



## **Procedure for Responding to Allegations of Research Misconduct**

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### **I. PURPOSE**

The University Code of Conduct for Sponsored Programs states that all members of the University community engaged in sponsored project activities are expected to conduct their projects with integrity and intellectual honesty at all times, to act responsibly with respect to the use of funds, and to ensure that they and those who work with them comply with all campus, system wide, agency, and government regulations.

Members of the University community engaged in research and creative activities are not to fabricate data or results; change or knowingly omit data or results to misrepresent results in the research record; or intentionally misappropriate the ideas, writings, research, or findings of others. All those engaged in research are expected to pursue the advancement of knowledge while meeting the highest standards of honesty, accuracy, and objectivity in their work in general and as authors. This standard extends to all publications. They are also expected to demonstrate accountability for sponsors' funds and to comply with specific terms and conditions of contracts and grants.

The Office of Research and Sponsored Programs will follow the procedures outlined below for all extramurally funded sponsored programs.

This statement of procedures is intended to carry out San Francisco State University's (The University) responsibilities under the Public Health Service (PHS) Policies on Research Misconduct (42 CFR Part 93) and the policies of the National Science Foundation (45 CFR Part 689). This document applies to allegations of research misconduct (fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results) involving:

- (1) A 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 San Francisco State University; and (2) PHS supported research, research training or activities related to that research or research training, such as and the dissemination of research information, (3) applications or proposals for PHS support of research, research training or activities related to that research or research training, or (4) plagiarism of research records produced in the course of PHS supported research, research training or activities related to that research or research training. This includes any research proposed, performed, reviewed, or reported, or any research record generated from that research, regardless of whether an application or proposal for funds resulted in a grant, contract, cooperative agreement, or other form of support.

This statement of policy and procedures does not apply to authorship or collaboration disputes and applies only to allegations of research misconduct that occurred within six years of the date the institution or HHS received the allegation, subject to the subsequent use, health or safety of the public, and grandfather exceptions in 42 CFR § 93.105(b).

## II. DEFINITIONS

- A. Research misconduct means fabrication, falsification, or plagiarism in proposing or performing research, reviewing research proposals, or in reporting research results.
- B. Fabrication means making up data or results and recording or reporting them.
- C. Falsification means 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 means the appropriation of another person's ideas, processes, results or words without giving appropriate credit.
- E. Misconduct does not include honest error or differences of opinion.
- F. Deciding Official (DO) means the institutional official who makes final determinations on allegations of research misconduct and any institutional administrative actions. The Deciding Official will not be the same individual as the Research Integrity Officer and should have no direct prior involvement in the institution's inquiry, investigation, or allegation assessment. A DO's appointment of an individual to assess allegations of research misconduct, or to serve on an inquiry or investigation committee, is not considered to be direct prior involvement.
- G. Research Integrity Officer (RIO) means the institutional official responsible for: (1) assessing allegations of research misconduct to determine if they fall within the definition of research misconduct, are covered by 42 CFR Part 93, and warrant an inquiry on the basis that the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified; (2) overseeing inquires and investigations; and (3) the other responsibilities described in this policy.

## III. RIGHTS AND RESPONSIBILITIES

### A. Research Integrity Officer

The Associate Vice President for Research will serve as the RIO who will have primary responsibility for implementation of the institution's policies and procedures on research misconduct. The RIO's responsibilities include the following duties related to research misconduct proceedings:

- Consult confidentially with persons uncertain about whether to submit an allegation of research misconduct;
- Receive allegations of research misconduct either in writing or orally;
- Assess each allegation of research misconduct in accordance with this policy to determine whether it falls within the definition of research misconduct and warrants an inquiry;
- As necessary, take interim action and notify ORI of special circumstances, in accordance with this policy;
- Sequester research data and evidence pertinent to the allegation of research misconduct in accordance with this policy and maintain it securely in accordance with this policy and applicable law and regulation;
- Provide confidentiality to those involved in the research misconduct proceeding as required by 42 CFR § 93.108, other applicable law, and institutional policy;
- Notify the respondent and provide opportunities for him/her to review/ comment/respond to allegations, evidence, and committee reports in accordance with this policy;
- Inform respondents, complainants, and witnesses of the procedural steps in the research

