### I. Obligation to Report and Confidentiality

All members of the University community have an obligation to report good faith suspicions of research misconduct within the scope of this Policy. Allegations should be directed to the RIO, but may also be directed to the department chair or Dean of the responsible unit where the alleged research misconduct occurred. Allegations directed to department chairs or Deans shall be promptly reported to the RIO for purposes of assessment, and the RIO will notify the relevant Dean of any allegations reported directly to the RIO. Allegations that come from outside sources, such as journal editors, funding agencies, or other institutions, shall be directed to the RIO. Individuals are encouraged, but not required, to submit allegations in writing, so that the issues raised may be clearly identified. Anonymous allegations will be assessed, provided that sufficient specific detail or corroborating evidence is provided. Complainants cannot be promised anonymity, but Complainants who raise allegations in good faith will be protected from retaliation, and the University will adhere to applicable federal rules and guidelines regarding the protection of whistleblowers.

Since an allegation of research misconduct, particularly if later determined to be unfounded, may jeopardize a Respondent's career or reputation, care shall be taken to maintain the confidentiality of proceedings conducted under this Policy. During the pendency of an inquiry or investigation, information should be shared only with persons having a need to know in order to carry out the obligations of this Policy, including notification to responsible agencies in accordance with applicable regulations or where otherwise required by law. Notwithstanding the foregoing, information regarding an allegation may be disclosed by the University at any time, if University officials determine that: 1) the health or safety of the public is at risk, including an immediate need to protect human or animal subjects; 2) government resources or interests are threatened; 3) a determination has been made by the University that research activities should be suspended; 4) federal action is required to protect the interests of those involved in the research misconduct proceeding; 5) the research misconduct proceeding may be made public prematurely so that federal agencies may need to take appropriate steps to safeguard evidence and protect the rights of those involved; or 6) the research community or public should be informed. Where there is a reasonable

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indication of possible violations of civil or criminal law, the matter shall be immediately reported to the Office of General Counsel, which will assume responsibility for prompt notification of the appropriate federal and state authorities.

### II. Assessment

The RIO, in consultation with the Deciding Official if needed, shall promptly make a preliminary assessment of an allegation to determine whether it falls within the definition of research misconduct, and whether the allegations are sufficiently credible and specific so that potential evidence of misconduct may be identified. If the RIO determines that the allegation does not fall within the definition of research misconduct, but may be a violation of other University policies (e.g., human subject research, conflict of interest, disclosure and professional commitment, or fiscal policies), the RIO shall refer the matter to the appropriate University office or committee. If the RIO determines that the allegation either does not meet the definition of research misconduct, or is not sufficiently credible and specific so that potential evidence of research misconduct may be identified, the RIO may close the matter.

### III. The Inquiry

- a. Initiation of the Inquiry: At the time of or before beginning an inquiry, the RIO or Deciding Official will notify the Respondent in writing of the allegation and provide a copy of this Policy and the relevant procedures, if any, of the school. The RIO will take all reasonable and practical steps at the time of or before beginning an inquiry to obtain custody of all the relevant research records and the evidence needed to conduct the inquiry, to inventory the records and evidence, and to sequester them in the office of the RIO or another designated, secure location. The Respondent is obligated to cooperate with all requests of the University to obtain this information. Where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the information on the instruments.
- b. Purpose of the Inquiry and Standard of Review: The purpose of the inquiry is to conduct an initial review of the evidence to determine whether to proceed with an investigation by identifying meritorious accusations and to put quickly to rest frivolous, unjustified, or mistaken allegations. The question is: Do the initial allegations or suspicions warrant investigation? The Inquiry Committee should not normally include deciding whether research misconduct occurred, but should be limited to determining whether there is sufficient substantive evidence of possible Research Misconduct to recommend further investigation.
- c. Role of an Advisor: At the beginning of the inquiry process, the Respondent will be afforded the opportunity to consult with an uninvolved senior faculty member, who will serve as advisor to the Respondent throughout the proceedings in accordance with any school level procedures. The role of the advisor will be to offer advice and guidance regarding the procedural aspects of the process. The advisor shall not act as an advocate for the Respondent.
- d. Conduct of the Inquiry: In consultation with the RIO, the Deciding Official will appoint one or more members of the faculty, in accordance with School procedures, who do not have unresolved personal, professional or financial conflicts of interest with those involved in the inquiry, and who possess the necessary and appropriate

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expertise to evaluate the available evidence regarding the allegation (the "Inquiry Committee"). The Deciding Official shall provide a written charge to the Inquiry Committee, detailing the allegations to be considered by the Inquiry Committee. Every effort will be made to complete the inquiry within 60 calendar days of its initiation. If the inquiry requires longer than 60 days to complete, the record of the inquiry will document the reasons for exceeding 60 days. When the inquiry is completed, a draft report will be prepared by the Inquiry Committee. The RIO will assist the Inquiry Committee with ensuring that their written report states what evidence was reviewed, summarizes relevant interviews (if interviews were conducted), and includes sufficient detail to support the conclusions of the inquiry. The Respondent will be provided a copy of the draft inquiry report and will be given an opportunity to comment on the report. Comments from the Respondent must be received within 14 days of his or her receipt of the draft inquiry report. The final written report of the matter along with any comments received by the Respondent(s) will be submitted to the Deciding Official.

e. Outcome of the Inquiry:

i) No grounds for conducting an investigation: If the inquiry determines that an investigation is not warranted, sufficiently detailed documentation of the inquiry must be maintained to permit a later assessment of the reasons for the determination. Efforts to protect or restore the reputation of the Respondent will be made, by the Deciding Official, with the assistance of the RIO, as deemed appropriate and needed. The records of the inquiry will be kept secure by the RIO for seven years. Records will be available to authorized federal personnel upon request if the allegations concern federally supported research.

ii) Recommendation to Proceed to Investigation: If the inquiry concludes that there appear to be grounds for an investigation of research misconduct, the Deciding Official will initiate a formal investigation into the matter and notify the Provost of the pending investigation. If the matter involves federally supported research or an application for federal support, the appropriate federal agency will also be notified by the RIO, as required by federal regulations.

iii) Admission by Respondent: If the Respondent makes a legally sufficient admission of research misconduct at the inquiry stage, an allegation may be closed at the Inquiry stage, provided that all issues raised by the allegation are resolved, and the RIO obtains from the Respondent a written admission that details the specifics of the research misconduct. For research funded by any Public Health Service ("PHS") agency, the RIO must consult with the U.S. Department of Health and Human Services ("DHHS") Office of Research Integrity before closing the matter on the basis of an admission.



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#### IV. Investigation

- a. Purpose of the Investigation: The purpose of the investigation is to collect and evaluate all relevant evidence of the alleged research misconduct, including research records, documentation, interviews with those involved, and interviews with those knowledgeable about the activities under investigation. This collection and review of evidence is to be thorough, competent, objective and fair.
- b. The Initiation of the Investigation: At the initiation of the investigation, the Deciding Official shall inform the Respondent in writing of all the charges against him or her and the fact that an investigation is being initiated. The Respondent must be informed promptly in writing of any amendment to the original allegations that may be identified as the investigation proceeds.

The Respondent will be notified in writing of the names of the members of the Investigation Committee appointed by the Deciding Official to conduct the investigation. The Respondent may request, within five (5) days of receiving that notification, that the Deciding Official replace a member of the Investigation Committee on a reasonable showing of potential bias or conflict of interest. The Deciding Official's decision as to whether or not to replace a member of the Investigation Committee may not be appealed during the pendency of the investigation, but may be raised as part of an appeal at the conclusion of the matter, as set forth in Section V of this Policy.

- c. Conduct of the Investigation: The investigation will be conducted by an Investigation Committee appointed by the Deciding Official, in accordance with procedures of the particular school or University division. The Investigation Committee will consist of three or more faculty members from the Johns Hopkins University or other academic institutions as may be needed to provide the necessary expertise. The Deciding Official shall provide a written charge to the Investigation Committee, detailing the allegations to be considered by the Investigation Committee. Investigation Committee will initiate the investigation within 30 days of the completion of the inquiry and make a good-faith effort to complete all aspects of the investigation within 120 days of its initiation. If the Investigation Committee is unable to complete all aspects of the investigation within 120 days and federal funds are involved, a request for an extension will be made by the RIO to the appropriate federal agency pursuant to applicable regulations. The Investigation Committee will conduct a careful review of the allegations and afford an opportunity for all individuals concerned to present their knowledge and information. The Investigation Committee may consider it necessary to review potential research misconduct beyond that identified in the initial allegations, in which case the Respondent will be informed in writing by the RIO of the additional allegations. If, in the course of the investigation, the Investigation Committee finds reasonable grounds to believe there should be an inquiry into actions of individuals other than the Respondent, the RIO must notify the Deciding Official promptly. At any stage of the investigation, the Deciding Official, after consultation with the Investigation Committee and the RIO, may take steps to notify other parties who, in the Deciding Official's judgment, should be informed of the ongoing investigation. The Deciding Official will also take interim administrative action as necessary to protect any sponsored project funding and assure that intended purposes of the sponsored research in question are being carried out.

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- d. Meetings of the Investigation Committee: The Investigation Committee will give the Respondent written notification of the place, time, and date of any meeting at which her/his appearance is requested. Every effort will be made to schedule such meetings at a mutually convenient time. Unless waived by the Respondent, no initial meeting with the Investigation Committee will take place less than seven days after he or she receives the Investigation Committee's request to appear. The Respondent may request a rescheduling of the meeting(s) with the Investigation Committee for good cause. The Respondent's failure or refusal to meet with the Investigation Committee will not deter the progress of the investigation. If the Respondent is no longer a member of the University community, the requirements of written notice and an opportunity to answer to the charge of misconduct will be observed as far as is practical, but the failure of the Respondent to respond or to make himself or herself available to those with investigatory responsibilities will not deter the investigation. If an advisor has been appointed to advise the Respondent, the advisor may attend meetings if requested by the Respondent, but may not present matters or advocate on behalf of the Respondent.

All testimony to the Investigation Committee by the Respondent or other persons will be recorded and transcribed. Copies of the transcripts will be furnished to the Respondent. All those interviewed may submit corrections of any transcription errors, but may not otherwise edit the transcript.

The Respondent will be allowed to present a written statement at the start of the investigation. He or she may request that the Investigation Committee interview certain individuals with relevant information, and may suggest to the Investigation Committee any avenues of inquiry that he or she believes are likely to produce relevant evidence. The Respondent may submit written questions for the Investigation Committee to present to the Complainant. The Committee may determine that such questions are duplicative or not relevant to the matters at hand, and in such case, may elect not to present the questions to the Complainant.

- e. Investigation Committee Report: At the conclusion of the investigation, a report will be prepared by the Investigation Committee. The RIO will assist the committee to ensure that the report includes the names of the persons interviewed; a summary of the interviews; a description of the documents, data, and other evidence examined; and the Investigation Committee's conclusion regarding each of the allegations. The Respondent will be given a copy of the Investigation Committee's draft report and a copy of, or supervised access to, the evidence on which the report is based. The Respondent may submit comments on the draft report within 14 days of receipt. The RIO may grant Respondent an extension of an additional 7 days in which to submit comments upon good cause shown. The Committee will finalize its report, taking into account any comments from the Respondent if deemed appropriate by the Committee. The Committee will forward its final report and the Respondent's comments, if any, to the Deciding Official. A copy of the report will be provided by the RIO to the responsible federal agency as required by regulation.

- f. Outcome of the Investigation:

- i) No Finding of Misconduct: If the investigation concludes that research misconduct has not occurred, and if the Deciding Official concurs with these findings, the matter will be closed, with appropriate action taken to restore the

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reputation(s) of those under investigation, as deemed appropriate and needed by the Deciding Official, in consultation with the RIO, and continued protection of the Complainant(s) from retaliation. The RIO will retain the records of the investigation, including the findings of the Investigation Committee, in a confidential, sequestered file for a period of seven years. A copy of the Investigation Committee's findings of no misconduct will be sent by the Deciding Official to the Respondent, and the report and the Deciding Official's decision will be sent to the appropriate federal agency as required under applicable federal regulation.

