



OFFICE OF THE VICE PRESIDENT – RESEARCH & GRADUATE STUDIES

RESEARCH POLICY ANALYSIS & COORDINATION  
1111 Franklin Street, 11<sup>th</sup> Floor  
Oakland, California 94607-5200  
Web Site: <http://www.ucop.edu/research/rpac/>  
Tel: (510) 587-6031  
Fax: (510) 987-9456

August 16, 2019  
(via email: [civilrightsinfo@nasa.gov](mailto:civilrightsinfo@nasa.gov))

Cheryl E. Parker  
Federal Register Liaison Officer  
National Aeronautics and Space Administration Headquarters  
300 E Street SW, Rm. 6O87  
Washington, DC 20546

**Re: National Aeronautics and Space Administration Reporting Requirements Regarding Findings of Harassment, Sexual Harassment, Other Forms of Harassment, or Sexual Assault (FR Doc. 2019-15088)**

Dear Ms. Parker:

On behalf of the University of California (UC), thank you for the opportunity to comment on the National Aeronautics and Space Administration's (NASA's) proposed reporting requirement for sexual harassment, other forms of harassment and sexual assault, as published in the Federal Register on July 17, 2019 (FR Doc. 2019-15088).

First, we wish to make clear that UC shares NASA's commitment to eliminating harassment in the workplace and appreciates NASA's desire to ensure appropriate oversight of the projects it funds at institutions of higher education (IHEs), including receipt of timely notification when a (co-)Principal Investigator (PI) is found to have committed harassment or a sexual assault. UC's system-wide Policy on Sexual Violence and Sexual Harassment (SVSH policy)—most recently updated on July 31, 2019—demonstrates UC's commitment to creating and maintaining a community dedicated to the advancement, application and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in university programs and activities can work and learn together in an atmosphere free of harassment, exploitation or intimidation.

We submit this response to NASA's request for comments on behalf of UC's ten research campuses, five medical centers and the UC-managed Lawrence Berkeley National Laboratory. UC's response was coordinated with relevant offices across the system, including Title IX, Academic Personnel, Research, Human Resources, the Academic Senate and General Counsel.

UC's comments, provided below, are presented with the following considerations:

- NASA's stewardship responsibilities and concerns about the status of its funded projects;
- The university's authority and obligation to investigate SVSH complaints according to its procedures and to take appropriate action for substantiated complaints;

- The need to protect the integrity of SVSH investigations as well as the privacy of complainants, respondents and witnesses during an investigation; and
- The importance of ensuring consistency in reporting requirements across federal grant-making agencies to promote compliance, avoid confusion and reduce the risk of errors and missed reporting deadlines by grantees.

### **Current Practices**

As stated above, UC supports the intent of NASA's proposed policy and is fully committed to ensuring that it properly protects faculty, staff and students from harassment. UC has made significant efforts in recent years to address SVSH within the university community by implementing a system-wide policy explicitly prohibiting SVSH and obligating employees to report possible SVSH to the Title IX office, as well as system-wide procedures for investigating and adjudicating complaints of SVSH. Moreover, UC has expanded its SVSH prevention efforts, including mandated annual training for all faculty and staff. In addition, every UC campus has a confidential advocate's office to support those in our community who experience SVSH. Campus Title IX offices have also hired additional staff, which has improved these office's ability to timely and fairly respond to and investigate reports of SVSH.

UC is also working to ensure compliance with the National Science Foundation's (NSF's) Term and Condition Regarding Findings of Sexual Harassment, Other Forms of Harassment, or Sexual Assault that was implemented in October 2018, including providing written [guidance](#) from the Office of the President's Systemwide Title IX Office and the Research Policy Analysis and Coordination unit.

In light of the university's ongoing efforts in this area, we detail below our specific concerns with NASA's proposal.

### **Consistency**

UC is primarily concerned with inconsistencies that exist between NASA's proposal and NSF's term and condition. Should other federal grant-making agencies propose similar terms to require reporting of SVSH or other forms of harassment, UC is concerned that there would be a patchwork of possibly conflicting and burdensome requirements from agencies seeking to follow NSF's and NASA's example. UC first and foremost recommends consistency across federal grant-making agencies to avoid confusion about different reporting requirements.

### **Timing of Notification**

NASA's proposal requires the recipient's Authorized Organizational Representative (AOR) to submit a report within seven business days from the date of a finding/determination, the date of the placement of a (co-)PI on leave or the imposition of another administrative action. This timeline is both insufficient and inconsistent with NSF's term and condition, which provides ten days to submit the necessary report. A discrepancy between NASA's and NSF's reporting deadlines, as currently proposed, would be burdensome on IHEs that are already tasked with maintaining compliance with multiple and often conflicting agency requirements, and would increase the risk of errors and missed reporting deadlines by grantees. To promote compliance by all institutions that would be subject to the

term and condition, UC recommends that NASA modify its reporting deadline to ten business days, consistent with NSF's current requirements.

