



January 27, 2020

Chloe Kontos, Executive Director
National Science and Technology Council
Office of Science and Technology Policy
Executive Office of the President
Eisenhower Executive Office Building
1650 Pennsylvania Avenue
Washington, D.C. 20504

Submitted via email to: JCORE@ostp.eop.gov

Dear Executive Director Kontos,

On behalf of the Association of American Universities (AAU), an association of America's leading research universities, I write to offer our comments in response to the request for information (RFI) issued by the National Science and Technology Council (NSTC) Joint Committee on the Research Environment (JCORE) and [published](#) in the *Federal Register* on November 26, 2019. We appreciate the opportunity to comment on the important issues on which the JCORE is focused.

Our nation's research enterprise is built on the foundation of a strong government-university partnership. JCORE's work is important to sustaining this partnership so it can flourish and continue serve our national interests. Through this partnership, in which federal agencies support research conducted at leading universities, we have developed the fundamental scientific knowledge that drives the innovations which have made us global leaders in medicine, defense, technology, and a host of other scientific disciplines. For more than 70 years, the government-university partnership has made our nation stronger, healthier, and more prosperous. University-based researchers of all genders, races, and ethnicities work at institutions in every state across our nation to fuel these innovations. Universities, small businesses, and large industries then take that basic research, develop it, and often commercialize it to the great benefit of America's economy, health, and security.

The federal government must take care to ensure that policies and regulations affecting research safeguard the taxpayers' interests while allowing science and scientists to thrive. JCORE is poised to help streamline, enhance, and make long overdue improvements to federal policies that affect our nation's research enterprise. For years, we have been discussing many of these challenges in a diffuse and piecemeal fashion. JCORE now gives the Executive Branch a mechanism to address these challenges and coordinate needed improvements across federal agencies.

The following comments are organized to correspond with the four JCORE subcommittees: ensuring rigor and integrity in research; coordinating administrative requirements for federally funded research; strengthening the security of America's science and technology research enterprise; and fostering safe, inclusive, and equitable research environments.

Ensure Rigor and Integrity in Research

Facilitating Public Access to Research Data

A critical element of ensuring reproducibility and replicability is guaranteeing public access to federally funded research so that results can be shared and evaluated by other scholars. Agencies are already mandated to do this by way of the February 22, 2013 [OSTP memorandum](#), which expanded public access to the results of federally funded research.

Additional steps can be taken by federal agencies to further facilitate and support institutions as they work to accelerate public access to research data and comply with new data access requirements being developed by federal research agencies. We recommend federal agencies:

- Harmonize regulatory guidance for data sharing across all federal science agencies. Currently, regulatory guidance varies between federal research agencies; this is due in part to the differences in types of data collected and varying practices between scientific disciplines. Improving regulatory alignment between agencies will help to improve greatly the overall research enterprise and reduce burdens and costs for both researchers and institutions; and
- Under the stewardship of OSTP, provide guidance to grantees that supports researchers in creating Data Management Plans (DMP) that are Findable, Accessible, Interoperable, and Re-useable (FAIR).

This guidance would include:

- Requiring the grantee to use persistent identifiers (PIDs) to track research objects (people, awards, research outputs, organizations, samples, etc.) pre-award, e.g., ORCID, ROR, other DOIs;
- Allowing data management and sharing as a direct cost in grant applications.
 - AAU believes that these costs are, in fact, a critical component of disseminating research and ensuring research quality. Thus, data management and sharing costs should be allowed as a direct cost by research granting agencies and budgeted for by the researcher as a part of the DMPs they submit.
 - We would also note that the current 26-percent cap on indirect cost recovery constrains universities' ability to pay for the infrastructure and additional resources necessary to ensure public access to research results, particularly for biological data collected from medical patients as patient data is understandably subject to strict confidentiality protocols.
- Training for agency staff to act as partners with grantees and researchers in developing quality DMPs that include the use of PIDs and other elements to facilitate reproducibility and replicability. Data management is a constantly evolving field and agency partners should have the capacity to collaborate with researchers as data elements change;
- Clearly identifying agency-approved elements expected in a DMP to avoid guidance that requires researchers to become experts in data science;
- Developing a government-wide mechanism for accepting machine-readable data management plans at the time of proposal submission; and
- Requiring researchers to include in their bio sketches information about publicly accessible datasets they have created, where and how those datasets can be accessed, and briefly describe their scientific relevance/value. This simple but significant change will act as an incentive for