- ii) Good Faith Determination: If, in the judgment of the Investigation Committee, the allegations, however incorrect or unsupported, were made in good faith, no retaliatory or disciplinary action will be taken against the Complainant(s) and appropriate measures will be taken to protect the Complainant(s) from retaliation. If, with due regard to whistleblower protections, the Investigation Committee finds that the allegations of misconduct were not made in good faith, the Deciding Official may take appropriate disciplinary action against those responsible.
- iii) Finding of Misconduct: If the Investigation Committee concludes that research misconduct has occurred, it will report its findings and the significance assigned by the Investigation Committee to such findings, to the Deciding Official. The Investigation Committee's report may include recommendations as to disciplinary and/or corrective action, if consistent with school procedures. The Deciding Official, or his or her designee, may ask questions including with regard to recommendations for disciplinary and/or corrective action (if school procedures contemplate the Investigation Committee making such recommendations) of the Investigation Committee. The Deciding Official will accept or reject the investigation report in whole or in part. Upon acceptance of the report or any part of the report by the Deciding Official, the Deciding Official or any other disciplinary committee established by individual school policy will propose sanctions and/or corrective action which may include any of the following:
  - a) withdrawal or correction of papers, abstracts, or other publications;
  - b) notification of journal editors where the research at issue has been published or is under review;
  - c) notification of sponsoring agencies;
  - d) termination or alteration of employment status, including periods of supervised probation;
  - e) postponement or denial of promotion or advancement;
  - f) release of information about the incident to the public, particularly when public funds were used to support the fraudulent or suspect research; or
  - g) any other action deemed appropriate to the circumstances.

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### **V. Appeals**

The Respondent may appeal the determination of research misconduct in writing to the Provost of the University within 14 days of the Deciding Official's decision. The Provost's review of the appeal will be limited to the adequacy of the procedures followed and the appropriateness of the disciplinary action taken, and the Provost shall render a decision on the appeal promptly and inform the Deciding Official of the Provost's decision.

### **VI. The Office of General Counsel**

The Office of General Counsel will not act as the prosecutor or defender of the Respondent, but will act as an impartial legal advisor to the University. The RIO and Deciding Official may consult with the Office of General Counsel on procedural matters at any step in the proceedings. Any contact or inquiry to the University from attorneys representing any parties in a research misconduct matter, including contacts and inquiries emanating from legal representatives of any federal, state, or local agency, must be referred to the Office of General Counsel. Legal counsel retained by a Respondent must direct any request to interview any university employees to the Office of General Counsel.

### **VII. Exclusivity of Procedure**

This procedure for the determination of misconduct is the exclusive mechanism within the University for adjudication of questions of this nature. The Respondent may not invoke a School's grievance procedure in an effort to gain a re-adjudication of the charge.

## **Who is Governed by this Policy**

- All units of the university, excluding The Johns Hopkins University Applied Physics Laboratory

## **Exceptions/Exclusions**

This Policy does not apply to allegations or complaints that do not fall within the definition of research misconduct as set forth in this document or to matters that fall exclusively under other policies, including violations of conflict of interest policies, violations of Institutional Review Board or Institutional Animal Care and Use Committee policies, or violations of fiscal or other University policies, which shall be directed to the offices responsible for such matters. Where an allegation includes matters that may be partly within the scope of this Policy and also within the scope of another policy, the Research Integrity Officer shall coordinate as necessary with other offices.

## Policy Enforcement

<b>Enforcement</b>	The University Research Integrity Officer and Deciding Official (as defined in the Policy) are responsible for the conduct of inquiries and investigations. Disciplinary actions may be taken as outlined in the Policy.
<b>Reporting Violations</b>	All members of the University community have an obligation to report good faith suspicions of research misconduct within the scope of this Policy.  For details on the obligation to report and issues related to confidentiality, see <a href="#">Section I</a> of this Policy.

## Related Resources

<b>University Policies and Documents</b>
<a href="#">JHU Statement of Ethical Standards</a> <a href="#">The Johns Hopkins University and The Johns Hopkins Health System Corporation Policy on Institutional Conflict of Interest</a> <a href="#">Johns Hopkins University Policies on Disclosure and Professional Commitment/Conflict of Commitment and Conflict of Interest</a>
<b>External Documentation</b>
<a href="#">Office of Research Integrity</a> , U.S. Department of Health and Human Services <a href="#">Research Integrity and Administrative Investigations</a> , National Science Foundation
<b>University Forms and Systems</b>
<a href="https://johnshopkinsspeak2us.tnwreports.com/">https://johnshopkinsspeak2us.tnwreports.com/</a> or 1-844-SPEAK2US (1-844-773-2528)

## Contacts

Subject Matter	Office Name	Telephone Number	E-mail/Web Address
Policy Clarification and Interpretation	Office of the Provost	410-516-8070	Email: <a href="mailto:provost@jhu.edu">provost@jhu.edu</a> Website: <a href="http://web.jhu.edu/administration/provost/contact">http://web.jhu.edu/administration/provost/contact</a>
Anonymous Reporting/EthicsLine	Johns Hopkins University	1-844-SPEAK2US	<a href="https://johnshopkinsspeak2us.tnwreports.com/">https://johnshopkinsspeak2us.tnwreports.com/</a>

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<b>Subject Matter</b>	<b>Office Name</b>	<b>Telephone Number</b>	<b>E-mail/Web Address</b>
	and Health System Compliance Line		
Reporting allegations of research misconduct	Research Integrity Officer	410-516-6880	<a href="http://web.jhu.edu/administration/provost/bios/links">http://web.jhu.edu/administration/provost/bios/links</a>
Reporting violations of civil or criminal law	Office of the Vice President and General Counsel	410-516-8128	<a href="http://web.jhu.edu/administration/general_counsel/">http://web.jhu.edu/administration/general_counsel/</a>

## Web Address For This Policy

<https://www.jhu.edu/university-policies/#policies>

**HARVARD UNIVERSITY**

**Harvard University  
Faculty of Arts and Sciences**

**Interim Policy and Procedures for Responding to Allegations of Research Misconduct**

Date of Adoption: September 6, 2019

Responsible Office: FAS Research Administration Services (RAS)

Contact: Stacey Springs, Research Integrity Officer FAS

**I. Basis for Policy**

Integrity in scholarship and research is one of the University's fundamental values. Thus, allegations of misconduct in scholarship and research must be treated with the utmost seriousness and examined carefully and responsibly.

It is the shared responsibility of all members of our academic community to ensure that misconduct in scholarship and research is dealt with in a timely and effective manner, and that the reputation of the University for high standards of scholarly and research integrity is preserved. The Faculty of Arts and Sciences ("FAS") is committed to addressing allegations of research misconduct and has established this **Policy and Procedures for Responding to Allegations of Research Misconduct** (the "Policy") to guide the process of reviewing, investigating and reporting such allegations.

**II. Scope**

This Policy is intended to comply with institutional responsibilities under the [Public Health Service \(PHS\) Policies on Research Misconduct, 42 CFR Part 93](#). Other federal agencies have published their own research misconduct regulations; to the extent those regulations apply to an allegation of research misconduct and are inconsistent with this Policy, FAS shall comply with the applicable regulatory requirements. This Policy also applies to research that is not federally funded, although such cases need not be reported to the federal government.

This Policy applies to allegations of research misconduct (as defined by this Policy) involving any person who, at the time of the alleged research misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with FAS, including without limitation officials, tenured and non-tenured faculty, teaching and support staff, researchers, research coordinators, technicians, post-doctoral and other fellows, students, volunteers and agents. This Policy may be applied to any individual no longer affiliated with FAS if the alleged misconduct occurred while the person was employed by, an agent of, or affiliated with the University. These policies and procedures do not apply to authorship or collaboration disputes and apply only to allegations of research misconduct that occurred within six years of the date FAS or the U.S. Department of Health and Human Services ("HHS") received the allegation, subject to the subsequent use, health or safety of the public, and grandfather exceptions articulated in 42 C.F.R. § 93.105(b).



With respect to students involved in allegations of research misconduct that involve federal funding, the Administrative Board of Harvard College or of the Graduate School of Arts and Sciences will be notified of the initiation of any inquiries and/or investigations and will be informed of the findings of any such inquiries and/or investigations, including receiving copies of all inquiry and/or investigation reports. Allegations of research misconduct against students that do not involve federal funding will ordinarily be referred to the Administrative Board of Harvard College or of the Graduate School of Arts and Sciences.

### **III. Other Professional Conduct Violations**

In addition to allegations of research misconduct as defined by this Policy, FAS may use this Policy as a general framework for reviewing other allegations of professional conduct violations that are not research misconduct, including but not limited to the following:

- *Abuse of confidentiality*: releasing the ideas or data of others that were shared with the legitimate expectation of confidentiality (e.g., disclosing ideas from others' grant proposals, award applications, or manuscripts for publication when one is a reviewer for granting agencies or journals, or is an internal reviewer);
- *Sabotage or other property violations*: stealing, tampering with, or destroying property of others, such as experiments, research papers, supplies, equipment, or products of research or scholarship;
- *Failure to report observed research misconduct*: covering up or otherwise failing to report observed, suspected, or apparent research misconduct by others;
- *Retaliation*: Any act of retaliation as defined in this Policy; or
- Directing or encouraging others to engage in any of the above listed offenses.

Such cases, like those cases involving research that is not federally funded, need not be reported to the federal government.

### **IV. Definitions**

*Allegation*: a disclosure of possible research misconduct through any means of communication.

*Committee member*: a member of the FAS Standing Committee on Professional Conduct ("CPC") or an *ad hoc* committee member appointed to conduct all or a portion of the research misconduct process under this Policy.

*Complainant*: a person who in good faith makes an allegation of research misconduct.

***Conflict of interest:*** financial, personal, or professional relationships that may compromise, or appear to compromise a person's decisions.

***Deciding Official (DO):*** the institutional official who makes final determinations about allegations of research misconduct and any institutional actions, ordinarily the Edgerley Family Dean of the Faculty of Arts and Sciences. The Deciding Official does not serve as the Research Integrity Officer and is not directly involved in the institution's preliminary assessment, inquiry, or investigation. The Deciding Official's involvement, if any, in the appointment of a person to assess allegations of research misconduct, or to serve on an inquiry or investigation committee, is not considered to be direct involvement.

***Evidence:*** any document or other record, tangible item, or testimony offered or obtained during a research misconduct proceeding that tends to prove or disprove the existence of an alleged fact.

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

***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.

***Good faith***

***As applied to a complainant or witness:*** having a belief in the truth of one's allegation or testimony that a reasonable person in the same position could have, based on the information known to the person at the time. An allegation or cooperation with a research misconduct proceeding is not in good faith if made with knowing or reckless disregard for information that would negate the allegation or testimony.

***As applied to a committee member:*** cooperating with the research misconduct proceeding by carrying out the duties assigned impartially for the purpose of helping the institution meet its responsibilities under the Policy. A committee member does not act in good faith if the committee member's acts or omissions on the committee are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the research misconduct proceeding.

***Inquiry:*** preliminary information-gathering and preliminary fact-finding in accordance with the Policy to determine whether an allegation of research misconduct warrants investigation.

***Investigation:*** the formal development of a factual record and the examination of that record leading to a decision about whether to recommend a finding of research misconduct, which may include a recommendation for other appropriate actions, including institutional actions.

***ORI:*** the Office of Research Integrity in the U.S. Department of Health and Human Services (DHHS). ORI is responsible for the scientific misconduct and research integrity activities of the U.S. Public Health Service (PHS).

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

**Preponderance of the evidence:** proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

**Research:** a systematic experiment, study, evaluation, demonstration or survey designed to develop or contribute to general knowledge or specific knowledge by establishing, discovering, developing, elucidating or confirming information about, or the underlying mechanism relating to, the matters to be studied.

**Research Integrity Officer (RIO):** the institutional official responsible for, at a minimum and while working with the CPC Chair: (1) reviewing allegations of research misconduct to determine if they fall within the definition of research misconduct and warrant an inquiry; and (2) overseeing inquiries and investigations.

**Research misconduct:** fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct includes fabrication, falsification and plagiarism (as defined in this Policy). Research misconduct does not include honest error or differences of opinion.

**Research record:** the record of data or results that embody the facts resulting from scientific inquiry or other scholarly endeavors, including but not limited to research proposals, laboratory records (physical and electronic), progress reports, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, correspondence, and any documents and materials provided to an institutional official in the course of a research misconduct proceeding.

**Respondent:** the person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

**Retaliation:** an adverse action taken against a complainant, witness, or committee member by an institution or one of its members in response to a good faith allegation of research misconduct or good faith cooperation with a research misconduct proceeding.

## **V. General Policies and Principles**

### **A. Research Misconduct Prohibited; Standard of Proof.**

FAS prohibits research misconduct and investigates and responds to allegations of research misconduct in accordance with this Policy. Throughout the research misconduct process, which begins at the time an allegation is made, all participants shall bear in mind the importance, both in fact and in appearance, of thoroughness, fairness, and objectivity. Individuals subject to this policy found to have committed research misconduct ordinarily shall be subject to sanctions up to and including termination.

A finding of research misconduct requires that:

- There be a significant departure from accepted practices of the relevant research community;
- The respondent committed the research misconduct intentionally, knowingly, or recklessly; and
- The allegation be proven by preponderance of the evidence.