- misconduct proceeding;
- Appoint the chair and members of the inquiry and investigation committees, ensure that those committees are properly staffed and that there is expertise appropriate to carry out a thorough and authoritative evaluation of the evidence;
- Determine whether each person involved in handling an allegation of research misconduct has an unresolved personal, professional, or financial conflict of interest and take appropriate action, including recusal, to ensure that no person with such conflict is involved in the research misconduct proceeding;
- In cooperation with other institutional officials, take all reasonable and practical steps to protect or restore the positions and reputations of good faith complainants, witnesses, and committee members and counter potential or actual retaliation against them by respondents or other institutional members;
- Keep the University Provost (Deciding Official) and others who need to know apprised of the progress of the review of the allegation of research misconduct;
- Notify and make reports to ORI as required by 42 CFR Part 93;
- Ensure that administrative actions taken by the institution and ORI are enforced and take appropriate action to notify other involved parties, such as sponsors, law enforcement agencies, professional societies, and licensing boards of those actions; and
- Maintain records of the research misconduct proceeding and make them available to ORI in accordance with this policy.

#### B. Complainant

The complainant is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with the inquiry and investigation. As a matter of good practice, the complainant should be interviewed at the inquiry stage and given the transcript or recording of the interview for correction. The complainant must be interviewed during an investigation, and be given the transcript or recording of the interview for correction.

#### C. Respondent

The respondent is responsible for maintaining confidentiality and cooperating with the conduct of an inquiry and investigation. The respondent is entitled to:

- A good faith effort from the RIO to notify the respondent in writing at the time of or before beginning an inquiry;
- An opportunity to comment on the inquiry report and have his/her comments attached to the report;
- Be notified of the outcome of the inquiry, and receive a copy of the inquiry report that includes a copy of, or refers to 42 CFR Part 93 and the institution's policies and procedures on research misconduct;
- Be notified in writing of the allegations to be investigated within a reasonable time after the determination that an investigation is warranted, but before the investigation begins (within 30 days after the institution decides to begin an investigation), and be notified in writing of any new allegations, not addressed in the inquiry or in the initial notice of investigation, within a reasonable time after the determination to pursue those allegations;
- Be interviewed during the investigation, have the opportunity to correct the recording or

transcript, and have the corrected recording or transcript included in the record of the investigation;

- Have interviewed during the investigation any witness who has been reasonably identified by the respondent as having information on relevant aspects of the investigation, have the recording or transcript provided to the witness for correction, and have the corrected recording or transcript included in the record of investigation; and
- Receive a copy of the draft investigation report and, concurrently, a copy of, or supervised access to the evidence on which the report is based, and be notified that any comments must be submitted within 30 days of the date on which the copy was received and that the comments will be considered by the institution and addressed in the final report

The respondent should be given the opportunity to admit that research misconduct occurred and that he/she committed the research misconduct. With the advice of the RIO and/or other institutional officials, the Deciding Official may terminate the institution's review of an allegation that has been admitted, if the University's acceptance of the admission and any proposed settlement is approved by ORI.

#### D. Deciding Official

The DO will receive the inquiry report and after consulting with the RIO and/or other institutional officials, decide whether an investigation is warranted under the criteria in 42 CFR § 93.307(d). Any finding that an investigation is warranted must be made in writing by the DO and must be provided to ORI, together with a copy of the inquiry report meeting the requirements of 42 CFR § 93.309, within 30 days of the finding. If it is found that an investigation is not warranted, the DO and the RIO will ensure that detailed documentation of the inquiry is retained for at least 7 years after termination of the inquiry, so that ORI may assess the reasons why the institution decided not to conduct an investigation.

The DO will receive the investigation report and, after consulting with the RIO and/or other institutional officials, decide the extent to which this institution accepts the findings of the investigation and, if research misconduct is found, decide what, if any, institutional administrative actions are appropriate. The DO shall ensure that the final investigation report, the findings of the DO and a description of any pending or completed administrative actions are provided to ORI, as required by 42 CFR § 93.315.

At San Francisco State University, the University Provost will serve as the Deciding Official (DO).

## IV. GENERAL POLICIES AND PRINCIPLES

### A. Responsibility to Report Misconduct

All institutional members will report observed, suspected, or apparent research misconduct to the RIO. If an individual is unsure whether a suspected incident falls within the definition of research misconduct, he or she may meet with or contact the RIO at [\(415\) 338-7091](tel:415-338-7091) 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, the RIO will refer the individual or allegation to other offices or officials with responsibility for resolving the problem.

At any time, an institutional member may have confidential discussions and consultations about concerns of possible misconduct with the RIO and will be counseled about appropriate procedures for reporting allegations.

B. Cooperation with Research Misconduct Proceedings

Institutional members will cooperate with the RIO and other institutional officials in the review of allegations and the conduct of inquiries and investigations. Institutional members, including respondents, have an obligation to provide evidence relevant to research misconduct allegations to the RIO or other institutional officials.

