
August 4, 2019

To: Contact & Grant Officers
Title IX Officers
Affirmative Action/Equal Employment Opportunity Officers

Subject: Guidance on federal terms used to define “sexual harassment,” “other forms of harassment,” and “sexual assault”

Background

This guidance is jointly issued by the Systemwide Title IX Office and the Research Policy Analysis & Coordination (RPAC) unit at the University of California, Office of the President to assist campuses in addressing reporting requirements contained in federal contracts and grants, as these relate to sexual and other forms of harassment (see “Types of Harassment Covered by the Term and Condition” section below). The Systemwide Title IX Office and RPAC have also coordinated with the Systemwide Affirmative Action/Equal Employment Opportunity Office, the Office of General Counsel, campuses Title IX officers and Vice Chancellors of Research. This guidance is not intended to replace or change campus-established processes or interpretations of federal terms, or to super-impose additional University requirements.

Currently, the National Science Foundation (NSF) is the only federal agency requiring reporting of sexual harassment, other forms of harassment and sexual assault. However, it is possible that other funding agencies will impose reporting requirements similar to NSF’s. If so, the Office of the President will update this guidance. In addition, existing interconnected requirements in National Institutes of Health (NIH) awards are mentioned at the end of this document.

I. National Science Foundation

An NSF grant [Term and Condition](#) titled "Notification Requirements Regarding Findings of Sexual Harassment, Other Forms of Harassment, or Sexual Assault" went into effect on October 22, 2018¹. The term and condition requires that awardee organizations notify NSF of

¹ The University is not required to report triggering actions (a finding, administrative leave, or an administrative action) unless and until the award is subject to the new term and condition. An award is subject to the new term and condition if it was newly issued after October 22, 2018, or if an amendment to an existing award was issued after October 22, 2018 that specifically incorporates the new term and condition. Once an award is subject to the new term and condition, triggering events must be reported even if the alleged harassment occurred before October 22, 2018.

certain events involving a PI or co-PI identified on an NSF award, if those events relate to alleged sexual harassment, including sexual assault, gender-based harassment, or harassment on another federally-protected basis, and even if the alleged harassment occurred outside the context of the NSF award, e.g., in the cafeteria. Specifically, the term and condition requires that UC notify NSF of:

- any finding that a PI or co-PI engaged in such harassment;
- placement of a PI or co-PI on administrative leave related to either an investigation to determine whether they engaged in such harassment, or a finding that they did; and
- imposition of any other administrative action on a PI or co-PI related to either an investigation to determine whether they engaged in such harassment, or a finding that they did.

NSF issued an FAQ related to the term and condition. The FAQ was updated on November 13, 2018 and again on December 4, 2018. This guidance is based on [the term and condition published in the *Federal Register*, NSF's updated FAQ on the term and condition](#), NSF's presentation at the Association of Public and Land-grant Universities' 2018 annual meeting, and [NSF's 2019 Proposal & Award Policies & Procedures Guide \(PAPPG\)](#).

1. Types of Harassment Covered by the Term and Condition

Types of alleged harassment that may trigger UC's reporting obligation are:

- sexual harassment, including sexual assault;
- gender-based harassment; and
- harassment on any other basis protected by federal civil rights laws (for example, race, disability, and age).

This includes sexual harassment, sexual assault, other forms of "sexual violence," and "other prohibited behavior," as those terms are defined in [UC's Policy on Sexual Violence and Sexual Harassment](#), and—if on a basis protected by federal law²—harassment that would violate [UC's Policy on Discrimination, Harassment, and Affirmative Action in the Workplace](#) or any campus-specific policies.³ In addition, the University must notify NSF of events triggering a report even if the alleged harassment occurred outside the context of the NSF award (e.g., in the cafeteria).

2. Events Triggering a Report

"Finding" or "Determination"

² Federally protected bases include race, color, creed, religion, national origin, citizenship, sex, age, marital status, sexual orientation, gender identity or expression, disability, or protected veteran status.

