

# What to Know When the NSF OIG Calls

National Science Foundation Office of Inspector General

ARIO Conference

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# Office of Inspector General (OIG)

- Independent office at each federal agency that:
  - Promotes economy, efficiency, and effectiveness . . .
  - Prevents and detects fraud, waste, and abuse . . .  
    . . . in agency programs and operations.
  - Has full access to records and subpoena power
  - Reports to head of agency (e.g., NSB) and Congress



*Council of the*  
**INSPECTORS GENERAL**  
*on INTEGRITY and EFFICIENCY*

# OIG works with NSF and research community

- We investigate allegations of:
  - Fraud, waste, and abuse
  - Research misconduct
  - Violations of law, regulation, directive, or policy
- We conduct audits:
  - Financial
  - Performance
- We invest in outreach:
  - Presentations
  - Briefings
- [www.nsf.gov/oig/outreach\\_all.jsp](http://www.nsf.gov/oig/outreach_all.jsp)



# NSF OIG Investigations

## Research Integrity and Administrative

- Regulatory and policy violations
- WB Retaliation

## Civil/Criminal (Program Integrity)

- False claims
- False statements
- Misuse of grant funds
- Theft/embezzlement



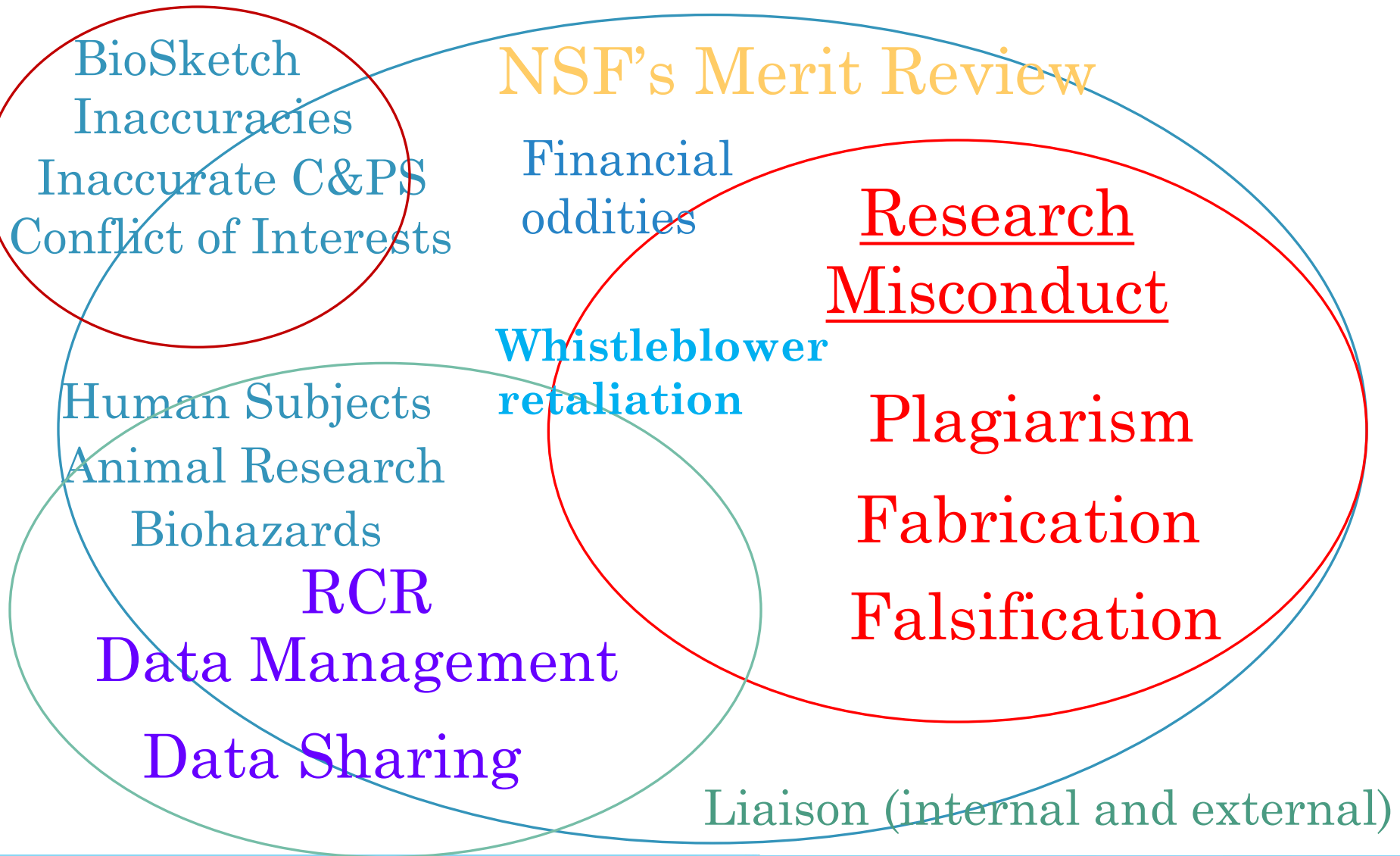
**OIG is delegated the responsibility for investigating RM allegations involving NSF programs.**

