



TRANSMITTAL AND ABSTRACT OF SENATE REPORT

Date Presented to the Senate: May 8, 2008

Presenter: Daniel E. Falvey, Chair, Senate Faculty Affairs Committee

Subject of Report: Revisions to University of Maryland Procedures for Scholarly Misconduct (III-1.10(A))

Senate Document Number: 07-08-39

Voting: (a) on resolutions or recommendations one by one, or
(b) in a single vote
(c) to endorse entire report

A. Statement of Issue:

The University currently has a policy on Scholarly Misconduct (III-1.10(A)) which provides procedures for investigating allegations of plagiarism, reporting fraudulent research data, etc. and determining appropriate sanctions when such misconduct has occurred. It was recently determined that the current University Policy is not in compliance with standards adopted by the Public Health Service (PHS). This agency (which includes the NIH) is a significant source of research funding. Failure to comply with PHS guidelines could prevent University researchers from obtaining funding from this agency.

In order to remain in compliance President Mote approved an interim policy on scholarly misconduct (10/4/07) which conforms to the new PHS guidelines. The interim policy applies to all researchers currently or potentially funded by the PHS, and the existing University policy applies to all others.

The interim policy is similar to the existing policy in that both require two levels of review: a preliminary inquiry phase and a more extensive investigation phase. In both phases, faculty committees are empanelled to review evidence, interview witnesses, and formulate recommendations.

There are two major differences between the interim and the existing policy. (1) The interim policy is more narrow in scope than the existing University policy. It is directed specifically at misconduct in scientific research and would not be applicable to scholarly misconduct in other disciplines. (2) The interim policy has more specific requirements for the conduct of inquiries and investigations. For example, the interim policy requires that all testimony be transcribed and that witnesses be allowed to review the transcript of their testimony and submit corrections. In contrast the previous policy did not require this. Likewise the interim policy requires that the respondent in an investigation be allowed to inspect and comment on any physical evidence

being used as a basis for an allegation. The current University policy does not explicitly provide these protections.

The Faculty Affairs Committee was charged by the Senate Executive Committee with reviewing the interim policy and determining if it should be adopted for the entire campus, or if a new policy could be devised which both complies with PHS guidelines and also could be fairly applied to the entire campus.

B. Recommendation:

The Senate Faculty Affairs Committee recommends adoption of the revised Policy on Scholarly Misconduct.

C. Committee Work:

The Committee reviewed the two policies at meetings on 10/17/07 and 11/14/07. The possibility of maintaining two separate policies, one for PHS researchers, and another for the rest of the campus was rejected for two reasons. First, determining which policy is operative could be very confusing. Departments and even individual research labs often obtain funding from multiple sources, including the PHS and in the early stages of inquiry it may not be obvious which funding source is connected to the allegations. Secondly, the committee felt that having two separate procedures would be inherently unfair. For example, a PHS-funded researcher accused of misconduct would be allowed to inspect and comment on physical evidence, yet a researcher not funded by PHS, but accused of similar misdeeds would not have that protection.

At the 2/7/08 meeting the committee decided to use the existing University policy as a starting point and modify it to conform the PHS standards. The proposed revisions were drafted based on discussions at the 3/27/08 meeting and with significant assistance from Susan Bayly in the Office of Legal Affairs. These revisions include the more specific due process requirements for the inquiry and investigation processes. There is a somewhat more restrictive timeline for completing the two phases, although there are provisions for extensions as warranted. Several confusing passages in the existing policy were clarified and redundant language was eliminated.

At the meeting on 4/28/08 the committee unanimously voted to recommend the revised policy.

D. Alternatives:

The Senate could decline to pass the revisions. In this case the University would be governed by the existing policy for those not affected by PHS funding and a parallel interim policy for those have PHS funding, or are eligible for PHS funding.

E. Risks:

As noted above, failure to approve the revisions will leave the University with two separate procedures for reviewing scholarly misconduct cases, creating confusion and potential inequities.

F. Financial Implications:

None.

III-1.10(A) UNIVERSITY OF MARYLAND PROCEDURES FOR SCHOLARLY MISCONDUCT

Approved by the President 1 August 1991;
Revised 11 May 2000, revised ____ 2008)

I. GENERAL

In accordance with the Board of Regents Guidelines for Policies and Procedures Relating to Allegations of Scholarly Misconduct (November 30, 1989), these procedures implement the Board of Regents Policy on Misconduct in Scholarly Work (November 30, 1990). All references to the "University" in these procedures mean the University of Maryland, College Park.

II. SCOPE

These procedures apply to all current and former University faculty, staff and students in the performance of scholarly or creative activity and/or research that is or was connected with the University or with their University appointment.