researchers to view data sharing as an expected part of the research process and the receipt of federal funding rather than just an additional compliance measure imposed on them by their universities.

Partnering to Increase Research Quality and Improve Data Infrastructure, Access, and Retention

Federal agencies can more effectively work with the academic community, professional societies, and the private sector to enhance research quality, reproducibility, and replicability by implementing the following suggestions:

- Convene stakeholders in the research data community to tackle challenges and address gaps in existing efforts. OSTP is in a critical position to bring all research parties together to inventory strengths, weaknesses, best practices, and to leverage and align agency policies and practices that promote synergistic partnerships with academia and industry;
- Support the creation of additional federal data infrastructure, data repositories, and cloud-based services to help ensure that federally funded research data can be uniformly stored and shared. Examples of existing efforts led by the NIH and DOE include: [NIH's Common Data Elements Portal](#), [PubMed](#), and the [DOE Office of Science and Technical Infrastructure's Data Services and Developer Tools](#);
- Work with stakeholders, particularly professional societies, to clarify and define which data needs to be retained and for how long. It is unrealistic, costly, burdensome, and not useful for all data to be made publicly accessible. Defining the scope of what, when, and which data should be made accessible is very important because current guidance is unclear. As a starting point, we suggest that only data underlying publications be required to be made publicly accessible and that other data be made public on a case-by-case basis based upon demonstrated value of making such data accessible; and
- Involve universities and other stakeholders in the National Institute of Standards and Technology's (NIST) development of a new national Research Data Framework (RDAF). As NIST develops the RDAF, it will be essential that it include universities in helping identify various interests, obligations, costs, benefits, and risks surrounding the generation, analysis, curation, preservation, distribution, and re-use of research data. In addition to convening several regional and national forums through which such input can be sought, AAU also encourages NIST to ensure comment collection and input through RFIs and other *Federal Register* notices.

Enhancing Research Ethics and Ensuring Integrity

Strengthening rigor and reproducibility requires that all researchers, including students, are aware of the ethical principles of integrity that are fundamental to research. It is critical that both researchers and students understand and adhere to the ethical principles to ensure the integrity of scientific research. To facilitate this important endeavor, AAU encourages federal research agencies take the following steps:

- Provide additional support through supporting faculty members and institutions that wish to initiate specific ethics training and/or responsible conduct of research courses within their academic departments or more broadly at their universities. NIH already supports some of this training through its "T" and "U" awards;
- Use agency guidance and proposal review panels to make clear that developing programs to mentor and train students in research ethics and integrity is a viable and reasonable way for faculty to meet their NSF "broader impacts of research" requirements and something for which faculty can receive grant support;

- Work with universities to identify, highlight, and share effective practices and responsible conduct of research training programs. For example, at NIH, such practice-sharing could be facilitated by the Center for Scientific Review; and
- Federal agencies should provide grant funding for developing and evaluating comprehensive and innovative new training programs in this area.

Reporting of Null/Negative Research Findings

AAU welcomes incentives from federal agencies to encourage the reporting of null or negative research findings. We suggest making reporting of null or negative results back to the sponsoring agency a condition of grant funding. This reporting should be required in the final grant report on any federally funded research award. Ensuring that final agency grant reports from federally sponsored research are publicly accessible, searchable, and contain information about how to access data resulting from the grant – including that relating to null and negative research findings – could prove very useful.