**Unique among the IG Community in that only IG with staff dedicated to addressing these allegations**

***Where does research integrity fit in?***

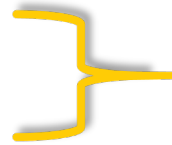


# Research Integrity & Admin Investigations



# The Basic RM Process (45 CFR Part 689)

- Allegations
- Inquiry
- Investigation
- Adjudication
- Appeal
- Final Decision



Institution Referral  
Process

If the allegation arises at the institution, and if the institution determines that an investigation is needed, then it **MUST** notify NSF.

- But we would not mind knowing at the inquiry stage

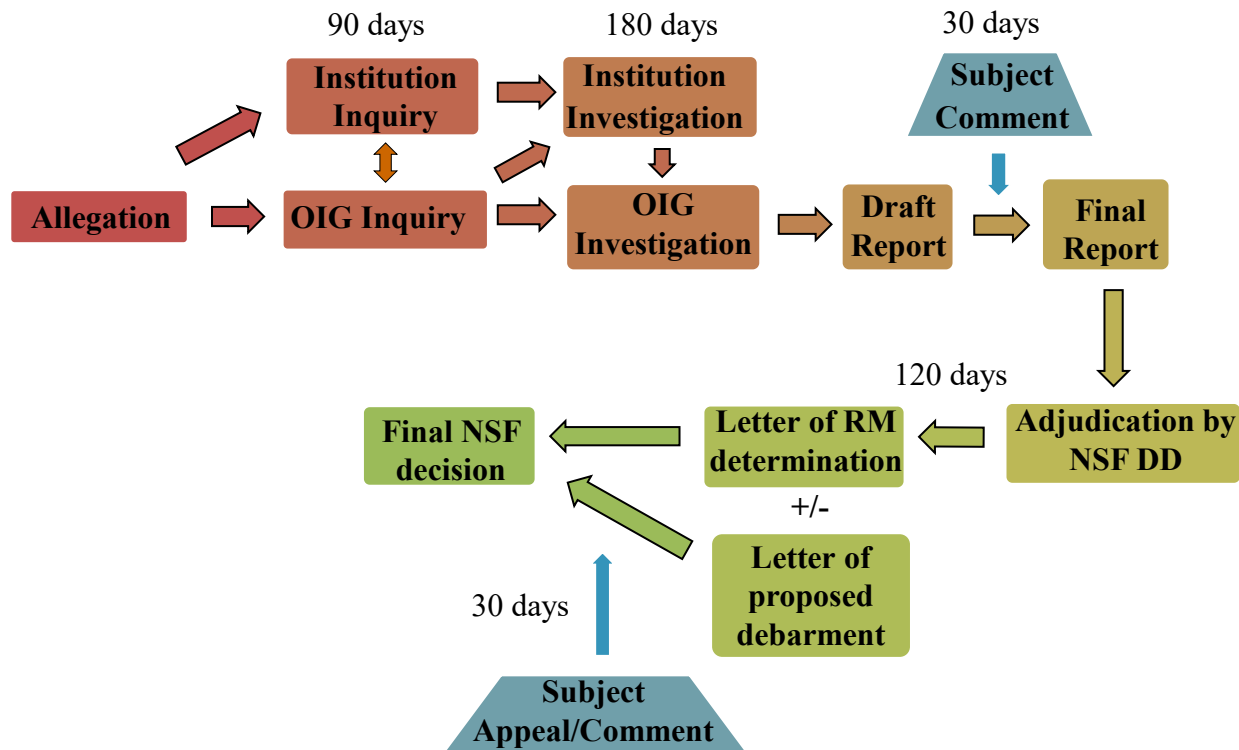
# The Inquiry/Investigation Process

- **Inquiry**: Confidential; establishes substance; 90 days; may close w/o institution ever knowing; potential QRP letter; data fabrication usually referred
- **Investigation**: Substantive matters referred unless institution conflicted; 180 days to complete; we use institution report as basis for our investigation; OIG investigation independent – additional 180 days; may come back to you to address unanswered questions
  - **Draft Report**: 30 days for comment
- **Adjudication** - Institution should act only to protect its interests; OIG makes recommendations to protect federal interests; NSF adjudicates, not OIG; 120 days
- **Appeal**: Director is final appeal; 30 days
- **Final Decision/Closeout**: all case closeout documents are available online  
<http://www.nsf.gov/oig/closeouts.jsp>



# NSF Research Misconduct Reg

45 C.F.R. Part 689 April 17, 2002





# Investigation Referral

Explains our inquiry and findings

Provides evidence we've gathered

Securing research records

Determination of RM

- Act, level of intent, significant departure, preponderance of the evidence

Additional Considerations

- Pattern, significant impact, RCR training

Your investigation report

- Transcripts, Supporting documents

Committee briefing



# Committee Briefing

Mode: In-person, videoconference, teleconference

Participants: Committee members, RIO/University officials, **University Counsel**

Discuss content of referral letter and address questions/concerns



# Elements of RM Finding

- 1) Does the act meet the definition?
- 2) Was it committed with a culpable intent?
- 3) Was the act a significant departure from accepted practices of the relevant research community?
