



To: SUNY and RF Employee Relations and Human Resources Professionals
SUNY Title IX Coordinators
Affirmative Action Officers
Sponsored Program Directors
RF Operations Managers

From: Beth Garvey, SUNY Vice Chancellor for Legal Affairs and General Counsel
Chris Ashley, RF General Counsel

Date: January 10, 2019

Re: National Science Foundation Notification Requirement Regarding Findings of Sexual Harassment, Other Forms of Harassment, or Sexual Assault

On September 21, 2018, the National Science Foundation (NSF) published a Final Notice of a new term and condition (T&C) applicable to new awards and funding amendment of awards made 30 days after the publication date. The T&C requires that awardees notify NSF of final findings or determinations that a Principal Investigator (PI) or co-PI has committed an act of sexual harassment, other form of harassment, or sexual assault or has been placed on administrative leave or has been subjected to an administrative action relating to such a finding or determination, pending a final determination (Fed. Reg., Vol. 83, No. 184, 47940-47942). Finding/Determination is defined in the T&C as final disposition of a case under organizational policies, including exhaustion of appeals or criminal conviction. Administrative Leave/Administration Action is defined as temporary or interim suspension of a PI or co-PI under organizational policies, or as required by relevant legal obligations, from “teaching, advising, mentoring, research, management/administrative duties, or presence on campus” (47941). For more information please see [NSF Q&A](#).

In order to implement this new NSF T&C, it is essential that SUNY and RF personnel work together to ensure that RF is able to meet its obligations as an NSF awardee on behalf of SUNY. This memorandum provides RF and SUNY’s shared opinion and position that any policy or agreement that restricts sharing of information related to allegations of sexual harassment, other harassment or sexual assault, is subordinate to this new requirement and any information subject to the requirement must be shared with the Authorized Organizational Representative (AOR) and other appropriate RF personnel or representatives whose responsibility includes reporting. The SUNY Office of General Counsel and the RF’s Office of General Counsel agree that this regulatory requirement mandates the sharing of information necessary for compliance with the new NSF T&C notwithstanding any other policy or agreement to the contrary. However, if you believe that another federal or state law precludes sharing such information please contact your campus counsel, the SUNY Office of General Counsel, or the RF Office of General Counsel. While safeguarding confidentiality is essential, this memorandum serves as explicit authority for SUNY human resources offices, Title IX officers, affirmative action and diversity officials, and legal staff to share relevant information in a timely fashion with RF personnel in order to facilitate regulatory compliance.

Notification must be made by the AOR electronically and within 10 business days to the NSF's Office of Diversity and Inclusion using a form available at www.nsf.gov/harassment. Per NSF guidance, the AOR is defined as "the individual who is authorized to sign on behalf of the proposing organization." Each campus should designate an appropriate representative of the sponsored program office to serve as the AOR. When necessary, specific case information may need to be shared with representatives of the SUNY Office of General Counsel, HR, or Audit or the RF Office of General Counsel, HR, Compliance, or Audit.

The reporting form designates specific information regarding the award and the type of report. While the PI subject to the action is identified, personally identifying information about complainants or other involved individuals is not included (47941, FN 4). Note that if a co-PI is affiliated with a sub-awardee, that sub-awardee is bound by the same requirements and must directly notify the NSF (47941, FN 1). Such matters must be reported regardless of whether the violation occurs at the institution, "on-line, or outside the organization, such as at field sites or facilities, or during conferences and workshops" (47941) and regardless of "**whether the behavior [in question] occurred while the PI or co-PI was carrying out award activities**" (47941, FN 3).

The institution may replace the PI or co-PI, and NSF will review and, after consulting with the AOR or designee, "may, if necessary...[substitute or remove] the PI or any co-PI, reduce the award funding amount, or where neither of those previous options is available or adequate...suspend or terminate the award" (47942).

Personnel other than the PI or co-PI who are funded by an NSF award also must comply with policies and legal requirements prohibiting sexual and other harassment and sexual assault (47942). An NSF awardee need not notify NSF of any non-compliance by such personnel but must take steps to "ensure the safety and security of other award personnel and the continued progress of the project." (47942).

Clients should share information about this new T&C with appropriate personnel on campus including sponsored programs officials and researchers. Questions may be directed to your campus counsel.

Training for AOR's will be available in 2019.

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