These procedures are intended to conform to Public Health Services ("PHS") regulations for dealing with reporting possible research misconduct ("PHS Misconduct Regulations"). PHS Misconduct Regulations are codified at 42 Code of Federal Regulations (CFR) Part 93. The University will conduct an institutional inquiry pursuant to the PHS Misconduct Regulations when an allegation falls within PHS definitions and jurisdictional requirements. As permitted under the PHS Misconduct Regulations, an institution has the authority to adopt internal standards of conduct different from the PHS standards, and may find conduct to be actionable even if the action does not meet PHS definitions. The University recognizes that authority in adopting these procedures. (See Appendix A, Special Provisions for Misconduct Subject to PHS Regulations, which identifies PHS provisions that may, in whole or part, present standards different from those set forth in the University procedures.) In the event that the PHS Misconduct Regulations do not apply, or if PHS declines to take jurisdiction over an allegation, these University procedures shall apply and control.

Other federal agencies have published regulations regarding the investigation of allegations of research misconduct involving activities supported by those agencies. (See Appendix B for Research Misconduct Policies of Selected Federal Research Sponsors.) The University will comply with the requirements of any applicable federal regulations. As with the PHS regulations, the University retains the authority to set standards and to make determinations of when University faculty, staff and students have failed to meet those standards.

Conduct, other than scholarly misconduct as defined herein, may be subject to review under other policies and procedures. [Note: Allegations of misconduct by students in academic exercises, such as examinations and course requirements, are generally handled pursuant to the University's Code of Academic Integrity UMCP Policy III -1.00(B)].

III. DEFINITIONS

- A. "Complainant" means a person who makes a report under these procedures alleging scholarly misconduct.
- B. "Conflict of Interest" means the real or apparent interference of one person's interests with the interests of another person, where potential bias may occur due to prior or existing personal or professional relationships.
- C. "Days" shall mean calendar days.
- D. "External Sponsor" means any entity that provides financial support for research or scholarly activities at the University of Maryland. Examples include the National Science Foundation, the Public Health Service, the Department of Defense, and the National Endowment for the Humanities.
- E. "Good Faith Report" means a report made with the honest belief that scholarly misconduct may have occurred. A report is not in good faith if it is made with malice, with reckless disregard for, or willful ignorance of facts that would disprove the allegation.
- F. "Record" means any data, document, computer file, computer diskette, or any other written or non-written account or object that reasonably may be expected to provide evidence or information regarding the proposed, conducted, or reported research or other conduct that constitutes the subject of an allegation of scholarly misconduct. A record includes, but is not limited to, grant or contract applications, whether funded or unfunded; grant or contract progress and other reports; laboratory notebooks; notes; correspondence; videos; photographs; X-ray film; slides; biological materials; computer files and printouts; manuscripts and publications; equipment use logs; laboratory procurement records; animal facility records; human and animal subject protocols; consent forms; medical charts; and patient research files.
- G. "Respondent" means the person against whom a report of scholarly misconduct is directed or the person whose actions are the subject of the inquiry or investigation. There can be more than one respondent in any inquiry or investigation.
- H. "Retaliation" means any action that adversely affects the employment or other

institutional status of an individual that is taken by the institution or an employee because the individual has in good faith, made a report of scholarly misconduct or of inadequate institutional response thereto or who has cooperated in good faith with an investigation of such report.

- I. "Scholarly Misconduct" means fabrication, falsification, plagiarism or other misconduct such as described below in proposing, performing, reviewing, or reporting research and/or in connection with other scholarly or creative activities. Other terms such as research fraud, scientific misconduct, or research misconduct are subsumed within the term scholarly misconduct. Scholarly misconduct does not include honest error or honest differences of opinion. A finding of scholarly misconduct requires that there be a significant departure from accepted practices of the scholarly community for maintaining the integrity of the research or scholarly record; the misconduct must be committed intentionally; or knowingly, or in reckless disregard of accepted practices; and the allegation must be proven by a preponderance of relevant evidence.

Scholarly misconduct may take many forms including, but not limited to:

1. Falsification or Misrepresentation of Data: such as fabrication, manipulation, alteration or falsification of data or background information, deceptively selective reporting, purposeful omission of conflicting data and willful suppression, distortion or destruction of data.
2. Plagiarism: the appropriation of the work of another, such as taking credit for an exact copy or the rewritten or rearranged work of another.
3. Improprieties of Authorship: including improper assignment of credit, such as excluding or insufficiently citing others; misrepresentation of the same material as original in more than one publication; inclusion of individuals as authors who have not made a contribution to the work published; or submission of multi-authored publications without the concurrence of all authors.
4. Abuse of Confidentiality/Misappropriation of Ideas: improper use or appropriation of information obtained from scholarly exchanges and other types of confidential access, such as review of grant applications or manuscripts and service on peer review panels, editorial boards or University committees.
5. Violation of Generally Accepted Research Practices: serious deviation from accepted research practices such as improper manipulation of experiments to obtain biased results, deceptive statistical or analytical

manipulations, or improper reporting of results.