C. Confidentiality

The RIO shall, as required by 42 CFR § 93.108 : (1) limit disclosure of the identity of respondents and complainants to those who need to know in order to carry out a thorough, competent, objective and fair research misconduct proceeding; and (2) except as otherwise prescribed by law, limit the disclosure of any records or evidence from which research subjects might be identified to those who need to know in order to carry out a research misconduct proceeding. The RIO should use written confidentiality agreements or other mechanisms to ensure that the recipient does not make any further disclosure of identifying information.

D. Protecting complainants, witnesses, and committee members

Institutional members may not retaliate in any way against complainants, witnesses, or committee members. Institutional members should immediately report any alleged or apparent retaliation against complainants, witnesses or committee members to the RIO, who shall review the matter and, as necessary, make all reasonable and practical efforts to counter any potential or actual retaliation and protect and restore the position and reputation of the person against whom the retaliation is directed.

E. Protecting the Respondent

As requested and as appropriate, the RIO and other institutional officials shall make all reasonable and practical efforts 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.

During the research misconduct proceeding, the RIO is responsible for ensuring that respondents receive all the notices and opportunities provided for in 42 CFR Part 93 and the policies and procedures of the institution.

F. Interim Administrative Actions and Notifying ORI of Special Circumstances

Throughout the research misconduct proceeding, the RIO will review the situation to determine if there is any threat of harm to public health, federal funds and equipment, or the integrity of the PHS supported research process. In the event of such a threat, the RIO will, in consultation with other institutional officials and ORI, take appropriate interim action to protect against any such threat. Interim action might include additional monitoring of the research process and the handling of federal funds and equipment, reassignment of personnel or of the responsibility for the handling of federal funds and equipment,

additional review of research data and results or delaying publication. The RIO shall, at any time during a research misconduct proceeding, notify ORI immediately if he/she has reason to believe that any of the following conditions 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 violations 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 and HHS action may be necessary to safeguard evidence and protect the rights of those involved; or
- The research community or public should be informed.

## **V. PROCEDURES FOR ASSESSMENT, INQUIRY AND INVESTIGATION OF ALLEGED RESEARCH MISCONDUCT**

### Assessment and Inquiry

"Inquiry" means information gathering and initial fact finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

The purpose of an inquiry is to determine as expeditiously as possible, if an allegation warrants a formal investigation. The inquiry should be conducted so as to protect the confidentiality of the respondent(s) and of the complainant(s), and to allow for possible reconciliation. If a formal investigation is not warranted, the complainant(s) and respondent(s) will be advised accordingly. At any stage of the inquiry or investigation involving federally funded programs, the RIO must notify the Office of Research Integrity (ORI) or the appropriate federal office if any of the following conditions exist:

- Public health or safety is at risk;
- Agency resources or interests are threatened;
- Research activities should be suspended;
- There is reasonable indication of possible violations of civil or criminal law;
- Federal action is required to protect the interests of those involved in the investigation;
- The University 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
- The research community or public should be informed.

To the extent allowed by law, we shall maintain the identity of respondents and complainants securely and confidentially and shall not disclose any identifying information, except to: (1) those who need to know in order to carry out a thorough, competent, objective and fair research misconduct Inquiry and/or Investigation; and (2) ORI as it conducts its review of the research misconduct proceeding and any subsequent proceedings.

To the extent allowed by law, any information obtained during the research misconduct proceeding that might identify the subjects of research shall be maintained securely and confidentially and shall not be disclosed, except to those who need to know in order to carry out the research misconduct proceeding.

At San Francisco State University, inquiries into allegations of misconduct shall proceed as follows:

A. Assessment of Allegations

Promptly after receiving an allegation of research misconduct, defined as a disclosure of possible research misconduct through any means of communication, the RIO shall assess the allegation to determine if: (1) it meets the definition of research misconduct in 42 CFR Section 93.103; (2) it involves either the PHS supported research, applications for PHS research support, or research records specified in 42 CFR Section 93.102(b) ; and, (3) the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified. Upon receipt of an allegation, the RIO, with the assistance of appropriate, impartial experts, as necessary, will initiate an Inquiry into the allegation(s) *within ten (10) days* or as soon as possible consistent with the need to assemble appropriate expertise and secure potential evidence.

Upon receiving an allegation of research misconduct, the RIO will immediately assess the allegation to determine whether it is sufficiently credible and specific so that potential evidence of research misconduct may be identified, whether it is within the jurisdictional criteria of 42 CFR § 93.102(b), and whether the allegation falls within the definition of research misconduct in 42 CFR § 93.103. An inquiry must be conducted if these criteria are met.

