

NIH POLICY MANUAL

1754 - REPORTING ALLEGATIONS OF CRIMINAL OFFENSES, MISUSE OF NIH GRANT AND CONTRACT FUNDS, OR IMPROPER CONDUCT BY AN NIH EMPLOYEE

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1. **Explanation of Material Transmitted:** This chapter describes NIH policies and procedures for reporting allegations of improper conduct by NIH employees, NIH grantees and contractors, or others doing business with NIH.
2. **Filing Instructions:**

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- Content of this chapter, contact the issuing office listed above.
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All NIH employees have a responsibility to assist in efforts to combat fraud, waste, and abuse in all NIH programs and to report such matters to the appropriate official following the procedures described in Section F. *Standard Procedures for Reporting Allegations*. They should identify activities that they believe are criminal or improper and report them appropriately. Employees of NIH contractors are required to assist in efforts to combat fraud, waste, and abuse in all NIH programs and to report such matters to the appropriate official following the procedures described in Section F, to the extent these responsibilities are specified in the terms of the contract. Employees of NIH grantee organizations who become aware of real or apparent fraud, abuse, and waste of PHS financial assistance funds are encouraged to report them to the HHS Inspector General's Office (OIG) at the number provided below, as stated in the *NIH Grants Policy Statement*.

- The HHS OIG Hotline at 800-HHS-TIPS (447-8477) or HHSTips@oig.hhs.gov

Allegations of improper conduct (see Section E for definitions) should be reported to:

- The Office of Management Assessment (OMA), NIH, at 301-496-5586 or 301-496-1873 or manuals@od.nih.gov

Employees may confer with OMA at any time for advice on reporting allegations.

NIH employees or components may not attempt to investigate such matters. It is the responsibility of the OIG or OMA to review issues over which they have appropriate authority and to refer other issues to the appropriate component for investigation.

All hard copy or electronic records (including e-mail messages and attachments) created while conducting official Government business are the property of the U.S. Government. NIH employees are required to provide these records to the OIG or OMA if requested as part of an official investigation or review and to the Office of Legislative Policy and Analysis (OLPA) if such records respond to congressional requests. Contractor and grantee organizations are required to provide the OIG and OMA access to their records, pursuant to contract and grant regulations.

Any questions regarding this chapter should be addressed to OMA at the telephone numbers provided above.

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A. Purpose:

This chapter describes National Institutes of Health (NIH) policies and procedures for reporting allegations of improper conduct by NIH employees, NIH grantees and contractors, or others doing business with NIH.

This chapter also provides an overview of the process the Office of Management Assessment (OMA) uses to review allegations of misconduct by NIH employees, NIH grantees and contractors, and others doing business with NIH. These reviews are an important component of NIH oversight of internal and external programs and operations, especially for the prevention of fraud, waste, abuse, mismanagement, and conflict of interest.

B. Scope:

Allegations covered by this chapter may include but are not limited to (1) criminal and civil offenses against the United States, (2) misuse of NIH grant and contract funds and grantee or contractor conflict of interest, and (3) misuse of funds and other misconduct or improper performance of assigned duties by NIH employees.

This chapter does not cover procedures for handling matters related to loyalty and security, employee grievances, hiring practices, equal employment opportunity complaints (including sexual harassment complaints), classification appeals, or other matters for which a formal Government-wide review system has been established. It does not cover allegations of research misconduct, human research protections, or laboratory animal welfare. Also, this chapter does not cover issues of security, property theft, and personal safety on the NIH Campus, which should be reported to the NIH Police.

C. Policy:

1. Responsibility for Reporting Allegations.

a. NIH Employees.

- (1) All NIH employees have a responsibility to assist in efforts to combat fraud, waste, and abuse in all NIH programs, including responsibility for identifying and questioning activities that they believe are wrong and improper. They have the responsibility to report such matters to the appropriate official following the procedures described in Section F, *Standard Procedures for Reporting Allegations*. Chapter 5-10 of the *HHS General Administration Manual* and the *HHS Standards of Conduct*, 45 C.F.R. Part 73 Subpart M, set

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out in relevant part at Section F, describe employee responsibilities for reporting possible criminal violations and allegations of misconduct.