Partnering Internationally to Promote Rigor, Reproducibility, and Replicability

The U.S. government can further align its efforts to foster research rigor, reproducibility, and replicability with those of international partners by deepening its discussions with those partners to establish uniform standards for data sharing and access of research results. To that end, AAU recommends continued engagement with our international partners through the [Open Government Partnership](#). To further demonstrate the government’s commitment to making data from federally funded research open and FAIR, steps should be taken to implement the data access activities outlined in the [Fourth Open Government National Action Plan for the U.S.](#)

Coordinate Administrative Requirements for Federally Funded Research

Reducing Administrative Work Associated with Financial Conflict of Interest (FCOI) Requirements

In 2011, the Department of Health and Human Services [amended](#) the Public Health Service (PHS) regulations on FCOI. This action was taken largely in response to growing congressional concerns driven by specific high-profile cases of non-disclosure. Among other changes, the revised PHS rule that took effect in August 2012 lowered the *de minimus* reporting threshold to \$5,000 and required disclosure of travel and payments from nonprofits. The rule also requires investigators and subrecipients to disclose FCOIs no later than the time of application.

These revisions to the PHS FCOI regulations have significantly increased the administrative workloads and costs for institutions and faculty associated with reviewing, identifying, and reporting FCOIs. At the same time, these changes have not substantially helped universities better identify and manage the most egregious conflicts and those with the greatest likelihood to adversely impact the integrity of research.

AAU and the Council on Governmental Relations (COGR) in 2015 conducted a [survey](#) to more closely examine the costs and benefits of the changes made to the PHS FCOI rules supports this finding. The survey found:

- For the over 30 institutions that responded, an average of 2,593 hours had been spent per institution in disclosing financial interests, reviewing for conflicts, and managing conflicts. In contrast, PHS estimated the burden at only 82 hours per institution at the time it issued the new rules;

- The 34 institutions that responded to the questions asked about the new PHS FCOI rules indicated that they spent \$10,555,993 on compliance in the year after implementation of the revised PHS policy, which represented an increase of \$2,682,090 in costs from the prior year. Because institutions had already begun implementing changes before the rule change and because large institutions were unable to supply cost data to AAU and COGR, this amount likely represents a substantial underestimation; and
- Schools reported 5,784 disclosures that involved only travel and outside income from nonprofits (including foreign universities). Only 20 of those disclosures warranted a management plan. Twenty-nine of 35 schools found no conflicts related to travel and income from non-profits.

A 2015 [study](#) conducted by the Association of American Medical Colleges (AAMC) similarly found that the costs associated with implementation of the PHS COI rule far exceeded expectations (i.e., 70 institutions alone spent \$22.6 million). Like the AAU and COGR survey, the AAMC review found that despite a 45-percent rise in the percentage of disclosures resulting from the new PHS rules, the total number of reportable FCOIs only rose 13.3 percent. And only 0.5 percent of the incremental disclosures revealed a reportable FCOI compared to 1.6 percent of the disclosures under the prior 10,000 thresholds.

To reduce the amount of administrative work associated with the PHS FCOI regulations and to avoid negatively impacting universities' ability to effectively identify and manage conflicts to protect the integrity of research, we suggest the following changes to the PHS FCOI rules:

- Lift the PHS policy requirement for disclosure of travel reimbursed by a third party;
- Raise the *de minimus* reporting threshold from \$5,000 to \$10,000; and
- Allow PIs to file disclosure and conflict of interest reporting information prior to award activation as opposed to at the time of proposal submission, thereby saving significant amounts of time for the PIs and other senior grant personnel.

Finding the Right Balance Between Reporting of FCOI and Encouraging Useful Faculty - Industry Interactions

At the time the new PHS rules were being considered, several organizations expressed concerns that they might have a chilling effect on faculty members' interest in engaging with industry and, as a result, hinder universities' ability to commercialize the results of NIH-sponsored research. A document summarizing the concerns expressed by various organizations at the time – including scientific societies, associations, individual universities, and companies – can be found [here](#).