The destruction of research records, absence of research records, or respondent's failure to provide research records adequately documenting the questioned research is evidence of research misconduct where the institution establishes by a preponderance of the evidence that the respondent intentionally, knowingly, or recklessly had research records and destroyed them, had the opportunity to maintain the records but did not do so, or maintained the records and failed to produce them in a timely manner and that the respondent's conduct constitutes a significant departure from accepted practices of the relevant research community.

FAS bears the burden of proof for making a finding of research misconduct. A respondent has the burden of proving, by a preponderance of the evidence, any and all affirmative defenses raised (such as honest error).

#### **B. Responsibility to Report Misconduct**

All individuals subject to this Policy will report observed, suspected, or apparent research misconduct to the RIO or to the Chair of the CPC. If an individual is unsure whether a suspected incident falls within the definition of research misconduct, that individual may meet with or contact the RIO or the CPC Chair to discuss the suspected research misconduct informally, which may include discussing it anonymously and/or hypothetically. If the circumstances described by the individual do not meet the definition of research misconduct, then the RIO or CPC Chair may refer the individual or allegation to other offices or officials, where appropriate.

#### **C. Cooperation with Research Misconduct Proceedings**

All individuals subject to this Policy shall cooperate with the RIO, CPC Chair, and other institutional officials in the review of allegations and the conduct of inquiries and investigations. All individuals subject to this Policy, including respondents, have an obligation to provide evidence relevant to research misconduct allegations to the RIO or other institutional officials.

#### **D. Duty to Maintain Confidentiality**

Because of the potential jeopardy to the reputation and rights of a respondent, the RIO, the CPC

**EXHIBIT E: ORI Policy on Plagiarism**

## ORI Policy on Plagiarism

Although there is widespread agreement in the scientific community on including plagiarism as a major element of the PHS definition of scientific misconduct, there is some uncertainty about how the definition of plagiarism itself is applied in ORI cases.

As a general working definition, ORI considers plagiarism to include both the theft or misappropriation of intellectual property and the substantial unattributed textual copying of another's work. It does not include authorship or credit disputes.

The theft or misappropriation of intellectual property includes the unauthorized use of ideas or unique methods obtained by a privileged communication, such as a grant or manuscript review.

Substantial unattributed textual copying of another's work means the unattributed verbatim or nearly verbatim copying of sentences and paragraphs which materially mislead the ordinary reader regarding the contributions of the author. ORI generally does not pursue the limited use of identical or nearly-identical phrases which describe a commonly-used methodology or previous research because ORI does not consider such use as substantially misleading to the reader or of great significance.

Many allegations of plagiarism involve disputes among former collaborators who participated jointly in the development or conduct of a research project, but who subsequently went their separate ways and made independent use of the jointly developed concepts, methods, descriptive language, or other product of the joint effort. The ownership of the intellectual property in many such situations is seldom clear, and the collaborative history among the scientists often supports a presumption of implied consent to use the products of the collaboration by any of the former collaborators.

For this reason, ORI considers many such disputes to be authorship or credit disputes rather than plagiarism. Such disputes are referred to PHS agencies and extramural institutions for resolution.

From ORI Newsletter, Vol 3, No. 1, December 1994

## Related Pages

» [Guidelines for avoiding plagiarism, self-plagiarism, and questionable writing practices](#)

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**Source URL:** <https://ori.hhs.gov/ori-policy-plagiarism>

## FAQ on the Research Misconduct Policy Proposal

### Can You Briefly Summarize the PCC recommendation on research misconduct policy?

**Yes.** After study and deliberation that involved substantial back-and-forth with the NKU administration, in April 2019 the PCC voted to recommend a package of technical amendments to NKU Faculty Handbook Sec. 16.7 (NKU's current Research Misconduct Policy). The PCC-recommended amendments would bring the Handbook more clearly into conformity with applicable federal regulations, without changing the current scope of the policy's coverage.

### If the PCC's recommendation doesn't materially change the current Faculty Handbook policy, then why has there been any controversy?

A controversy arose when the NKU administration asked the Senate to recommend two changes to existing policy. In the PCC's view, the changes sought by the administration would imprudently relax NKU's current standards of academic integrity, and would make it harder for the faculty to police certain forms and instances of academic misconduct that have, unfortunately, occurred at NKU. Because integrity is a core value at NKU, PCC could not recommend that our current standard of research integrity be relaxed.

### Why shouldn't the Senate defer to the administration on such matters?

The NKU Faculty Senate exists to represent the faculty, not to represent the administration.<sup>1</sup> The Senate's role in shared governance requires it to "[e]valuate university policies, programs, and practices and recommend such improvements as seem warranted" from a faculty perspective.<sup>2</sup> The Faculty Senate Constitution explicitly contemplates that the Senate will make recommendations with which the administration may disagree.<sup>3</sup> It provides

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<sup>1</sup> "The Faculty Senate is the official representative body of the General Faculty of Northern Kentucky University." NKU Faculty Senate Constitution Art. I.A. "The purposes of the Faculty Senate are to: (1) Provide a forum for the faculty to propose policy and to discuss all matters relating to the wellbeing of the University; and (2) Allow the faculty to participate effectively in the enactment of university policies." NKU Faculty Senate Constitution Art. I.B.

<sup>2</sup> NKU Faculty Senate Constitution Art. I.B.4. See also Statement of Collegial Governance at NKU Part B.1 ("Faculty bodies have primary responsibility for recommendations in [academic] matters . . . [including] policies which result in dismissal of tenured faculty, . . . and their recommendations should be implemented except for compelling reasons.").

<sup>3</sup> See NKU Faculty Senate Constitution Art. I.C. ("As the representative of the General Faculty, the Senate shall be a counselor to the University president in matters of faculty concern. When the University president disagrees with a recommendation of the Senate, he/she may request the Senate to reconsider its decision at its next regular meeting or at a special meeting called for that purpose. The University president or his/her designee shall provide the Senate with the reasons for his/her disagreement. The Senate shall reconsider its decision, giving due weight to the University president's reasons. If the Senate and University president cannot agree, the University President, at the request of the Senate, shall report the Senate's views to the Board of Regents."). See also Statement of Collegial Governance at NKU Part B.1 ("Faculty bodies have primary responsibility for recommendations in [academic] matters, and their recommendations should be implemented except for



procedures for resolving such disagreements collegially, and in public.<sup>4</sup> These procedures represent the essence of shared collegial governance. The capacity to give unwelcome advice to the administration is an essential attribute of the Faculty Senate that should not be diluted through self-censorship.

### **What are the actual points of disagreement between the administration and the PCC?**

There are only two points of disagreement between the administration and the PCC. One disagreement concerns the scope of the definition of “research misconduct.” The other disagreement concerns a “statute of limitations.”

### **What’s the disagreement over the definition of “research misconduct”?**

Section 16.7.2 of the NKU Faculty Handbook currently defines “research misconduct” to include “Fabrication, falsification, plagiarism, or other serious deviations from those accepted practices in proposing, carrying out, or reporting results from research.”

The current Handbook language prohibiting “other serious deviations from those accepted practices” may sound vague. But at NKU, that language has been given authoritative interpretation in written reports issued by various investigating committees, all working under the supervision of the NKU Office of General Counsel. In an exemplary *NKU Investigative Report* prepared in 2002, the phrase “other serious deviations from those accepted practices” was defined to include “the recycling of material in redundant or duplicate publications, compounded by a failure to cite the prior work.”<sup>5</sup>

Under this definition, the term “Redundant or duplicate publications” was further defined to mean “publications in which a substantial portion of the work has already been published. It also includes the situation in which the work is either so similar to previously published material or so modest an extension of previously published work that it would not be viewed as significant were the previous publication acknowledged.”<sup>6</sup>

Also under this definition, the term “Failure to cite prior work” was further defined to refer to “papers that are presented as if the material were new when in fact the authors have

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compelling reasons. Reasons for non-implementation of faculty recommendations should be clearly stated in writing. . . .”).

<sup>4</sup> See id.

<sup>5</sup> **Investigative Report Setting forth the General Findings Of the Investigation Into Papers by Shailendra Verma, Balasubramani Ramjee, Anju Ramjee, Louis Noyd, and Richard Snyder 1995-2001**, prepared by the NKU Ad Hoc Investigative Committee on Research Misconduct (Thomas Kearns, Robert Kempton, and Matthew Shank), at 5 (Dec. 23, 2002), online at <<https://www.sendspace.com/pro/ykfsfx>>;

<sup>6</sup> Ibid.

previously published much of the body of the work before. An extension or recycling of previous work must be viewed as such, not as a new and original contribution.”<sup>7</sup>

The entire *2002 Investigative Report*, including the definitions quoted above, was approved in 2003 by the NKU Board of Regents, upon the recommendation of the NKU President, Provost, and General Counsel. In the present PCC recommendation, these existing Board-approved NKU definitions are retained, but now would be recited directly in the main text of the Faculty Handbook.

### **Why shouldn't NKU faculty members be allowed to recycle their scholarly work in redundant or duplicate publications without citing the prior work?**

The *2002 NKU Investigative Report* answers this question as follows:

Readers of proceedings and journal articles have a right to know what is new and original in the work in question and how the work is related to previously published material. This requires fair attribution of prior work, including work by the same authors. Because evaluation of faculty members at the University depends in part on an evaluation of their scholarly activity, the obligation to disclose debts to prior work to readers is especially important for those at the University who evaluate performance. Department committees that make decisions on reappointment, promotion, and tenure; chairs that make these same decisions and also decisions about salaries and merit raises; and higher administrators who do the same – all are entitled to a fair understanding of the origins and nature of the scholarly work.<sup>8</sup>

The PCC concurs in these views. Accordingly, PCC does not consider it a “best practice” for NKU faculty members to recycle scholarly work in redundant or duplicate publications without citing the prior work, or to permit their colleagues to do so without consequence.

### **What was this *2002 Investigative Report* about?**

In 2002, five professors in the NKU Department of Finance were found to have co-authored and published 23 articles whose content overlapped significantly, over a period of nearly a decade. The faculty investigating committee described its findings as follows:

[The overlap between the papers was] not simply minor duplication of sentences or even an occasional paragraph. In some cases it amounts to essentially an entire paper

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<sup>7</sup> ibid.

<sup>8</sup> ibid. at 6. See also Michael R. Carroll & Sara Sidebottom, Business School Ethical Dilemma: A Case Study, 2 Business Renaissance Quarterly 91, 99 (Summer 2007) (noting that many journals have “explicit policies about duplicative or redundant publications which generally provide that by submitting a paper for review the authors certify that the work has not been previously published, accepted for publication, presented or submitted elsewhere”; such policies reflect “generally accepted expectations of academic submissions”).

being recycled. In every instance, the redundancy is accompanied by a failure to cite the prior and duplicated work. In fact, none of the twenty three papers cite any of the others. In almost every instance, very similar papers have been given quite distinct titles, with no suggestion of the relationship between the papers. They have in most cases then been submitted to different outlets for presentation and publication. The Committee considers the packaging of this redundant material to be part of a deliberate and extended pattern of deceit, intended to present the papers in question as entirely new work. The Committee considers this particular deviation from accepted practices to be research misconduct. It will be reported as “deceitful duplication of material.”

In 2003, this committee’s conclusion was endorsed by the NKU General Counsel, Provost, President, and Board of Regents. Under the administration’s present proposal, in contrast, such conduct would no longer fall within NKU’s definition of “research misconduct.”

**Are NKU students allowed to recycle the same academic work in more than one course without acknowledging the prior work?**

No. An NKU student may not “[s]ubmit an examination, assignment, or graduation requirement that the student has or will submit for credit in another course, without express approval from the professors in each of the courses.”<sup>9</sup> The PCC believes that NKU students should not be held to a higher standard of integrity in their coursework than NKU faculty members are held to in our scholarly and creative activity.

**Should NKU’s policy reflect the variation in accepted practices across academic fields?**

Yes. PCC recommends that the Handbook definition of “research misconduct” (Section 16.7.2.5) should state that “The question of what constitutes a serious deviation from accepted scholarly practices must be resolved by applying the standards and norms of the particular academic discipline at issue.” Research practices that are generally accepted within an NKU faculty member’s scholarly field cannot be deemed “misconduct” under this definition.

**Got it. So what is the other controversy over a “statute of limitations”?**

Under the current NKU Faculty Handbook, investigations may take place whenever evidence of misconduct is discovered and reported. The NKU administration, however, sought to introduce a “safe harbor,” in which misconduct generally would become immune from investigation if it remained undetected or unreported for six years. Because some forms of misconduct (such as plagiarism) may remain undetected for a long time but yet remain easy to prove when discovered, the PCC did not recommend setting any fixed “safe harbor” time period.