- (2) All NIH employees are responsible for providing all records (hard copy and electronic, including e-mail messages and attachments) if these records are requested by their supervisors, OMA, or the OIG as part of an official review or investigation. NIH employees are required to provide records to the OLPA that respond to congressional requests.
 - (3) All NIH management and supervisory personnel are responsible for fostering an organizational culture of integrity that provides a foundation for ensuring that fraud detection and prevention are active elements of a system of internal control to prevent, deter, and detect fraud.
- b. Employees of NIH contractors have a responsibility to assist in efforts to combat fraud, waste, and abuse in programs supported by NIH and have the responsibility to report such matters to the appropriate official according to Section F of this chapter, to the extent required under the terms of the contract.
 - c. Employees of NIH grantee organizations are encouraged to report real or apparent fraud, waste, and abuse of Public Health Service (PHS) financial assistance funds to the Department of Health and Human Services (HHS) OIG in writing or to the OIG Hotline, as stated in Section F or in the *NIH Grants Policy Statement*, Part III (12/03), *Points of Contact* at http://grants1.nih.gov/grants/policy/nihgps_2003/NIHGPs_Part14.htm.
 - d. Private citizens may also report allegations of fraud, waste, and abuse to OMA or the OIG at the addresses provided in Section F.
2. Responsibility of the OIG. The OIG is responsible for investigating allegations of wrongdoing it receives or for referring allegations to the appropriate operating division, staff division, the Assistant Secretary for Administration and Management/OS, or another law enforcement agency. (The OIG has authority to investigate criminal matters; both the OIG and OMA have authority to review misuse of NIH grant and contract funds, NIH grantee and contractor conflict of interest, and improper employee conduct.)
 3. Responsibility of the Office of Management Assessment. Within NIH, OMA is responsible for reviewing allegations of misuse of NIH grant and contract funds, NIH grantee and contractor conflict of interest, improper employee conduct (see E.3, *Improper Conduct*), violations of HHS grant or contract regulations or policy that are not directly tied to misuse of funds, and issues referred to OMA by the OIG when

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- prosecutive or civil action has been declined or when the OIG plans no further investigation.
4. **Dual Involvement in Investigations/Reviews.** In some cases, the same or related allegations may be reported to more than one organization for action. In these cases, the organization discovering the dual involvement should notify the other organization(s) involved as soon as possible to avoid confusion and duplicative information gathering efforts.
 5. **Confidentiality.** Persons contacting either the OIG or OMA may choose to remain anonymous. If the person reporting the allegation decides not to remain anonymous but requests that his or her identity be kept confidential, the OIG, OMA, and others in the chain of command at NIH are responsible for maintaining the confidentiality, to the greatest possible extent, of the source of the allegation. However, NIH must provide any information or documents requested by a congressional committee. NIH can request that information provided to Congress exclude or protect the identity of individuals.
 6. **Prohibition Against Reprisals.** Any NIH employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take, threaten to take, or fail to take any personnel action against any employee for making a complaint or providing any information pursuant to this chapter. No NIH employee shall subject another employee to harassment or take any action against that employee as reprisal for making a complaint or providing any information pursuant to this chapter. If the complaint was made or the information was disclosed with the knowledge that it was false, or with willful disregard for its truth or falsity, any action against the employee based on those reasons would not constitute a reprisal action.
 7. **Making a False Allegation.** Any employee who knowingly makes a false allegation or displays willful disregard for the truth or falsity of an allegation shall be subject to appropriate disciplinary action and may be subject to prosecution under criminal law, 18 U.S.C. Section 1001, for making a false statement regarding a matter. Use the link <https://my.nih.gov/portal/server.pt?space=CommunityPage&control=SetCommunity&CommunityID=839> to contact your Servicing Personnel Office for assistance in taking any adverse action.
 8. **Cooperation with Reviews.** NIH employees, supervisors, management officials, grantees, contract employees, and any others doing business with NIH shall cooperate fully with the OIG and OMA during the conduct of any review or investigation.

