

H. Fraud in Research

1. Introduction/Purpose*

It is the responsibility of all researchers to conduct their professional activities according to high standards of scholarship. Their responsibility to the community at large demands that they be honestly and sincerely devoted to the ideals of discovery and dissemination of truth and knowledge. Fraud in research undermines the academic enterprise. Institutions engaged in research have a responsibility, not only to provide an environment that promotes integrity, but also to establish and enforce policies and procedures that deal effectively and expeditiously with allegations or evidence of fraud.

In dealing with the problem of research fraud, it is important not to create an atmosphere that might discourage openness and creativity. Good and innovative research cannot flourish in an atmosphere of oppressive regulation. Moreover, it is particularly important to distinguish fraud from the honest error and the ambiguities of interpretation that are inherent in the scientific process and are normally corrected by further research.

This policy applies to all employees, students or other persons within the organizational control of Tulane University at the time of the performance of the research in question. The primary goal of this policy is to assure professional and humane handling of allegations regarding fraud in research. This policy has taken into consideration the 1989 Public Health Service (PHS) regulations, "Responsibility of PHS Awardees and Applicant Institutions for Dealing with and Reporting Possible Misconduct in Science," and the 1987 Regulations issued by the National Science Foundation (NSF), "Misconduct in Science and Engineering Research." If, at any stage in the process for dealing with research fraud, there is reasonable indication of possible criminal violation on the part of a PHS grant holder or applicant, or facts are disclosed which may affect current or potential Department of Health and Human Service's funding for the individual(s) under investigation or that the PHS needs to know to ensure appropriate use of federal funds and otherwise protect the public interest, the PHS Office of Scientific Integrity must be informed within twenty-four hours. The Office of Scientific Integrity must also be informed if an inquiry or investigation involving a PHS grantee or grant applicant is terminated prior to completion.

The procedures defined in this document involve four stages:

- a. An inquiry to determine which allegations or related issues warrant further investigation;
- b. If warranted after such inquiry, an investigation to collect and thoroughly examine evidence;
- c. A formal finding; and
- d. Appropriate disposition of the matter.

This policy is not intended to override or supplant, but rather to be consistent with existing Tulane policies for employment and academic conduct. (See Dismissal Procedure, Art. VI.) In

cases involving students alone, the Graduate School student Honor Code will be followed. If a case involves both students and faculty or staff, all parties will be investigated under the Policies and Procedures to Deal with Fraud in Research. With regard to the institutional review process for dealing with allegations of fraud, Tulane is committed to:

1. Ensuring that the process used to resolve allegations of fraud not damage the research process.
2. Investigating and resolving all charges. All respondents to allegations of research fraud must cooperate with the division, Dean or chief administrator undertaking inquiries or investigations into allegations of research fraud. Even if the respondent leaves Tulane before the case is resolved, Tulane shall continue examination of the allegations and reach a conclusion. Further, Tulane shall cooperate with the processes of other involved institutions to resolve such problems.
3. Treating all parties with justice and fairness and being sensitive to their reputations and vulnerabilities. The Dean shall provide confidentiality for the individual who comes forward with an allegation of fraud and shall take appropriate steps to protect the complainant against retaliation. Any individuals engaging in acts of malice or of retaliation shall be disciplined in accordance with appropriate institutional policies. The Dean shall work to assure that allegations of research fraud have been brought in good faith and are not motivated by malicious intent.
4. Preserving the highest attainable degree of confidentiality compatible with an effective and efficient response. Strict confidentiality shall be maintained of all information gathered in an inquiry or investigation. This may include seeking assurances of the confidential treatment of such information prior to notifying sponsors of research. If confidentiality is breached, the Dean responsible for the inquiry or investigation shall take reasonable steps to minimize damage to reputations that may result from inaccurate reports.
5. Maintaining the integrity of the process by painstaking avoidance of real or apparent conflict of interest. The Dean in charge of each stage of the process shall be responsible for assuring no real or apparent conflict of interest, bearing on the case in question, is possessed by individuals chosen to assist in the inquiry and investigative process.
6. Resolving charges in as expeditious a manner as possible.
7. Documenting the pertinent facts and actions at each stage of the process.
8. After resolving allegations, discharging its responsibilities both internally --to all involved individuals -- and externally -- to the public, the sponsors of research, the scientific literature, and the scientific community, to the extent that it is appropriate and allowable. When allegations are not confirmed, the University shall undertake diligent efforts to restore the reputations of persons alleged to have engaged in this conduct, as well as to protect the positions and reputations of those who, in good faith, made such allegations.