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<sup>9</sup> NKU Student Honor Code Sec. H.2.1.f, codified at NKU Code of Student Rights and Responsibilities Sec. V.H.2.1.f (2012), <<https://inside.nku.edu/scra/information/students/rights-responsibilities.html#policies>>.

## Is there some law that requires NKU to relax our current standards of research integrity?

No. For most NKU faculty members, the standards of integrity that govern scholarly and creative activity are established by academic/institutional norms and policies, not by laws or regulations.<sup>10</sup> For NKU faculty members who perform federally-funded behavioral and biomedical research, however, the standards of research integrity also are governed, in part, by US Department of Health & Human Services (HHS) regulations (42 CFR Part 93). For such federally-funded research, these HHS regulations require NKU to investigate certain allegations concerning data fabrication, falsification, and plagiarism, and to deploy certain investigative procedures in so doing. To ensure that our Handbook remains in compliance with these regulations, all pertinent text provided by the Provost's office was incorporated into PCC's recommendation.

Importantly, however, the federal regulations set forth in 42 CFR Part 93 set only minimum permissible standards of integrity for federally-funded behavioral and biomedical research. Those HHS regulations do not prohibit institutions from setting higher standards. To the contrary, Section 102(d) of the HHS regulations explicitly states that the government "does not prohibit or otherwise limit how institutions handle allegations of misconduct that do not fall within this part's definition of research misconduct or that do not involve PHS support." 42 CFR § 93.102(d) (emphasis added). Indeed, in its own "Q&A" on the application of these regulations, the HHS Office of Research Integrity offers the following explanation:

### **Q: May an institution have different standards and definitions for research misconduct than those in the final rule?**

A: Yes. Although an institution must apply the regulatory definitions, standards, and requirements in evaluating an allegation of research misconduct reported to ORI, it may also apply its internal definitions or standards in determining whether misconduct has occurred at the institutional level. An institution may find misconduct under its internal standards and impose administrative sanctions based on that finding, regardless of whether the institution or ORI makes a finding of research misconduct under the HHS standard. Section 93.319.<sup>11</sup>

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<sup>10</sup> See **2002 Investigative Report** at 4 (finding it unnecessary to investigate any "failure to meet other material legal requirements governing research" because "No federal funding was involved for the research under investigation in this case").

<sup>11</sup> US Department of Health & Human Services, Office of Research Integrity, **Questions and Answers 42 CFR Part 93**, at 6, <<https://ori.hhs.gov/sites/default/files/QandA.reg.6-06.pdf>> (emphasis added), included in Appendix C of Memorandum from NKU General Counsel Joan Gates to NKU Faculty Senate Executive Committee (Oct 11, 2019). See also White House Office of Science & Technology Policy, **Federal Policy On Research Misconduct** Sec. VI ("Roles of Other Organizations: This federal policy does not limit the authority of research institutions, or other entities, to promulgate additional research misconduct policies or guidelines or more specific ethical guidance.") (Nov. 11, 2002), <<https://www.aps.org/policy/statements/upload/federalpolicy.pdf>>, included in Appendix D of Memorandum from NKU General Counsel Joan Gates to NKU Faculty Senate Executive Committee (Oct 11, 2019).

In short, NKU is neither required nor prohibited by federal regulations to police any of the following forms of research misconduct:

- Misconduct in scholarly or creative activity that is not federally funded;
- Misconduct that remains undiscovered or unreported for six years (with exceptions);
- Recycling of material in redundant or duplicate publications, compounded by a failure to cite the prior work (i.e. “self-plagiarism”); or
- Other serious deviations from accepted practices.

With respect to each of these forms of research misconduct, the NKU Board of Regents has recognized that NKU is free to adopt whatever substantive policy best suits NKU.<sup>12</sup>

**Is it *possible* for the PCC-recommended Handbook policy to conflict with federal law?**

No. Section 16.7.2.5 of the new Handbook language recommended by PCC would provide:

In cases of allegations involving activities submitted to or supported by a federal agency where definitions or procedures for research misconduct specified in the agency's regulations differ from those in this policy, the definitions and procedures in the agency's regulations will be used.

By this language, the Handbook itself would require that federal laws and regulations must be adhered to in all instances in which they apply, including in instances where contrary Handbook provisions otherwise might apply. Accordingly, this language renders it impossible for the PCC-proposed Handbook language to conflict with any federal law or regulation.

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<sup>12</sup> See ibid. (“Following a decade of discussion and reports, the federal Office of Science and Technology in the Executive Office of the President issued a revised policy on research misconduct in 2000. The fourth prong in NKU’s policy – serious deviation from accepted practices – is no longer a part of the federal policy and there has been some question about our continued use of this clause. However, although the federal policy no longer includes the “deviation from accepted practices” clause, it does not preclude its use. The federal guidelines, which apply only to federally sponsored research, explicitly recognize the authority of universities to add to the federal guidelines.”) (emphasis added).

## **The HHS regulations don't require NKU to investigate "self-plagiarism"? Doesn't this mean that HHS doesn't think "self-plagiarism" is all that bad?**

Although applicable HHS regulations neither prohibit nor require institutions like NKU to police "self-plagiarism," the HHS Office of Research Integrity continues to characterize "self-plagiarism" as one of "the most serious negative consequences" of the present academic ecosystem. It observes:

As can be expected, and in the context of decreasing or, at best, stagnant funding for research, the current reward system produces a tremendous amount of pressure for scientists to generate as many publications as possible. Unfortunately, some of the most serious negative consequences of the present system, aside from fabrication, falsification and outright plagiarism, are the problems of duplicate publication and of other forms of redundancy. In the sciences, duplicate publication generally refers to the practice of submitting a paper with identical or near identical content to more than one journal, without alerting the editors or readers to the existence of its earlier published version.<sup>13</sup>

The HHS Office of Research Integrity does not consider it a "best practice" for researchers to recycle scholarly work in redundant or duplicate publications without citing the prior work, or to permit their colleagues to do so without consequence.

### **Do NKU's accreditors want NKU to stop policing "self-plagiarism"?**

No. In 2003, the NKU College of Business removed five faculty members from the classroom, mid-semester, after finding that those faculty members had engaged in a course of research misconduct, including fraudulent submission of duplicative or redundant publications. When provided with the faculty committee's investigative report, the College's accreditor concluded that in removing tenured faculty members for fraudulent submission of duplicative or redundant publications, "Northern Kentucky University acted appropriately and decisively to correct the internal research misconduct."<sup>14</sup>

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<sup>13</sup> See, e.g., HHS Office of Research Integrity, **Avoiding Plagiarism, Self-plagiarism, and Other Questionable Writing Practices: A Guide to Ethical Writing** (2003, revised 2015), online at <<https://ori.hhs.gov/plagiarism-14>>.

<sup>14</sup> AACSB Maintenance Accreditation Committee Letter (2003), *quoted in* Michael R. Carroll & Sara Sidebottom, Business School Ethical Dilemma: A Case Study, 2 **Business Renaissance Quarterly** 91, 106 (Summer 2007).

## How do other universities define “research misconduct”?

Substantially all American universities define “research misconduct” to include fabrication, falsification, and plagiarism (“FFP”).<sup>15</sup> But many define “research misconduct” more expansively.<sup>16</sup> Recently, the Dean of the Faculty at Cornell University conducted a limited survey of research misconduct policies at Cornell’s peer institutions.<sup>17</sup> He found that seven of Cornell’s peer institutions were “FFP-only” institutions in which “research misconduct” procedures are reserved exclusively to address fabrication, falsification, and plagiarism claims.<sup>18</sup> In contrast, he found that eleven peer institutions, plus Cornell itself, were “FFP-plus” institutions, in which university policies and procedures that addresses research misconduct “include more than just the ‘core’ FFP standard in its list of research-related prohibitions.”<sup>19</sup>

Some “FFP-plus” universities have adopted express policy language of the type that PCC recommends. For example, the **Virginia Tech Faculty Handbook** includes the following language:

**Scholarship.** Guided by a deep conviction of the worth and dignity of the advancement of knowledge, we recognize our primary responsibility to our disciplines is to seek and to state the truth. To this end, we devote our energies to developing and improving our scholarly competence. We accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. We practice intellectual honesty and do not compromise our freedom of inquiry. At Virginia Tech, self-plagiarism is considered unethical behavior. Self-plagiarism occurs when authors reuse substantial parts of their own published work as new without providing appropriate references to the previous work if this reuse deviates materially from standard practice in the field.<sup>20</sup>

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<sup>15</sup> Institutions must police these three forms of misconduct in order to remain eligible to participate in federally-funded biomedical and behavioral research, See 42 C.F.R. § 93.103.

<sup>16</sup> See 42 C.F.R. § 93.102(d) (federal regulations do not “prohibit or otherwise limit how institutions handle allegations of misconduct that do not fall within this part's definition of research misconduct or that do not involve PHS support.”).

<sup>17</sup> **Promoting Research Integrity: What is Research Misconduct?**, Cornell University Office of the Dean of the Faculty Web Site, <<https://theuniversityfaculty.cornell.edu/news/promoting-research-integrity/definitions-and-examples/>>.

<sup>18</sup> These seven institutions were Berkeley, Brown, Columbia, Dartmouth, Harvard, NYU, and Virginia Commonwealth University. Ibid. For these FFP-Only schools, “no effort was made to see how other research-related malpractices are handled.” Ibid.

<sup>19</sup> Ibid. These institutions were Cornell, Duke, Johns Hopkins, MIT, NYU, Princeton, Stanford, The University of Chicago, the University of Michigan, the University of Pennsylvania, The University of Texas, and the University of Washington. Ibid.

<sup>20</sup> Virginia Polytechnic Institute and State University Faculty Handbook § 2.23.1 (approved Aug 26, 2019), <[https://www.provost.vt.edu/who\\_we\\_are/faculty\\_affairs/faculty\\_handbook/chapter02.html.html#2.0](https://www.provost.vt.edu/who_we_are/faculty_affairs/faculty_handbook/chapter02.html.html#2.0)> (emphasis added). See also Virginia Polytechnic Institute and State University Policy on Misconduct in Research,

Similarly, **The University of Tennessee** defines (and prohibits) “redundant publication” as follows:

Redundant Publication (sometimes called self-plagiarism) means either multiple publications of the same material, by the same author, to the extent that the core of the new document fails to constitute an original contribution to knowledge. Redundant Publication can constitute Research Misconduct, depending on the standards of the relevant discipline and scientific community.<sup>21</sup>

Using different terminology with the same essential meaning, **The University of Maryland** defines (and prohibits) “self-plagiarism” as follows:

“Self-Plagiarism” means the representation of the same materials as original in more than one publication. Self-Plagiarism can include reuse of one’s own words, images, data, or other products of Research without appropriate attribution and/or, in the case in which copyright is held by another person or organization, without receiving appropriate permission. When not in accordance with accepted standards in the relevant discipline, Self-Plagiarism may constitute Scholarly Misconduct.<sup>22</sup>

In yet another verbal formulation, **the University of Pittsburgh** defines (and prohibits) “duplicate publication” as follows:

#### **DUPLICATE PUBLICATION**

Researchers should not publish the same article in two different places without very good reason to do so, unless appropriate citation is made in the later publication to the earlier one, and unless the editor is explicitly informed. The same rule applies to abstracts. If there is unexplained duplication of publication without citation, sometimes referred to as self-plagiarism, a reader may be deceived as to the amount of original research data.

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Policy No. 13020, at 1 (last revised Nov 8, 2018), <<https://policies.vt.edu/13020.pdf>> (“At Virginia Tech, self-plagiarism is considered unethical behavior.”).

<sup>21</sup> The University of Tennessee Policy and Procedures on Responsible Conduct in Research and Scholarly Activities, Policy No. RE0001, at 4 ¶ 22 (Sept. 15, 2016), <<https://universitytennessee.policytech.com/dotNet/documents/?docid=175&public=true>>. “For developing guidance on redundant publication, dual publication, self-plagiarism, “salami-slicing” and similar topics,” the University of Tennessee’s Research Misconduct Policy expressly cites the HHS Office of Research Integrity guidance web module on “Avoiding plagiarism, self-plagiarism, and other questionable writing practices: A guide to ethical writing,” at <http://ori.hhs.gov/avoiding-plagiarism-self-plagiarism-and-other-questionable-writing-practices-guide-ethical-writing>. *Ibid.* at 4 ¶ 22 n.21.

<sup>22</sup> University of Maryland Policy and Procedures Concerning Scholarly Misconduct § I (“Definitions”), at 10 (amended and approved March 12, 2019) (emphasis added), <<https://president.umd.edu/sites/president.umd.edu/files/documents/policies/III-110A.pdf>>.



