



Legal Alert from the Office of the General Counsel

On October 21, 2018, the NSF's new Term and Condition regarding sexual or other harassment or sexual assault (attached here and available at: <http://www.gpo.gov/fdsys/pkg/FR-2018-09-21/pdf/2018-20574.pdf>) became effective. The new Term and Condition requires that organizations that receive NSF awards or funding notify NSF of:

- any Finding/Determinations¹ of sexual assault, sexual harassment, or Other Forms of Harassment by a NSF-funded principal investigator (PI) or co-principal investigator (co-PI); and/or
- if a PI or co-PI is placed on administrative leave; or if any administrative action is imposed on the PI or co-PI relating to either: a) any finding/determination, or b) an investigation of alleged sexual assault, sexual harassment or other forms of harassment.

The NSF expects that organizations that receive NSF funding, including institutions of higher education, will be responsible for fully investigating complaints, and for compliance with federal nondiscrimination laws and regulations. NSF's new Term and Condition is meant to ensure that NSF-funded organizations clearly understand these expectation. The new Term and Condition will be incorporated into NSF's Agency Specific Requirements to the Research Terms and Conditions, the Grant General Conditions, and the Cooperative Agreement/Financial and Administrative Terms and Conditions.

Notifications made under the new Term and Condition must be made by the Authorized Organizational Representative (AOR) to NSF's Office of Diversity and Inclusion

at <http://www.nsf.gov/harassment%3chttp://www.nsf.gov/harassment> within ten business days from the date of the Finding/Determination, or the date of the placement of the PI or co-PI on administrative leave, or the imposition of administrative action, whichever is sooner. Notifications must include the NSF Award Number, Name of PI or co-PI being reported, the type of notification (e.g., Finding/Determination, administrative leave), description of the Finding/Determination and action(s) taken if any, and the reason(s) for, and conditions of, placement of the PI or any co-PI on administrative leave or imposition of administrative action. Importantly, personally identifiable information regarding any complainants or other individuals involved in the matter should not be included in the notification.

After notification, NSF will consult with the organization to determine what action is necessary, which may include, if necessary, asserting NSF programmatic stewardship responsibilities and oversight authority to initiate the substitution or removal of the PI or any co-PI; reducing the award funding amount; or, where neither of these options is available or adequate, suspending or terminating the award. The NSF awardee institution may at any time propose a substitute investigator if it determines the PI or any co-PI may not be able to carry out the NSF-funded project or activity and/or abide by the award terms and conditions.

These requirements will be effective for any new award, or funding amendment to an existing award, made on or after October 21, 2018. Thus, the notification requirement will be triggered by: any Finding/Determination of sexual assault, sexual harassment, or other forms of harassment by a PI or co-PI, and/or administrative action (including

¹ The new NSF Term and Condition defines the following key terms: Finding/Determination; Other Form of Harassment", "Sexual Harassment" and "Administrative Leave/Administrative Action". The Term and Condition defines "Finding/Determination" as "[t]he 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." Definitions can be found within the Term and Condition by following the link above.

administrative leave) imposed on a PI or co-PI relating to any Finding/Determination or investigation of alleged sexual assault, sexual harassment or other forms of harassment, on or after the start date of an award or funding amendment.

In order to comply with this requirement, we recommend that campuses ensure that information regarding employees' status as, PI or co-PIs be made electronically available to those departments responsible for investigation of incidents of sexual or other harassment or sexual assault (e.g., Human Resources, Title IX, Affirmative Action and Diversity and Inclusion) so that these departments can: 1) confidentially comply with the new NSF Terms and Conditions, and 2) review the University's procedures to ensure compliance with these new Terms and Conditions regarding current and future NSF awards and funding.

The OGC is available to help campuses abide by this recent development. Should you wish to discuss the issues addressed in this Legal Alert with us, please contact us using the web-link which can be found at <https://www.umassp.edu/general-counsel/legal-advice-request-form> and use the words "Legal Alert Follow Up" in the subject line.

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