- 4) Does a preponderance of the evidence prove it?

# Element: Definition

- Plagiarism: appropriation of another person's ideas, processes, results or words without giving appropriate credit
  - Verbatim, paraphrase, structural, conceptual, intellectual theft
  - QCR: Quotation, Citation, Reference
- Fabrication: making up data or results and recording or reporting them
  - Dream it, was going to do it, I know the results will look like this
- Falsification: manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record
  - Fudge it, alter it, swap one figure for another, adjust the equipment to get desired outcome



# Element: Intent

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No more careless; instead “honest error” non-culpable intent in RM reg

Element of RM finding: was act “culpable”?

Culpable comprises all degrees of intent (reckless, knowing, intentional (purposeful) necessary for a finding); excludes honest error

Not culpable	Culpable		
Honest Error	Reckless	Knowing	Intentional
Reasonable Person Standard No conscious awareness	Individual Standard Awareness of action		

# Element: Intent

- **Reckless:** Lacking proper caution; indifferent to the risk; lacking care about the consequences; reasonable person standard
- **Knowing:** Consciously; awareness of actions
- **Intentional:** Specific purpose; purposeful; willful

Not intent to deceive or motive; need to prove only intent to commit the Act

Same standard of proof: certainty not required – preponderance of evidence

Knowing degree of intent assumed for plagiarism (QCR)

<https://nsf.gov/oig/outreach/RM-intent.pdf>

# Element: Significant Departure

- Determine accepted practices of the relevant research community
  - University, academic department, discipline, journals



# Element: Preponderance of the Evidence

- Which way does the evidence tip the scales
- 51%





# Questions you might want to ask

- Is your RM policy current?
  - Is it > 10 years old and never been used?
- How does your policy link with other policies?
  - Consistent with Academic Misconduct policy?
- Do faculty understand the process?
- How does your policy handle an admission of guilt?
  - Do you get it in writing? With details?
- Is your GC involved?
  - Can be helpful explaining intent
- How do you secure evidence (particularly digital data)?
- Do you document interviews? Record? Transcribe?