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D. References:

1. HHS *General Administration Manual*, Chapter 5-10, *Responsibility and Procedures for Reporting Misconduct and Criminal Offenses*;
2. *NIH Grants Policy Statement*, Part II (12/03), *Terms and Conditions of NIH Grant Awards*, Subpart A, *General, Administrative Requirements, Management Systems and Procedures*;
3. Whistleblower Protection Act, 5 U.S.C. 2302;
4. Freedom of Information Act, 5 U.S.C. 552;
5. Privacy Act, 5 U.S.C. 552a;
6. Privacy Act System Notice: 09-25-0213, *Administration: Employee Conduct Investigative Records*, HHS/NIH/OM/OA/OMA, covers records relating to correspondence concerning individual's employment status or conduct while employed by or working at NIH;
7. Section 402(b)(1) of the Public Health Service Act, 42 U.S.C. 282(b)(1), covers the authority of the Director, NIH, to establish and implement general policies for management and operations of programs and activities within the NIH;
8. Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635;
9. HHS Standards of Conduct, 45 C.F.R. part 73;
10. Supplemental Standards of Ethical Conduct for Employees of the Department of Health and Human Services, 5 C.F.R. part 5501 and 5502;
11. 45 C.F.R. 74.53(e) covers the authority for OMA to obtain access to records of NIH grantees and interview grantee personnel; and
12. Federal Acquisition Regulation, 48 C.F.R. Section 52.215-2, covers the authority for OMA to obtain access to records of NIH contractors.

E. Definitions:

As used in this chapter:

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1. **Criminal Offenses** include, but are not limited to, bribery; fraud; conflicts of financial interest; embezzlement; certain misuse of funds, equipment, and facilities; perjury; and other violations of criminal law by NIH employees, grantees, contractors, or others doing business with NIH.
2. **Misuse of Grant and Contract Funds and Other Violations** include any unauthorized or inappropriate use of grant or contract funds that violate federal grant or contract regulations, HHS and/or NIH grants or contracts policy, or the terms of the award, and violations of grant or contract regulations or policy that are not directly tied to misuse of funds.
3. **Improper Conduct**, which does not include criminal offenses as defined above, includes the performance of one's assigned duties in a manner that purposely contributes to the abuse or waste of the taxpayers' money, is injurious to the integrity of the HHS or the NIH, or is contrary to the standards of conduct established by HHS and the Office of Government Ethics (OGE) or established personnel practices and policies.
4. **Administrative Offenses** are those incidents of improper conduct that affect performance of official duties which can and should be addressed directly by supervisors with the assistance of their servicing personnel office. Administrative offenses, which may be a single or recurring incident, include but are not limited to:
 - a. leave abuse and other attendance-related offenses such as tardiness and absence without leave;
 - b. use of intoxicants or substance abuse that affects performance of official duties;
 - c. negligent performance of, or failure to attend to, duties;
 - d. insubordinate behavior and failure to follow instructions;
 - e. discourteous behavior and offensive or abusive conduct; and
 - f. fighting.

F. Standard Procedures for Reporting Allegations:

1. Allegations of criminal offenses. Pursuant to Chapter 5-10 of the HHS General Administration Manual (Sections 5-10-20.B), every employee, supervisor, and management official shall report any allegations of criminal offenses to the OIG, unless it is clear that the allegation is frivolous and has no basis in fact. The allegation must be reported to:

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- a. Department of Health and Human Services, OIG Hotline
Phone: 1-800-HHS-TIPS (1-800-447-8477)
Fax: 1-800-223-8164
TTY: 1-800-377-4950
E-mail: HHSTips@oig.hhs.gov
Mail: Office of Inspector General
Department of Health and Human Services
Attn: HOTLINE
330 Independence Ave., SW
Washington, DC 20201

Because the OIG has authority within HHS to conduct criminal investigations, OMA refers all allegations of criminal offenses to the OIG for investigation. OMA has no authority to undertake criminal investigations. However, employees may confer with OMA at any time for advice and to determine whether allegations are criminal or not.

