

2018 APLU Annual Meeting
NSF's Policies On
Sexual
Harassment



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NSF and Title IX

- NSF's Title IX regulation: 45 CFR §618
 - Prohibits discrimination on the basis of sex in educational programs and activities receiving Federal financial assistance such as NSF awards.
 - ODI limits its operational jurisdiction to NSF-funded programs and activities at grantee institutions.
 - Sexual and gender-based harassment are forms of discrimination prohibited by Title IX.



Nondiscrimination and Civil Rights Compliance

- The role of NSF's **Office of Diversity and Inclusion** is to ensure the agency is in compliance with the laws and regulations governing federal-sector equal employment opportunity and civil rights.
- All recipients of federal/NSF funds are required to comply with laws and regulations that prohibit discrimination in federally assisted programs and activities. (Chapter XI, A. PAPPG)

Pre-Award Compliance	Done via submission of an electronic certification at the time of proposal submission.
Post-Award Compliance	The goal of post-award compliance reviews is to ensure grantee compliance with NSF civil rights regulations, provide meaningful, technical assistance to all grantees that help strengthen their current compliance efforts as well as identify and report on best practices.
Complaints of Discrimination	NSF also is responsible for processing complaints of discrimination from institutions that receive NSF funding.



Title IX Compliance Reviews

- NSF conducts at least two on-site Title IX reviews of NSF funded programs at colleges and universities per fiscal year
- Reviewed programs include academic departments that receive NSF grants
- Site selection criteria include Total dollar amount of NSF grants to the university, Number of PI receiving grants, type of program/department, known Title IX compliance issues
- Coordinate site selection with other agencies to avoid duplicative efforts



Complaints of Discrimination:

- NSF is also responsible for processing complaints of discrimination, harassment and retaliation under Title IX and other laws involving NSF awardees.
- Complainants may choose between the awardee Title IX complaint process or file with NSF
- NSF discrimination complaints involving awardees are filed with ODI and investigated by ODI
- NSF limits complaint investigations to those programs, PIs, students that receive NSF funding. The US Department of Education's Office for Civil Rights investigates all other programs of the awardee.
- Personally Identifiable Information of individuals named in complaints is protected by the Privacy Act and Freedom of Information Act



NSF Polices On Harassment

- Recent attention to sexual misconduct has led NSF to implement several new initiatives. NSF has actively addressed sexual misconduct in NSF Awardee programs funded by academic and research institutions
- It is a violation of NSF's Title IX regulations when a grantee institution fails to address known incidents of sexual misconduct. If a grantee refuses to voluntarily correct Title IX violations, NSF funding can ultimately be withheld from the grantee.
- Important Notice #144 (Harassment) "NSF does not tolerate sexual harassment, or any kind of harassment, within the agency, at grantee organizations, field sites, or anywhere NSF-funded science and education are conducted."
- ODI Bulletin No. 18-01 (Sexual Harassment Reporting) "As an NSF employee you must inform ODI immediately if you become aware of a harassment issue in an NSF-funded program, project, or institution, including a complaint of sexual harassment, whether the issue occurred on campus, in the field, at a conference, at a facility, or elsewhere."



New Term and Condition For Reporting Findings of Harassment

- Published in the Federal Register March 5, 2018
- Purpose of notice was to solicit public comment on the NSF's proposed implementation of the new reporting requirements specified in NSF Important Notice No. 144, dated February 8, 2018.
- Comment period ended May 4, 2018
- NSF received 198 comments from students, faculty, universities, and various scientific and university organizations.
 - Roundtables were held with university organizations and Federal science agency partners
- Task team of NSF staff from ODI, General Counsel and Policy offices reviewed each comment (May-August 2018)
- Some modifications to the final notification published 9/21/18 reflect some of the public comment



NSF Policies On Harassment

- New Term and Condition (Published in the Federal Register TODAY – September 21, 2018), went into effect on Monday October 22, 2018.
 - Grantee will be required to report findings of sexual or any other kind of unlawful harassment involving a PI, or co/PI.
 - Grantees will also be required to report the placement of the PI/co-PI on administrative leave/action relating to a harassment finding or investigation.
 - NSF may take action as necessary to protect the safety of all grant personnel, to include suspending or terminating an award or requiring the grantee to replace or remove personnel.
- 2019 PAPPG (draft) contains the above plus conference funding proposals will be required to have a policy/conduct code addressing sexual/other forms of harassment and that includes means of reporting policy/code violations.
- ODI has updated its online Web resources that provide information on sexual harassment and grantee/awardee civil rights compliance



NSF New Term & Conditions - Definitions

- **Sexual harassment:** May include but is not limited to gender or sex-based harassment, unwelcome sexual attention, sexual coercion, or creating a hostile environment, as set forth in organizational policies or codes of conduct, statutes, regulations, or executive orders.
- **Other Forms of Harassment:** Non- gender or non-sex-based harassment of individuals protected under federal civil rights laws, as set forth in organizational policies or codes of conduct, statutes, regulations, or executive orders



NSF New Term & Conditions – Definitions (Cont.)