6. Deliberate Material Failure to Comply with Federal, State or University Requirements Affecting Research: such as violations involving the use of funds or resources, care of animals, human subjects, investigational drugs, recombinant products, new devices, radioactive, biologic or chemical materials or the health and safety of individuals or the environment.
7. Deliberate Misrepresentation of Qualifications: such as misrepresentation of experience or research accomplishments to advance the research program, to obtain external funding, or for other professional or personal advancement.
8. Misappropriation of Funds or Resources: such as misuse of funds or resources for personal gain.

IV. GENERAL PRINCIPLES

- A. Responsibility to Administer Procedures: The President has delegated to the Vice President for Academic Affairs ("VPAA") the responsibilities set out in these procedures. The VPAA shall seek the President's approval of institutional actions as set forth herein, including, but not limited to, any final determination regarding an allegation of scientific misconduct. The VPAA may designate a Research Integrity Officer (RIO) who, in the VPAA's place, will perform duties as assigned to administer these procedures.
- B. Responsibility to Report Misconduct: Reporting of scholarly misconduct is a responsibility shared by everyone at the University. Reports of scholarly misconduct are serious charges and, as such, should be supported by sufficient evidence. Reports of scholarly misconduct which are not made in good faith will not be tolerated and may result in disciplinary or other actions.
- C. Protecting Participants: All participants in the inquiry and investigation process, including the complainant, respondent, witnesses, and committee members should be treated with fairness, respect and sensitivity to their reputations, and should be protected against retaliation in connection with good faith participation. Any alleged or apparent retaliation should be reported to the Vice President for Academic Affairs. The VPAA 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.

- D. Confidentiality: To the maximum extent possible consistent with law, University policy, and effective and efficient proceedings, the confidentiality of information regarding the complainant, the respondent, and other affected individuals, including research subjects identifiable from research records or evidence, will be protected. Members of the inquiry and investigation committees, recognizing that they may need to consult persons with relevant knowledge who are not on the committee, as well as other participants in the process should observe the confidentiality of the proceedings and any information and documents reviewed as a part thereof. Outside of official contexts, they should not discuss the matters with the respondent, complainant, witnesses, or any one not authorized by the VPAA.
- E. Cooperation with Scholarly Misconduct Proceedings: All University faculty, staff, and students are required to cooperate with the VPAA 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 scholarly misconduct allegations to the VPAA or other institutional officials. Uncooperative behavior is unacceptable and may result in disciplinary or other sanctions.
- F. Conflict of Interest: The integrity of the process shall be maintained by taking reasonable precautions to avoid bias and real or apparent conflicts of interest on the part of those involved in conducting the inquiry or investigation.
- G. Timeliness: Any allegation assessment, inquiry, or investigation should be conducted in a timely, objective, thorough, and competent manner. The termination of the respondent's institutional employment, by resignation or otherwise, before 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. If the respondent refuses to participate in the process after resignation, the VPAA 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.
- H. Standard of Proof: A finding of scholarly misconduct must be established by a preponderance of the relevant evidence. This means that the evidence shows that it is more likely than not that the respondent committed scholarly misconduct.
- I. Administrative Actions: Prior to conclusion of the inquiry or the investigation, the VPAA may initiate such interim administrative action(s) as he or she considers appropriate to protect research funds or equipment; the health or safety of research

subjects, students, employees, or other persons; or the integrity of the research process. Such administrative actions, ranging from slight restrictions to complete suspension of the respondent and notification of External Sponsors, if indicated, should generally be taken only after consultation with the President and University legal counsel.