Persons reporting should provide a summary of the allegation and, if possible, supporting documentation. Persons making reports are encouraged to assist the OIG by providing information on how they can be contacted for additional information, but may choose to remain anonymous.

2. Allegations of non-criminal misuse of grant or contract funds, grantee or contractor conflict of interest, or improper employee conduct shall be reported to:
 - a. The Office of Management Assessment
Phone: 301-496-5586 or 301-496-1873
Fax: 301-402-0548
By letter: Director, Office of Management Assessment, OM
National Institutes of Health
6011 Executive Blvd., Suite 601
Rockville, MD 20892-7669

Allegations involving senior NIH officials or OMA staff may also be reported to the OIG.

3. Allegations of administrative offenses shall be reported to the appropriate supervisor, a higher-level management official within the organization, or OMA.

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G. OIG Review of Allegations:

1. OIG Authority for Investigating Allegations
 - a. The Deputy Inspector General for Investigations (DIGI), who heads the Office of Investigations, has been designated by the Secretary and the IG, as prescribed by Appendix 3 of Title 5, United States Code:
 - (1) to provide liaison for the Department with the Attorney General and staff on all investigative matters; and
 - (2) to conduct investigations of alleged cases of criminal wrongdoing by HHS employees, grantees, contractors, and other persons doing business with the Department.
 - b. The authority of the Office of Investigations includes authority to undertake or authorize others to undertake such investigations without the prior approval of higher officials. The authority does not include investigations of matters related to loyalty and security; employee grievances; equal employment opportunity complaints, including sexual harassment; employee civil rights; tort claims; and similar administrative activities that are under the jurisdiction of other HHS offices.
2. OIG Investigations of Allegations
 - a. Investigation/Referral of Allegations Received by the OIG. All allegations involving criminal offenses against the United States by NIH employees or agents will be sent to the OIG for review, whether they are submitted directly by the person making the allegation or forwarded by OMA. Depending on its assessment of the nature of the allegations it receives, the OIG may decide to conduct an investigation or to refer the allegation to OMA for further action.
 - (1) When the OIG investigates the allegation and finds reasonable grounds to determine that an NIH employee or contractor, grantee, or other person doing business with NIH has committed a criminal offense, the OIG promptly notifies the United States Attorney for the district in which the alleged violation occurred; the Criminal Division, Department of Justice; or the Federal Bureau of Investigation.

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- (2) The OIG may refer allegations of criminal activity to OMA/NIH for action under the following conditions:
 - (a) Prosecutive action has been declined, and the OIG plans no further investigation of the criminal issue.
 - (b) After reviewing the allegation, the OIG determines that it will not investigate the issue but that NIH should address the allegation or related issues. OMA will either review the issue as an administrative matter or forward it to the appropriate NIH component for review; in either case, OMA will report the final disposition of the case to the OIG.
 - (c) A criminal investigation is ongoing, and administrative action is also being considered.
- b. NIH Cooperation with the OIG. All NIH employees shall cooperate fully with the OIG in reporting, conducting, and assisting with reviews of alleged criminal offenses. OMA promptly reports to the OIG alleged violations of law by NIH employees and agents.
- c. NIH Administrative Action During an OIG Investigation.
 - (1) Whenever the OIG informs NIH, through OMA, that it has initiated an investigation of a grantee, a contractor, an employee of a grantee or contractor, or an individual doing business with the Department, NIH may wish to initiate administrative actions. This is a programmatic decision and must be made in the best interests of the Government and the individuals concerned. Program decisions to suspend, limit, or terminate funds must be made on the basis of available facts, impact on the program, potential loss to the Government, and judgment as to the validity of the allegation.