Balancing the need to ensure reporting of FCOI and the government's interest in having faculty work with industry to facilitate technology commercialization must be carefully considered when assessing what type of reporting of FCOI is deemed appropriate and how such conflicts are effectively managed.

To better achieve this balance, we recommend the following actions:

- Focus on collecting the information that is most likely to help identify egregious conflicts that have the greatest potential to jeopardize research integrity. Agencies should avoid requiring the reporting of so much information that agency officials have neither the time nor ability to successfully make determinations as to where real conflicts exist and must be managed or eliminated. For example, we do not believe the additional travel payment disclosures required by the PHS in 2011 are valuable or necessary;
- Allow for "just-in-time" disclosure of FCOIs. Currently, investigators and subrecipients must disclose FCOIs no later than at the time of proposal submission. With success rates for NIH

proposals sometimes under 20 percent, we ask that NIH consider allowing for FCOI disclosure after proposal submission but prior to activation of awards. This would reduce unnecessary work for investigators and institutions;

- Specify in agency disclosure forms and templates for PIs the specific types of relationships that should be reported and disclosed; and
- Require PIs to separately disclose foreign financial relationships and domestic financial relationships.

Developing a Federal-wide FCOI Policy to Reduce Administrative Burden

AAU supports a harmonized and streamlined federal-wide policy for FCOI. The issuance of disparate FCOI policies by several agencies in response to the Uniform Guidance has already created significant burdens due to differing definitions of covered individuals and entities and monetary thresholds. Having said this, AAU would oppose any proposal to use 2011 FHS FCOI rules as the basis for such a federal-wide FCOI policy. As discussed above, AAU believes that many aspects of the PHS policy are ineffective, as well as unnecessarily costly and burdensome.

Reducing Administrative Burden Associated with the Grants Submission and Review Process

In addition to addressing issues relating to FCOI, JCORE can also help reduce workload associated with submitting and reviewing applications for federal research funding. This can be done by:

- Standardizing grant formats and bio sketch requirements across agencies;
- Streamlining pre-award solicitations and requirements;
- Encouraging preliminary proposals, concept papers, and white papers, as appropriate, to reduce the amount of effort that goes into writing full proposals;
- Implementing one unified federal system for report submission;
- Increasing the use of remote/on-line video conference reviews of grant proposals; and
- Increasing the use of just-in-time reporting in the following instances:
 - Submission of NSF post-doctoral mentoring plans;
 - PHS FCOI reporting requirements and FCOI information required by other federal agencies;
 - Submission of current and pending support requirements;
 - Submission of data management plans; and
 - Submission of detailed award budgets.

Additional Actions that Can be Taken to Streamline, Harmonize, and Coordinate Research Regulations

As the JCORE looks at how to coordinate administrative requirements for federally funded research, we believe additional steps should be considered to better streamline, harmonize, and coordinate research regulations, including the following:

- Standardize financial reporting requirements and systems across federal agencies. Currently, the financial reporting by universities is unnecessarily complex and costly because of the significant variation in systems across agencies. In a 2015 survey conducted by AAU and the COGR, the approximately 50 universities surveyed cited using 11 different federal payment systems on average. Most systems require monthly or quarterly reporting, but some require reports to be filed weekly, biweekly, bimonthly, semiannually, or annually. For FY 2014, the institutions surveyed reported filing an average of 829 reports across all federal agencies. We recommend harmonizing federal financial reporting systems, thereby eliminating the multiple federal payment systems that currently exist across agencies.

