

UNIVERSITY OF SOUTHERN MAINE
Office of Research Integrity & Outreach

Procedure #:	RCR-103
Date Adopted:	November 20, 2013
Last Updated:	March, 2014
Prepared By:	Assistant Provost for Research Integrity
Reviewed By:	Provost, Federal Office of Research Integrity, Institutional Review Board University of Southern Maine Human Resources
Title:	Anti-Retaliation Policy for Reporting of Misconduct in Research

1. **Purpose:** The standard operating procedures (SOP) for submitting retaliation complaints as well as the process for resolving the complaints.
2. **Scope:** This SOP applies to instances of possible retaliation against whistleblowers and or complainants that make allegations of research misconduct covered by the University of Southern Maine (USM) [Research Misconduct Policy](#).
3. **Responsibility:**
 - 3.1. USM has designated the USM Research Integrity Officer (RIO) to establish and implement this SOP. The RIO also serves as a liaison between USM and the sponsoring agency and will prepare and submit all reports to the research sponsor.
 - 3.2. The RIO shall be free of any real or apparent conflicts of interest in any particular case.
 - 3.3. If involvement of the RIO in a particular case creates a real or apparent conflict of interest with the USM's obligation to protect good faith whistleblowers, and the conflict cannot be satisfactorily resolved for that case, the Provost shall appoint a substitute RIO who has no conflict of interest.
4. **Definitions:**
 - 4.1. **“Adverse action”** means any action taken by a member of USM which negatively affects the terms or conditions of the whistleblower's status at the University, including but not limited to his or her employment, academic matriculation, awarding of degree, or USM relationship established by grant, contract, or cooperative agreement. An adverse action can be directed toward any USM member, including the respondent as well as complainant.
 - 4.2. **“Allegation”** means any disclosure, whether by written or oral statement, or any other communication, to USM, a governmental or other sponsoring agency official who receives the allegation while acting in their official capacity, that USM or member thereof has engaged in research misconduct.
 - 4.3. **“Conflict of Interest”** means any personal, professional, or financial relationship that influences or reasonably would be perceived to influence the impartial performance of a duty assigned under these Procedures by any of the following: a member of an Inquiry Panel, Investigative Committee, or a Review Panel, the Responsible Administrator, the RIO, the Deciding Official, or the President.
 - 4.4. **“Deciding official”** means the official designated by the President of the University to make a final University determination as to whether retaliation occurred.
 - 4.5. **“Good faith allegation”** as applied to a whistleblower, complainant or witness, means having a belief in the truth of one’s allegation or testimony that a reasonable person in the complainant’s or witness’s position could have based on the information known to the complainant or witness at the time. An allegation or cooperation with a research misconduct proceeding is not in good faith if made with a knowing or reckless disregard for information that would negate the allegation or testimony.