It is improper in most fields to allow the same manuscript to be under review by more than one journal at the same time. Very often journals specify that a submitted work should not have been published or submitted for publication elsewhere, and some journals require that a submitted manuscript be accompanied by a statement to that effect.<sup>23</sup>

### **But how common is this kind of policy language?**

Only a minority of American universities appear to have adopted explicit policy language on this subject. But importantly: among universities that lack such specific language on-point, it is common for broad or general research misconduct policy language to be invoked, as needed, to investigate claims of excessive text-recycling, duplicative publication, or self-plagiarism. The research misconduct policy of the **University of Cincinnati**, for example, does not specifically name “self-plagiarism” or “duplicate publication” as forms of research misconduct. Instead, UC’s research misconduct policy broadly proclaims that:

Fraud in research undermines the scientific enterprise in ways that go far beyond the waste of public funds. Although an uncommon event relative to the large scientific literature, violations of accepted standards inevitably appear in this as in all human pursuits. Institutions engaged in research have a major responsibility, not only to provide an environment that promotes integrity, but also to establish and enforce policies that deal effectively and expeditiously with allegations or evidence of fraud.<sup>24</sup>

Despite its lack of explicit reference to self-plagiarism, however, the University of Cincinnati nonetheless does rely upon the quoted language to investigate such misconduct. In mid-July 2008, for example, the University of Cincinnati Provost's office received a letter accusing a tenured computer science professor of “self-plagiarism” and other misconduct.<sup>25</sup> In response, on July 25, 2008, the Dean of UC’s College of Engineering initiated an investigative proceeding.<sup>26</sup> Although the Dean’s investigation centered mainly on other allegations, the “accusation of self-plagiarism against Dr. Agrawal was separately investigated by Jane Strasser and Melissa Colbert, who both work in the University's Research Compliance group. They

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<sup>23</sup> University of Pittsburgh Guidelines For Responsible Conduct of Research § 4.d (revised March 2011), <<http://www.provost.pitt.edu/documents/GUIDELINES%20FOR%20ETHICAL%20PRACTICES%20IN%20RESEARCH-FINALrevised2-March%202011.pdf>> (emphasis added).

<sup>24</sup> Conduct and Ethics: Policy For Investigation of Research Misconduct, University of Cincinnati Document 3361 (10-17-05), at Page 2, <[https://www.uc.edu/content/dam/uc/trustees/docs/rules\\_10/10-17-05.pdf](https://www.uc.edu/content/dam/uc/trustees/docs/rules_10/10-17-05.pdf)> (emphasis added). See also *ibid.* at 4 (“Appropriate administrative action may be taken as necessary to ensure the integrity of the research, to protect the rights and interests of research subjects and the public, to protect sponsoring agency funds, and to assure that the purposes of the financial assistance are met.”) (emphasis added).

<sup>25</sup> Agrawal v. University of Cincinnati, 977 F.Supp.2d 800, 808 (S.D. Ohio 2013), aff'd in pertinent part, 574 Fed.Appx. 570, 576-77 (6th Cir. 2015) (unpublished opinion).

<sup>26</sup> Ibid. at 809.

essentially concluded that Dr. Agrawal had improperly replicated some of his own previously published work in a subsequent professional publication, but that the issue was not worth further pursuit by UC based on the type of publication that was involved."<sup>27</sup>

Although this particular investigation resulted in no disciplinary action against the professor, the episode confirms that the University of Cincinnati does interpret its broad policy language on research misconduct to apply to self-plagiarism. Indeed, UC subsequently addressed self-plagiarism again in another more recent misconduct investigation.<sup>28</sup>

Although research misconduct proceedings ordinarily are confidential, court decisions reveal evidence that other peer institutions in our region interpret broad handbook language similarly to UC and NKU. **The Ohio State University (TOSU)**, for example, recently enforced a policy that defined research misconduct broadly to include research “practices that seriously deviate from those that are commonly accepted within the relevant scholarly community”.<sup>29</sup> Using this definition, a faculty committee convened by the Dean of TOSU’s College of Pharmacy found potential research misconduct when a tenured full professor recycled major portions of text from her own 2005 article into a 2007 article, without citation or attribution.<sup>30</sup> As summarized by a federal judge:

The committee did find that ‘most of the prose in the 2007 article has been directly taken from the 2005 article’, and concluded that ‘the practice of using large sections of previous work, particularly without citation, represents the poorest of scholarly practices’.... The report stated the committee's belief ‘that the failure to quote the 2005 article in the 2007 article seriously deviates from commonly accepted practices within the research community and as such represents misconduct.’<sup>31</sup>

Like UC and TOSU, to date NKU to date has relied on broad, non-specific Faculty Handbook language to investigate claims of excessive text-recycling, duplicative publication, or self-plagiarism.<sup>32</sup> The PCC recommends that such claims should continue to be investigated

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<sup>27</sup> Ibid. at 812. The accusations of “self-plagiarism” were investigated with the advice and counsel of University of Cincinnati legal counsel. See Conduct and Ethics: Policy For Investigation of Research Misconduct, University of Cincinnati Document 3361 (10-17-05), at Page 3 (“university legal counsel shall provide advice and counsel throughout the proceedings.”), <[https://www.uc.edu/content/dam/uc/trustees/docs/rules\\_10/10-17-05.pdf](https://www.uc.edu/content/dam/uc/trustees/docs/rules_10/10-17-05.pdf)> (emphasis added).

<sup>28</sup> See also Ashraf v. Boat, No. 1:13-CV-533, 2013 WL 4017642, at \*1 (S.D. Ohio Aug. 6, 2013) (“In August 2012, the University decided to conduct an investigation into whether Dr. Ashraf had committed self-plagiarism or other research misconduct.”).

<sup>29</sup> Szeinbach v. Ohio State Univ., 987 F. Supp. 2d 732, 739 (S.D. Ohio 2013). This is the same language currently in force under NKU Faculty Handbook Sec. 16.7.2.

<sup>30</sup> Ibid. at 739-40.

<sup>31</sup> Ibid. at 740 (emphasis added).

<sup>32</sup> See NKU Faculty Policies and Procedures Handbook Sec. 16.7.2. (2019) (“Research ‘misconduct,’ as used herein, is defined as: Fabrication, falsification, plagiarism, or other serious deviations from those accepted

where warranted, but that our Faculty Handbook should be updated to provide clearer notice of our policy.

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practices in proposing, carrying out, or reporting results from research. . . ."). See also 2002 Investigative Report, at 5 (defining the phrase "other serious deviations from those accepted practices" to include "the recycling of material in redundant or duplicate publications, compounded by a failure to cite the prior work."), online at <<https://www.sendspace.com/pro/ykfsfx>>.

CHECKLIST: Policies and Procedures for Handling Research Misconduct Allegations

This checklist is used by the U.S. Department of Health and Human Services, Office of Research Integrity (ORI) and is intended only to provide general information regarding ORI’s review of institutional policies. It should not be used by institutions or relied on by them as a substitute for familiarity with the Federal laws and regulations applicable to research misconduct, including 42 U.S.C. 289b and 42 C.F.R. Part 93. The information presented in the checklist is not legal advice, is not to be acted on as such, may not be current, and is subject to change without notice.

A. Policies and Procedures Requirements Pursuant to §93.304. Institutions seeking an approved assurance <b>must</b> have written policies and procedures for addressing research misconduct that include the following:	
Page/Section	Criteria
	<p>Consistent with Sec. 93.108, protection of the confidentiality of</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Respondents,</li> <li><input type="checkbox"/> Complainants, and</li> <li><input type="checkbox"/> Research subjects identifiable from research records or evidence (§93.304(a)) .</li> </ul>
	<p>A thorough, competent, objective, and fair response* to allegations of research misconduct consistent with and within the time limits** of 42 C.F.R. Part 93, including precautions to ensure that individuals responsible for carrying out any part of the research misconduct proceeding do not have unresolved personal, professional, or financial conflicts of interest with the</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Complainant,</li> <li><input type="checkbox"/> Respondent, or</li> <li><input type="checkbox"/> Witnesses (§93.304(b)).</li> </ul> <p><u>*Ensuring a fair investigation</u></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practicable, including participation of persons with appropriate scientific expertise who do not have unresolved personal, professional, or financial conflicts of interest with those involved with the inquiry or investigation (§93.310(f)).</li> </ul> <p><u>** Time Limits</u></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The institution must complete the inquiry within 60 calendar days of its initiation unless circumstances clearly warrant a longer period. If the inquiry takes longer than 60 days to complete, the inquiry record must include documentation of the reasons for exceeding the 60-day period ((§93.307(g))</li> <li><input type="checkbox"/> Within 30 days of finding that an investigation is warranted, provide ORI with the written finding by the responsible institutional official and a copy of the inquiry report (93.309(a))</li> <li><input type="checkbox"/> Begin the investigation within 30 days after determining that an investigation is warranted (§93.310(a))</li> <li><input type="checkbox"/> An institution must complete all aspects of an investigation within 120 days of beginning it, including conducting the investigation, preparing the report of findings, providing the draft report for comment in accordance with Sec. 93.312, and sending the final report to ORI under Sec. 93.315. (93.311(a))</li> </ul>
	<p>Written notice to the respondent(s), consistent with and within the time limits of this part (§93.304(c))</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> At the time of or before beginning an inquiry, an institution must make a good faith effort to notify in writing the presumed respondent, if any (§93.307(b))</li> <li><input type="checkbox"/> If the inquiry subsequently identifies additional respondents, the institution must notify them (§93.307(b))</li> <li><input type="checkbox"/> The institution must notify the respondent whether the inquiry found that an investigation is warranted. The notice must include a copy of the inquiry report and include a copy of or refer to this part and the institution's policies and procedures adopted under its assurance. (§93.308(a))</li> <li><input type="checkbox"/> Notify the respondent in writing of the allegations within a reasonable amount of time after determining that an investigation is warranted, but before the investigation begins. The</li> </ul>

	institution must give the respondent written notice of any new allegations of research misconduct within a reasonable amount of time of deciding to pursue allegations not addressed during the inquiry or in the initial notice of investigation (93.310(c))
	Written notice to ORI of any decision to open an investigation on or before the date on which the investigation begins (§93.304(d))
	Opportunity for the respondent to provide written comments on the institution's inquiry report (§93.304(e))
	Respondent comments (§93.304(f)) <ul style="list-style-type: none"> <li><input type="checkbox"/> Opportunity for the respondent to provide written comments on the draft report of the investigation, and</li> <li><input type="checkbox"/> Provisions for the institutional investigation committee to consider and address the comments before issuing the final report</li> </ul>
	Protocols for handling the research record and evidence, including the requirements of Sec. 93.305 (§93.304(g))
	Appropriate interim institutional actions to protect public health, Federal funds and equipment, and the integrity of the PHS-supported research process (§93.304(h))
	Notice to ORI under Sec. 93.318 and notice of any facts that may be relevant to protect public health, Federal funds and equipment, and the integrity of the PHS supported research process (§93.304(i))
	Institutional actions in response to final findings of research misconduct (§93.304(j))
	All reasonable and practical efforts, if requested and as appropriate, to protect or restore the reputation of persons alleged to have engaged in research misconduct but against whom no finding of research misconduct is made (§93.304(k))
	All reasonable and practical efforts to protect or restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against these complainants, witnesses, and committee members (§93.304(l))
	Full and continuing cooperation with ORI during its oversight review under Subpart D of 42 C.F.R. Part 93 or any subsequent administrative hearings or appeals under Subpart E of Part 93. This includes providing all research records and evidence under the institution's control, custody, or possession and access to all persons within its authority necessary to develop a complete record of relevant evidence (§93.304(m))

## Additional Elements

Although not required to be included in writing in the institutional policies and procedures as described in §93.304, institutions may consider incorporating the following elements (Sections B, C, and D) in their written policy and procedures. This is not an exhaustive list. Institutions, as defined in §93.213, are required to comply with 42 C.F.R. Part 93 in its entirety. Individuals responsible for drafting their institutional policies and procedures should consult their legal counsel to ensure compliance with 42 C.F.R. Part 93.