- *Reduce IG and agency audits for universities deemed low risk under the single audit.* To combat waste, fraud, and abuse, most recipients of federal grants are required to be audited under the Single Audit Act of 1984 and the Single Audit Act Amendments of 1996. Grantees spend considerable time and resources to ensure that internal systems and controls comply with federal requirements, and a primary intent of the Single Audit Act is to affirm compliance as it relates to all federal programs. Consequently, other than specific program close-out audits, broader audits by IG from multiple federal agencies, which occur frequently, are usually duplicative and unnecessary. To improve efficiency of both oversight and compliance, when a grantee has been deemed low risk under its single audit, more broadly focused audits by an IG should be permitted only when the IG definitively identifies due cause and justification for such an audit.
- *Modify current sub-recipient monitoring requirements.* Currently universities must review and report on audit information even if the subrecipient has been the subject of a federal A-133 audit. This requirement makes little sense and should be eliminated because it is duplicative and unnecessary.
- *Stand up the Research Policy Board called for in 21st Century Cures Act.* Section 2034 of the 21st Century Cures Act calls on the OMB Director to staff a new RPB with 10 or fewer federal members and 9-12 professionals from academic or other non-profit research institutions. Under the Act, Members for the RPB are to be appointed through a formal process including nominations by the research community. This Board is charged with coordinating and improving regulations and policies, identifying policy and regulatory gaps, and conducting ongoing assessment of regulatory burden. Despite being statutorily required, the administration has not moved to create the new Board.

Strengthen the Security of America's S&T Research Enterprise

Securing Federally Funded Research and Mitigating Risk

America's leading research universities take seriously the security threats posed by foreign adversaries who seek to interfere with our highly successful innovation enterprise. The United States' research enterprise is one of our nation's greatest assets, which is why foreign governments and individuals seek to attack and unduly influence it. For the last two years, federal officials have expressed increasing concern about the participation of academic researchers in foreign talent recruitment programs, theft of intellectual capital, breaches in scientific integrity, targeted cyberattacks, and other forms of undue foreign government interference relating to research performed at American universities. We must now move beyond a focus on identifying the threat and work in partnership with the U.S. government and other nations to manage and mitigate risks to the U.S. research enterprise.

Federal agencies and universities are currently assessing how to strengthen disclosure policies and reporting guidelines in efforts to mitigate risks and eliminate unethical behaviors. As universities review their own disclosure policies, we encourage OSTP to take a leading role to help agencies harmonize rules and create standard templates for disclosure of financial and non-financial ties with foreign entities. A common set of disclosure rules should be crafted to include disclosure of participation in foreign talent recruitment programs, which are often not listed or easily identifiable. For this reason, it will be very important for agencies to require reporting on specific types of activities, affiliations, and financial and/or academic relationships rather than request disclosure of specific named talent recruitment programs.

To increase transparency and strengthen disclosure reporting, agencies should consider making reports of information about foreign ties and affiliations separate and distinct from the requirements for disclosing domestic relationships. This will help to better identify foreign ties and affiliations of potential concern and make clear to academic researchers the information they should be reporting. Further, agencies should require disclosure of current and pending support and potential conflicts of interest only for *key personnel* (e.g. PI, co-PIs, and other individuals who will contribute to the scientific development or execution of a project in a substantive measurable way) on a grant. Students should not be required to make such disclosures. To enforce these policies, as outlined in the recommendations of the JASON study on [Fundamental Research Security](#), “failures to disclose commitments and actual or potential conflicts of interest should be investigated and adjudicated...with consequences similar to those currently in place for scientific misconduct.”

Developing Better Partnerships and Coordination to Ensure Research Security

AAU and its members value our partnerships with federal intelligence and research agencies and opportunities to discuss, share information, and implement practices aimed at addressing undue foreign government influence. We also believe university administrators would benefit from greater access to information some agencies already collect in order to better identify and respond to security concerns on campus. For example, the U.S. government already collects information about U.S. faculty that are unknowingly collaborating with Chinese scientists with ties to China’s People’s Liberation Army (PLA). U.S. intelligence agencies have been unwilling to share this information with these U.S. faculty or their home institutions. This limits the ability of researchers and institutions to assess and respond to risks of such faculty associations or affiliations and their ability to identify foreign collaborators who have such affiliations. Additionally, universities could benefit from federal guidance on how to communicate potential concerns or issues to government officials and with whom this information should be shared.

