

# RESEARCH MISCONDUCT POLICY

## NATIONAL ENDOWMENT FOR THE HUMANITIES

In accordance with the Federal Policy on Research Misconduct, published in the December 6, 2000, edition of the Federal Register, 65 Fed. Reg. 76,260, the National Endowment for the Humanities has established the following procedures for handling allegations of research misconduct applicable to both internal and external research programs supported by NEH. Published in November 2001, this policy reflects NEH's interest in the accuracy and reliability of the research record and the processes involved in its development. As defined in the Federal Policy on Research Misconduct, research includes all basic, applied, and demonstration research.

### I. Definition of Research Misconduct

- Research misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.
- Fabrication is making up data or results and recording or reporting them.
- Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record [i.e. the record of data or results that embody the facts emerging from the research, and includes, but is not limited to, research proposals, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and books].
- Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- Research misconduct does not include honest error or differences of opinion.

### II. Findings of Research Misconduct

A finding of research misconduct requires that:

- there be a significant departure from accepted practices of the relevant research community (i.e. the humanities, social sciences, or scientific research community);
- the misconduct be committed intentionally, or knowingly, or recklessly; and
- the allegation be proven by a preponderance of evidence.

### III. Responsibility for Inquiry, Investigation, and Adjudication of Allegations of Research Misconduct

NEH and NEH grantees are partners who share responsibility for the research process. The term "grantee" here is defined to include all organizations or individuals that are recipients of an NEH grant or fellowship. NEH has ultimate oversight authority for NEH funded research, but NEH institutional grantees bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to

have occurred in association with their own institutions.

#### **IV. Phases of the Response to an Allegation of Research Misconduct**

A response to an allegation of research misconduct will usually consist of several phases, including:

1. an inquiry--the assessment of whether the allegation has substance and if an investigation is warranted;
2. an investigation--the formal development of a factual record, and the examination of that record leading to dismissal of the case or to a recommendation for a finding of research misconduct or other appropriate remedies;
3. adjudication, during which recommendations are reviewed and appropriate corrective actions determined.

After an inquiry or during an institutional or NEH investigation the Deputy Chairman, in consultation with the Inspector General, the General Counsel, the director of the relevant division and the director of the Office of Grant Management, may order that interim actions be taken to protect NEH resources or to guard against continuation of suspected or alleged misconduct.

#### **V. Procedures for Inquiry and Investigation**

1. Upon receiving an allegation of research misconduct on the part of an applicant, a recipient of an NEH grant, a participant in an NEH-supported project, a panelist or reviewer, or an NEH employee, an NEH staff member should notify the director of the relevant division or office, the director of the Office of Grant Management, and the Inspector General. The Inspector General shall take the lead in responding to allegations of research misconduct.
2. The Inspector General in most cases will refer the allegation of research misconduct made directly to NEH to the appropriate grantee institution and will rely on the grantee institution to make the initial response to allegations of research misconduct. At any time, however, NEH may proceed with its own inquiry or investigation. Circumstances in which NEH may elect not to defer to the grantee institution include, but are not limited to, the following: the agency determines the grantee institution is not prepared to handle the allegation in a manner consistent with this policy; agency involvement is needed to protect the public interest; or the allegation involves an entity of sufficiently small size (or an individual) that it cannot reasonably conduct the investigation itself. Such decisions will be made by the Inspector General after consultation with the division director and the director of the Office of Grant Management.
3. When other Federal agencies are involved in funding activities relevant to the allegation, a lead agency should be designated to coordinate responses to allegations of research misconduct. Each agency may implement administrative actions in accordance with applicable laws, regulations, policies, or contractual procedures.
4. Inquiry and Investigation
  - a. *Inquiry and investigation conducted by the grantee institution*

- If the allegation is first made to the grantee institution, the grantee institution will notify NEH (and other agencies in some cases) of an allegation of research misconduct if (1) the allegation involves NEH-funded research (or an application for NEH funding) and meets the Federal definition of research misconduct given above, and (2) if the institution's inquiry into the allegation determines there is sufficient evidence to proceed to an investigation.
- When referring an inquiry or investigation to a grantee institution, the Inspector General should require that the grantee institution provide a copy of the policy under which it will conduct the inquiry and investigation and the curriculum vitae of each person who is conducting the inquiry and/or investigation. The curricula vitae should be reviewed in consultation with the Office of General Counsel for indicators of possible conflicts of interest.
- At any time during an inquiry or investigation, the grantee institution will immediately notify the NEH if resources or interests are threatened; if public health or safety is at risk; if research activities should be suspended; if there is reasonable indication of possible violations of civil or criminal law; if NEH action is required to protect the interests of those involved in the investigation; if the grantee institution believes the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved; or if the research community or public should be informed.
- When an investigation is complete, the grantee institution will forward to the NEH Inspector General a copy of the evidentiary record, the investigative report, recommendations made to the institution's adjudicating official, and the subject's written response to the recommendations (if any). The report should contain an explanation of the methods and procedures employed as well as a full explanation of the findings, recommendations, and conclusions of the investigation.
- When a grantee institution completes the adjudication phase, it will forward the adjudicating official's decision and basis and notify the NEH Inspector General of any corrective actions taken or planned. If, as a result of the investigation's findings, the institution takes action against anyone, it should provide the name and title of the person(s) who imposed the action and copies of documents detailing how the action was implemented.
- After reviewing the record of an investigation conducted by a grantee institution, the grantee institution's recommendations to the grantee institution's adjudicating official, and any corrective actions taken by the grantee institution, the NEH Inspector General will take additional oversight or investigative steps if necessary. The Inspector General will forward copies of his recommendation regarding the outcome of the institutional investigation along with relevant documents, including the grantee institution's response (provided that the misconduct is not criminal in nature), to the director of the Office of Grant Management, the director of the affected division, and if a finding of misconduct is found, to the General Counsel