<b>B. GENERAL ELEMENTS</b>	
<b>Page/Section</b>	<b>Description</b>
	Informing institution's research members of the policy and procedures, and the institution's commitment to compliance with the policy and procedures (§93.302(a)(2)(i))
	Definition of research misconduct is consistent with §93.103 <ul style="list-style-type: none"> <li><input type="checkbox"/> Fabrication</li> <li><input type="checkbox"/> Falsification</li> <li><input type="checkbox"/> Plagiarism</li> <li><input type="checkbox"/> Does not include honest error or differences of opinion</li> <li><input type="checkbox"/> Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results</li> </ul>
	Requirements for findings of research misconduct (§93.104) <ul style="list-style-type: none"> <li><input type="checkbox"/> Significant departure from accepted practices of the relevant research community, and</li> <li><input type="checkbox"/> Misconduct committed intentionally, knowingly, or recklessly, and</li> <li><input type="checkbox"/> Proven by a preponderance of evidence</li> </ul>
	Allegation may be by any means of communication to an institutional or HHS official (§93.201)
	Institutional contact information for reporting possible research misconduct. (Not required by the regulation)
	Six-year limitation on allegations from the date HHS or an institution receives an allegation, and exceptions to the six-year limitation (§93.105)
	The institution shall take all reasonable and practical steps to ensure the cooperation of respondents and other institutional members with research misconduct proceedings, including, but not limited to, their providing information, research records, and evidence (§93.300(f))
	Carry inquiries and investigations through to completion and to pursue diligently all significant issues (§93.316)
	Notify ORI in advance if the institution plans to close a case at the <ul style="list-style-type: none"> <li><input type="checkbox"/> Inquiry,</li> <li><input type="checkbox"/> Investigation, or</li> <li><input type="checkbox"/> Appeal</li> </ul> stage on the basis that the respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason, except the closing of a case at the inquiry stage on the basis that an investigation is not warranted or a finding of no misconduct at the investigation stage, which must be reported to ORI under Sec. 93.515 (§93.316)
<b>C. ELEMENTS RELEVANT TO THE INQUIRY STAGE</b>	
	Criteria warranting an inquiry (§93.307(a)(1) - (3)) <ul style="list-style-type: none"> <li><input type="checkbox"/> Falls within the definition of research misconduct under 42 C.F.R. Part 93;</li> </ul>

	<input type="checkbox"/> Is within Sec. 93.102; and <input type="checkbox"/> Is sufficiently credible and specific so that potential evidence of research misconduct may be identified.
	Take custody of the research records and evidence on or before the date required to secure research records and evidence, inventory them, and sequester them in a secure manner (§93.305(a), §93.307(b))
	Sequestration of additional research records or evidence that is discovered during the course of a research misconduct proceeding (§93.305(c))
	Purpose of inquiry is to conduct an initial review of evidence to determine whether to conduct an investigation (§93.307(c))
	Contents of inquiry report (§93.307(e), §93.309(a)) <ul style="list-style-type: none"> <li><input type="checkbox"/> The name and position of the respondent;</li> <li><input type="checkbox"/> A description of the allegations of research misconduct;</li> <li><input type="checkbox"/> The PHS support, including, for example, grant numbers, grant applications, contracts, and publications listing PHS support;</li> <li><input type="checkbox"/> The basis for recommending that the alleged actions warrant an investigation; and</li> <li><input type="checkbox"/> Any comments on the report by the respondent or the complainant.</li> </ul>
	Criteria warranting an investigation (§93.307(d)(1-2))
	Retention of records of research misconduct proceedings, as defined by Part 93, including the inquiry report and final documents produced in the course of preparing inquiry report (§93.317(a)(3), §93.317(b))
	Documentation of decision not to investigate (§93.309(c))
<b>D. ELEMENTS RELEVANT TO THE INVESTIGATION STAGE</b>	
	Notify ORI on or before date investigation is to begin (§93.310(b))
	Additional sequestration as needed to conduct the research misconduct proceeding (§93.310(d))
	May request extension of investigation (§93.311(b))
	Documentation. Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research records and evidence relevant to reaching a decision on the merits of the allegations (§93.310(e))
	Conduct required interviews, transcribed or recorded (§93.310(g))
	Pursue leads. Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation (§93.310(h))
	Investigation report, including (§93.313): <ul style="list-style-type: none"> <li>a. <input type="checkbox"/> Describe the nature of the allegations of research misconduct</li> <li>b. <input type="checkbox"/> Describe and document the PHS support (e.g., grant numbers, grant applications, contracts, and publications listing PHS support)</li> <li>c. <input type="checkbox"/> Institutional charge (e.g., description of the specific allegations of research misconduct for consideration in the investigation)</li> <li>d. <input type="checkbox"/> Copy of the institutional policies and procedures under which the investigation was conducted</li> <li>e. <input type="checkbox"/> Research records and evidence. Identify and summarize the research records and evidence</li> </ul>

	<p>reviewed, and identify any evidence taken into custody but not reviewed</p> <p>f. <input type="checkbox"/> Statement of findings. For each separate allegation of research misconduct identified during the investigation, provide a finding as to whether research misconduct did or did not occur, and if so--</p> <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Identify whether the research misconduct was falsification, fabrication, or plagiarism, and if it was intentional, knowing, or in reckless disregard;</li> <li>2. <input type="checkbox"/> Summarize the facts and the analysis which support the conclusion and consider the merits of any reasonable explanation by the respondent;</li> <li>3. <input type="checkbox"/> Identify the specific PHS support;</li> <li>4. <input type="checkbox"/> Identify whether any publications need correction or retraction;</li> <li>5. <input type="checkbox"/> Identify the person(s) responsible for the misconduct; and</li> <li>6. <input type="checkbox"/> List any current support or known applications or proposals for support that the respondent has pending with non-PHS Federal agencies</li> </ol> <p>g. <input type="checkbox"/> Comments. Include and consider any comments made by the respondent and complainant on the draft investigation report</p> <p>h. <input type="checkbox"/> Maintain and provide records. Maintain and provide to ORI upon request all relevant research records and records of the institution's research misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews</p>
	<p>The institution must give ORI the following (§93.315):</p> <ol style="list-style-type: none"> <li>a. <input type="checkbox"/> Investigation Report. Include a copy of the report, all attachments, and any appeals</li> <li>b. <input type="checkbox"/> Final institutional action. State whether the institution found research misconduct, and if so, who committed the misconduct</li> <li>c. <input type="checkbox"/> Findings. State whether the institution accepts the investigation's findings.</li> <li>d. <input type="checkbox"/> Institutional administrative actions. Describe any pending or completed administrative actions against the respondent</li> </ol>
	<p>Maintain records of research misconduct proceedings in a secure manner for 7 years after completion of the proceeding or the completion of any PHS proceeding involving the research misconduct allegation, whichever is later (§93.317(b))</p>



## FAQ on the Research Misconduct Policy Proposal

### Can You Briefly Summarize the PCC recommendation on research misconduct policy?

**Yes.** After study and deliberation that involved substantial back-and-forth with the NKU administration, in April 2019 the PCC voted to recommend a package of technical amendments to NKU Faculty Handbook Sec. 16.7 (NKU's current Research Misconduct Policy). The PCC-recommended amendments would bring the Handbook more clearly into conformity with applicable federal regulations, without changing the current scope of the policy's coverage.

### If the PCC's recommendation doesn't materially change the current Faculty Handbook policy, then why has there been any controversy?

A controversy arose when the NKU administration asked the Senate to recommend two changes to existing policy. In the PCC's view, the changes sought by the administration would imprudently relax NKU's current standards of academic integrity, and would make it harder for the faculty to police certain forms and instances of academic misconduct that have, unfortunately, occurred at NKU. Because integrity is a core value at NKU, PCC could not recommend that our current standard of research integrity be relaxed.

### Why shouldn't the Senate defer to the administration on such matters?

The NKU Faculty Senate exists to represent the faculty, not to represent the administration.<sup>1</sup> The Senate's role in shared governance requires it to "[e]valuate university policies, programs, and practices and recommend such improvements as seem warranted" from a faculty perspective.<sup>2</sup> The Faculty Senate Constitution explicitly contemplates that the Senate will make recommendations with which the administration may disagree.<sup>3</sup> It provides

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<sup>1</sup> "The Faculty Senate is the official representative body of the General Faculty of Northern Kentucky University." NKU Faculty Senate Constitution Art. I.A. "The purposes of the Faculty Senate are to: (1) Provide a forum for the faculty to propose policy and to discuss all matters relating to the wellbeing of the University; and (2) Allow the faculty to participate effectively in the enactment of university policies." NKU Faculty Senate Constitution Art. I.B.

<sup>2</sup> NKU Faculty Senate Constitution Art. I.B.4. See also Statement of Collegial Governance at NKU Part B.1 ("Faculty bodies have primary responsibility for recommendations in [academic] matters . . . [including] policies which result in dismissal of tenured faculty, . . . and their recommendations should be implemented except for compelling reasons.").

<sup>3</sup> See NKU Faculty Senate Constitution Art. I.C. ("As the representative of the General Faculty, the Senate shall be a counselor to the University president in matters of faculty concern. When the University president disagrees with a recommendation of the Senate, he/she may request the Senate to reconsider its decision at its next regular meeting or at a special meeting called for that purpose. The University president or his/her designee shall provide the Senate with the reasons for his/her disagreement. The Senate shall reconsider its decision, giving due weight to the University president's reasons. If the Senate and University president cannot agree, the University President, at the request of the Senate, shall report the Senate's views to the Board of Regents."). See also Statement of Collegial Governance at NKU Part B.1 ("Faculty bodies have primary responsibility for recommendations in [academic] matters, and their recommendations should be implemented except for

procedures for resolving such disagreements collegially, and in public.<sup>4</sup> These procedures represent the essence of shared collegial governance. The capacity to give unwelcome advice to the administration is an essential attribute of the Faculty Senate that should not be diluted through self-censorship.

### **What are the actual points of disagreement between the administration and the PCC?**

There are only two points of disagreement between the administration and the PCC. One disagreement concerns the scope of the definition of “research misconduct.” The other disagreement concerns a “statute of limitations.”

### **What’s the disagreement over the definition of “research misconduct”?**

Section 16.7.2 of the NKU Faculty Handbook currently defines “research misconduct” to include “Fabrication, falsification, plagiarism, or other serious deviations from those accepted practices in proposing, carrying out, or reporting results from research.”

The current Handbook language prohibiting “other serious deviations from those accepted practices” may sound vague. But at NKU, that language has been given authoritative interpretation in written reports issued by various investigating committees, all working under the supervision of the NKU Office of General Counsel. In an exemplary *NKU Investigative Report* prepared in 2002, the phrase “other serious deviations from those accepted practices” was defined to include “the recycling of material in redundant or duplicate publications, compounded by a failure to cite the prior work.”<sup>5</sup>

Under this definition, the term “Redundant or duplicate publications” was further defined to mean “publications in which a substantial portion of the work has already been published. It also includes the situation in which the work is either so similar to previously published material or so modest an extension of previously published work that it would not be viewed as significant were the previous publication acknowledged.”<sup>6</sup>

Also under this definition, the term “Failure to cite prior work” was further defined to refer to “papers that are presented as if the material were new when in fact the authors have

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compelling reasons. Reasons for non-implementation of faculty recommendations should be clearly stated in writing. . . .”).

<sup>4</sup> See id.

<sup>5</sup> **Investigative Report Setting forth the General Findings Of the Investigation Into Papers by Shailendra Verma, Balasubramani Ramjee, Anju Ramjee, Louis Noyd, and Richard Snyder 1995-2001**, prepared by the NKU Ad Hoc Investigative Committee on Research Misconduct (Thomas Kearns, Robert Kempton, and Matthew Shank), at 5 (Dec. 23, 2002), online at <<https://www.sendspace.com/pro/ykfsfx>>;

<sup>6</sup> Ibid.

previously published much of the body of the work before. An extension or recycling of previous work must be viewed as such, not as a new and original contribution.”<sup>7</sup>

The entire *2002 Investigative Report*, including the definitions quoted above, was approved in 2003 by the NKU Board of Regents, upon the recommendation of the NKU President, Provost, and General Counsel. In the present PCC recommendation, these existing Board-approved NKU definitions are retained, but now would be recited directly in the main text of the Faculty Handbook.

### **Why shouldn't NKU faculty members be allowed to recycle their scholarly work in redundant or duplicate publications without citing the prior work?**

The *2002 NKU Investigative Report* answers this question as follows:

Readers of proceedings and journal articles have a right to know what is new and original in the work in question and how the work is related to previously published material. This requires fair attribution of prior work, including work by the same authors. Because evaluation of faculty members at the University depends in part on an evaluation of their scholarly activity, the obligation to disclose debts to prior work to readers is especially important for those at the University who evaluate performance. Department committees that make decisions on reappointment, promotion, and tenure; chairs that make these same decisions and also decisions about salaries and merit raises; and higher administrators who do the same – all are entitled to a fair understanding of the origins and nature of the scholarly work.<sup>8</sup>

The PCC concurs in these views. Accordingly, PCC does not consider it a “best practice” for NKU faculty members to recycle scholarly work in redundant or duplicate publications without citing the prior work, or to permit their colleagues to do so without consequence.