- J. Notification of External Sponsors: The VPAA, in consultation with University legal counsel, is responsible for determining which, if any, External Sponsors have a legitimate interest in scholarly misconduct cases, and for communicating with the External Sponsor about the matter. To the extent applicable, notification policies, if any, of the External Sponsor, including federal regulations, shall be followed. Absent specific notification requirements, factors used in determining the need for and timing of such notification may include: (a) the seriousness of the possible misconduct, (b) reasonable indication of possible criminal violations, (c) a determination that the health or safety of the public is at risk, including an immediate need to protect human or animal subjects, (d) University policies, (e) the need to protect External Sponsor funds, equipment, or the integrity of the supported research process; (f) the need to suspend research activities, (g) a determination that External Sponsor action is required to protect the interests of those involved in the research misconduct proceeding, (h) a determination that the research misconduct proceeding may be made public prematurely, requiring notice so that an External Sponsor may take appropriate steps to safeguard evidence and protect the rights of those involved; and (i) the interests of the funding agency, the scientific community, the public, and the individual who is the subject of the inquiry or investigation.
- K. Documentation: Appropriate documentation of an inquiry and/or investigation shall be maintained for a period of at least seven years after the completion of all proceedings or the completion of any proceedings required by an External Sponsor.
- L. Completing the Research Misconduct Process: The University expects that inquiries and investigations will be diligently pursued and carried through to completion. The VPAA may, however, with the approval of the President, close a case at the inquiry or investigation stage if the respondent had made a legally sufficient admission of scholarly misconduct or a settlement with the respondent has been reached. In that case, the VPAA will proceed as described in section VI.B. to determine appropriate institutional actions. These actions shall be subject to the final approval of the President. As required by External Sponsors' policies or regulations, the VPAA shall consult with and report to External Sponsors.
- M.. Finality and Sanctions: Findings reached under these procedures as to the existence or absence of scholarly misconduct are not subject to review under any other University policies or procedures. If disciplinary sanctions are

recommended following a finding of scholarly misconduct, the University shall follow any applicable University policies and procedures in the imposition of those sanctions.

V. PROCEDURES FOR REVIEWING REPORTS OF SCHOLARLY MISCONDUCT

A. Complaint and Preliminary Review

1. Suspected or apparent scholarly misconduct should be reported to the VPAA. A report of scholarly misconduct must be in writing and signed. Prior to reporting scholarly misconduct, a person may informally discuss the matter with the appropriate Department Chair, Director, Dean, the Vice President for Research, the Associate Provost for Faculty Affairs or the VPAA. Such informal consultations or requests for information will not, in and of themselves, be considered a report of scholarly misconduct.
2. If the VPAA has a possible conflict of interest or is unavailable to begin a review immediately, the report should be referred to the President who shall designate a substitute administrator to oversee the process and carry out responsibilities assigned to the VPAA under this policy.
3. The VPAA shall preliminarily review any report of scholarly misconduct and confer with legal counsel, as appropriate, to determine: (a) whether the report warrants initiation of the inquiry process according to these policies and procedures; (b) whether other policies and procedures should be invoked; or (c) whether the report is without any reasonable basis and should be dismissed. If the VPAA determines an inquiry is not warranted, consideration shall be given as to whether the report of misconduct was not made in good faith. If the VPAA determines an inquiry is warranted, the inquiry process will be initiated.
4. Upon initiating the inquiry process, the VPAA will take all reasonable and practical steps to obtain custody of, inventory, and secure all research records relevant to the allegation.
5. Upon initiating the inquiry process, the VPAA will assess the report to determine whether it involves activities with extramural funding. If the report involves activities supported by extramural funding (such as NSF, DOD, NASA, or PHS) the VPAA will oversee compliance, throughout the process, with any applicable External Sponsor reporting requirements. (See Appendix A for Special Provisions for Misconduct Subject to PHS Regulations, and Appendix B for Research Misconduct Policies of Selected Federal Research Sponsors.)

B. Inquiry

1. The primary purpose of the inquiry is to determine if there is sufficient evidence of scholarly misconduct to warrant further investigation and, if further investigation is not warranted, to make recommendations concerning the disposition of the case. The purpose of the inquiry is not to reach a final conclusion about whether misconduct definitely occurred or who was responsible. Records of the inquiry are confidential to the maximum extent possible as provided herein and are to be passed on to a committee of investigation if an investigation is initiated.
2. The inquiry is not in the character of a criminal or civil proceeding. It is not modeled on these adversarial systems, and is not governed by their procedures and rules of evidence. Parties may have the assistance of counsel; however, counsel is for advisory purposes only and may not participate in the process. Parties must speak for themselves.
3. The VPAA, in consultation with other institutional officials as appropriate, will appoint a committee of inquiry and committee chair. The committee shall consist of no less than three University tenured faculty members of equal or senior rank to the respondent with at least one outside the respondent's discipline. The VPAA shall take reasonable steps to ensure that the members of the committee are unbiased, do not have real or apparent conflicts of interest, and have appropriate expertise to evaluate the issues related to the allegation. Every effort shall be made to appoint the committee within 10 days of initiation of the inquiry.
4. The VPAA shall notify the complainant and the respondent in writing of the charges, the procedures that will be used to examine the charges, and the membership of the committee of inquiry. If, within five (5) days, either party submits a written objection to any appointed member of the committee on the grounds of bias or conflict of interest, the VPAA will determine whether to replace the challenged member or expert with a qualified substitute.
5. The committee of inquiry shall conclude its process as expeditiously as possible. The inquiry phase generally should be completed and a written report filed within sixty (60) days from initiation of the inquiry. If this deadline cannot be met, the VPAA and the President shall be advised and

the record of the inquiry shall include documentation of the reasons for exceeding the 60-day period. The VPAA shall inform any relevant External Sponsors of delays, as required by such agency.

