
Federation of American Societies for Experimental Biology
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FASEB Finds ORI's Proposal to Protect Whistleblowers Overly Broad, Too Prescriptive, and Unfair

Bethesda, Md. — In cases of research misconduct, the accused as well as the accusers must be accorded full protection under the law, according to Mary J. C. Hendrix, president of the Federation of American Societies for Experimental Biology. In a Jan. 29 letter to the federal Office of Research Integrity (ORI), she writes: "We believe that allegations of misconduct should be addressed impartially, with due process for all parties and deplore those situations in which there is retaliation against individuals bringing charges of misconduct." However, while FASEB strongly supports legitimate efforts to punish scientific misconduct and protect the integrity of the scientific record, Dr. Hendrix writes, Federation officials are dismayed by ORI's proposed standards for the protection of research misconduct whistleblowers.

"The proposed rules greatly exceed the agency's statutory authority, are overly prescriptive, may conflict with existing laws creating an unfair imbalance between the accuser and the accused," Dr. Hendrix writes. "With little justification in terms of scope or magnitude of the problem, the rules also place new, unreasonable and costly financial burdens on research institutions."

The proposed standards, published in the Nov. 28 *Federal Register*, would require institutions receiving PHS funds to "follow certain requirements for preventing or otherwise responding to occurrences of retaliation against whistleblowers." Among FASEB's concerns is that the ORI's proposed policy –

- Establishes an elaborate structure and prescribes a detailed system of regulations that go far beyond the agency's statutory authority. These include requirements for subcontractors and the establishment of specified time frames for adjudicating cases. Moreover, the time frames established in these rules are unreasonable in light of the sensitive charges and adversarial relationships involved.
- Creates a completely new and redundant system for dispute resolution. It creates a totally separate channel for grievances in addition to mechanisms existing under collective bargaining agreements and state laws. In some cases, it would be possible for individuals

to pursue remedies simultaneously in all three venues, and it might be the case that the results would be three separate opinions.

- May conflict with state laws and institutional employment agreements, thereby resulting in a complex web of competing rules and regulations. Under the National Labor Relations Act, an employer cannot unilaterally make changes in the conditions of employment. In those institutions covered by collective bargaining agreements, employers cannot, by themselves, establish a system for resolving grievances unless it is already covered by the contract.

"The new rules go well beyond the development of standards and mandate the creation of a complex and burdensome system," Dr. Hendrix writes. "We also question whether the proposed remedies will have the desired effects and are concerned that the creation of a special status for whistleblowers will create new legal problems."

The entire FASEB letter can be found on the web at www.faseb.org/opa/ppp/res_int/whistle.html. ORI's proposed rule can be found at <http://ori.dhhs.gov/html/misconduct/nprmreg.htm>.

The Federation of American Societies for Experimental Biology (FASEB) is comprised of 21 societies with more than 60,000 members, making it the largest coalition of biomedical research associations in the United States. The mission of FASEB is to enhance the ability of biomedical and life scientists to improve, through their research, the health, well-being and productivity of all people. FASEB serves the interests of these scientists, particularly in those areas related to public policy. FASEB also facilitates coalition activities among Member Societies and disseminates information on biological research through scientific conferences and publications.

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