When a criminal investigation is ongoing and administrative action is being considered apart from the criminal investigation, the official considering the administrative action must consult with the OIG before implementing such action. The OIG will assess what effect the proposed administrative action might have on the criminal investigation and advise NIH accordingly.
 - (2) Whenever the OIG informs NIH, through OMA, that it has initiated an investigation of an NIH employee, NIH may wish to initiate administrative actions (contact your servicing personnel office for assistance in taking any

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adverse action). OMA will ensure that consultation takes place with the OIG before NIH implements such action.

3. OIG Report Process. When the OIG conducts an investigation, it will determine whether the findings require additional administrative action. Where appropriate, the OIG will inform the head of the operating division or staff division, the Secretary, or other Department officials of the findings. Such reports will be in writing.

H. OMA Review of Allegations of Misuse of NIH Grant and Contract Funds and NIH Employee Misconduct:

1. OMA Authority for Reviewing Allegations of Misuse of NIH Grant and Contract Funds and Improper Conduct by NIH Employees. OMA is responsible for reviewing non-criminal allegations of improper employee conduct, misuse of grant or contract funds, and grantee/contractor conflict of interest related to NIH programs and activities, and may receive such allegations directly or from NIH employees, other NIH components, private citizens, the Office of Research Integrity, the OIG, other federal agencies, or Congress.
 - a. General authority for OMA to conduct reviews of allegations of improper conduct by NIH employees is provided by section 402(b)(1) of the Public Health Service Act, 42 U.S.C. 282(b)(1), which authorizes the Director, NIH, to establish and implement general policies for the management and operation of programs and activities within NIH. See also 42 U.S.C. section 282(b)(11).
 - b. OMA's authority to conduct reviews of NIH grantees is set forth in 45 C.F.R. section 74.53(e). This section provides that HHS awarding agencies, the HHS Inspector General, the U.S. Comptroller General, or any of their duly authorized representatives, "have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts, and copies of such documents." This right also includes "timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents."
 - c. OMA's authority to conduct review of NIH contractors is set forth in 48 C.F.R. section 52.215-2 or the terms of the contract. 48 C.F.R. section 52.215-2 provides that contractors, for contracts that are cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable, or any combination of these, are required to maintain, and the Contracting Officer or an authorized representative has "the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be

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incurred directly or indirectly in performance of this contract.” This right of examination shall include “inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.”

2. OMA Review of Allegations.

- a. Review/Referral of Allegations Received by OMA. OMA will promptly assess the allegations and decide whether a review is warranted and who should conduct the review. Although OMA conducts most reviews with staff from its Division of Program Integrity, OMA refers the following:
 - (1) Allegations of criminal activity, fraud, or sensitive issues involving top NIH management to the OIG.
 - (2) Allegations involving research misconduct to the Office of Research Integrity.
 - (3) Allegations of discrimination or harassment to the Office of Equal Opportunity and Diversity Management.
 - (4) Allegations involving personnel matters, including allegations of improper hiring procedures, promotions violating agency or department policy, payment of recruitment and/or retention bonuses, awards or performance bonuses, and classification of positions to the Office of Human Resources.
 - (5) Administrative offenses to the appropriate NIH Institute or Center (IC).
 - (6) Allegations of noncompliance with HHS Regulations or Policies concerning human subjects involved in HHS supported or conducted research to the Office for Human Research Protections.
 - (7) Allegations of noncompliance with HHS Regulations or Policies concerning the use of laboratory animals in research to the Office of Laboratory Animal Welfare, Office of Extramural Research.
 - (8) Certain non-criminal allegations (see E. 4, *Administrative Offenses*) to an IC for review, if the IC has adequate staff available for the review and there is assurance that the review will be conducted in a fair and impartial manner. The IC will provide a copy of the written report on the review of the allegation to OMA for use in determining whether the IC review was objective and thorough.

