

April 13, 2023
Dr. Arati Prabhakar
Director
Office of Science and Technology Policy
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

RE: Improving Agency Scientific Integrity Policies

Dear Director Prabhakar:

As organizations whose work involves federal scientific integrity issues, we write to thank the Office of Science and Technology Policy (OSTP) for issuing *A Framework for Scientific Integrity Policies and Practices*ⁱ and to request four updates to the framework to help it achieve President Biden’s directive to “ensure the highest level of integrity in all aspects of executive branch involvement with scientific and technological processes” in order to restore trust in government.ⁱⁱ Specifically, we believe agency scientific integrity policies should contain provisions that establish:

- Transparent and explicit procedures for investigating allegations;
- Explicit written policies that delineate scientists’ ability to communicate with the media and public about their areas of expertise and allow for prompt clearance of scientific materials;
- Enforceable rules with penalties that hold all scientific integrity violators accountable, including political appointees; and
- Protections for scientists from retaliation when they engage in policy dissent against a scientific integrity infraction and do not meet the definition of whistleblowing.

We would like to see these provisions integrated into the model policy. If the timeline does not permit updates to the model policy, we urge that a) agencies be provided this letter and encouraged to incorporate these provisions into their policies and b) OSTP and the National Science and Technology Council (NSTC) Subcommittee on Scientific Integrity assess agencies’ draft policies to see if they contain these provisions, and recommend their addition where they are absent.

I. Transparent and explicit procedures for investigating allegations

The model policy indicates that the Scientific Integrity Official (SIO) “drafts procedures to respond to allegations of compromised scientific integrity in a timely, objective, and thorough manner” and specifies that the procedures include “an initial assessment and review, a fact-finding process, an agency adjudication or determination including description of remedies and preventative measures to safeguard the science, an appeals process, follow-up to track implementation of remedies, and reporting” (Section IV.4).

We recommend that the model policy and agencies' scientific integrity policies provide additional specifics regarding these procedures to allow agency employees and the public to trust them. In particular, policies should contain the following:

A. Independent appeal mechanisms on findings and decisions: Agency personnel will be reassured that investigations and findings are handled appropriately if an independent appeal process exists. Scientific integrity policies should specify the appeals process(es) that will be available to all affected personnel, including those found to have violated scientific integrity policies and those whose allegations were not investigated or remedied. The policies should establish an independent mechanism for appeals, such as the ability to appeal to the NSTC Subcommittee on Scientific Integrity.

B. Mechanism for safeguarding the independence of investigators: SIOs or others investigating allegations of compromised scientific integrity should be protected from undue pressure from their supervisors or political appointees. Scientific integrity policies should establish the independence of investigators to investigate thoroughly and withstand any pressure to alter their findings. This could include provisions that investigators are not supervised by the chain of command involving an allegation or that they coordinate with their inspector general's office and/or the NSTC Subcommittee on Scientific Integrity when allegations involve high-level officials.

C. Timeliness provisions: Scientific integrity policies should include timelines to assure the timely resolution of an allegation of a loss of scientific integrity. For instance, a decision to investigate an allegation could be required within 10 working days and a determination within another 45 working days, and the appeal process could be limited to 30 working days.

II. Explicit written policies that delineate scientists' ability to communicate with the media and public about their areas of expertise and allow for prompt clearance of scientific materials

We appreciate that the model policy takes the important step of encouraging agency scientists to "participate in communications with the media regarding their scientific activities and areas of scientific expertise" (II.3) and requires "that technical review and clearance processes include provisions for timely clearance and expressly forbid censorship, unreasonable delay, and suppression of objective communication of data and results without scientific justification" (II.13). Ensuring that scientists are able to communicate efficiently with members of the media and publish findings promptly can help improve public awareness of and trust in agency activities.

Scientists are most likely to make use of opportunities to speak with members of the media and the public when the policies related to these activities are explicit and unambiguous. Some references to clearance policies and ethics rules in the model policy could be interpreted as restricting scientists' ability to talk to journalists or the public, and the statement about timely clearance is too general. We recommend the following clarifications and specifics for the model policy and agencies' scientific integrity policies:

A. More-explicit recognition of the ability to proceed in media communications without experts' input: In item II.3, add “but not required” to the sentence about seeking advice from communications experts, so it reads: “In communicating with the media, scientists are strongly encouraged, but not required, to seek advice from [AGENCY] trained career communications experts.”

B. Clarification of the scope of scientific clearance procedures: Scientific clearance procedures typically relate to quality control of scientific materials intended for publication or presentation rather than to interview or public speaking requests, and we recommend making this distinction explicit. One option for doing so would be to add a sentence stating “Scientific clearance procedures are only applicable to scientific materials intended for publication or presentation and do not apply to interview and speaking requests” at the end of item II.13. Another option would be to assure that communications officers and political appointees are prohibited from conducting scientific clearance review.

C. Specifics regarding ethics rules: In item II.9, “Allow scientists to communicate with the media or the public in their personal capacities subject to limitations of government ethics rules,” specify what kinds of ethics rules apply to communications with media and the public – e.g., “the limitations of government ethics rules regarding compensation for speaking engagements.”

