



NATIONAL SCIENCE FOUNDATION

Notification Requirements Regarding Findings of Sexual Harassment, Other Forms of Harassment, or Sexual Assault

AGENCY: National Science Foundation.

ACTION: Final Notice of a new NSF term and condition regarding sexual harassment, other forms of harassment, and sexual assault.

SUMMARY: NSF is publishing, in final form, a new term and condition regarding sexual harassment, other forms of harassment, and sexual assault. NSF's intention to develop and implement this new term and condition was specified in Important Notice No. 144, dated February 8, 2018.

The National Science Foundation (NSF) will not tolerate sexual harassment, other forms of harassment, or sexual assault within the agency, at awardee organizations, field sites, or anywhere NSF-funded science and education is conducted. The 3,000 U.S. institutions of higher education and other organizations that receive NSF funds are responsible for fully investigating complaints and for compliance with federal non-discrimination laws, regulations, and executive orders. NSF has taken steps to help ensure research environments are free from sexual harassment. Additionally, NSF is bolstering our policies, guidelines, and communications so that organizations funded by NSF clearly understand expectations and requirements.

NSF is working to make certain that recipients of grants and cooperative agreements respond promptly and appropriately to instances of sexual harassment, other forms of harassment, or sexual assault. A community effort is essential to eliminate sexual and other

forms of harassment in science and to build scientific workspaces where people can learn, grow, and thrive.

FOR FURTHER INFORMATION CONTACT: For any questions, comments, or concerns regarding sexual or other forms of harassment, please contact the Office of Diversity and Inclusion (ODI), National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA, 22314, e-mail: harassmentnotifications@nsf.gov; telephone (703) 292-8020; FAX: (703) 292-9482.

SUPPLEMENTARY INFORMATION:

As the primary funding agency of fundamental science and engineering research in the United States, NSF is committed to promoting safe, productive research and education environments for current and future scientists and engineers. We consider the Principal Investigator (PI) and any co-PI(s) identified on an NSF award to be in positions of trust. The PI, any co-PI(s), and all personnel supported by an NSF award must comport themselves in a responsible and accountable manner during the award period of performance whether at the awardee institution, on-line, or outside the organization, such as at field sites or facilities, or during conferences and workshops.

On March 5, 2018, NSF published a request for public comment regarding the agency's proposed implementation of new notification requirements specified in Important Notice No. 144. [83 FR 9342, pages 9342-9343, March 5, 2018]. All comments were carefully considered in developing the final version of the term and condition. A table listing the comments and NSF responses is posted on the NSF website at: www.nsf.gov/harassment.

Upon implementation, the new term and condition will require awardee organizations to notify NSF of any findings/determinations of sexual harassment, other forms of harassment, or sexual assault regarding an NSF funded PI or co-PI. The new term and condition also will require the awardee to notify NSF if the PI or co-PI is placed on administrative leave or if the awardee has imposed any administrative action on the PI or any co-PI 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. Finally, the award term and condition specifies the procedures that will be followed by NSF upon receipt of a notification.

The full text of the revised term and condition is provided below:

Article X: Notification Requirements Regarding Sexual Harassment, Other Forms of Harassment, or Sexual Assault

The Principal Investigator (PI) and any co-PI(s) identified on an NSF award are in a position of trust. These individuals must comport themselves in a responsible and accountable manner during the award period of performance, whether at the awardee institution, on-line, or at locales such as field sites, facilities, or conferences/workshops.

For purposes of this term and condition, the following definitions apply:

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.

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 awardee is required to notify NSF of: 1) any finding/determination regarding the PI or any co-PI¹ that demonstrates a violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault; and/or 2) if the PI or any co-PI is placed on administrative leave or if any administrative action has been imposed 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

¹ If a co-PI is affiliated with a subawardee organization, the Authorized Organizational Representative of the subawardee must provide the requisite information directly to NSF, as instructed in this paragraph.

harassment, or sexual assault.² Such notification must be submitted by the Authorized Organizational Representative (AOR) to NSF's Office of Diversity and Inclusion at www.nsf.gov/harassment within ten business days from the date of the finding/determination, or the date of the placement of a PI or co-PI by the awardee on administrative leave or the imposition of an administrative action, whichever is sooner.³ Each notification must include the following information:

- NSF Award Number;
- Name of PI or co-PI being reported⁴;
- 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

² 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.

³ Such notification 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.

⁴ 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.

- Reason(s) for, and conditions of, placement of the PI or any co-PI on administrative leave or imposition of administrative action.

The awardee, at any time, may propose a substitute investigator if it determines the PI or any co-PI may not be able to carry out the funded project or activity and/or abide by the award terms and conditions.

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.

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.

Other personnel supported by an NSF award must likewise remain in full compliance with awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault. With regard to any personnel not in compliance, the awardee must make appropriate arrangements to ensure the safety and

security of other award personnel and the continued progress of the funded project.

Notification of these actions is not required under this term and condition.

End of Article X

IMPLEMENTATION: NSF will incorporate the new term and condition into the NSF Agency Specific Requirements to the Research Terms and Conditions, the Grant General Conditions, and the Cooperative Agreement/Financial and Administrative Terms and Conditions. These revised terms and conditions will become effective thirty days from the date of publication in the Federal Register.

Awardees are strongly encouraged to conduct a thorough review of the term and condition to determine whether the new requirements necessitate any changes to the institution's policies and procedures. The new term and condition will be effective for any new award, or funding amendment to an existing award, made on or after the effective date. For these purposes, this means that any finding/determination, placement on administrative leave or the imposition of any administrative action by the institution made on or after the start date of an award or funding amendment subject to the new term will invoke the new notification requirements.

Dated: September 17, 2018.

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