2. Definition of Fraud in Research

Research fraud is a form of misconduct involving fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic

research community for proposing, conducting or reporting research. It does not include honest error or honest differences in interpretation or judgments of data.

Furthermore, when allegations are made, difficulties can often arise in determining where -- along the spectrum from error to fraud - a particular case will lie. The primary focus of this policy will be:

- a. Falsification of data - ranging from fabrication to deceptive selective reporting, including the purposeful omission of conflicting data with the intent to falsify results;
- b. Plagiarism - representation of another's work as one's own;
- c. Violation of Federal Regulations - material failure to comply with federal requirements that uniquely relate to the conduct of research.

3. Process for Handling Allegations of Research Fraud

a. Initiation of an Inquiry

All allegations of research fraud should be reported to the Dean or chief administrator of the division in which the respondent researcher resides. The Dean shall take immediate and appropriate action as soon as misconduct has been alleged or is suspected. Pursuit of the allegations should include discussion with the individual or individuals who made the allegation as well as with the researcher whose practices have been questioned. The researcher should be informed at the outset of the potential seriousness of the allegation and that he/she may wish to seek the advice of outside counsel.

If the Dean determines that the allegation is properly addressed through these policies and procedures designed to deal with fraud in research, inquiry procedures shall be discussed with the individual who has raised questions about the integrity of a research project. If this individual chooses not to make a formal allegation, but the Dean believes there is sufficient cause to warrant an inquiry, the matter shall be pursued under these policies and procedures.

b. Inquiry

1. Structure

The Dean or chief administrator of the division in which the respondent researcher resides is the official responsible for conducting inquiries into allegations of research fraud. The Dean may appoint a small ad hoc committee to provide advice relevant to the inquiry stage. It is the responsibility of the Dean to insure that the inquiry is conducted in a fair and just manner. The Dean may delegate the responsibility for collecting part or all of the information to a member of his/her staff.

2. Purpose

The purpose of the inquiry will be, expeditiously, to gather and review factual information to determine if reasonable cause for investigation of the charge exists.

The inquiry stage is not considered to be a formal hearing, but is designed to separate allegations deserving of further investigation from frivolous, unjustified, or clearly mistaken allegations.

3. **Process**

Upon initiation of an inquiry, the Dean is responsible for notifying the respondent within a reasonable time of the charges and the process that will follow. The Dean shall be responsible for disseminating information on the inquiry to appropriate individuals to include the Senior Vice President for Academic Affairs and Provost or the Senior Vice President for the Health Sciences, the Office of the University Counsel, and the Vice President for Research. Notification should be made in writing and copies filed in the Dean's office. The safety and security of all documents must be assured. The inquiry phase should be completed within 60 days of the initial written notification of the respondent. If it is anticipated that the established deadline cannot be met, a report providing the reasons for the delay and progress to date should be submitted, for the record, and to the respondent and appropriately involved individuals. (If the respondent has a PHS grant or grant application pending, the NIH Office of Scientific Integrity must be so informed.)

4. **Findings**

The inquiry phase will be completed when the Dean determines whether or not reasonable cause for investigation exists. A report shall be written that summarizes the process (including the evidence reviewed and interviews conducted) and state the conclusion of the inquiry. The respondent shall be given a copy of the written report and shall be informed by the Dean as to whether or not there will be further investigation. Comments on the report by the respondent may be made part of the record of the inquiry. The complainant shall be given the report, along with the respondent's comments. If the complainant chooses to renew the complaint, he/she shall prepare it in reasonable detail with the assistance of the University Counsel. The report shall be forwarded promptly to the Senior Vice President for Academic Affairs and Provost or the Senior Vice President for the Health Sciences, depending on the primary appointment of the individual against whom the allegation of fraud has been made. The Senior Vice President for Academic Affairs and Provost or the Senior Vice President for the Health Sciences will work with the office responsible for administering the research funding agreement to provide a copy of the notice to any federal agencies sponsoring research of the individual under investigation. (If the respondent has a PHS grant or grant application pending, the NIH Office of Scientific Integrity shall be informed of the pending investigation.) (1/97)

c. Investigation

1. **Purpose**

When a Dean finds that investigation is warranted, the purpose of the investigation shall be to explore further the allegations and determine where fraud has been committed. The investigation should focus on accusations of fraud as defined previously and examine the factual materials of each case. In the course

of the investigation, broadening the scope of the investigation beyond the initial allegations may occur, if additional information emerges that justifies such action. The respondent shall be informed when significant new directions in the investigation are undertaken and shall be given adequate time to prepare a defense, if new developments so require.

