

MIDWESTERN UNIVERSITY

STANDARD OPERATING PROCEDURE

DIVISION: All University Colleges

SUBJECT: Addressing Allegations of Harassment and Sexual Harassment Involving PIs, Co-PIs, or Award Personnel on National Science Foundation Grants	PROCEDURE NO. 2		
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PURPOSE : This procedure establishes institutional requirements for addressing allegations of unlawful harassment, including sexual harassment, regarding a Principal Investigator (PI), co-PI, or award personnel on a funded National Science Foundation (NSF) grant (collectively Grant Personnel). The purpose of this procedure is to explain to Midwestern University (MWU) faculty and staff the expectation imposed on the PI and how MWU intends to implement this expanded and formalized federal agency requirement. This procedure does NOT abrogate or otherwise amend any of MWU's policies and procedures concerning anti-harassment, equal employment opportunity, code of conduct, or any other policy or procedure concerning unlawful discrimination, harassment, or retaliation (collectively MWU Policies and Procedures). Instead, this procedure shall be read in conjunction with, and in an effort to give full force and effect to, MWU Policies and Procedures. Moreover, any inconsistencies in this procedure shall be construed to be additional requirements to any contained in the MWU Policies and Procedures where there are findings of sexual harassment, other forms of harassment, or sexual assault against any Grant Personnel.

BACKGROUND: On September 21, 2018, the NSF published in the Federal Register, "Notification Requirements Regarding Findings of Sexual Harassment, Other Forms of Harassment, or Sexual Assault", <<<https://www.federalregister.gov/documents/2018/09/21/2018-20574/notification-requirements-regarding-findings-of-sexual-harassment-other-forms-of-harassment-or>>>, a final notice of a new award term and condition to be incorporated by reference into the grant agreement that will become part of that award to go into effect October 21, 2018. This new term and condition will require MWU to notify the NSF promptly of

findings of “sexual harassment, other forms of harassment, or sexual assault” against any Grant Personnel. The award term and condition also requires MWU to report the placement of the PI or co-PI on administrative leave or the imposing of an administrative action related to a finding or investigation of a violation of awardee policies, codes of conduct, statutes or regulations relating to sexual harassment, other forms of harassment, or sexual assault.

DEFINITIONS: For purposes of this procedure, the following definitions shall apply:

Sexual Harassment: unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.

Other Forms of Harassment: Non-gender or non-sex-based harassment of individuals protected under federal civil rights laws, as set forth in the MWU Policies and Procedures, statutes, regulations, or executive orders.

Sexual Violence: a form of sexual harassment. Sexual violence, as the Office of Civil Rights uses the term, refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent (e.g., due to the victim’s age or use of drugs or alcohol or because an intellectual or other disability prevents the victim from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

Finding/Determination: the final disposition of a matter involving sexual harassment or other forms 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.

Administrative Leave/Administrative Action: any temporary/interim suspension or permanent removal of the PI or co-PI, or any administrative action imposed on the PI or co-PI by the awardee under MWU Policies and Procedures, statutes, regulations, or executive orders, relating to activities, including but not limited to the following: teaching, advising, mentoring, research, management/administrative duties, or presence on campus.

Respondent: a person responding to an allegation of sexual misconduct. An individual alleged to have violated MWU’s Anti-Harassment Policy and who has been identified as such in a complaint.

NOTIFICATION

REQUIREMENTS: The new NSF term and condition requires MWU to notify the NSF of any findings/determinations of sexual harassment, other forms of harassment, or sexual assault regarding any Grant Personnel. The new term and condition also will require MWU to notify NSF if the PI or co-PI is placed on administrative leave or if MWU has imposed any administrative action on the PI or any co-PI related to any finding/determination or an investigation of an alleged violation of awardee policies or codes of conduct, statutes, regulations, or executive orders relating to sexual harassment, other forms of harassment, or sexual assault.

Notification must be submitted by the Director of the Office of Research and Sponsored Programs to the NSF's Office of Diversity and Inclusion within 10 business days from the date of the finding/determination, or the date of the placement of a PI or co-PI by the awardee on administrative leave or the imposition of an administrative action, whichever is sooner. Submission of the required notification will be by means of completing a web form at:

<<https://www.nsf.gov/od/odi/notification_form.jsp>>. The notification will describe the interim measures taken by MWU and the reasons MWU took such action.

Upon receipt and review of the information provided, the NSF will consult with the Director of the Office of Research and Sponsored Programs. Based on the results of this review, the NSF may, if necessary, assert its programmatic stewardship responsibilities and oversight authority to initiate the substitution or removal of the PI or any co-PI, reduce the award funding amount, or where neither of these options are available or adequate, to suspend or terminate the award.

PROCEDURE:

1. The Director of the Office of Research and Sponsored Programs (ORSP) will provide MWU's Director of Human Resources a list of all key personnel devoting effort on NSF grants; the list will be updated quarterly in conjunction with the ORSP Quarterly Research Report.
2. When a student or employee of MWU files a complaint of sexual harassment and/or sexual assault with the Human Resources Department, the department will determine whether the respondent is listed on the roster as devoting effort on an NSF grant. Notification must be submitted confidentially by the Human Resources Department to the Director of ORSP within three (3) business days from the date of finding/determination, or the date of the placement of key personnel on administrative leave or the imposition of an administrative action, whichever is sooner.

3. Notification by the Director of ORSP to the NSF under this procedure regarding both interim administrative actions and final determinations of responsibility will identify the respondent, as required, but will not include personally identifiable information of others (e.g., the complainant(s) or witnesses). When MWU is a subawardee or non-lead institution under an NSF award, notification will be made directly to the NSF. However, MWU may also communicate with the prime awardee as necessary or appropriate under the circumstances.
4. If the interim measures could negatively affect the federally-funded activity or other personnel associated with the award, MWU may seek to appoint a substitute PI or co-PI in consultation with the NSF. This process will necessarily involve discussions with others at MWU, including the potential substitute PI and appropriate Department Chair(s), but disclosures will be limited to the extent possible.
5. Once the respondent is found responsible, following any applicable appeals, of violating MWU policy prohibiting harassment or sexual assault, the Human Resources department will confidentially notify the Director of ORSP of such final determination within three (3) business days.
6. If the respondent is a PI or co-PI on an NSF award(s), including sub-award(s), the NSF will be notified by the Director of ORSP within ten (10) business days of such final determination.
7. After a final determination and if a substitute PI or co-PI have not already been approved, MWU may again seek to appoint a substitute PI or co-PI in consultation with the NSF. This process will necessarily involve discussions with others at MWU, including the potential substitute PI(s) or co-PI(s) and appropriate Department Chair(s), but disclosures will be limited to the extent possible.

REFERENCES: NSF, Office of the Director webpage, Sexual Harassment
<<https://www.nsf.gov/od/odi/harassment.jsp>>

NSF, Term and Condition: Sexual Harassment, Other Forms of Harassment or Sexual Assault
<https://www.nsf.gov/od/odi/term_and_condition.jsp>