### **Role of Subrecipients**

UC has concerns regarding the role of subrecipients in the proposed NASA reporting process. The proposed term states that the recipient agrees to insert the term in any subcontract involving a co-investigator, and the recipient will be responsible for ensuring that all reports, including those relating to co-investigators, comply with the term. This appears to imply that reports for co-investigators at subrecipient institutions must be reviewed and/or submitted by the recipient's AOR. Such a requirement would put the recipient institution in the position of not only having potentially inappropriate access to sensitive information, but also having to determine whether the subrecipient institution has an event triggering NASA notification, and whether it has properly complied with the subrecipient's own policies and procedures, with which the recipient would be unfamiliar. We are likewise concerned that the subrecipient would be required to submit such sensitive and premature information to primary awardees. We strongly urge NASA to revise this requirement to be consistent with the NSF process so that subrecipient institutions submit their own reports directly to NASA.

### **Privacy**

Reports of SVSH and assault potentially contain highly sensitive information not only about the respondent, but about the reporting parties and witnesses, who may be concerned about retaliation and other adverse effects on their careers. An effective SVSH investigation therefore requires impartiality, discretion and professionalism. These factors not only ensure a fair and thorough factual inquiry, but also protect the privacy, safety and reputations of all involved parties. The imperative of protecting privacy and respecting due process during an investigation is why UC is particularly concerned with the proposed requirement that universities report to NASA certain open investigations, i.e., those where a (co-)PI has been put on leave during the course of the investigation. Such a requirement can compromise investigations, interfere with the rights of both the reporting party and the party under investigation, undermine due process, lead to misunderstandings of NASA's role in investigations and damage careers, including those of the (co-)PIs, co-workers and students.

In addition, the university must comply with the Family Educational Rights and Privacy Act of 1974 (FERPA), a federal law that protects the privacy of student education records. In the *Reporting Requirements Regarding Findings of Harassment, Sexual Harassment, Other Forms of Harassment, or Sexual Assault* we noted that footnote 1 of subsection (e) expressly states that the identification of the complainant or other individuals involved in the matter must not be included in the report, which protects the privacy of the complaining party, including students. However, the proposed NASA reporting obligations could conflict with FERPA in the uncommon instance when the co-(PI) alleged to have engaged in harassment is a graduate student.

NASA's proposed term would also require the recipient's AOR to submit the necessary reports to NASA via email. Given the sensitive nature of the information contained in these reports, UC is concerned that this method of transmittal is not secure and may increase the risk of submission of spurious, malicious or unauthorized reports (i.e., not by the recipient's recognized AOR). UC recommends that reports be transmitted through a more secure portal, consistent with the NSF

procedure. UC also encourages NASA to ensure that there is a mechanism to verify that reports are submitted by a valid AOR from the recipient institution.

Lastly, grantee organizations need assurance that NASA will appropriately handle, store and maintain the confidentiality of such sensitive information, and NASA should clarify whether the information would be protected from potential subpoenas, Freedom of Information Act requests or any other legal action.

### **Clarity/Definitions**

NASA's proposed term makes general references to "statutes" and "regulations." UC requests clarification as to whether the reportable findings are limited to categories protected under federal civil rights law or whether findings of discrimination and harassment expressly protected by state laws and regulations should also be reported.

### **Impact on Project Members/Reporting**

Consequences for violations of SVSH policy or other harassment policies are determined at the end of the investigation when the preponderance of the evidence shows the employee violated policy. UC is concerned that NASA's reporting requirement, as proposed, could irreparably damage NASA-funded projects as well as the reputations of individuals involved—particularly if an allegation of harassment or assault is not substantiated. Participants on a NASA project, including postdoctoral researchers, staff and students, may experience adverse impacts on their current and future professional endeavors and livelihoods. As a result, NASA project members may be reluctant to report harassment if they believe a report could disrupt or terminate their project. Further, UC is concerned that the term does not address NASA's process in those situations in which a report is made concerning allegations that are later found to be unsubstantiated. In such a circumstance, UC would expect that names of exonerated PIs or co-PIs would be removed from any allegation-related internal NASA lists or databases on which they had appeared.

We again thank NASA for the opportunity to provide comments and are available for further consultation.

Sincerely,



Arthur B. Ellis  
Vice President for Research and Graduate Studies  
University of California, Office of the President  
1111 Franklin St, 11th Floor  
Oakland, CA 94607  
(510) 987-9615  
[Arthur.Ellis@ucop.edu](mailto:Arthur.Ellis@ucop.edu)



Suzanne Taylor  
Systemwide Title IX Director  
University of California, Office of the President  
1111 Franklin St, 12th Floor  
Oakland, CA 94607  
(510) 987-9161  
[Suzanne.Taylor@ucop.edu](mailto:Suzanne.Taylor@ucop.edu)

cc: Associate Vice President Harrington