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(i) If the seriousness of apparent misconduct warrants;

(ii) If immediate health hazards are involved;

(iii) If NSF's resources, reputation, or other interests need protecting;

(iv) If Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or

(v) If the scientific community or the public should be informed.

(4) Provide NSF with the final report from any investigation.

(c) If an institution wishes NSF to defer independent inquiry or investigation, it should complete any inquiry and decide whether an investigation is warranted within 90 days. It should similarly complete any investigation and reach a disposition within 180 days. If completion of an inquiry or investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(d) Awardee institutions should maintain and effectively communicate to their staffs appropriate policies and procedures relating to misconduct, which should indicate when NSF must or should be notified.

§ 689.4 Initial NSF handling of misconduct matters

(a) NSF staff who learn of alleged misconduct will promptly and discreetly inform OIG or refer informants to OIG.

(b) To the extent possible the identity of informants who wish to remain anonymous will be kept confidential. To the extent allowed by law, documents and files maintained by NSF during the course of an inquiry or investigation of misconduct will be treated as investigative files exempt from mandatory public disclosure upon request under the Freedom of Information Act.

(c) If alleged misconduct may involve a crime, OIG will determine whether any criminal investigation is already pending or projected. If not, OIG will determine whether the matter should be referred to the Department of Justice.

(d) Otherwise OIG may:

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(1) Inform the awardee institution of the alleged misconduct and encourage it to undertake an inquiry;

(2) Defer to inquiries or investigations of the awardee institution or of another Federal agency;

(3) At any time proceed with its own inquiry.

(e) If OIG proceeds with its own inquiry it will normally complete the inquiry no more than 60 days after initiating it.

(f) On the basis of what it learns from an inquiry and in consultation as appropriate with other NSF offices, OIG will decide whether a formal NSF investigation is warranted.

§ 689.5 Investigations.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, OIG may defer an NSF inquiry or investigation until it receives the results of that external investigation. If it does not receive the results within 180 days, OIG will ordinarily proceed with its own investigation.

(b) If OIG decides to initiate an NSF investigation, it must give prompt written notice to the individual or institutions to be investigated, unless notice 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.

(c) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is underway or under active consideration by these agencies or the NSF, OIG will determine what information, if any, may be disclosed to the subject of the investigation or to other NSF employees.

(d) An NSF investigation may include:

(1) Review of award files, reports, and other documents already readily available at NSF or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

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(3) Interviews with parties or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies;

(6) Opportunity for the subject of the investigation to be heard; and

(7) Full adjudicatory hearings or other formal proceedings, as described in appropriate regulations.

(e) NSF may invite outside consultants or experts to participate in an NSF investigation. They should be appointed in a manner that ensures the official nature of their involvement and provides them with legal protections available to federal employees.

(f) OIG will make every reasonable effort to complete an NSF investigation and to report within 120 days after initiating it. If OIG cannot report within 120 days, it should submit to the Deputy Director within 90 days an interim report and an estimated schedule for completion of the final report.

§ 689.6 Pending proposals and awards.

(a) Upon learning of alleged misconduct OIG will identify potentially implicated awards or proposals and when appropriate, will ensure that program, grant, and contracting officers handling them are informed (subject to § 689.5(c)).

(b) Neither a suspicion or allegation of misconduct nor a pending inquiry or investigation will normally delay review of proposals. To avoid influencing reviews, reviewers or panelists will *not* be informed of allegations or of ongoing inquiries or investigations. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Assistant Director may, in consultation with OIG, either defer review or inform reviewers of the status of the matter.

[56 FR 22287, May 14, 1991, as amended at 59 FR 37438, July 22, 1994]

§ 689.7 Interim administrative actions.

(a) After an inquiry or during an external or NSF investigation the Deputy Director may order that interim actions (as described in § 689.2(c)) be taken to protect Federal resources or

to guard against continuation of any suspected or alleged misconduct. Such an order will normally be issued on recommendation from OIG and in consultation with the Division of Contracts, Policy, and Oversight or Division of Grants and Agreements, the Office of the General Counsel, the responsible Directorate, and other parts of the Foundation as appropriate.

(b) When suspension is determined to be appropriate, the case will be referred to the suspending official pursuant to 45 CFR 620.410(a), and the suspension procedures of 45 CFR part 620 will be followed, but the suspending official (see § 620.105(t)) will be either the Deputy Director or an official designated by the Deputy Director.

(c) Such interim actions may be taken whenever information developed during an investigation indicates a need to do so. Any interim action will be reviewed periodically during an investigation and modified as warranted. An interested party may request a review and modification of any interim action.

(d) The Deputy Director will make and OIG will retain a record of interim actions taken and the reasons for taking them.

(e) Interim administrative actions are not final agency actions subject to appeal.

[56 FR 22287, May 14, 1991, as amended at 59 FR 37439, July 22, 1994]

§ 689.8 Dispositions.

(a) After receiving a report from an external investigation by an awardee institution or another Federal agency, OIG will assess the accuracy and completeness of the report and whether the investigating entity followed usual and reasonable procedures. It will either recommend adoption of the findings in whole or in part or, normally within 30 days, initiate a new investigation.

(b) When any satisfactory external investigation or an NSF investigation fails to confirm alleged misconduct and the Deputy Director concurs,

(1) OIG will notify the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.