The RIO shall, on or before the date, on which the respondent is notified of the allegation, obtain custody of, inventory, and sequester all research records and evidence needed to conduct the research misconduct proceeding, as provided in paragraph C. of this section. In cases where the RIO has a conflict of interest, or the appearance of a conflict of interest, the allegation(s) will be referred by the RIO to *an administrator designated by the University Provost (DO)*. *The University Provost's designee* will then act in the place of the RIO under this policy until resolution of the allegation(s).

B. Initiation and Purpose of the Inquiry

If the RIO determines that the criteria for an inquiry are met, he or she will immediately initiate the inquiry process. The purpose of the inquiry is to conduct an initial review of the available evidence to determine whether to conduct an investigation. An inquiry does not require a full review of all the evidence related to the allegation.

C. Notice to Respondent; Sequestration of Research Records

At the time of or before beginning an inquiry, the RIO must make a good faith effort to notify the respondent in writing, if the respondent is known. If the inquiry subsequently identifies additional respondents, they must be notified in writing. On or before the date on which the respondent is notified, or the inquiry begins, whichever is earlier, the RIO must 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.

#### D. Appointment of an Inquiry Committee

The RIO, in consultation with other institutional officials as appropriate, will appoint an inquiry committee and committee chair as soon after the initiation of the inquiry as is practical. The inquiry committee must consist of individuals who do not have unresolved personal, professional, or financial conflicts of interest with those involved with the inquiry and should include individuals with the appropriate scientific expertise to evaluate the evidence and issues related to the allegation, interview the principals and key witnesses, and conduct the inquiry.

#### E. Charge to the Committee and First Meeting

The RIO will prepare a charge for the inquiry committee that:

- Sets forth the time for completion of the inquiry;
- Describes the allegations and any related issues identified during the allegation assessment;
- States that the purpose of the inquiry is to conduct an initial review of the evidence, including the testimony of the respondent, complainant and key witnesses, to determine whether an investigation is warranted, not to determine whether research misconduct definitely occurred or who was responsible;
- States that an investigation is warranted if the committee determines: (1) there is a reasonable basis for concluding that the allegation falls within the definition of research misconduct and is within the jurisdictional criteria of 42 CFR § 93.102(b); and, (2) the allegation may have substance, based on the committee's review during the inquiry.
- Informs the inquiry committee that they are responsible for preparing or directing the preparation of a written report of the inquiry that meets the requirements of this policy and 42 CFR § 93.309(a).

At the committee's first meeting, the RIO will review the charge with the committee, discuss the allegations, any related issues, and the appropriate procedures for conducting the inquiry, assist the committee with organizing plans for the inquiry, and answer any questions raised by the committee. The RIO will be present or available throughout the inquiry to advise the committee as needed.

*The respondent(s) shall be notified in writing by the RIO within ten (10) days of receipt of the allegation or as soon as possible consistent with the need to assemble appropriate expertise and secure potential evidence that a complaint has been lodged and that an Inquiry has been initiated. The respondent must be informed of the nature of the allegation and the procedures to be followed. The RIO shall invite the respondent(s) to make a written response to the allegation(s) and to comment during the course of the Inquiry. Those comments will be included in the final Inquiry Report.*

#### F. Inquiry Process

The inquiry committee will normally interview the complainant, the respondent and key witnesses as well as examining relevant research records and materials. The interviews will be recorded and transcribed to ensure continuity. Then the inquiry committee will evaluate the evidence, including the testimony obtained during the inquiry. After consultation with the RIO, the committee members will decide whether an investigation is warranted based on the criteria in this policy and 42 CFR § 93.307(d). The scope of the inquiry is not required to and does not normally include deciding whether misconduct definitely occurred, determining definitely who committed the research misconduct or conducting

exhaustive interviews and analyses. However, if a legally sufficient admission of research misconduct is made by the respondent, misconduct may be determined at the inquiry stage if all relevant issues are resolved. In that case, the institution shall promptly consult with ORI to determine the next steps that should be taken.

#### G. Time for Completion

The inquiry, including preparation of the final inquiry report and the decision of the DO on whether an investigation is warranted, must be completed within 60 calendar days of initiation of the inquiry, unless the RIO determines that circumstances clearly warrant a longer period. If the RIO approves an extension, the inquiry record must include documentation of the reasons for exceeding the 60-day period.

The respondent(s) and all involved individuals are expected to cooperate by timely response to requests for documents and/or information.