6. Charge to the Committee and First Meeting. The VPAA will prepare a charge for the inquiry committee that:
 - a. Sets forth the time for completion of the inquiry;
 - b. Describes the allegations and any related issues identified during the allegation assessment;
 - c. 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 scholarly misconduct definitely occurred or who was responsible;
 - d. States that an investigation is warranted if the inquiry committee determines that there is a reasonable basis for concluding that the allegation falls within the University's definition of scholarly misconduct and/or within the definition and jurisdiction of any relevant External Sponsor; and that the allegation may have substance, based on the committee's review during the inquiry.
 - e. 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, if applicable, any External Sponsor requirements.
7. At the inquiry committee's first meeting, the VPAA 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 VPAA will be present or available throughout the inquiry to advise the committee as needed.
8. The inquiry committee will normally interview the complainant, the respondent, and key witnesses as well as examine relevant research records and materials. Witnesses' testimony shall be recorded and/or transcribed, and the recording or transcript shall be provided to the interviewee for correction. The inquiry committee will include the recording and/or transcription in the record of the investigation. The inquiry committee will evaluate the evidence, including the testimony

obtained during the inquiry. The committee members will decide whether an investigation is warranted based on the criteria in this policy, and as necessary, the criteria set forth by any relevant External Sponsor.

9. All material reviewed by the committee of inquiry will be considered confidential and shared only with those with a need to know. The VPAA and the members of the committee are responsible for the security of relevant documents. Copies of all documents and related communications are to be maintained in a secure space.

10. The committee of inquiry shall submit to the VPAA a confidential draft report of its findings. The inquiry report, which is advisory, must contain:
(1) the name and position of the respondent; (2) a description of the allegations of scholarly misconduct; (3) where applicable, a description of the external support as required by the External Sponsor; 4) a summary of the inquiry process used; (5) a list of the records and evidence reviewed; (6) transcripts or recordings of any interviews; (7) the basis for recommending or not recommending that the allegations warrant an investigation; (8) if applicable, the charges for the investigation to consider; ; (9) names and titles of the committee members and experts who conducted the inquiry; and (10) whether any other actions should be taken if an investigation is not recommended. University counsel should review the report prior to submission for legal sufficiency.

11. The VPAA shall provide to the complainant and respondent a copy of the draft findings and recommendations contained in the report. The parties shall be given the opportunity to comment in writing upon the findings and recommendations of the inquiry committee. Such comments shall be submitted within five (5) calendar days. Any comments submitted by the parties will be included in the inquiry report. On the basis of these comments, the inquiry committee may revise the draft report as it determines to be appropriate and prepare it in final form. The inquiry committee will deliver the final report to the VPAA.

12. The VPAA may ask the committee of inquiry to undertake such additional inquiry as needed to facilitate a decision respecting the disposition of the case.

13. If the report of the committee of inquiry does not recommend a formal investigation, but does find a need for further alternative action, such action may be taken by the VPAA, as appropriate.
14. If the committee of inquiry finds the allegations of misconduct were not made in good faith, it shall refer the matter to the VPAA. It is a violation of University policy when a report of misconduct is not made in good faith.
15. If the committee of inquiry plans to terminate the inquiry for any reason prior to completion of the inquiry process, a report of the termination, including a description of the reasons for such termination, shall be made to the VPAA.
16. The VPAA shall inform the President of the final recommendations of the committee of inquiry and of the VPAA's decision respecting the disposition of the case. Upon approval of the President, the VPAA shall proceed to take further action.
17. Documentation of Decision Not to Investigate. If the VPAA, with the President's approval, decides that an investigation is not warranted, the VPAA shall secure and maintain for seven (7) years after the termination of the inquiry a sufficiently detailed documentation of the inquiry to permit a later assessment by External Sponsors of the reasons why an investigation was not conducted. These documents shall be provided to relevant External Sponsors upon request.
18. Within 30 days of the approval of the President, the VPAA shall provide the complainant, respondent, and if applicable, any External Sponsors, a copy of the committee of inquiry report and of the decision respecting the disposition of the case.