*b. Inquiry and investigation conducted by NEH*

- To assure objectivity and expertise, the Inspector General in consultation with the director of the relevant division shall select individuals to review allegations and

conduct investigations who have appropriate expertise and have no unresolved conflicts of interests in order to help to ensure fairness throughout all phases of the process.

- o Upon completion of the investigation, the Inspector General will submit a report to the Deputy Chairman with a recommendation for a finding of misconduct, if warranted, with copies to the director of the relevant division and the director of the Office of Grant Management, and if a finding of misconduct is recommended, to the General Counsel.

## **VI. Notification of the subject of the allegation**

Before NEH makes any finding of misconduct or takes any action on such a finding, the NEH Inspector General will, in timely fashion, notify subjects in writing regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct (if any). Before initiating discussion with the subject, the Inspector General should inform the subject about his or her rights under the Privacy Act or other administrative rights as appropriate.

## **VII. Procedures for Adjudication and Appeal**

1. If there is a recommendation for a finding of misconduct, the Deputy Chairman in consultation with the General Counsel, the director of the relevant division and the director of the Office of Grant Management will review the recommendations of the Inspector General and determine the appropriate administrative actions in accordance with applicable laws, regulations, or policies.
2. In deciding what administrative actions are appropriate, NEH should consider the seriousness of the misconduct, including, but not limited to, the degree to which the misconduct was knowing, intentional, or reckless; was an isolated event or part of a pattern; or had significant impact on the research record, research subjects, other researchers, institutions, or the public welfare.
3. Administrative actions available include, but are not limited to, appropriate steps to correct the research record; letters of reprimand; the imposition of special certification or assurance requirements to ensure compliance with applicable regulations or terms of an award; suspension or termination of an active award; or suspension and debarment in accordance with applicable NEH and government-wide rules on suspension and debarment. In the event of suspension or debarment, the information is made publicly available through the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the U.S. General Services Administration. With respect to administrative actions imposed upon government employees, the agencies must comply with all relevant federal personnel policies and laws. If the NEH Inspector General believes that criminal or civil fraud violations may have occurred, the Inspector General shall promptly inform the Department of Justice.
4. When NEH has made a decision, it will notify the subject of the allegation of the outcome and inform the grantee regarding its disposition of the case. NEH's finding of research misconduct and agency administrative actions can be appealed to the Chairman in writing within 30 calendar days following receipt of the agency decision. The agency decision

becomes a final administrative action if it is not appealed within the 30-day period. The request for review must contain a full statement of the subject's position and the pertinent facts and reasons that support such a position. The Chairman will promptly acknowledge the request for review and appoint a review committee of at least three staff members with relevant expertise and without any conflicts of interest who have not been previously involved in the matter. The committee will have full access to all relevant NEH background materials. The committee may also request the submission of additional information from the subject, NEH staff, or the Inspector General and, at its discretion, may meet with representatives of these groups to discuss the pertinent issues. All review activities will be fully documented by the committee. Based on its review, the committee will present its written recommendation to the Chairman, who will make the final decision and advise the parties concerned.

### **VIII. Closing of the Case**

A closeout document that explains the actions taken to assess the allegation and the conclusions should be placed in the investigation file, which is maintained in accordance with the Privacy Act and agency policies and which is subject to the Freedom of Information Act.

### **IX. Timeliness**

The inquiry, investigation, adjudication, and appeal phases (if any) should be conducted within six months of the initial receipt of the allegation, with allowances for extensions where appropriate.

### **X. Safeguards for Informants**

Safeguards for informants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as informants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for informants who make good faith allegations, fair and objective procedures for the examination and resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith.

### **XI. Safeguards for Subjects of Allegations**

Safeguards for subjects give individuals the confidence that their rights are protected and that the mere filing of an allegation of research misconduct against them will not bring their research or NEH review of a research proposal to a halt or be the basis for other disciplinary or adverse action absent other compelling reasons. Such safeguards include the right to prompt written notification to the individual or institution to be investigated, unless notification would prejudice the investigation or unless a criminal investigation is underway or under active consideration. If notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law enforcement policies. If a proposal by a subject of an allegation is pending, to avoid influencing reviews, reviewers or panelists will not be informed of allegations or of ongoing inquiries or investigations.

### **XII. Confidentiality During the Inquiry, Investigation, and Decision-Making Processes**

To the extent possible consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and informants is limited to those who need to know. Records maintained or created by the agency during the course of responding to an allegation of research misconduct are exempt from disclosure under the Freedom of Information Act to the extent permitted by law and regulation.