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- b. Confidentiality. OMA and IC records pertaining to reviews concerning NIH employees are maintained in accordance with the requirements of the Privacy Act (5 U.S.C. 552a), 45 C.F.R. part 5b, and System Notice 09-25-0213, *Administration: Employee Conduct Investigative Records, HHS/NIH/OM/OA/OMA*, and disclosed only to the extent permitted by the Act.

This system of records has been exempted pursuant to 5 U.S.C. 552a (k)(2) of the Privacy Act from the access, notification, correction, and amendment provisions of the Privacy Act [5 U.S.C.552a (c)(3), (d)(1)-(4), (e)(1), (e)(4)(G) and (H) and (f)], because it consists of investigatory material compiled for law enforcement purposes. Individual access to these files could impair investigations and alert subjects of investigations that their activities are being scrutinized, thereby allowing them time to take measures to prevent detection of illegal action or to escape prosecution. Disclosure of investigatory techniques/procedures and the existence and identity of confidential sources of information could jeopardize investigative activities. However, any individual who has been denied any right, privilege, or benefit for which he/she would otherwise be entitled or be eligible as a result of the maintenance of such material will be given access to the material, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of such source would be held in confidence.

This system of records is also exempted from (k)(5) of the Privacy Act in order to allow NIH to exempt from individual access, investigatory materials compiled for the purpose of determining suitability, eligibility, or qualification for federal employment or financial assistance if release of the materials would disclose the identity of a confidential source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. OMA considers all information pertaining to a review (e.g., status of the review or nature of evidence) as confidential.

NIH neither confirms nor denies that a review is being initiated or is under way. Congressional committees with relevant oversight responsibilities may request information or documents related to OMA reviews through OLPA; all NIH employees must provide any information or documents (including e-mails) requested by congressional committees. NIH can request that information provided to Congress exclude or protect the identity of individuals. However, Congress is not legally required to abide by this request.

3. Reviews of Allegations. OMA generally uses a two-stage report process that includes a Draft Report and a Final Advisory Report. Recipients of all OMA reports, draft and

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- final, are required to maintain the confidentiality of the reports except on a need-to-know basis.
- a. The Draft Report is sent to the subject of the report (e.g., the employee alleged to have violated the Standards of Conduct or the institution alleged to have misused grant funds) for review and comment.
 - b. The Final Advisory Report, which may incorporate comments made by the subject, is sent to NIH officials with a need-to-know, including the IC Director. An information copy is sent to the subject. Final Advisory Reports are pre-decisional documents and are considered advisory to NIH management officials, who are asked to report within 30 days regarding action they are planning to take or have taken related to the recommendations. OMA reviews the action to ensure that it addresses the problems identified in the report. When OMA believes the actions planned or taken do not adequately address the problems identified in the report, the Director, OMA, refers the issue to the NIH Deputy Director for Management for resolution.
4. OMA may also include in its reports a Management Advisory section to address management control issues identified in the course of reviewing allegations, or it may issue a Management Advisory Report alone or in addition to a Final Advisory Report, where appropriate. OMA generally issues Management Advisory Reports as final reports, but it may issue a draft report for comment, depending on the nature of the report. Recipients of all OMA Management Advisory reports, draft and final, are required to maintain the confidentiality of the reports except on a need-to-know basis.
 5. Follow-up and Reporting to OIG. OMA is responsible for monitoring all recommendations it makes in its reports and for informing the OIG, as necessary, of any follow-up administrative actions taken by NIH to correct improper conduct or improve management as related to systemic weaknesses.
 6. Official Files. The Director, OMA on behalf of the Director, NIH, shall ensure that a file is maintained on each NIH review that is initiated. The review file shall contain complete documentary material, including all reports, showing in detail: the basis for the review, the extent of the review, persons interviewed and information furnished, records reviewed and information obtained, and any other material pertinent to the review. The file shall also contain a record of the action taken. Similar files are to be maintained by ICs when they conduct reviews of allegations referred by OMA. The records described in this section pertaining to reviews of NIH employees conducted by either OMA or ICs are kept in accordance with the requirements of the Privacy Act, 5 U.S.C. section 552a, and maintained under System Notice 09-25-0213,