#### H. The Inquiry Report

Included in the Inquiry Report must be at least:

- (1) The name and position of the respondent(s);
- (2) A description of the allegations of misconduct;
- (3) The PHS or other Federal agency support involved, including, for example, grant numbers, grant applications, contracts, and publications listing PHS or other Federal agency support;
- (4) The basis for recommending that the alleged actions warrant an investigation;
- (5) Any comments on the report by the respondent or the complainant;
- (6) recommendations for action by the University Provost (DO).

#### I. Notification to the Respondent and Opportunity to Comment

The RIO shall notify the respondent whether the inquiry found an investigation to be warranted, include a copy of the draft inquiry report for comment 10 days, and include a copy of or refer to 42 CFR Part 93 and the institution's policies and procedures on research misconduct.

Any comments that are submitted by the respondent or complainant will be attached to the final inquiry report. Based on the comments, the inquiry committee may revise the draft report as appropriate and prepare it in final form. The committee will deliver the final report to the RIO.

#### J. Institutional Decision and Notification

*The University Provost (DO) shall determine* on the basis of the Inquiry Report, and any other consultation deemed necessary, whether the allegations warrant a formal investigation. In either case, the basis for the decision will be fully documented. The Inquiry is complete when the University Provost (DO) has made the determination.

*If the University Provost (DO) decides that an investigation is not warranted, the RIO shall notify all concerned.* Every effort will be made to clear individuals of unsupported allegations, restore any damaged reputations, and protect the reputation and position of those who, in good faith, made allegations.

If an investigation is not recommended The RIO shall maintain sufficiently detailed documentation to permit later reassessment of any reasons for determining that an Investigation was not warranted. *Such records shall be maintained in a secure manner for at least seven (7) years after the end of the Inquiry or longer as required by regulation.*

Whatever the outcome of the Inquiry, *the respondent(s) shall be afforded the opportunity to comment, in writing, on any allegations, findings of the Inquiry and the determination of the University Provost (DO) regarding the need for an Investigation within fifteen (15) days of receiving the report of the Inquiry from RIO.*

If the decision of the University Provost is that an Investigation is not warranted, will be made available to ORI or any other appropriate Federal agency.

#### K. Notification to ORI

Within 30 calendar days of the DO's decision that an investigation is warranted, the RIO will provide ORI with the DO's written decision and a copy of the inquiry report. The RIO will also notify those institutional officials who need to know of the DO's decision. The RIO 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 to be considered in the investigation.

#### Investigation

"Investigation" means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred; or, if misconduct has already been confirmed, to assess its extent and consequences and determine appropriate action. Investigations should specifically address the materiality or significance of the misconduct, identify evidence that shows the respondent had a deliberate intent, and explain why the conduct constitutes a serious deviation from accepted practices under institutional or general scientific standards.

In conducting all investigations, we shall: (1) Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all records and evidence relevant to reaching a decision on the merits of the allegations; (2) Interview each respondent, complainant, and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the respondent, and record and transcribe each interview, provide the recording or transcript to the interviewee for correction, and include the recording or transcript in the record of investigation; (3) Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of additional instances of possible misconduct, and continue the investigation to completion; and (4) Otherwise comply with the requirements for conducting an investigation in 42 CFR Section 93.310.

The University shall prepare the draft and final institutional investigation reports in writing and provide the draft report for comment as provided elsewhere in these policies and procedures and 42 CFR Section 93.312. The final investigation report shall:

- 1) Describe the nature of the allegations of research misconduct;
- 2) Describe and document the PHS support, including, for example any grant numbers, grant applications, contracts, and publications listing PHS support;

- 3) Describe the specific allegations of misconduct considered in the investigation;
- 4) Include the institutional policies and procedures under which the investigation was conducted, if not already provided to ORI;
- 5) Identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody, but not reviewed. The report will also describe any relevant records and evidence not taken into custody with an explanation as to why these were not included.
- 6) Provide a finding as to whether research misconduct did or did not occur for each separate allegation of research misconduct identified during the investigation, and if misconduct was found, (i) identify it as falsification, fabrication, or plagiarism and whether it was intentional, knowing, or in reckless disregard, (ii) summarize the facts and the analysis supporting the conclusion and consider the merits of any reasonable explanation by the respondent and any evidence that rebuts the respondent's explanations, (iii) identify the specific PHS support; (iv) identify any publications that need correction or retraction; (v) identify the person(s) responsible for the misconduct, and (vi) list any current support or known applications or proposals for support that the respondent(s) has pending with non-PHS Federal agencies; and include and consider any comments made by the respondent and complainant on the draft investigation report.