2. **Structure**

The Grievance Committee of the college in which the respondent researcher has his/her primary appointment shall be responsible for investigation of research fraud allegations. Necessary and appropriate expertise shall be secured to carry out a thorough and authoritative evaluation. If additional technical expertise is needed, the Grievance Committee in consultation with the Dean shall appoint one to three additional members from the University community to provide such expertise. Outside researchers may be consulted as expert witnesses, but may not serve as members of the Grievance Committee.

3. **Process**

Upon receipt of the inquiry findings that an investigation is warranted, and within 30 days of completion of an inquiry, the college Grievance Committee shall initiate a formal investigation and so notify the Dean, the Senior Vice President for Academic Affairs and Provost or the Senior Vice President for the Health Sciences, Vice President for Research, the Office of the University Counsel, the complainant and the respondent. The researcher concerned, upon written request made within 10 working days following delivery of such notification, shall have the right to be heard by the College Grievance Committee. If a researcher does not request a hearing or deny the charges within said 10-working day period, the College Grievance Committee must make recommendations for a disposition of the case on the basis of the evidence that it gathers. The accused is required to cooperate with the investigation and failure to cooperate may be taken into consideration by the committee. Members of the Grievance Committee must remove themselves from the case, if they deem themselves disqualified for reasons of bias or personal interest. Any members removed for this reason shall be replaced by the Chair of the Grievance Committee. The Office of the University Counsel shall be used in an advisory role throughout the process.

(1/97)

As soon as practicable, in any event no later than 10 days from the deadline for the respondent's request for a hearing, the Dean shall serve on the respondent a copy of the statement of charges and, if a hearing is requested by the respondent or determined to be necessary by the committee, written notice of the place and day of the hearing by the Grievance Committee. The hearing shall be fixed for a date not sooner than 20 working days nor later than 40 working days after delivery of the notice. The respondent may waive a hearing or may respond to the charges in writing at any time before the hearing. The respondent may also waive a hearing, but deny the charges or assert that the charges do not support a finding of research fraud. In any such event, the College Grievance Committee shall investigate and evaluate all available evidence and make its findings and recommendations upon the evidence in the record before it. Normally, evidence

will include, but not necessarily be limited to, relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Whenever possible, interviews should be conducted of all individuals involved either in making the allegation or against whom the allegation is made, as well as other individuals who might have information regarding key aspects of the allegations; complete summaries of these interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigatory file.

Hearings shall be private, unless the Grievance Committee, the Dean and the respondent all agree that the hearing shall be public. During the proceedings, the respondent and the complainant shall have the right to have legal counsel present for the purpose of observation and advice, but outside counsel shall not be allowed to address the committee directly. Whenever an outside counsel is present, University counsel must also be present. A verbatim record of the hearing(s) shall be made available to the respondent without cost.

The burden of proof rests with the University and should be based upon a preponderance of the evidence. The Grievance Committee shall grant adjournments of reasonable periods of time, not to exceed 10 days, to enable either party to investigate evidence about which a valid claim of surprise is made. The respondent shall be afforded an opportunity to present necessary witnesses in his/her defense and documentary of other evidence and the University shall, so far as this is possible, secure the cooperation of such witnesses and make available necessary documents and other evidence within the control of the University. The respondent, members of the Grievance Committee, and the Dean shall have the right to confront and cross-examine all witnesses. Where a witness cannot or will not appear, but the committee determines that the interest of justice requires admission of a statement, the committee shall identify the witness, and disclose the statement. The Grievance Committee shall not be bound by strict rules of legal evidence and may admit any evidence which is of probative value in determining the issues involved. Every possible effort shall be made to obtain the most reliable evidence available.