- 4.6. **“Research Misconduct”** means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the research community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data or creative innovations that are nonetheless ethical, legal and meet professional standards.
- 4.7. **“Research Integrity Officer (RIO)”** means the official designated by and reporting to the Provost to establish and implement USM’s Anti-Retaliation Policy for Reporting of Misconduct in Research. The RIO for USM currently is [Ross Hickey, Assistant Provost for Research Integrity](#).
- 4.8. **“Retaliation”** means an adverse action taken against an whistleblower or other individual who has, in good faith, participated in a Misconduct Proceeding (as Complainant, witness, Review Panel member, Inquiry Panel member, Investigative Committee member, Counsel, Advisor, Responsible Administrator, or RIO) or otherwise cooperated in the review of an allegation, where there is a clear causal link between the participation or cooperation and the adverse action. The context in which an adverse action has occurred, including its materiality, is a relevant and important factor to be taken into account in determining whether it constitutes retaliation.
- 4.9. **“USM member” or “member”** means a person who is employed by, affiliated with under a contract or agreement, or under the control of USM. USM members include but are not limited to faculty, students, administrators, teaching and support staff, researchers, technicians, and fellows.
- 4.10. **“Whistleblower”** means an individual who makes a good faith allegation of research misconduct or demonstrates intent to make a good faith allegation (or what is perceived to be an allegation) while a member of the USM at which the alleged research misconduct occurred.
5. **Applicable Documents:**
- 5.1. **42 CFR 50 and 93 applies to all HHS research.**
- 5.2. Title 42, Part 50, Subpart A of the Code of Federal Regulations - 42 CFR 50, Subpart A
- 5.3. Federal Sentencing Guidelines – Chapter 8 Part B – Remedying Harm from Criminal Conduct, and Effective Compliance & Ethics
- 5.4. America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science (COMPETES) Act - 42 U.S.C. §1862 et seq. (2007)
6. **Procedure:**
- 6.1 **Filing complaints:**
- 6.1.1. A whistleblower who wishes to receive the procedural protections described by this SOP shall file his or her written retaliation complaint with the RIO within **180 days** from the date the whistleblower became aware or should have become aware of the alleged adverse action. USM shall review and resolve all whistleblower retaliation complaints and should do so within **180 days** after receipt of the complaint. If the whistleblower fails to receive a response from USM to the complaint in accordance with this SOP within **10 working days**, the whistleblower may file the retaliation complaint directly with any sponsoring agency.
- 6.1.2. The retaliation complaint must include a description of the whistleblower's research misconduct allegation and the asserted adverse action, or threat thereof, against the whistleblower, by USM or its members in response to the allegation. If the retaliation complaint is incomplete, the RIO shall describe to the whistleblower what additional information is needed in order to meet the minimum requirements of a complaint under this SOP.

6.2. **Responding to complaints:**

- 6.2.1. Upon receipt of a whistleblower retaliation complaint, the RIO shall notify the whistleblower of receipt within **ten (10) working days** after receipt. The notice shall also inform the whistleblower of the process USM proposes to follow in resolving the retaliation complaint and the necessary actions by the whistleblower required under that process.
- 6.2.2. The whistleblower may raise any concerns about the proposed process with the RIO and USM may modify the process in response to the whistleblower's concerns.
- 6.2.3. The whistleblower has **five (5) working days** from the date of receipt of the initial notification in section **6.2.1** to:
 - 6.2.3.1. Accept the proposed process, although the whistleblower may also submit documentation for the official record about any concerns he or she may have about the proposed process; or
 - 6.2.3.2. Not accept the proposed process. If the whistleblower rejects the proposed process, he or she may pursue other remedies as provided by law.
- 6.2.4. USM shall notify the sponsoring agency of any whistleblower retaliation complaint it receives within **ten (10) working days** after receipt of the complaint.

6.3. **Interim Protection:**

- 6.3.1. At any time before the merits of a whistleblower retaliation complaint have been fully resolved, the whistleblower may submit a written request to the RIO to take interim actions to protect the whistleblower against an existing adverse action or credible threat of an adverse action by USM or a member. This shall be a separate written request and is not considered part of the initial request under section 6.1.
- 6.3.2. Based on the available evidence, the RIO shall make a determination of whether to provide interim protections and shall advise the whistleblower of his or her decision in writing. Documentation underlying the decision whether to provide interim protections shall become part of the record of the complaint. When the whistleblower retaliation complaint is fully resolved, any temporary measure taken to protect the whistleblower shall be discontinued or replaced with permanent remedies.

6.4. **Resolution of complaints:**

6.4.1. **General**

- 6.4.1.1. The process should be completed within **180 days** of the date the complaint is filed, unless the whistleblower agrees to an extension of time. USM shall promptly report the final outcome of either process or any settlement to the sponsoring agency.
- 6.4.1.2. If the whistleblower declines USM's proposed process according to these guidelines, he or she may pursue any other legal rights available to the whistleblower for resolution of the retaliation complaint.