³ Many campuses have policies prohibiting other types of harassing conduct, such as abusive conduct and bullying in the workplace. NSF only requires that the University report sexual harassment, including sexual assault, gender-based harassment, and "harassment of individuals protected under federal civil rights laws." The University should only report to NSF harassment that falls into these categories.

UC must inform NSF of any “finding” or “determination” that a PI or co-PI engaged in harassment of the type described above. As defined by NSF, a finding or determination is the final disposition of the matter under our own policies and procedures, including exhaustion of any appeal rights. Grantees are not required to inform NSF of a finding or determination that a PI or co-PI did *not* engage in alleged harassment; however, UC campuses are encouraged to voluntarily do so.

- For cases alleging sexual harassment or sexual assault by a faculty member, this means the matter was completely resolved under UC’s *Investigation and Adjudication Framework for Senate and Non-Senate Faculty* and local implementing procedure, and the Chancellor or designee made a final decision on discipline (for Senate faculty) or issued a Notice of Intent to take action or terminate (for Non-Senate faculty).
- For cases alleging sexual harassment or sexual assault by staff or non-faculty academic personnel, this means the matter was completely resolved under UC’s *Investigation and Adjudication Framework for Staff and Non-Faculty Academic Personnel* and local implementing procedure, and the University either decided to take no further action, reached an informal resolution, or issued a Notice of Intent to take corrective action or terminate.
- For cases alleging sexual harassment or sexual assault by a student, this means that the matter was completely resolved under *PACAOs-Appendix-E: Sexual Violence and Sexual Harassment Student Adjudication Framework* and local implementing procedures, and either the period for submitting an appeal has lapsed, or the appeal process is complete.
- For cases involving other types of harassment by a faculty member or non-faculty academic personnel, this means that the matter was completely resolved under APM-016 and APM-150, respectively, and local implementing procedures. For cases involving other types of harassment by other employees or by students, this means the matter was fully resolved under local implementing procedures, and either the period for submitting an appeal has lapsed or the appeal process is complete.

According to the term and condition, a finding also includes conviction of the PI or co-PI in a criminal court of law. While criminal prosecutions do not occur under Universities policies, and the University typically has no official role in such proceedings, University officials should inform the Authorized Organizational Representative (AOR) if they learn of such a conviction, so that the AOR may notify NSF.

“Administrative Leave”

Administrative leave includes any temporary or permanent suspension or removal of the PI or co-PI related to their presence on campus, or to activities, such as teaching, advising, mentoring, research, management, or administrative duties.

“Administrative Action”

NSF defines “administrative action” broadly to include measures put in place at the beginning of an investigation, while an investigation is underway, or after a finding. This includes, for example, no-contact orders, alternative work schedules, or assigning the complainant a new supervisor, mentor, or evaluator. Before an investigation is initiated, you need not report administrative actions—for example, you need not report actions taken while the Title IX officer or Office of Equal Opportunity (OEO) officer is conducting an initial assessment of the report, or while the complainant is deciding whether they want an investigation. The University also need not report actions resulting from an informal resolution (“Alternative Resolution” under the SVSH Policy) rather than an investigation. However, once an investigation begins, all administrative and interim measure actions taken or in place either before and during the investigation need to be reported.

3. Determination of PI/co-PI Status

Upon occurrence of an event that would trigger a report, the University must determine whether the alleged harasser (the “respondent”) is an NSF PI or co-PI.

We recommend that campuses consider providing their Title IX officer, OEO officer,⁴ and designated officials in academic affairs, human resources and student conduct, access to the campus database that holds the campus contract and grant data so that these officials can personally make this determination. This will limit the number of people who need to know of the allegations, and protect the privacy of the respondent and others. Alternatively, the Sponsored Projects / Contract & Grant Office (SPO) could provide a nightly list of all NSF PI/co-PIs to the Title IX officer, OEO officer, and designated officials in academic affairs, human resources and student conduct. If neither option is feasible, then the campus should establish a protocol and designate a limited number of SPO personnel who these officials can contact to determine if the respondent is an NSF PI or co-PI.

⁴ On some campuses the same person serves as both the Title IX and OEO officers.