The University shall maintain and provide to ORI upon request all relevant research records and records of the misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

If the allegation is determined to warrant an Investigation and federal funds are involved, the RIO shall notify the appropriate federal officials within 24 hours in accordance with applicable federal regulations and begin the investigation within 30 days of the determination that an investigation is warranted. *The RIO will appoint an Ad Hoc Committee to conduct the Investigation and will also designate the chair of the Committee. The Committee will be composed of at least three impartial members with appropriate expertise to evaluate the allegations. Whenever possible, and consistent with the needs of the investigation, Committee members will be drawn from the faculty at San Francisco State University.* The complainant(s) and respondent(s) will be informed of the Committee's composition and given an opportunity to comment on its membership.

The RIO shall take all reasonable steps to ensure an impartial and unbiased misconduct proceeding to the maximum extent practicable. Those conducting the inquiry or investigation shall be selected on the basis of scientific expertise that is pertinent to the matter and, prior to selection, we shall screen them for any unresolved personal, professional, or financial conflicts of interest with the respondent, complainant, potential witnesses, or others involved in the matter. Any such conflict which a reasonable person would consider to demonstrate potential bias shall disqualify the individual from selection.

At San Francisco State University, investigations into allegations of misconduct will proceed as follows:

#### A. Initiation and Purpose

The investigation must begin within 30 calendar days after the determination by the DO that an investigation is warranted. The purpose of the investigation is to develop a factual record by exploring the allegations in detail and examining the evidence in depth, leading to recommended findings on whether research misconduct has been committed, by whom, and to what extent. The investigation will

also determine whether there are additional instances of possible research misconduct that would justify broadening the scope beyond the initial allegations. This is particularly important where the alleged research misconduct involves clinical trials or potential harm to human subjects or the general public or if it affects research that forms the basis for public policy, clinical practice, or public health practice. Under 42 CFR § 93.313 the findings of the investigation must be set forth in an investigation report.

#### B. Notifying ORI and Respondent; Sequestration of Research Records

On or before the date on which the investigation begins, the RIO must: (1) notify the ORI Director of the decision to begin the investigation and provide ORI a copy of the inquiry report; and (2) notify the respondent in writing of the allegations to be investigated. The RIO must also 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 the investigation.

The RIO will, prior to notifying respondent of the allegations, take all reasonable and practical steps to obtain custody of and sequester in a secure manner all research records and evidence needed to conduct the research misconduct proceedings that were not previously sequestered during the inquiry. The need for additional sequestration of records for the investigation may occur for any number of reasons, including the institution's decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured. The procedures to be followed for sequestration during the investigation are the same procedures that apply during the inquiry.

#### C. Appointment of the Investigation Committee

The RIO, in consultation with other institutional officials as appropriate, will appoint an investigation committee and the committee chair as soon after the beginning of the investigation as is practical. The investigation committee must consist of individuals who do not have unresolved personal, professional, or financial conflicts of interest with those involved with the investigation and should include individuals with the appropriate scientific expertise to evaluate the evidence and issues related to the allegation, interview the respondent and complainant and conduct the investigation. Individuals appointed to the investigation committee may also have served on the inquiry committee.

#### D. Charge to the Committee and the First Meeting

##### 1) Charge to the Committee

The RIO will define the subject matter of the investigation in a written charge to the committee that:

- Describes the allegations and related issues identified during the inquiry;
- Identifies the respondent;
- Informs the committee that it must conduct the investigation as prescribed in paragraph E. of this section;
- Defines research misconduct;
- Informs the committee that it must evaluate the evidence and testimony to determine whether, based on a preponderance of the evidence, research misconduct occurred and, if so, the type and extent of it and who was responsible;
- Informs the committee that in order to determine that the respondent committed research

misconduct it must find that a preponderance of the evidence establishes that: (1) research misconduct, as defined in this policy, occurred (respondent has the burden of proving by a preponderance of the evidence any affirmative defenses raised, including honest error or a difference of opinion); (2) the research misconduct is a significant departure from accepted practices of the relevant research community; and (3) the respondent committed the research misconduct intentionally, knowingly, or recklessly; and

- Informs the committee that it must prepare or direct the preparation of a written investigation report that meets the requirements of this policy and 42 CFR § 93.313.

## 2) First Meeting

The RIO will convene the first meeting of the investigation committee to review the charge, the inquiry report, and the prescribed procedures and standards for the conduct of the investigation, including the necessity for confidentiality and for developing a specific investigation plan. The investigation committee will be provided with a copy of this statement of policy and procedures and 42 CFR Part 93. The RIO will be present or available throughout the investigation to advise the committee as needed.