C. INVESTIGATION

1. Should an investigation be warranted, a committee of investigation shall be appointed within 30 days (or as soon thereafter as practicable) of the President's approval. The committee shall consist of no less than three (3) respected members of the academic, professional, or scientific community who have a national reputation of excellence in the same or closely allied discipline as the respondent. At least one member should, if reasonably possible, be a person not primarily associated with the University System of Maryland.

2. The VPAA shall appoint the committee of investigation in the following manner. First, the VPAA shall develop two lists of potential committee members: (a) a list of at least 10 University System of Maryland faculty, equal or senior to the respondent in rank and (b) a list of at least four persons not primarily associated with the University System. Second, the complainant and respondent shall each be extended the option to strike two persons from the first list and one person from the second list. The complainant and respondent must submit in writing any strikes within five (5) days of receipt of the list. The VPAA will then appoint the committee and chair from the remaining of the names. Generally, the committee consists of three (3) members, including the chair and two (2) alternates. The VPAA shall review the committee membership to ensure that the members of the committee are unbiased, do not have real or apparent conflict of interest, and have appropriate expertise to evaluate the issues related to the allegation.
3. Every effort should be made to complete the investigation within 120 days; this includes conducting the investigation, preparing the report, allowing thirty (30) days for the respondent and complainant to review and comment on the draft report and submitting the report to the VPAA. It is acknowledged that some cases cannot be fully investigated in 120 days. In such cases, the committee of investigation should compile a progress report, identify reasons for the delay, estimate time required to complete the investigation, and request an extension from the VPAA. In granting an extension, the VPAA shall comply with any relevant External Sponsor's policies or regulations.
4. Charge to the Committee and the First Meeting.
 - a. Charge to the Committee. The VPAA will define the subject matter of the investigation in a written charge to the committee that:
 - i. Sets forth the time for the completion of the investigation;
 - ii. Describes the allegations and related issues identified during the inquiry;
 - iii. Identifies the respondent;
 - iv. Informs the committee that it must conduct the investigation as prescribed in paragraph 5.. of this section;
 - v. Defines scholarly misconduct;

- vi. Informs the committee that it must evaluate the evidence and testimony to determine whether, based on a preponderance of the evidence, scholarly misconduct occurred and, if so, the type and extent of it and who was responsible;
- vii. Informs the committee that in order to determine that the respondent committed scholarly misconduct it must find that a preponderance of the evidence establishes that: (1) scholarly 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 scholarly misconduct is a significant departure from accepted practices of the relevant research and/or scholarly community; and (3) the respondent committed the scholarly misconduct intentionally, knowingly, or recklessly;
- viii. Informs the committee that it must prepare or direct the preparation of a written investigation report that meets the requirements of this policy and, where applicable, the requirement of external sponsors.
- ix. Provides the committee with a copy of these Policies and Procedures on Scholarly Misconduct and any relevant regulations promulgated by External Sponsors.

b. First Meeting

The VPAA will convene the first meeting of the committee of investigation 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.

5. Investigation Process

a. Process.

The investigation is not in the character of a criminal or civil legal proceeding. It is not modeled on these adversarial systems, and is not governed by their procedures and rules of evidence. Parties may have the assistance of counsel; however, counsel is for advisory purposes only and may not participate in the process. Parties must speak for themselves. In formulating its conclusions, the committee may assign to information such weight as



experienced members of the discipline customarily accept in the conduct of research, scholarship, and creative activities. As part of its investigation, the committee may in its discretion undertake informal, fact-finding meetings with persons it determines may have useful knowledge.

- b. The Investigation Committee must:
 - i. To the extent not already done at the allegation or inquiry stages, take all reasonable or practical steps to obtain custody of, inventory, and secure all research records evidence needed to conduct the investigation;
 - ii. Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research or other relevant records and evidence relevant to reaching a decision on the merits of each allegation;
 - iii. Take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical;
 - iv. 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 within a reasonable period of time, and include the recording or transcript in the record of the investigation; and
 - v. Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of any additional instances of possible scholarly misconduct, and continue the investigation to completion.
6. Consistent with fulfilling its responsibilities, the committee of investigation shall endeavor to maintain strict confidentiality in the performance of its activities.
7. Investigation Report. The investigation committee is responsible for preparing a written draft report of the investigation that:
 - a. Describes the nature of the allegation of scholarly misconduct,

including identification of the respondent;

b. Describes and documents any financial support from External Sponsors, including, for example, any grant numbers, grant applications, contracts, and publications listing support;