4. Who Must File a Report with NSF

NSF made clear that only the SPO AOR can file a report; the University cannot designate another individual, such as the Title IX or OEO officer, to complete this task. This means that the Title IX officer, OEO officer, and designated officials in academic affairs, human resources and student conduct must notify the AOR of any event triggering a report (a finding, administrative leave, or an administrative action). The AOR must then report the event to NSF's Office of Diversity and Inclusion (ODI) via a [portal](#) that NSF established for that purpose.

5. When the Report Must be Filed

The AOR must file the report within ten business days of the event triggering it. However, as noted above, UC should not report "administrative actions" unless and until it actually initiates an investigation. Once it initiates an investigation, UC should report any previous related administrative actions, even if they occurred more than ten days earlier; in this instance, it is initiation of the investigation that starts the ten-day clock. If UC never initiates an investigation, it should not report the administrative actions.

6. Required Information

The AOR's report to NSF must include:

- the NSF Award Number;
- the name only of the respondent (not of any other person involved);
- the type of event triggering the notice (a finding, administrative leave, or other administrative action);
- a description of the event triggering the notice; and
- the reason for and conditions of the administrative leave or other administrative action.

7. Recommended Procedures for Filing a Report

The Title IX officer, OEO officer, designated officials in academic affairs, human resources and student conduct, and SPO on each campus must work together to develop a process to comply with the term and condition. As stated above, we recommend that—where it makes sense given individual campus structure and needs—campuses provide the Title IX officer, OEO officer, and designated officials in academic affairs, human resources, and student conduct access to the campus contracts and grants database so they can personally determine whether the respondent is a PI or co-PI. We further recommend that campuses identify 1 to 3 specific individuals in the SPO who the Title IX and OEO officers may contact upon an event potentially triggering a report. These measures will limit the number of people who need to know of the

allegations, and protect the privacy of the respondent and others. Here is how that might look:

If the Title IX officer, OEO officer, and designated officials in academic affairs, human resources, and student conduct can determine whether the respondent is a PI or co-PI, then within ten business days of the triggering event:

- the Title IX officer, OEO officer, or other designated official will notify the AOR of the information listed above under “Required Information,” and
- the AOR will then report the information to NSF using NSF’s portal.

If the AOR must determine whether the respondent is a PI or co-PI then, all within ten business days of the triggering event:

- the Title IX officer, OEO officer, or other designated official will ask the AOR to determine whether the respondent is a PI or co-PI;
- only if the AOR confirms the respondent is a PI or co-PI, the Title IX officer, OEO officer, or other designated official will inform the AOR of the information listed above under “Required Information”; and
- the AOR will then report the information to NSF using NSF’s portal.

8. Process Following Notice

Upon receipt and review of the information provided, NSF will consult with the AOR, or someone the AOR designates, about whether NSF will take responsive action. Based on the results of this review and consultation, NSF may substitute or remove the PI or co-PI, reduce the award funding amount, or suspend or terminate the award. In deciding whether to take such action, NSF will consider “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.”

9. Additional Obligations and Considerations

- The campus SPO should alert PIs/Co-PIs of the NSF Term and Condition requirements. This could be accomplished within standard SPO proposal or award communications. For example, new internal proposal forms could include an explicit consent to this requirement as a condition of being named as a PI/Co-PI. If a PI/Co-PI not accept this condition, they will have to relinquish their position in the award.
- The term and condition states that if a co-PI is affiliated with a subawardee organization, the AOR of the subawardee must provide the requisite information directly to NSF. Therefore, when your campus is the subawardee, you should provide notifications directly to NSF. However, the SPO should ensure that the University complies with other related reporting obligations to the prime awardee (e.g., an obligation to report the PI’s absence).
- In addition to NSF reporting requirements, 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. This raises the question of

whether the NSF reporting obligations could conflict with FERPA in the uncommon instance when the PI/co-PI is a graduate student. In response to a relevant question posed during the notice and comment period, NSF responded, “NSF does not view the notification requirement as being in conflict with other federal privacy laws or regulations, such as FERPA. With regard to state laws and regulations, many state privacy laws contain language allowing for information disclosure to federal agencies, and if there were to be a conflict, conflict of laws doctrines would apply.” To ensure compliance with FERPA, your campus could require that students consent to required disclosures to NSF as a condition to becoming a PI/co-PI.