## E. Investigation Process

The investigation committee and the RIO must:

- 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 each allegation,
- Take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical,
- Interview each respondent, complainant, and any other available person who has been reasonably identified as having information regarding any 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; and
- Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of any additional instances of possible research misconduct, and continue the investigation to completion.

## F. Time for Completion

The investigation is to be completed within 120 days of beginning it, including conducting the investigation, preparing the report of findings, providing the draft report for comment and sending the final report to ORI. However, if the RIO determines that the investigation will not be completed within this 120-day period, he/she will submit to ORI a written request for an extension, setting forth the reasons for the delay. The RIO will ensure that periodic progress reports are filed with ORI, if ORI grants the request for an extension and directs the filing of such reports.

## G. The Investigation Report

- 1) The Committee will submit a written report of its findings and conclusions to the RIO. This report will be included in the report of the investigation.
- 2) RIO shall submit a written report of the results of the investigation to the University Provost (DO). Included in this report shall be:
  - o a statement of the allegation;
  - o a description of the investigative procedures followed;
  - o a statement of from whom (if known) and how information was obtained;
  - o a presentation of the evidence, or the lack of evidence, of misconduct; (At San Francisco State University, *the standard of proof to be applied in misconduct investigations shall be the same as that used by the Public Health Service and the National Science Foundation, i.e., "a preponderance of evidence." In applying this standard, the University will place emphasis on confirmatory evidence. This may include forensic analysis of relevant documents, expert statistical analysis demonstrating that the research was not done as reported, and documentary evidence from sources other than the questioned research records demonstrating that the reported research data are false or fabricated. The presumption of innocence applies*).
  - o a statement of the findings;
  - o an assessment of the seriousness and extent of misconduct found, if any;
  - o the recommendation by the RIO regarding the disposition of the allegation.

The respondent(s) will receive a copy of the *Investigation Report* from the RIO. *The respondent(s) will have thirty (30) days to respond in writing to the report, by submission to the RIO. The RIO will have fifteen (15) days after receipt of the response to forward copies of the report of the investigation and the respondent's comments to the University Provost (DO).*

*In distributing the draft report, or portions thereof, to the respondent, the RIO will inform the recipient of the confidentiality under which the draft report is made available and may establish reasonable conditions to ensure such confidentiality.*

The following shall be promptly provided to ORI after the investigation: (1) A copy of the investigation report, all attachments, and any appeals; (2) A statement of whether the institution found misconduct and, if so, who committed it; (3) A statement of whether the institution accepts the findings in the investigation report; and (4) A description of any pending or completed administrative actions against the respondent.

#### H. Disposition

*Upon receipt of the Investigation Report, the University Provost (DO) shall:*

1. Make a final determination in writing as to whether misconduct has occurred.
2. Inform the respondent and all other interested parties accordingly.
3. Submit to the President the final report of the investigation, including any written addenda, and any recommendations for further action.
4. In the case of unsubstantiated charges, oversee diligent efforts to restore any and all damaged reputations, and to protect the reputations and positions of individual(s) who, in good faith, made allegations of misconduct. As noted above, in cases where reasonable evidence suggests that the complainant acted irresponsibly, or dishonestly, the complainant may be subject to a charge of

misconduct.

5. In the case of a determination that misconduct has occurred, the University Provost or appropriate Associate Vice President shall, at the direction of the President:
  - Institute disciplinary proceedings against the individual(s) against whom charges have been substantiated. These proceedings must be consistent with established University and CSU policies, and applicable collective bargaining agreements;
  - Transmit the conclusions of the Investigation to the editors of all journals or books in which research results of the indicted project(s) have been published or are under consideration for publication, to all funding sources related to the research, and to the University community, as appropriate. In cases in which the person found to have committed misconduct has been affiliated with other institutions (during the process of production of material that is part of a finding of misconduct), those other institutions shall be notified of the misconduct.
6. When Federal funds are involved, forward to the appropriate agency a copy of the evidentiary record, the investigative report, recommendations made to the University Provost (DO), and the respondent's written response to the recommendations (if any). When the adjudication phase is complete, the University Provost (DO) will forward his/her decision and notify the agency of any corrective actions taken or planned.
7. Upon completion of disciplinary proceedings, the University Provost or appropriate Associate Vice President shall report to the appropriate University officers or bodies, and, when federal funds are involved, to cognizant federal agencies and to all other parties as necessary.