c. Describes the specific allegations of scholarly misconduct considered in the investigation;

d. Identifies and summarizes any research records and evidence reviewed and identifies any evidence taken into custody but not reviewed; and

e. Includes a statement of findings, supported by a majority of the committee, for each allegation of scholarly misconduct identified during the investigation. Each statement of findings must: (1) identify the specific nature of the scholarly misconduct as defined in Part III, and whether it was committed intentionally, knowingly, or recklessly; (2) summarize the facts and the analysis that support the conclusion and consider the merits of any reasonable explanation by the respondent, including any effort by respondent to establish by a preponderance of the evidence that he or she did not engage in scholarly misconduct because of honest error or a difference of opinion; (3) identify any external support relevant to the charge; (4) identify whether any publications need correction or retraction; (5) identify the person(s) responsible for the misconduct; and (6) list any current support or known applications or proposals for support that the respondent has pending with External Sponsors;

f. Includes recommendations for institutional actions for any finding in favor of scholarly misconduct.

8. Comments on the Draft Report and Access to Evidence.

a. Respondent

The VPAA shall give the respondent a copy of the draft investigation report for comment and, concurrently, a copy of, or supervised access to the evidence on which the report is based. The respondent will be allowed 30 days from the date he/she received the draft report to submit comments to the VPAA. The respondent's comments must be included and considered in the final report.

b. Complainant

To the extent appropriate, the VPAA may give the complainant a copy of the draft investigation report for comment and, concurrently, a copy of, or

supervised access to the evidence on which the report is based. The complainant will be allowed 30 days from the date he/she received the draft report to submit comments to the VPAA. The complainant's comments must be included and considered in the final report.

c. Confidentiality

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

9. The VPAA shall review the Investigation Report. For each specific charge the VPAA will, in writing, state: (1) whether he/she concurs or differs with the findings of the investigation committee, and whether he/she concurs with the committee recommendations for institutional action or proposes modified action. If this determination varies from the findings of the investigation committee, the VPAA will, as part of his/her written statement, explain in detail the basis for rendering a decision different from the findings of the investigation committee. Alternatively, the VPAA may return the report to the investigation committee with a request for further fact-finding or analysis.
10. Final Approval of the President. Both the Investigation Report and the VPAA's response will be presented to the University President who will give final approval to the findings and any recommended institutional actions. If a finding or recommendation of the VPAA and the committee of investigation differs, the President may (a) approve the finding or recommendation of the committee; (b) approve the finding or recommendation of the VPAA; or (c) return the report to the VPAA with a request for further fact-finding and/or analysis. In cases where the VPAA and committee of investigation are in agreement, the President may either (a) approve the finding or recommendation; or (b) return the report to the VPAA with a request for further fact-finding and/or analysis. The VPAA shall inform the complainant and the respondent of the final decision and intended actions.

VI. RESOLUTION

A. A Finding of No Scholarly Misconduct

1. The VPAA is responsible for informing, in writing, External Sponsors and others with a legitimate reason to know that charges of misconduct were not supported. The VPAA shall provide written notice to External Sponsors in the form required under applicable External Sponsors' policies or regulations. In publicizing the finding of no misconduct, the University should be guided by whether public announcements will be harmful or beneficial in restoring any reputations that may have been affected. Such decision should generally take into account the preference of any person whose reputation is involved.
2. If the allegations of misconduct are deemed not to have been made in good faith, appropriate disciplinary or other action(s) should be taken. If the allegations, however incorrect, are deemed to have been made in good faith, and no disciplinary measures are indicated, efforts should be made to prevent retaliatory actions and to protect, to the maximum extent possible, the positions and reputations of the persons who made the allegations as well as those against whom allegations of misconduct were not confirmed.

B. A Finding of Scholarly Misconduct

1. When an investigation confirms misconduct, the VPAA is responsible for informing, in writing, External Sponsors and others with a legitimate reason to know the outcome. The VPAA shall provide written notice to External Sponsors in the form required under applicable External Sponsor policies or regulations.
2. The VPAA shall be responsible for implementing institutional action approved by the President. If the approved action is not within the VPAA's authority, the President shall assume the responsibility, as appropriate.
3. The University shall take action appropriate for the seriousness of the misconduct, including, but not limited to, the following:
 - a. Disciplinary action such as:
 - (1) Termination of employment;
 - (2) Removal from particular project;
 - (3) Special monitoring of future work;
 - (4) Letter of reprimand;
 - (5) Probation for a specified period with conditions specified;
 - (6) Suspension of rights and responsibilities for a specified period;

- (7) Financial restitution;
 - (8) Removal from an academic program;
 - (9) Dismissal from the University.
- b. Notification, as appropriate, to involved parties such as:
- (1) External Sponsors;
 - (2) Co-authors, co-investigators, collaborators, university publications, appropriate campus and other officials;
 - (3) Editors of journals in which fraudulent research was published;
 - (4) State professional licensing boards;
 - (5) Editors of journals or other publications, or other institutions with which the individual has been affiliated;
 - (6) Professional societies.