- Additionally, [NSF’s 2019 PAPPG, effective January 28, 2019](#) requires that conference proposers have a policy prohibiting harassment, and a process for conference participants to report violations. Conference awardees must disseminate the policy and procedure to attendees before the conference, and make the information available at the conference. The SVSH Policy already prohibits sexual harassment, including sexual assault, in University programs, which includes University-sponsored conferences. The University’s [Nondiscrimination Statement](#) and [Regents Policy 1111](#) include general statements prohibiting harassment on other bases in University programs, and the University’s Policy on Discrimination, Harassment, and Affirmative Action in the Workplace prohibits harassment on other bases in the employment context. We recommend that each campus confirm that it has policies prohibiting harassment at University-sponsored conferences, work with its Title IX and OEO officers to develop local reporting procedures, and inform participants of the procedures and policy prohibitions in literature disseminated to attendees before and at the conference.
- NSF also encourages awardees who send individuals to field stations, vessels, summer schools, and the like, to implement practices to ensure their safety and to provide them clear reporting mechanisms. Accordingly, we recommend that each campus work with its Title IX and OEO officers to assess its practices in such programs, and develop literature informing participants of University policies prohibiting harassment and available reporting mechanisms.

II. National Institutes of Health

In September 2018, the Director of the National Institutes of Health (NIH) issued a statement about “[Changing the culture of science to end sexual harassment](#)” in response to a 2018 [National Academies report](#) on sexual harassment. Throughout 2018 and 2019, NIH has taken steps to promote compliance with its policies on sexual harassment, including issuing guidance, revising its application process, and maintaining an “[Anti-Sexual Harassment](#)” webpage.

- On November 7, 2018, [NIH issued an announcement](#) that applications for NIH institutional training grants submitted on or after January 25, 2019 must include a letter from “a key institutional leader” describing the “institutional commitment to ensuring that proper policies, procedures, and oversight are in place to prevent discriminatory harassment and other discriminatory practices.” The Office of the

President has provided [a letter](#) signed by Provost and Executive Vice President Michael Brown that can be used for this purpose.

- [NIH Grants Policy Statement 8.1.2.6](#) requires that universities seek NIH approval if, among other events, a PI withdraws from a project, is absent for a continuous period of 3 months or more, or reduces time devoted to the project by 25 percent. In May 2018, NIH issued a reminder of this requirement in [Notice Number: NOT-OD-18-172](#) and on [its Extramural Nexus blog](#). The Policy Statement and reminder are not specific to harassment; rather this is a requirement that applies to change in status for any reason. However, campuses should be mindful of the need to seek the required approval, including when the circumstances stem from harassment allegations.
- NIH issued an “[Update on NIH’s efforts to address sexual harassment in science](#)” on February 28, 2019 outlining actions NIH is taking to address sexual harassment and providing an email address (GranteeHarassment@od.nih.gov) through which anyone may report concerns that sexual harassment is affecting NIH-funded research. For additional information, see NIH’s [Anti-Sexual Harassment: for NIH Awardee Organizations and Those Who Work There webpage](#).
- In a [June 14, 2019 blog post](#), NIH’s Deputy Director for Extramural Research announced “[a new webform](#) that allows for anybody in the biomedical research community to share information related to a potential case of sexual harassment directly and, if desired, anonymously, to NIH.”

Contact

For questions regarding what constitutes a reportable event, please contact the Systemwide Title IX Director Suzanne Taylor at Suzanne.Taylor@ucop.edu or the Systemwide AA/EEO Compliance Specialist John Sims at John.Sims@ucop.edu.

For other administrative questions regarding this guidance, please contact the Research Policy Analysis & Coordination unit in the Office of the President Andrew Jones at Andrew.Jones@ucop.edu or Michael Kusiak at Michael.Kusiak@ucop.edu.

cc: Research Compliance Officers



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