

May 4, 2018

**Rush D. Holt**

Chief Executive Officer and  
Executive Publisher, *Science*

Ms. Suzanne H. Plimpton  
Reports Clearance Officer  
Office of the General Counsel  
National Science Foundation  
2415 Eisenhower Avenue  
Alexandria, VA 22314

Dear Ms. Plimpton,

The American Association for the Advancement of Science (AAAS), the largest general scientific society in the United States, appreciates the opportunity to submit comments on the National Science Foundation's (NSF) proposed reporting requirements for sexual harassment, other forms of harassment, or sexual assault. AAAS has a history of addressing bias and harassment, and agrees with NSF that a "community effort is essential to eliminate sexual and other forms of harassment in science and to build scientific workspaces where people can learn, grow and thrive."

As a non-profit organization and a recipient of NSF grant awards, AAAS has its own policies regarding harassment in the workplace and abiding by federal non-discrimination laws. AAAS is committed to supporting a safe and productive working environment and believes that NSF's proposed reporting requirement provides an opportunity for the research community to ensure the same. While NSF's goals in this regard are to be commended, AAAS is concerned that certain aspects of this initial draft could result in unintended consequences, and we are therefore submitting these comments in the interest of improving and enhancing the proposed reporting requirements. Our specific comments are outlined below:

**Responsible and Accountable Manner.** In the supplementary information and in the beginning of Proposed Article X, NSF describes the expectations of how individuals must comport themselves, specifically "during the performance of award activities." While AAAS appreciates that NSF is interested in including misbehavior in settings outside of traditional laboratory environments (e.g., field sites and conferences), we are concerned that the language "during the performance of awards activities" could be interpreted as the chronological time of the period of performance of the grant and could capture conduct of an individual beyond the intended scope of the NSF reporting requirement. AAAS suggests that NSF investigate this further and consider clarifying this language as appropriate.

**Definition of Conduct Covered.** In the proposed reporting requirements, NSF notes that it would apply to "sexual harassment, other forms of harassment, or sexual assault." This broad

range of behaviors encompasses both improper behavior and illegal/criminal activities. Furthermore, the term "other forms of harassment" is vague and may or may not be covered under existing laws, thus leading to confusion among covered institutions. For example, the AAAS meeting code of conduct includes harassment "based on ethnicity, gender, religion, age, body size, disability, veteran status, marital status, sexual orientation, [or] gender identity." As this is a new reporting requirement, AAAS believes that NSF should either focus explicitly on sexual harassment and assault, or provide specific guidance as to what is covered under "other forms of harassment."

**Definition of Finding.** As stated above, the NSF reporting requirement covers a broad range of behaviors that encompasses both improper behavior and illegal/criminal activities. If the alleged activity constitutes a criminal act (i.e., sexual assault), institutions must rely on law enforcement to conduct and complete an investigation. It is unclear in the NSF proposal what is considered a finding or determination, especially from a legal perspective. Would a single allegation qualify as a finding? Should the requirement be applied only if there is evidence of pervasiveness? Is it applied after an investigation is completed and an allegation is upheld? If the act at issue is a single incident and an individual is found at fault and appropriate action is taken, would a report still be required? AAAS is concerned that institutions that have robust policies in place and actively work to respond to allegations could be viewed in a negative light in comparison to institutions that do not have robust policies in place. AAAS recommends that NSF provide greater clarity to the definition of finding and determination.

**Type of Reporting.** According to the NSF proposal the reporting requirement would be triggered "from the date of the finding/determination or the awardee's placement of the PI or co-PI on administrative leave." In addition, NSF must be informed by the Authorized Organization Representative via email within seven (7) business days. Individuals may be put on administrative leave for many different reasons, for example, at the onset of a related investigation and for both brief (e.g., a few days) or long periods of time depending on the severity of the allegation. AAAS is concerned that it would be premature to disclose such information at an interim stage. It has the potential to trigger employment laws and expose institutions to allegations of defamation. AAAS recommends that NSF require that reporting be triggered after a conclusive finding has been made and an action has been established.

**Protection of Privacy.** It is unclear how NSF's Office of Diversity and Inclusion will protect the confidentiality of the personal information that is submitted and whether the agency will have a secure system for obtaining reports of findings and determinations. It is crucial that the NSF reporting requirement provide clear guidelines as to how that information will be filed, protected, shared, and archived. This is particularly crucial as personal information could be subject to Freedom of Information Act inquiries and the information on a claimant could be made public. This could have negative consequences for that individual at a professional and personal level, and could create a disincentive for individuals to file complaints with their institutions. Furthermore, there is no instruction as to how NSF would address the removal or correction of reported information if a "finding/determination" is later found to be incorrect. Given the sensitive nature of harassment, it is important that NSF take concrete measures to protect the privacy of both parties involved.

**Unilateral Action.** AAAS respects NSF's interest in protecting federal funding and ensuring that individuals with a record of harassment and/or assault are restricted from receiving federal funds. However, the NSF clause to allow it to take unilateral action and to terminate an award does not appear to take into consideration whether an institution is acting to resolve the situation. Nor does NSF provide any guidance with respect to an appeals process. NSF should consider creating a safe harbor as part of its policy and allow for a consultation period between NSF and the institution. For example, NSF could first alert an awardee institution that it is considering unilateral action, who the authorized individuals are that are involved in the decision-making process, and provide for discussion between the agency and institution regarding the action(s) it is taking.

Finally, as this is a new and very important policy that can have a positive impact in ensuring that institutions work proactively to create robust policies so that scientists may work in a safe environment, AAAS recommends that NSF use this opportunity to gather information on the impact of the policy on the scientific enterprise. There may be unintended consequences or unforeseen impacts of the reporting requirements—as outlined above—that may necessitate NSF's making changes to the policy accordingly. AAAS recommends that NSF revisit the policy in 1 to 2 years and analyze the evidence of policy impact. This will afford other federal agencies and/or funding organizations an opportunity to craft policies appropriately and move toward a uniform standard.

AAAS appreciates the opportunity to share our thoughts, concerns and suggestions, and we stand ready to work with the National Science Foundation toward building "scientific workspaces where people can learn, grow and thrive."

Sincerely,



Rush D. Holt