

Report on Research Compliance Volume 15, Number 7. July 31, 2018 No New NIH Harassment-Related Requirements?

By Theresa Defino

NIH is undertaking a number of initiatives to prevent and address sexual and other types of harassment when they occur on the agency's campuses. But when it comes to NIH-supported investigators who are alleged perpetrators or targets of harassment, NIH will not be involved except when required, Larry Tabak, NIH principal deputy director, recently told members of the Advisory Committee to the Director (ACD) of NIH. The ACD is the agency's highest ranking external consultative panel.

That didn't sit too well with at least one ACD member and another participant on an unrelated NIH working group who was in attendance during Tabak's remarks. NIH's approach contrasts with the strategy taken by the National Science Foundation (NSF), which has proposed a new award term and condition that explicitly deals with harassment and imposes new reporting requirements for awardee institutions.

Awardees Are Responsible

In the portion of his 35-minute presentation that correlated to slides titled "Extramural Workforce and Sexual Harassment: The NIH Perspective," Tabak stressed that investigators are employees of institutions, and that, "fundamentally, grants and contracts are awarded to institutions."

"Awardees are responsible for their employees," he said, in the same way that "NIH is responsible for its employees, for example, the people who work in the intramural program, the people who work in grants [program offices] and so forth."

Institutions "are responsible for creating and maintaining a safe work environment," he said. NIH, if it "hears concerns," may contact institutions and "renegotiate terms and conditions if appropriate," said Tabak.

In his review of NIH's "expectations" related to harassment, Tabak did not introduce any new requirements. Expectations that NIH has set for institutions, updated in 2015 and 2016, remain in effect, he said, such as informing the agency when a researcher has been removed as a principal investigator for any reason, or faces actions such as being banned from campus and cannot continue as a PI.

NIH also established requirements that conferences it supports must occur "in an environment free from discrimination and harassment, sexual and otherwise. On May 1, NIH released a notice clarifying that NIH must be alerted when there is a "change in status" of a PI, program director or peer reviewer.

In February, NSF Director France A. Córdova publicly issued an "important notice" sent to "presidents of universities and colleges and heads" of other NSF grantee organizations stating that NSF "does not tolerate sexual harassment, or any kind of harassment, within the agency, at grantee organizations, field sites, or anywhere NSF-funded science and education are conducted." PIs and co-PIs on NSF grants are "in positions of trust" and "must comport themselves in a responsible and accountable manner, including during the performance of award activities conducted outside the organization, such as at field sites or facilities, or during conferences and workshops," she said (RRC 3/18, p. 1).

Córdova also announced a series of new requirements that are proposed to be added as the term and condition to awards (RRC 4/18, p. 6). Institutions would have to report “1) any findings/determinations regarding the PI [principal investigator] or any co-PI on an NSF award that demonstrate a violation of organizational codes of conduct, regulations or statutes relating to sexual harassment; and 2) if the awardee places the PI, or any co-PI on administrative leave relating to a finding or investigation of a violation of organizational codes of conduct, regulations or statutes relating to sexual harassment.” Reporting is also applicable to “other forms of harassment or sexual assault.”

The proposed term and condition, which was open for comment until May 5, has not yet been finalized.

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