### **What was this *2002 Investigative Report* about?**

In 2002, five professors in the NKU Department of Finance were found to have co-authored and published 23 articles whose content overlapped significantly, over a period of nearly a decade. The faculty investigating committee described its findings as follows:

[The overlap between the papers was] not simply minor duplication of sentences or even an occasional paragraph. In some cases it amounts to essentially an entire paper

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<sup>7</sup> ibid.

<sup>8</sup> ibid. at 6. See also Michael R. Carroll & Sara Sidebottom, Business School Ethical Dilemma: A Case Study, 2 Business Renaissance Quarterly 91, 99 (Summer 2007) (noting that many journals have “explicit policies about duplicative or redundant publications which generally provide that by submitting a paper for review the authors certify that the work has not been previously published, accepted for publication, presented or submitted elsewhere”; such policies reflect “generally accepted expectations of academic submissions”).

being recycled. In every instance, the redundancy is accompanied by a failure to cite the prior and duplicated work. In fact, none of the twenty three papers cite any of the others. In almost every instance, very similar papers have been given quite distinct titles, with no suggestion of the relationship between the papers. They have in most cases then been submitted to different outlets for presentation and publication. The Committee considers the packaging of this redundant material to be part of a deliberate and extended pattern of deceit, intended to present the papers in question as entirely new work. The Committee considers this particular deviation from accepted practices to be research misconduct. It will be reported as “deceitful duplication of material.”

In 2003, this committee’s conclusion was endorsed by the NKU General Counsel, Provost, President, and Board of Regents. Under the administration’s present proposal, in contrast, such conduct would no longer fall within NKU’s definition of “research misconduct.”

**Are NKU students allowed to recycle the same academic work in more than one course without acknowledging the prior work?**

No. An NKU student may not “[s]ubmit an examination, assignment, or graduation requirement that the student has or will submit for credit in another course, without express approval from the professors in each of the courses.”<sup>9</sup> The PCC believes that NKU students should not be held to a higher standard of integrity in their coursework than NKU faculty members are held to in our scholarly and creative activity.

**Should NKU’s policy reflect the variation in accepted practices across academic fields?**

Yes. PCC recommends that the Handbook definition of “research misconduct” (Section 16.7.2.5) should state that “The question of what constitutes a serious deviation from accepted scholarly practices must be resolved by applying the standards and norms of the particular academic discipline at issue.” Research practices that are generally accepted within an NKU faculty member’s scholarly field cannot be deemed “misconduct” under this definition.

**Got it. So what is the other controversy over a “statute of limitations”?**

Under the current NKU Faculty Handbook, investigations may take place whenever evidence of misconduct is discovered and reported. The NKU administration, however, sought to introduce a “safe harbor,” in which misconduct generally would become immune from investigation if it remained undetected or unreported for six years. Because some forms of misconduct (such as plagiarism) may remain undetected for a long time but yet remain easy to prove when discovered, the PCC did not recommend setting any fixed “safe harbor” time period.

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<sup>9</sup> NKU Student Honor Code Sec. H.2.1.f, codified at NKU Code of Student Rights and Responsibilities Sec. V.H.2.1.f (2012), <<https://inside.nku.edu/scra/information/students/rights-responsibilities.html#policies>>.

## Is there some law that requires NKU to relax our current standards of research integrity?

No. For most NKU faculty members, the standards of integrity that govern scholarly and creative activity are established by academic/institutional norms and policies, not by laws or regulations.<sup>10</sup> For NKU faculty members who perform federally-funded behavioral and biomedical research, however, the standards of research integrity also are governed, in part, by US Department of Health & Human Services (HHS) regulations (42 CFR Part 93). For such federally-funded research, these HHS regulations require NKU to investigate certain allegations concerning data fabrication, falsification, and plagiarism, and to deploy certain investigative procedures in so doing. To ensure that our Handbook remains in compliance with these regulations, all pertinent text provided by the Provost's office was incorporated into PCC's recommendation.

Importantly, however, the federal regulations set forth in 42 CFR Part 93 set only minimum permissible standards of integrity for federally-funded behavioral and biomedical research. Those HHS regulations do not prohibit institutions from setting higher standards. To the contrary, Section 102(d) of the HHS regulations explicitly states that the government "does not prohibit or otherwise limit how institutions handle allegations of misconduct that do not fall within this part's definition of research misconduct or that do not involve PHS support." 42 CFR § 93.102(d) (emphasis added). Indeed, in its own "Q&A" on the application of these regulations, the HHS Office of Research Integrity offers the following explanation:

### **Q: May an institution have different standards and definitions for research misconduct than those in the final rule?**

A: Yes. Although an institution must apply the regulatory definitions, standards, and requirements in evaluating an allegation of research misconduct reported to ORI, it may also apply its internal definitions or standards in determining whether misconduct has occurred at the institutional level. An institution may find misconduct under its internal standards and impose administrative sanctions based on that finding, regardless of whether the institution or ORI makes a finding of research misconduct under the HHS standard. Section 93.319.<sup>11</sup>

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<sup>10</sup> See **2002 Investigative Report** at 4 (finding it unnecessary to investigate any "failure to meet other material legal requirements governing research" because "No federal funding was involved for the research under investigation in this case").

<sup>11</sup> US Department of Health & Human Services, Office of Research Integrity, **Questions and Answers 42 CFR Part 93**, at 6, <<https://ori.hhs.gov/sites/default/files/QandA.reg.6-06.pdf>> (emphasis added), included in Appendix C of Memorandum from NKU General Counsel Joan Gates to NKU Faculty Senate Executive Committee (Oct 11, 2019). See also White House Office of Science & Technology Policy, **Federal Policy On Research Misconduct** Sec. VI ("Roles of Other Organizations: This federal policy does not limit the authority of research institutions, or other entities, to promulgate additional research misconduct policies or guidelines or more specific ethical guidance.") (Nov. 11, 2002), <<https://www.aps.org/policy/statements/upload/federalpolicy.pdf>>, included in Appendix D of Memorandum from NKU General Counsel Joan Gates to NKU Faculty Senate Executive Committee (Oct 11, 2019).

In short, NKU is neither required nor prohibited by federal regulations to police any of the following forms of research misconduct:

- Misconduct in scholarly or creative activity that is not federally funded;
- Misconduct that remains undiscovered or unreported for six years (with exceptions);
- Recycling of material in redundant or duplicate publications, compounded by a failure to cite the prior work (i.e. “self-plagiarism”); or
- Other serious deviations from accepted practices.

With respect to each of these forms of research misconduct, the NKU Board of Regents has recognized that NKU is free to adopt whatever substantive policy best suits NKU.<sup>12</sup>

**Is it *possible* for the PCC-recommended Handbook policy to conflict with federal law?**

No. Section 16.7.2.5 of the new Handbook language recommended by PCC would provide:

In cases of allegations involving activities submitted to or supported by a federal agency where definitions or procedures for research misconduct specified in the agency's regulations differ from those in this policy, the definitions and procedures in the agency's regulations will be used.

By this language, the Handbook itself would require that federal laws and regulations must be adhered to in all instances in which they apply, including in instances where contrary Handbook provisions otherwise might apply. Accordingly, this language renders it impossible for the PCC-proposed Handbook language to conflict with any federal law or regulation.

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<sup>12</sup> See ibid. (“Following a decade of discussion and reports, the federal Office of Science and Technology in the Executive Office of the President issued a revised policy on research misconduct in 2000. The fourth prong in NKU’s policy – serious deviation from accepted practices – is no longer a part of the federal policy and there has been some question about our continued use of this clause. However, although the federal policy no longer includes the “deviation from accepted practices” clause, it does not preclude its use. The federal guidelines, which apply only to federally sponsored research, explicitly recognize the authority of universities to add to the federal guidelines.”) (emphasis added).

## **The HHS regulations don't require NKU to investigate "self-plagiarism"? Doesn't this mean that HHS doesn't think "self-plagiarism" is all that bad?**

Although applicable HHS regulations neither prohibit nor require institutions like NKU to police "self-plagiarism," the HHS Office of Research Integrity continues to characterize "self-plagiarism" as one of "the most serious negative consequences" of the present academic ecosystem. It observes:

As can be expected, and in the context of decreasing or, at best, stagnant funding for research, the current reward system produces a tremendous amount of pressure for scientists to generate as many publications as possible. Unfortunately, some of the most serious negative consequences of the present system, aside from fabrication, falsification and outright plagiarism, are the problems of duplicate publication and of other forms of redundancy. In the sciences, duplicate publication generally refers to the practice of submitting a paper with identical or near identical content to more than one journal, without alerting the editors or readers to the existence of its earlier published version.<sup>13</sup>

The HHS Office of Research Integrity does not consider it a "best practice" for researchers to recycle scholarly work in redundant or duplicate publications without citing the prior work, or to permit their colleagues to do so without consequence.

### **Do NKU's accreditors want NKU to stop policing "self-plagiarism"?**

No. In 2003, the NKU College of Business removed five faculty members from the classroom, mid-semester, after finding that those faculty members had engaged in a course of research misconduct, including fraudulent submission of duplicative or redundant publications. When provided with the faculty committee's investigative report, the College's accreditor concluded that in removing tenured faculty members for fraudulent submission of duplicative or redundant publications, "Northern Kentucky University acted appropriately and decisively to correct the internal research misconduct."<sup>14</sup>

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<sup>13</sup> See, e.g., HHS Office of Research Integrity, **Avoiding Plagiarism, Self-plagiarism, and Other Questionable Writing Practices: A Guide to Ethical Writing** (2003, revised 2015), online at <<https://ori.hhs.gov/plagiarism-14>>.

<sup>14</sup> AACSB Maintenance Accreditation Committee Letter (2003), *quoted in* Michael R. Carroll & Sara Sidebottom, Business School Ethical Dilemma: A Case Study, 2 **Business Renaissance Quarterly** 91, 106 (Summer 2007).

## How do other universities define “research misconduct”?

Substantially all American universities define “research misconduct” to include fabrication, falsification, and plagiarism (“FFP”).<sup>15</sup> But many define “research misconduct” more expansively.<sup>16</sup> Recently, the Dean of the Faculty at Cornell University conducted a limited survey of research misconduct policies at Cornell’s peer institutions.<sup>17</sup> He found that seven of Cornell’s peer institutions were “FFP-only” institutions in which “research misconduct” procedures are reserved exclusively to address fabrication, falsification, and plagiarism claims.<sup>18</sup> In contrast, he found that eleven peer institutions, plus Cornell itself, were “FFP-plus” institutions, in which university policies and procedures that addresses research misconduct “include more than just the ‘core’ FFP standard in its list of research-related prohibitions.”<sup>19</sup>

Some “FFP-plus” universities have adopted express policy language of the type that PCC recommends. For example, the **Virginia Tech Faculty Handbook** includes the following language:

**Scholarship.** Guided by a deep conviction of the worth and dignity of the advancement of knowledge, we recognize our primary responsibility to our disciplines is to seek and to state the truth. To this end, we devote our energies to developing and improving our scholarly competence. We accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. We practice intellectual honesty and do not compromise our freedom of inquiry. At Virginia Tech, self-plagiarism is considered unethical behavior. Self-plagiarism occurs when authors reuse substantial parts of their own published work as new without providing appropriate references to the previous work if this reuse deviates materially from standard practice in the field.<sup>20</sup>

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<sup>15</sup> Institutions must police these three forms of misconduct in order to remain eligible to participate in federally-funded biomedical and behavioral research, See 42 C.F.R. § 93.103.

<sup>16</sup> See 42 C.F.R. § 93.102(d) (federal regulations do not “prohibit or otherwise limit how institutions handle allegations of misconduct that do not fall within this part’s definition of research misconduct or that do not involve PHS support.”).

<sup>17</sup> **Promoting Research Integrity: What is Research Misconduct?**, Cornell University Office of the Dean of the Faculty Web Site, <<https://theuniversityfaculty.cornell.edu/news/promoting-research-integrity/definitions-and-examples/>>.

<sup>18</sup> These seven institutions were Berkeley, Brown, Columbia, Dartmouth, Harvard, NYU, and Virginia Commonwealth University. Ibid. For these FFP-Only schools, “no effort was made to see how other research-related malpractices are handled.” Ibid.

<sup>19</sup> Ibid. These institutions were Cornell, Duke, Johns Hopkins, MIT, NYU, Princeton, Stanford, The University of Chicago, the University of Michigan, the University of Pennsylvania, The University of Texas, and the University of Washington. Ibid.

