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RESEARCH & GRADUATE STUDIES

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October 18, 2018
Via Email: rjdavis@nsf.gov

Ms. Rhonda J. Davis
Office of Diversity and Inclusion (ODI)
National Science Foundation
2415 Eisenhower Avenue
Alexandria, VA 22314

Re: National Science Foundation Term and Condition Regarding Findings of Sexual Harassment,
Other Forms of Harassment, or Sexual Assault

Dear Ms. Davis:

The University of California (UC) strongly supports the efforts of the National Science Foundation (NSF) to ensure all NSF-funded research and learning environments are free from sexual harassment, as implemented via its new term and condition ([83 FR 47940](#)). The UC Systemwide Title IX office provides direction and support for the Title IX offices on each of the system's ten campuses and other UC locations. In addition, the UC Systemwide Employee Relations Office supports systemwide compliance with the University's policy on Discrimination, Harassment, and Affirmative Action in the Workplace.

We are seeking some clarification and have a few questions regarding the scope of the requirements in 83 FR 47940 to help UC in our implementation.

1. The new NSF term and condition requires grantees to notify NSF when: 1) a finding or determination regarding a PI/co-PI 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) the PI/co-PI is placed on administrative leave or if *any administrative action* has been imposed on the PI/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.

We seek clarification regarding the definition of “any administrative action”.

The following are examples of measures that UC locations might put in place temporarily *prior to initiating an investigation*, or while an investigation is taking place, when the respondent is a PI or co-PI and the complainant works in the respondent’s lab or performs research for the respondent:

- Directing the respondent not to contact or interact with the complainant.
- Changing the parties’ work schedules or locations, provided that any changes to the complainant’s arrangements are voluntary and equitable.
- Allowing or requiring one party to work remotely.
- Excluding the respondent from the complainant’s workspace.
- Ensuring the respondent does not evaluate the complainant.

It’s not clear to us that all of these interim measures rise to the same level in terms of requiring a report to NSF, particularly since they are often implemented before the University has investigated or reached conclusions as to whether the PI or co-PI has engaged in the misconduct alleged. We would appreciate some clarification as to whether the above interim measures meet the definition of an “administrative action”.

2. To protect the privacy of the individuals involved, the University limits disclosure of harassment investigations and related interim measures to those who have a legitimate “need to know” the information; this does not typically include the Authorized Organizational Representative (AOR), as defined in other NSF policies and systems. If the individuals who typically serve as AORs must submit the required reports, then the University will be compelled to broaden the scope of its disclosure of private and highly sensitive information.

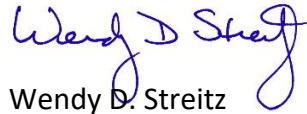
We request that NSF create a role separate from the traditional AOR for the sole purpose of reporting under this new term and condition. In the meantime, do institutions have the discretion, as they may deem appropriate, to designate AORs for the limited purpose of reporting under this new term? Such officials may include the Title IX or Equal Opportunity officers.

3. UC understands why NSF would want to handle the reporting of incidents under this policy outside of Fastlane. However, the use of a non-secure URL (https://www.nsf.gov/od/odi/notification_form.jsp) is problematic. Without the firewall that Fastlane provides with password-protected user accounts, unauthorized parties may seek to contact NSF.

UC respectfully requests a secure method of making a report to NSF. This would allow for appropriately authorized and limited permissions for harassment reporting, and help limit the individuals informed of allegations to those who have a legitimate need to know.

We thank NSF for raising these important issues, and for the opportunity to receive further guidance and clarification on the new term and condition NSF recently issued. We are available for further consultation.

Sincerely,



Wendy D. Streitz
Executive Director
Research Policy Analysis & Coordination

cc: Associate Vice President Harrington, UC Federal Governmental Relations
Jean I. Feldman, Head, NSF Policy Office, Division of Institution and Award Support