- **Finding/Determination:** The final disposition of a matter involving sexual harassment or other form of harassment under organizational policies and processes, to include the exhaustion of permissible appeals exercised by the PI or co-PI, or a conviction of a sexual offense in a criminal court of law.
- **Administrative Leave/Administrative Action:** Any temporary/interim suspension or permanent removal of the PI or co-PI, or any administrative action imposed on the PI or co-PI by the awardee under organizational policies or codes of conduct, statutes, regulations, or executive orders, relating to activities, including but not limited to the following: teaching, advising, mentoring, research, management/ administrative duties, or presence on campus.



The New Term & Condition and Title IX

- The new term and condition does NOT impact NSF's Title IX regulations and is distinct from NSF's Title IX regulations.
- The new term and condition will be part of the PAPPG, which is revised annually and has its own compliance and enforcement mechanisms.
- Title IX is focused on the accountability of the awardee institution.
- The new term and condition is focused on the ability of the PI and Co-PI to participate in their NSF funded research.



NSF New Term & Conditions For Reporting Findings of Harassment

- Awardee findings/determinations and placement of a PI or co-PI on administrative leave or the imposition of an administrative action must be conducted in accordance with organizational policies and processes. They also must be conducted in accordance with federal laws, regulations, and executive orders.
- Notification to NSF must be provided regardless of whether the behavior leading to the finding/ determination, or placement on administrative leave, or the imposition of an administrative action occurred while the PI or co-PI was carrying out award activities.
- Only the identification of the PI or co-PI is required. Personally identifiable information regarding any complainants or other individuals involved in the matter must not be included in the notification.



How Will NSF Review Notifications That Are Received?

- Upon receipt and review of the information provided, NSF will consult with the AOR, or designee.
- Based on the results of this review and consultation, the Foundation may, if necessary, assert its programmatic stewardship responsibilities and oversight authority to initiate the substitution or removal of the PI or any co-PI, reduce the award funding amount, or where neither of those previous options is available or adequate, to suspend or terminate the award.



How Will NSF Review Notifications That Are Received?

In reviewing the notification, NSF will consider, at a minimum, the following factors:

- a. The safety and security of personnel supported by the NSF award;
- b. The overall impact to the NSF-funded activity;
- c. The continued advancement of taxpayer-funded investments in science and scientists; and
- d. Whether the awardee has taken appropriate action(s) to ensure the continuity of science and that continued progress under the funded project can be made.



Under what circumstances would NSF take action to remove a PI or co-PI from awards?

- Action to remove a PI or co-PI only will occur after consultation with the awardee, and after considering the safety and security of personnel supported by the NSF award, the overall impact to the NSF-funded activity, the continued advancement of taxpayer investments in science and scientists, and whether the awardee has taken appropriate actions to ensure the continuity of science and continued award progress.
- The decision making role in NSF is expected to consist of ODI, Office of General Counsel, NSF Policy Office and Program Officers/Leadership of the involved NSF scientific program division



How To Submit Notifications to NSF

- Notifications must be submitted electronically via a secure web mechanism that will transmit the information directly and only to ODI.
- Only ODI and other NSF staff with a specified need to know (e.g., Office of the General Counsel, Policy Office, and program staff, as applicable), will have access to the information upon release by ODI. The information will not be available in NSF corporate systems such as Research.gov or FastLane.
- https://www.nsf.gov/od/odi/notification_form.jsp



Does the term and condition cover conduct that occurs prior to the effective date of the term and condition?

- Yes, the term and condition covers conduct of a PI or co-PI that occurred prior to the effective date of the term and condition **if** the finding/determination or imposition of administrative leave/administrative action occurs **after the term and condition becomes effective and if the award on which the individual is the PI or a co-PI is subject to the term and condition.** The term and condition will apply to new awards and any funding amendments made on or after the effective date of the term and condition.



Each notification must include the following information:

- NSF Award Number
- Name of PI or co-PI being reported
- *Type of Notification:* Select one of the following:
- Finding/Determination that the reported individual has been found to have violated awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault; **or**
- Placement by the awardee of the reported individual on administrative leave or the imposition of any administrative action on the PI or any co-PI by the awardee relating to any finding/determination or an investigation of an alleged violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault.
- Description of the finding/determination and action(s) taken, if any; and
- Reason(s) for, and conditions of, placement of the PI or any co-PI on administrative leave or imposition of administrative action.



How will NSF Maintain Confidentiality?

- NSF recognizes the sensitivity of the information that may be contained in the notifications and will take appropriate steps to manage such information consistent with the Privacy Act, the Freedom of Information Act and other applicable federal laws.
- Only ODI and other NSF staff with a specified need to know (e.g., Office of the General Counsel, Policy Office, and program staff, as applicable), will have access to the information upon release by ODI. The information will not be available in NSF corporate systems such as Research.gov or FastLane.
- NSF only seeks the personally identifiable information (PII) of the PI and Co-PI. Awardees are not to report the PII of any other individuals involved in findings or determinations .



What should My Institution Do Now?

- NSF provided an effective date of Monday October 22, 2018 to allow awardee institutions to take steps to develop and implement internal processes for the coordination and reporting of the notifications to NSF requested in the new Term & Condition. NSF would expect that the following awardee offices would be involved in this process:
 - Title IX Office
 - General Counsel
 - Human Resources
 - Sponsored Programs/Research
- NSF expects the reporting of notifications to come from the awardee's Sponsored Programs/Research, since the NSF award's Authorized Organizational Representative is typically in this office.