<sup>20</sup> Virginia Polytechnic Institute and State University Faculty Handbook § 2.23.1 (approved Aug 26, 2019), <[https://www.provost.vt.edu/who\\_we\\_are/faculty\\_affairs/faculty\\_handbook/chapter02.html.html#2.0](https://www.provost.vt.edu/who_we_are/faculty_affairs/faculty_handbook/chapter02.html.html#2.0)> (emphasis added). See also Virginia Polytechnic Institute and State University Policy on Misconduct in Research,



Similarly, **The University of Tennessee** defines (and prohibits) “redundant publication” as follows:

Redundant Publication (sometimes called self-plagiarism) means either multiple publications of the same material, by the same author, to the extent that the core of the new document fails to constitute an original contribution to knowledge. Redundant Publication can constitute Research Misconduct, depending on the standards of the relevant discipline and scientific community.<sup>21</sup>

Using different terminology with the same essential meaning, **The University of Maryland** defines (and prohibits) “self-plagiarism” as follows:

“Self-Plagiarism” means the representation of the same materials as original in more than one publication. Self-Plagiarism can include reuse of one’s own words, images, data, or other products of Research without appropriate attribution and/or, in the case in which copyright is held by another person or organization, without receiving appropriate permission. When not in accordance with accepted standards in the relevant discipline, Self-Plagiarism may constitute Scholarly Misconduct.<sup>22</sup>

In yet another verbal formulation, **the University of Pittsburgh** defines (and prohibits) “duplicate publication” as follows:

#### **DUPLICATE PUBLICATION**

Researchers should not publish the same article in two different places without very good reason to do so, unless appropriate citation is made in the later publication to the earlier one, and unless the editor is explicitly informed. The same rule applies to abstracts. If there is unexplained duplication of publication without citation, sometimes referred to as self-plagiarism, a reader may be deceived as to the amount of original research data.

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Policy No. 13020, at 1 (last revised Nov 8, 2018), <<https://policies.vt.edu/13020.pdf>> (“At Virginia Tech, self-plagiarism is considered unethical behavior.”).

<sup>21</sup> The University of Tennessee Policy and Procedures on Responsible Conduct in Research and Scholarly Activities, Policy No. RE0001, at 4 ¶ 22 (Sept. 15, 2016), <<https://universitytennessee.policytech.com/dotNet/documents/?docid=175&public=true>>. “For developing guidance on redundant publication, dual publication, self-plagiarism, “salami-slicing” and similar topics,” the University of Tennessee’s Research Misconduct Policy expressly cites the HHS Office of Research Integrity guidance web module on “Avoiding plagiarism, self-plagiarism, and other questionable writing practices: A guide to ethical writing,” at <http://ori.hhs.gov/avoiding-plagiarism-self-plagiarism-and-other-questionable-writing-practices-guide-ethical-writing>. *Ibid.* at 4 ¶ 22 n.21.

<sup>22</sup> University of Maryland Policy and Procedures Concerning Scholarly Misconduct § I (“Definitions”), at 10 (amended and approved March 12, 2019) (emphasis added), <<https://president.umd.edu/sites/president.umd.edu/files/documents/policies/III-110A.pdf>>.

It is improper in most fields to allow the same manuscript to be under review by more than one journal at the same time. Very often journals specify that a submitted work should not have been published or submitted for publication elsewhere, and some journals require that a submitted manuscript be accompanied by a statement to that effect.<sup>23</sup>

### **But how common is this kind of policy language?**

Only a minority of American universities appear to have adopted explicit policy language on this subject. But importantly: among universities that lack such specific language on-point, it is common for broad or general research misconduct policy language to be invoked, as needed, to investigate claims of excessive text-recycling, duplicative publication, or self-plagiarism. The research misconduct policy of the **University of Cincinnati**, for example, does not specifically name “self-plagiarism” or “duplicate publication” as forms of research misconduct. Instead, UC’s research misconduct policy broadly proclaims that:

Fraud in research undermines the scientific enterprise in ways that go far beyond the waste of public funds. Although an uncommon event relative to the large scientific literature, violations of accepted standards inevitably appear in this as in all human pursuits. Institutions engaged in research have a major responsibility, not only to provide an environment that promotes integrity, but also to establish and enforce policies that deal effectively and expeditiously with allegations or evidence of fraud.<sup>24</sup>

Despite its lack of explicit reference to self-plagiarism, however, the University of Cincinnati nonetheless does rely upon the quoted language to investigate such misconduct. In mid-July 2008, for example, the University of Cincinnati Provost's office received a letter accusing a tenured computer science professor of “self-plagiarism” and other misconduct.<sup>25</sup> In response, on July 25, 2008, the Dean of UC’s College of Engineering initiated an investigative proceeding.<sup>26</sup> Although the Dean’s investigation centered mainly on other allegations, the “accusation of self-plagiarism against Dr. Agrawal was separately investigated by Jane Strasser and Melissa Colbert, who both work in the University's Research Compliance group. They

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<sup>23</sup> University of Pittsburgh Guidelines For Responsible Conduct of Research § 4.d (revised March 2011), <<http://www.provost.pitt.edu/documents/GUIDELINES%20FOR%20ETHICAL%20PRACTICES%20IN%20RESEARCH-FINALrevised2-March%202011.pdf>> (emphasis added).

<sup>24</sup> Conduct and Ethics: Policy For Investigation of Research Misconduct, University of Cincinnati Document 3361 (10-17-05), at Page 2, <[https://www.uc.edu/content/dam/uc/trustees/docs/rules\\_10/10-17-05.pdf](https://www.uc.edu/content/dam/uc/trustees/docs/rules_10/10-17-05.pdf)> (emphasis added). See also *ibid.* at 4 (“Appropriate administrative action may be taken as necessary to ensure the integrity of the research, to protect the rights and interests of research subjects and the public, to protect sponsoring agency funds, and to assure that the purposes of the financial assistance are met.”) (emphasis added).

<sup>25</sup> Agrawal v. University of Cincinnati, 977 F.Supp.2d 800, 808 (S.D. Ohio 2013), aff'd in pertinent part, 574 Fed.Appx. 570, 576-77 (6th Cir. 2015) (unpublished opinion).

<sup>26</sup> Ibid. at 809.

essentially concluded that Dr. Agrawal had improperly replicated some of his own previously published work in a subsequent professional publication, but that the issue was not worth further pursuit by UC based on the type of publication that was involved."<sup>27</sup>

Although this particular investigation resulted in no disciplinary action against the professor, the episode confirms that the University of Cincinnati does interpret its broad policy language on research misconduct to apply to self-plagiarism. Indeed, UC subsequently addressed self-plagiarism again in another more recent misconduct investigation.<sup>28</sup>

Although research misconduct proceedings ordinarily are confidential, court decisions reveal evidence that other peer institutions in our region interpret broad handbook language similarly to UC and NKU. **The Ohio State University (TOSU)**, for example, recently enforced a policy that defined research misconduct broadly to include research “practices that seriously deviate from those that are commonly accepted within the relevant scholarly community”.<sup>29</sup> Using this definition, a faculty committee convened by the Dean of TOSU’s College of Pharmacy found potential research misconduct when a tenured full professor recycled major portions of text from her own 2005 article into a 2007 article, without citation or attribution.<sup>30</sup> As summarized by a federal judge:

The committee did find that ‘most of the prose in the 2007 article has been directly taken from the 2005 article’, and concluded that ‘the practice of using large sections of previous work, particularly without citation, represents the poorest of scholarly practices’.... The report stated the committee's belief ‘that the failure to quote the 2005 article in the 2007 article seriously deviates from commonly accepted practices within the research community and as such represents misconduct.’<sup>31</sup>

Like UC and TOSU, to date NKU to date has relied on broad, non-specific Faculty Handbook language to investigate claims of excessive text-recycling, duplicative publication, or self-plagiarism.<sup>32</sup> The PCC recommends that such claims should continue to be investigated

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<sup>27</sup> Ibid. at 812. The accusations of “self-plagiarism” were investigated with the advice and counsel of University of Cincinnati legal counsel. See Conduct and Ethics: Policy For Investigation of Research Misconduct, University of Cincinnati Document 3361 (10-17-05), at Page 3 (“university legal counsel shall provide advice and counsel throughout the proceedings.”), <[https://www.uc.edu/content/dam/uc/trustees/docs/rules\\_10/10-17-05.pdf](https://www.uc.edu/content/dam/uc/trustees/docs/rules_10/10-17-05.pdf)> (emphasis added).

<sup>28</sup> See also Ashraf v. Boat, No. 1:13-CV-533, 2013 WL 4017642, at \*1 (S.D. Ohio Aug. 6, 2013) (“In August 2012, the University decided to conduct an investigation into whether Dr. Ashraf had committed self-plagiarism or other research misconduct.”).

<sup>29</sup> Szeinbach v. Ohio State Univ., 987 F. Supp. 2d 732, 739 (S.D. Ohio 2013). This is the same language currently in force under NKU Faculty Handbook Sec. 16.7.2.

<sup>30</sup> Ibid. at 739-40.

<sup>31</sup> Ibid. at 740 (emphasis added).

<sup>32</sup> See NKU Faculty Policies and Procedures Handbook Sec. 16.7.2. (2019) (“Research ‘misconduct,’ as used herein, is defined as: Fabrication, falsification, plagiarism, or other serious deviations from those accepted

where warranted, but that our Faculty Handbook should be updated to provide clearer notice of our policy.

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practices in proposing, carrying out, or reporting results from research. . . .”). See also 2002 Investigative Report, at 5 (defining the phrase “other serious deviations from those accepted practices” to include “the recycling of material in redundant or duplicate publications, compounded by a failure to cite the prior work.”), online at <<https://www.sendspace.com/pro/ykfsfx>>.

## Faculty Retirement Information

### Retiree definition

NKU considers you to be a retiree when, as a faculty employee, you are age 45 or older and have at least **10 years of continuous tenured, full-time service at NKU**. As an NKU retiree you will have the following privileges:

- Continued use of NKU email address
- All Card (for use at NKU sponsored events)
- Parking Pass at no cost
- Recreation Center admission at no cost to you. Additional cost for spouse and/or children

### NKU Benefits upon retirement

Benefit coverage for the following benefits will end on June 30<sup>th</sup> whether you are paid over 10 or 12 months:

- Dental
- Disability (short and/or long term )
- Flexible spending accounts
- Health savings account
- Life (basic, optional and/or dependent)
- Mandatory savings plans (TIAA-CREF mandatory 403b)
- Medical
- Supplemental savings (TIAA-CREF or Kentucky Deferred Compensation)
- Vision

*Notes:*

- If you are paid over 12 months, your July pay will only include deductions for the mandatory 403b plan and any supplemental savings you wish to continue.
- If you are paid over the fiscal year, you benefits will end at the end of the month in which you retire. For example, if you retire on August 8<sup>th</sup>, your benefits will end on August 31<sup>st</sup>.

Information about the end of benefit coverage and options to continue/ convert coverage will be provided during your exit interview.

After retirement you can continue dental, medical and/or vision coverage, paying 100 percent of the cost as shown in the chart below:

Insured	Medical	Dental	Vision
Employee	Until first of month attain Medicare eligibility	As long as coverage is continuous and premium paid timely.	
Spouse	Until first of month attain Medicare eligibility	As long as you remain covered, coverage is continuous and premium paid timely.	
Children	Until end of month attain age 26.		

You can obtain cost information and the forms necessary to continue the coverage, outlined above, as you approach your retirement date.

Contact TIAA-CREF to obtain information about distribution of your mandatory and supplemental 403b retirement savings plans. Phone 1-800-842-2776 for more information.

Contact Kentucky Deferred Compensation Authority to obtain information about distribution of your supplemental 401k, Roth or 457b retirement savings plans. Phone 1-800-542-2667 for more information.

## Social Security Benefits

Social Security has separate criteria for retirement eligibility. You may want to refer to information available on the Social Security website to become more familiar with your benefit options and the application process if you are not already receiving Social Security income benefits.

Social Security recommends that you begin your application at least three months prior to when you want to begin receiving your income.

Social Security website [www.social security.gov](http://www.socialsecurity.gov)

## Medicare

You are eligible to begin Medicare coverage the first day of the month in which you attain age 65. If you are receiving Social Security benefits in the month you attain age 65, you are automatically enrolled in Medicare. You will automatically receive your Medicare card three months before you attain age 65.

If you are Medicare eligible when you retire but not receiving Social Security income benefits you will need to apply for Medicare coverage. Medicare recommends that you begin your application at least three months prior to when you want coverage to begin.

## Timeline

Here is a suggested timeline of activities related to retirement and benefits.

### 3 months prior to retirement

- Contact Social Security about retirement income
- Contact Medicare about Medicare enrollment
- Begin discussions with resources about Medicare Supplemental and Part D options
- Contact TIAA-CREF about receiving retirement income

### 1 month prior to retirement

- Schedule exit interview with Human Resources

### 1 week prior to retirement

- Convert All Card to Retiree
- Convert Parking Pass to Retiree