6.4.2. **Investigation**

- 6.4.2.1. USM shall conduct an investigation of the whistleblower retaliation complaint according to this SOP and implement appropriate administrative remedies consistent with the investigation's finding and University decision thereon.
- 6.4.2.2. An investigation of whistleblower retaliation shall be timely, objective,

thorough, and competent. The investigation should be conducted by a panel of at least three (3) individuals appointed by the Provost. The members of the investigation panel shall have no personal or professional relationship or other conflict of interest with the whistleblower or the alleged individual retaliator(s), and shall be qualified to conduct a thorough and competent investigation.

- 6.4.2.3. The investigation shall include the collection and examination of all relevant evidence, including interviews with the whistleblower, the alleged retaliator(s), and any other individual who can provide relevant and material information regarding the claimed retaliation.
- 6.4.2.4. USM shall fully cooperate with the investigation and use all available administrative means to secure testimony, documents, and other materials relevant to the investigation.
- 6.4.2.5. The confidentiality of all participants in the investigation shall be maintained to the maximum extent possible throughout the investigation.
- 6.4.2.6. To encourage and protect whistleblowers, it is USM policy that no reference to good-faith reporting of USM-related research misconduct shall be made in personnel files, letters of recommendation, performance appraisals, or any other permanent evaluative documents without the concurrence of the whistleblower.
- 6.4.2.7. The panel members shall evaluate and respond objectively to any concerns raised by the whistleblower about the process, including concerns regarding the selection of the Inquiry Panel member, an Investigative Committee member, or a Review Panel member, the Responsible Administrator, or the RIO, which are raised prior to resolution of the complaint.
- 6.4.2.8. The conclusions of the investigation shall be documented in a written report and made available to the whistleblower. The report shall include findings of fact, a list of witnesses interviewed, an analysis of the evidence, and a detailed description of the investigative process.
- 6.4.2.9. The Provost shall be the Deciding Official. The Provost shall make a final USM determination as to whether retaliation occurred. This decision shall be based on the report, the record of the investigation, and a preponderance of evidence standard.
- 6.4.2.10. If there is a determination that retaliation has occurred, the Provost shall determine what remedies are appropriate to satisfy USM's obligation to protect whistleblowers. The Provost shall, in consultation with the whistleblower, take measures to protect or restore the whistleblower's position and reputation, including making any public or private statements, as appropriate. In addition, the Provost may provide protection against further retaliation by monitoring or disciplining the retaliator.
- 6.4.2.11. USM shall promptly notify the sponsoring agency of its conclusions and remedies, if any, and forward the underlying investigation report to the sponsor.
- 6.4.2.12. USM recognizes that the sponsoring agency may, at its own discretion, review the report to determine whether the University has substantially

followed the process described herein.

- 6.4.2.13. USM compliance with this process does not bar the whistleblower from seeking redress against USM's decision under state law, or as otherwise provided.

6.5. **Settlement:**

- 6.5.1. In lieu of the option described above, USM and the whistleblower may, at any time after the retaliation complaint is made, enter into any binding settlement agreement, which finally resolves the retaliation complaint. If both parties agree, the RIO shall facilitate negotiation of such settlements. If such an agreement is reached, USM and the whistleblower shall sign a statement indicating that the retaliation complaint has been resolved. USM shall within **30 days** send a copy of the signed statement to the sponsoring agency. The settlement may not restrict the whistleblower from cooperating with any investigation of an allegation of research misconduct.
- 6.5.2. USM compliance. At any time a sponsoring agency may review USM's compliance with these guidelines to the extent that USM relies on these guidelines for regulatory compliance. The University and its members shall cooperate with any such review and provide the sponsoring agency access to all relevant records.

6.6. **Notice of USM policy:**

- 6.6.1. USM shall provide to all its members notice of its Anti-Retaliation Policy for Reporting of Misconduct in Research through the Office of Research Integrity and Outreach (ORIO) website. The notice shall include the requirement set forth regarding a whistleblower's deadline for filing a retaliation complaint.