# NSF OIG and ORI

- Responsible for intake/assessment of allegations
- Refer matters to university for investigation
- Make recommendations regarding administrative actions
- Work together on matters of joint jurisdiction

**But there are some subtle differences**

## **ORI**

- Negotiates Voluntary Exclusions (VE)
- Oversees grantee investigations
- Not a law enforcement agency
- Division of Education/Integrity
- Publishes all findings/VEs with names

## **NSF**

Refers exclusion requests to NSF OGC  
Ability to independently investigate  
LE agency with subpoena authority  
Search warrant capability  
Limited outreach by investigative staff  
All closeouts online but are redacted/anonymized

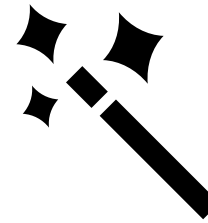


NSF OIG referred an investigation to me. What could possibly go wrong?



# Policy Issues

- Bibbidi! Bobbidi! Policy!

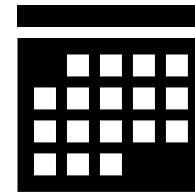


- I'm expected to read and know this thing!?

(Remember this person)

# Timeliness is Goodliness

- I'll get to this eventually...



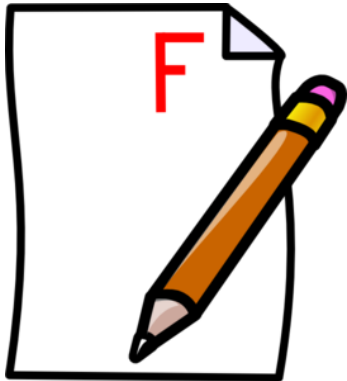
- I can take my time with this
- Maybe we should do an inquiry, too

# Let's Make This Go Away

- “I’m guessing you probably just...”
- “Let me ask that again because I think you meant...”
- I want to define RM this way instead (That person)
- You hired a lawyer?



# We Don't Need a Briefing



- Report lacks necessary information

- “He can figure out the meaning of reckless and knowing and whatever”



# Potpourri

- Student RM handled as academic misconduct
- Didn't interview Subject or relevant witnesses
- Just accepted the Subject's explanation
- Interviews not documented
- Inquiry=Investigation
- Mixed intents





# You Can't Make This Stuff Up

- The adjudicator was on the committee
- A minority and majority report
- The vigilante PI
- Pre-written admission
- The Subject taught ethics



# Whistleblower Protection



- A core value of OIG is protecting NSF employees, contractors, award recipients, and subrecipients who step forward to identify potential wrongdoing
- Federal law prohibits retaliation for providing information reasonably believed to evidence
  - a violation of law, rule, or regulation;
  - gross mismanagement;
  - gross waste of funds;
  - abuse of authority; or
  - a substantial and specific danger to public health and safety.

# Whistleblower Protection



- **NSF Federal employees** are protected if they make a whistleblower disclosure to the U.S. Office of Special Counsel, the OIG, or a supervisor
- **Employees of NSF contractors and award recipients (and subcontractors/subrecipients)** are protected if they make a whistleblower disclosure to their management, an OIG, or an official responsible for investigating misconduct
- **All of the above** are also protected for communications to Congress
- **Additional information** on Whistleblower Protection available at:
  - <http://www.osc.gov>
  - <http://www.nsf.gov/oig/whistleblower.jsp>

# Whistleblower Protection Ombudsman



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# Contact Information



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