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Administration: Employee Conduct Investigative Records, HHS/NIH/OM/OA/OMA.
(Records on grantees, contractors, and others conducting business with the NIH are not covered by the Privacy Act, as they are not filed by individual identifiers.)

7. Requests under the Freedom of Information Act (FOIA) for Documents Related to Investigations. Information, documents, and reports related to ongoing and completed reviews are subject to the FOIA. The NIH FOIA officer, after consulting with OMA and the IC, if necessary, may determine that one or more FOIA exemptions protect some or all of OMA's documents from public disclosure.

To the extent permitted by the Privacy Act and required by FOIA, specific OMA record information may be released by the Privacy Act or FOIA Officer in response to a specific request. Each determination regarding release is made on a case-by-case basis. The following FOIA exemptions may apply to documents and records related to ongoing and completed reviews:

- a. Ongoing Reviews - FOIA Exemption 5 (internal deliberative governmental communications, e.g., pre-decisional documents, opinions, evaluations, and recommendations, and attorney-client communications), Exemption 6 (clearly unwarranted invasion of personal privacy), and Exemption 7 (record compiled for law enforcement purposes) may be cited by the NIH FOIA Officer when denying access to information of ongoing OMA review files.
 - b. Completed Reviews: OMA final reports are considered advisory to the ICs and are characterized as pre-decisional documents, both before and after a case is closed. The final report may be subject to release under FOIA if the final decision of an NIH management official incorporates the report or parts of the report by reference.
8. Release of records to Congress through the Office of Legislative Policy and Analysis (OLPA). NIH can request that information provided to Congress exclude or protect the identity of individuals. However, Congress is not legally required to abide by this request. Congressional committees with relevant oversight responsibilities may request information or documents related to OMA reviews through OLPA. All NIH employees must provide any information or documents (including e-mails) requested by congressional committees.

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I. Records Retention and Disposal:

All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743, *Keeping and Destroying Records*, Appendix 1, *NIH Records Control Schedule*, Item 1700-A-4, *Investigative/Audit Case Files*.

NIH e-mail messages. NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered federal records. These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information.

All e-mail messages are considered Government property and, if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews, and the OIG may request access to or copies of e-mail messages. E-mail messages must also be provided to members of Congress or congressional committees, if requested, and are subject to FOIA requests. Since most e-mail systems have back-up files that are sometimes retained for significant periods of time, e-mail messages and attachments may be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

The records covered by this chapter located in NIH (Office of the Director and IC) files relate to reviews of specific problems or allegations of impropriety or malfeasance and consist of documents describing the inception, nature, scope, and purpose of each project; correspondence; e-mails, including attachments; miscellaneous papers important to the conduct of the project or the development of final determinations; draft reports, together with comments or reactions from concerned NIH officials or individuals or organizations subject to review; final reports; and related follow-up documents.

J. Management Controls:

1. **Office Responsible for Reviewing Management Controls:** Division of Program Integrity (DPI), OMA, OM.
2. **Frequency of Review:** Because the internal control area of investigations is rated high-risk, a management control review will be conducted at least every three years.
3. **Method of Review:** A review will be done to determine OMA compliance with the policies and procedures contained in this chapter. The review may include surveys, interviews, testing, and analysis of reports.

**REPORTING ALLEGATIONS OF CRIMINAL OFFENSES,
MISUSE OF NIH GRANT AND CONTRACT FUNDS,
OR IMPROPER CONDUCT BY AN NIH EMPLOYEE**

4. **Review Reports Are Sent to:** Deputy Director for Management.