#### I. Notice to ORI of Institutional Findings and Actions

Unless an extension has been granted, the RIO must, within the 120-day period for completing the investigation, submit the following to ORI: (1) a copy of the final investigation report with all attachments; (2) a statement of whether the institution accepts the findings of the investigation report; (3) a statement of whether the institution found misconduct and, if so, who committed the misconduct; and (4) a description of any pending or completed administrative actions against the respondent.

#### J. Maintaining Records for Review by ORI

The RIO must maintain and provide to ORI upon request "records of research misconduct proceedings" as that term is defined by 42 CFR § 93.317. Unless custody has been transferred to HHS or ORI has advised in writing that the records no longer need to be retained, records of research misconduct proceedings must be maintained in a secure manner for 7 years after completion of the proceeding or the completion of any PHS proceeding involving the research misconduct allegation. The RIO is also responsible for providing any information, documentation, research records, evidence or clarification requested by ORI to carry out its review of an allegation of research misconduct or of the institution's handling of such an allegation.

#### K. Appeal

The University Provost (DO) is the final adjudicator of all allegations of misconduct in scholarly activity subject only to appeal to the President on procedural grounds.

*Within fourteen (14) days of receipt of written notification of the University Provost's (DO) determination, the respondent may appeal to the President on the sole question of whether the*

procedures prescribed in this document have been followed. The appeal must be filed in writing and must specify the nature of the procedural error. *The President shall issue a decision within thirty (30) days*, either affirming or vacating the University Provost's (DO) determination in whole or in part, based on whether the investigative procedures described above were fully and fairly followed.

If federal funds are involved, the RIO will inform the cognizant federal agencies and ORI if the Investigation has been reopened. The President will convey the written decision on appeal to the University Provost (DO), all principal parties, and to the appropriate federal agencies.

## **VI. Completion of Cases; Reporting Premature Closures to ORI**

Generally, all inquiries and investigations will be carried through to completion and all significant issues will be pursued diligently. The RIO must notify ORI in advance if there are plans to close a case at the inquiry, investigation, or appeal stage on the basis that respondent has admitted guilt, a settlement with the respondent has been reached, or for any other reason, except: (1) closing of a case at the inquiry stage on the basis that an investigation is not warranted; or (2) a finding of no misconduct at the investigation stage, which must be reported to ORI, as prescribed in this policy and 42 CFR § 93.315.

## **VII. Other Considerations**

### **A. Termination or Resignation Prior to Completing Inquiry or Investigation**

The termination of the respondent's institutional employment, by resignation or more or after an allegation of possible research misconduct has been reported, will not preclude or terminate the research misconduct proceeding or otherwise limit any of the institution's responsibilities under 42 CFR Part 93.

If the respondent, without admitting to the misconduct, elects to resign his or her position after the institution receives an allegation of research misconduct, the assessment of the allegation will proceed, as well as the inquiry and investigation, as appropriate based on the outcome of the preceding steps. If the respondent refuses to participate in the process after resignation, the RIO and any inquiry or investigation committee will use their best efforts to reach a conclusion concerning the allegations, noting in the report the respondent's failure to cooperate and its effect on the evidence.

### **B. Restoration of the Respondent's Reputation**

Following a final finding of no research misconduct, including ORI concurrence where required by 42 CFR Part 93, the RIO must, at the request of the respondent, undertake all reasonable and practical efforts to restore the respondent's reputation. Depending on the particular circumstances and the views of the respondent, the RIO should consider notifying those individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in any forum in which the allegation of research misconduct was previously publicized, and expunging all reference to the research misconduct allegation from the respondent's personnel file. Any institutional actions to restore the respondent's reputation should first be approved by the University Provost (DO).

### **C. Protection of the Complainant, Witnesses and Committee Members**

During the research misconduct proceeding and upon its completion, regardless of whether the institution or ORI determines that research misconduct occurred, the RIO must undertake all reasonable and practical efforts to protect the position and reputation of, or to counter potential or actual retaliation against, any complainant who made allegations of research misconduct in good faith and of any witnesses and committee members who cooperate in good faith with the research misconduct proceeding. The University Provost (DO) will determine, after consulting with the RIO, and with the complainant, witnesses, or committee members, respectively, what steps, if any, are needed to restore their respective positions or reputations or to counter potential or actual retaliation against them. The RIO is responsible for implementing any steps that the University Provost (DO) approves.

D. Allegations Not Made in Good Faith

If relevant, the University Provost (DO) will determine whether the complainant's allegations of research misconduct were made in good faith, or whether a witness or committee member acted in good faith. If the University Provost (DO) determines that there was an absence of good faith he/she will determine whether any administrative action should be taken against the person who failed to act in good faith.