Investigations should be completed within 120 days. However, due to the nature of some cases, this time period may be extended. It is also recognized that the ability to complete an investigation within the 120-day period will depend heavily upon factors such as the volume and nature of research reviewed and the degree of cooperation being offered by the subject of the investigation. If the 120-day time period cannot be met, an interim report describing the progress of the investigation shall be submitted to the Dean.

Investigations into allegations of research fraud may result in various outcomes including:

- (a) A finding of fraud;

- (b) A finding of serious scientific misconduct short of fraud;
- (c) A finding that no scientific misconduct was committed, but serious scientific errors were discovered;
- (d) A finding that no fraud, misconduct or serious error was committed.

1. Findings

The Committee shall submit its findings and its recommendation concerning the nature and severity of the disciplinary action in writing to the Senior Vice President for Academic Affairs and Provost or the Senior Vice President for the Health Sciences, who will be responsible for deciding what will be the outcome of the investigation, following the lapse of time necessary to allow an appeal, if one is filed. The Dean, Vice President for Research and respondent shall receive copies of the full report of the investigation. When there is more than one respondent, each shall receive all those parts that are pertinent to his/her role.

d. Appeal

If the Grievance Committee recommends the dismissal of a faculty member, the Senior Vice President for Academic Affairs and Provost or the Senior Vice President for the Health Sciences will refer the case to the Senate Committee on Faculty Tenure, Freedom, and Responsibility for the initiation of dismissal proceedings as described herein. In all other cases, the respondent to the allegation of research fraud may appeal the decision of the Grievance Committee to the Senate Committee on Faculty, Tenure, Freedom and Responsibility (FTFR), within 10 working days after a recommendation is rendered by the Grievance Committee. Appeals shall be restricted to the body of evidence already presented. To correct procedural errors or to consider the submission of new evidence, the case shall be remanded by the FTFR to the Grievance Committee. The two committees shall meet to discuss whatever differences may exist in their judgment of the case. If the disagreement cannot be resolved, separate recommendations shall be sent to the proper administrative officers. The Senate Committee on Faculty Tenure, Freedom and Responsibility shall complete its review and submit its recommendation within 40 days to the Senior Vice President for Academic Affairs and Provost or the Senior Vice President for the Health Sciences, the Dean, the Vice President for Research, and the researcher(s) concerned.

e. Disposition

1. Discipline

In cases in which the researcher has been judged guilty by the Grievance Committee, the Senior Vice President for Academic Affairs and Provost or the Senior Vice President for the Health Sciences shall be responsible for determining the nature and severity of the disciplinary action. If dismissal of the researcher is recommended, such recommendation shall use normal dismissal procedures as described herein or in the Tulane Staff Handbook. Examples of disciplinary

actions that may be taken by the Senior Vice President for Academic Affairs and Provost or the Senior Vice President for the Health Sciences as a result of a finding of research fraud include the following:

- (a) Removal from the particular project;
- (b) Letter of reprimand;
- (c) Special monitoring of future work;
- (d) Suspension or exclusion of a graduate student;
- (e) Termination of employment of a staff member;
- (f) Referral to the Senate Committee on Faculty Tenure, Freedom, and Responsibility for dismissal proceedings against a faculty member.

1. Notification of Concerned Parties and Sponsoring Agencies

The Vice President for Research will promptly notify the federal agencies, sponsors, or other entities initially informed of the findings of the investigation. The institution shall retain the findings of the investigation in a confidential and secure file. (If the respondent has a PHS grant or grant application pending, a copy shall also be sent to the NIH Office of Scientific Inquiry.)

In addition to notifying concerned parties and sponsoring agencies, the Senior Vice President for Academic Affairs and Provost or the Senior Vice President for the Health Sciences may also choose to notify:

- (a) Co-authors, co-investigators, collaborators;
- (b) Editors of journals in which fraudulent research was published;
- (c) Professional licensing boards;
- (d) Editors of journals or other publications, other institutions, sponsoring agencies, and funding sources with which the individual has been affiliated;
- (e) Professional societies; and
- (f) Where appropriate, criminal authorities.

* This policy statement is based on and draws heavily from the language of the report "Framework for Institutional Policies and Procedures to Deal with Fraud in Research," authored by the Association of American Universities and the National Association of State Universities and Land-Grant Colleges.