

§ 93.408

components, including, but not limited to ORI, the Office of Inspector General, the PHS funding component, and the debarring official.

§ 93.408 Mitigating and aggravating factors in HHS administrative actions.

The purpose of HHS administrative actions is remedial. The appropriate administrative action is commensurate with the seriousness of the misconduct, and the need to protect the health and safety of the public, promote the integrity of the PHS supported research and research process, and conserve public funds. HHS considers aggravating and mitigating factors in determining appropriate HHS administrative actions and their terms. HHS may consider other factors as appropriate in each case. The existence or nonexistence of any factor is not determinative:

(a) *Knowing, intentional, or reckless.* Were the respondent's actions knowing or intentional or was the conduct reckless?

(b) *Pattern.* Was the research misconduct an isolated event or part of a continuing or prior pattern of dishonest conduct?

(c) *Impact.* Did the misconduct have significant impact on the proposed or reported research record, research subjects, other researchers, institutions, or the public health or welfare?

(d) *Acceptance of responsibility.* Has the respondent accepted responsibility for the misconduct by—

- (1) Admitting the conduct;
- (2) Cooperating with the research misconduct proceedings;

(3) Demonstrating remorse and awareness of the significance and seriousness of the research misconduct; and

(4) Taking steps to correct or prevent the recurrence of the research misconduct.

(e) *Failure to accept responsibility.* Does the respondent blame others rather than accepting responsibility for the actions?

(f) *Retaliation.* Did the respondent retaliate against complainants, witnesses, committee members, or other persons?

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(g) *Present responsibility.* Is the respondent presently responsible to conduct PHS supported research?

(h) *Other factors.* Other factors appropriate to the circumstances of a particular case.

§ 93.409 Settlement of research misconduct proceedings.

(a) HHS may settle a research misconduct proceeding at any time it concludes that settlement is in the best interests of the Federal government and the public health or welfare.

(b) Settlement agreements are publicly available, regardless of whether the ORI made a finding of research misconduct.

§ 93.410 Final HHS action with no settlement or finding of research misconduct.

When the final HHS action does not result in a settlement or finding of research misconduct, ORI may:

(a) Provide written notice to the respondent, the relevant institution, the complainant, and HHS officials.

(b) Take any other actions authorized by law.

§ 93.411 Final HHS action with settlement or finding of research misconduct.

When a final HHS action results in a settlement or research misconduct finding, ORI may:

(a) Provide final notification of any research misconduct findings and HHS administrative actions to the respondent, the relevant institution, the complainant, and HHS officials. The debarring official may provide a separate notice of final HHS action on any debarment or suspension actions.

(b) Identify publications which require correction or retraction and prepare and send a notice to the relevant journal.

(c) Publish notice of the research misconduct findings.

(d) Notify the respondent's current employer.

(e) Take any other actions authorized by law.