D. Specifics regarding timely clearance: We recommend the addition of the following provision regarding clearance procedures:

“Each agency must have a written clearance policy that specifies who must review work products and gives deadlines by which comments must be given or the product can move to the next stage (e.g., if a supervisor does not clear or provide comments on a product five days after receiving it, it moves to the next-level approver; if there is no next-level approver, the author may submit the paper to a journal, deliver the presentation, etc.). The policy must also provide an appeal mechanism for those who are denied clearance and a method for obtaining a second opinion if an author disagrees with a requested revision.”

E. Explicit language reinforcing federal anti-gag rules: To comply with the Whistleblower Protection Enhancement Act and guard against any potential chilling effect on employees concerned about communicating with the media or the public, ensure that any communication policy, and any directives or instructions distributed to employees explaining such policies, contains the explicit language the Whistleblower Protection Enhancement Act mandates must be included under the “anti-gag” provisions of § 115 and 5 U.S.C. § 2302(b)(13) in any nondisclosure policy, form, or agreement:

“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by

controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”

F. Deletion of Item II.8: Model policy item II.8 prohibits “making or publishing statements that could be construed as being judgments of, or recommendations on, ... policy” without permission. Such a broad statement risks making scientists afraid of talking to reporters at all, given that many appropriate statements could be “construed as” recommending policy — e.g., describing a research finding that a pesticide is associated with a decline in an insect population could be construed as recommending a policy restricting use of that pesticide, even if the scientist does not give such a recommendation. We recommend item II.8 be deleted, given the potential for overly broad application and that item II.7 already requires compliance with agency policies and procedures for reporting findings.

III. Enforceable rules with penalties that hold all scientific integrity violators accountable, including political appointees

To help ensure that all agencies have scientific integrity policies capable of deterring violations, the model policy should specify the imposition of penalties and a mechanism for political appointee accountability. We appreciate that the framework includes among the metrics for assessing agencies policies “Scientific integrity policy and/or procedures or both describe consequences and enforcement responsibilities, or reference other agency policies that address consequences and enforcement responsibilities.” Some additional specifics would be helpful, and we recommend that the following be included in the model policy and agencies’ policies:

A. Specific penalties for violations: Each agency’s policy should specify penalties for scientific integrity violations, and these should appear in the agency’s official table of penalties. Penalties should be sufficiently meaningful to discourage violations — e.g., warnings, suspension, demotion, or removal.

B. Publicly identify appointees found to have violated policies: When an investigation determines that a political appointee has caused the loss of scientific integrity, the identity of that official should be made public and reported through their chain of command and to the National Science and Technology Council (NSTC) Subcommittee on Scientific Integrity and the relevant Cabinet Officer.

IV. Protections for scientists from retaliation when they engage in policy dissent against a scientific integrity infraction and do not meet the definition of whistleblowing

The model policy requires compliance with whistleblower protections, and the Whistleblower Protection Enhancement Act (WPEA) offers an additional layer of protection for federal scientist whistleblowers reporting egregious scientific integrity violations, but not all actions that the policy seeks to protect meet the definition of whistleblowing – such as policy dissent. Scientists could suffer retaliation or obstruction for pursuing research on controversial topics or for publishing research findings that could be interpreted as disagreement with agency policy, but

these activities may not constitute whistleblowing except to the extent they disclose adverse consequences. To ensure broad protection for scientists, we recommend the following:

A. Prohibit retaliation for specific activities: Add an item to Section V of the model policy explicitly prohibiting retaliation based upon the content of scientific research or its implications, or for expressing differing professional opinions.

B. Approach the Office of Special Counsel about an administrative path to enforcement: An administrative path is necessary to obtain enforcement of scientific integrity policies. Apart from protecting whistleblowers, the U.S. Office of Special Counsel (OSC) has very broad jurisdiction under 5 USC § 1216:

“(a) In addition to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning . . . (4) activities prohibited by **any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking.**” (Emphasis added.)

OSC uses this authority to take action to remedy and prevent discrimination on the basis of sexual orientation in the federal workplace by enforcing an executive order to that effect. OSC could potentially also extend protection to scientists who suffer discrimination for their pursuit of a scientific enterprise. We recommend the NSTC Subcommittee on Scientific Integrity reach out to OSC to explore this possibility.

The model policy contains many important elements, but a few remaining gaps risk undermining it. The modifications above would make it an even more effective tool to advance President Biden’s goals of ensuring the highest level of scientific integrity and restoring trust in government.

Sincerely,

Center for Progressive Reform
Climate Science Legal Defense Fund
Earthjustice
Environmental Protection Network
Government Accountability Project
Government Information Watch
Ibis Reproductive Health
Jacobs Institute of Women's Health
National Center for Health Research
Project On Government Oversight (POGO)
Public Employees for Environmental Responsibility (PEER)
The Digital Democracy Project
Union of Concerned Scientists

ⁱ Scientific Integrity Framework Interagency Working Group of the National Science and Technology Council. (2023). *A Framework for Federal Scientific Integrity Policy and Practice*. Available:

<https://www.whitehouse.gov/wp-content/uploads/2023/01/01-2023-Framework-for-Federal-Scientific-Integrity-Policy-and-Practice.pdf>

ⁱⁱ The White House. (2021). Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking. Available: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking/>