VII. SPECIAL PROVISIONS FOR SPONSORED PROJECTS

- A. Special Provisions for Misconduct Subject to PHS Regulations, see Appendix A.
- B. Research Misconduct Policies of Selected Federal Research Sponsors, see Appendix B.

APPENDIX A
SPECIAL PROVISIONS FOR MISCONDUCT SUBJECT TO PHS REGULATIONS

This Appendix A is incorporated in and made a part of the Procedures for Misconduct in Scholarly Work (the “University Procedures”) for the University of Maryland, College Park (the “University”).

The Public Health Service (“PHS”) has promulgated regulations for dealing with reporting possible research misconduct (“PHS Misconduct Regulations”). PHS Misconduct Regulations are codified at 42 Code of Federal Regulations (CFR) Part 93. The Office of Research Integrity (ORI), a component of the Office of the Director of the National Institutes for Health (NIH), oversees the implementation of all PHS policies and procedures related to misconduct.

The University of Maryland will comply and file institutional assurances as required by 42 CFR § 93.300, 93.301, and 93.302. In order to remain in compliance with these regulations, the University will:

1. Keep current and upon request provide to ORI and other PHS officials these procedures and others the University may develop to encourage scientific integrity.
2. Inform University personnel, as appropriate, of these procedures and the importance of compliance.
3. Take immediate and appropriate action as soon as misconduct on the part of University personnel is alleged. Actions shall include interim measures to protect federal funds and ensure that the purposes of federal financial assistance are being carried out.
4. In accordance with the PHS Misconduct Regulations, inform and cooperate with ORI with regard to each investigation of possible misconduct.

It is the University’s policy to comply with all other applicable requirements of the PHS Misconduct Regulations. As required under CFR § 93. 307, the University will conduct an institutional inquiry pursuant to the PHS Misconduct Regulations when an allegation: falls within the PHS definition of research misconduct under 42 CFR § 93.103; is within the applicability requirements of 42 CFR § 93.102; and is sufficiently credible and specific so that potential evidence of research misconduct is identified.

As permitted under 42 CFR § 93.319(a), the University has the authority to independently set its own standards of conduct different from PHS standards and to make determinations of scholarly misconduct even if the action does not meet PHS definitions. When the University

processes an allegation of scholarly misconduct subject to the PHS Misconduct Regulations, however, it is those regulations that will control all institutional actions and decisions. If the PHS Misconduct Regulations do not apply, or if ORI declines to take jurisdiction over an allegation, University Procedures will control.

The University notes that the following PHS provisions may, in whole or part, present standards different from those set forth in the University Procedures. University legal counsel must be consulted as part of the processing of any allegation of scholarly misconduct subject to the PHS Misconduct Regulations.

- 42 CFR § 93.102 Applicability
- 42 CFR § 93.103 Research Misconduct
- 42 CFR § 93.105 Time Limitations
- 42 CFR Part 93, Subpart B, Definitions

APPENDIX B
RESEARCH MISCONDUCT POLICIES OF
SELECTED FEDERAL RESEARCH SPONSORS

1. National Science Foundation
www.nsf.gov/oig/misconscieng.jsp
2. Department of Defense
www.dtic.mil/whs/directives/corres/html/321007.htm
3. Department of Energy
70 FR 1213, 6/28/05
http://www.sc.doe.gov/Program_Offices/Policy%20on%20research%20misconduct%20June%2028.pdf
4. Department of Labor
68 FR 117, 53861-53866
http://www.dol.gov/_sec/regs/fedreg/notices/2003023248.pdf
5. Department of Transportation
http://ori.dhhs.gov/documents/42_cfr_parts_50_and_93_2005.pdf
6. Department of Veterans Affairs
<http://ori.dhhs.gov/policies/documents/ViewPublication-VAMisconduct.pdf>
7. Environmental Protection Agency
<http://ori.dhhs.gov/documents/epapolicy.pdf>
8. National Aeronautics and Space Administration
14 CFR Part 275, 7/14/2004
<http://edocket.access.gpo.gov/2004/04-15432.htm>
9. National Endowment for the Humanities
<http://neh.gov/grants/guidelines/researchmisconduct.html>