Engagement and coordination between federal intelligence and science agencies is vital to our collective interest to be more effective at communicating and sharing information with each other. We are hopeful that the work of the JCORE subcommittee on research security will prove a positive step towards facilitating better interagency coordination. We encourage this group to continue to provide this coordinating role on an ongoing and continual basis, as called for by a [provision](#) included in the FY 2020 National Defense Authorization Act.

AAU also believes that that new National Academies of Science, Engineering, and Medicine *Science, Technology and Security Roundtable* can also be a very useful mechanism to facilitate an ongoing and regular dialogue between federal science, security, and intelligence agencies with the university and scientific communities and industry. Additionally, the existing [Federal Demonstration Partnership](#) (FDP) might be a mechanism that the new *Roundtable* could effectively employ to engage, discuss, pilot, and implement potential new and innovative research security solutions.

Properly Balancing Science and Security

As universities and the U.S. government continue to identify research security concerns and develop policies and practices to effectively address these concerns, we must remember to carefully balance these efforts with our responsibility to maintain the free flow of fundamental scientific information and international talent. U.S. national security and economic competitiveness requires the open exchange of fundamental scientific information and talent that fosters new ideas, facilitates novel research directions, and leads to discoveries that fuel innovation and new technologies.

In 1985, President Reagan issued National Security Decision Directive 189 (NSDD 189), which states that, to the maximum extent possible, the products of basic and applied research funded by the federal government should be published and widely disseminated, and that classification should be used in those limited circumstances when controlling scientific information is necessary to protect national security. By establishing that government strongly protects a narrow set of key technologies when imposing information security controls, NSDD 189 has ensured the widespread, public, and open dissemination of research results, which is essential to scientific progress and our national and economic security. NSDD 189 was reaffirmed in 2001 by Secretary of State Condoleezza Rice and most recently by the JASON study on [Fundamental Research Security](#). U.S. policies should continue to reaffirm NSDD 189 and limit security controls on research to only be used when it is truly necessary.

In addition to reinforcing existing policies, practices, and forums, the U.S. government should consider new resources to better assess and properly balance security risks. It is important to note that new resources should only be considered in circumstances where a new mechanism would add value, create efficiencies, streamline information, prevent duplication, and/or avoid confusion with existing resources. One recommendation is to designate an existing, or create a new, federal entity to help assess specific risks relating to foreign interference. This entity could engage and support universities and the broader research community in assessing and evaluating such risks. Another possibility is to develop new and improved red flag lists of foreign entities which pose potential research security risks. Such lists may lead institutions to choose not to collaborate and/or affiliate with identified foreign entities or allow their faculty to accept funding or other forms of support from these identified sources.

Other Practices and Recommended Actions to Secure Research and Protect Scientific Integrity

AAU supports several additional practices that government and/or non-government entities can adopt and follow to help protect the security and integrity of the research enterprise. In April 2019, AAU in partnership with the Association of Public and Land-grant Universities (APLU) released a [summary](#) of effective actions taken by universities to address growing concerns about security threats and undue foreign influence on campus. Our organizations are currently conducting a follow up survey to update the summary in 2020. We will continue to work with our federal partners to widely disseminate and encourage the use of effective research security practices across the sector.

Additional actions AAU supports include:

- Harmonization of research security-related definitions across federal science and security agencies. As elaborated above, this includes a harmonized definition of talent recruitment programs;
- Assessment of existing security controls and identification of gaps in protecting research and resulting intellectual property and capital;
- Improved training and support for FBI field agents working with universities and the nature of the research they conduct;
- Development and inclusion of new Responsible Conduct of Research (RCR) training modules/courses specifically aimed at teaching faculty and graduate students about potential threats to research integrity posed by foreign governments;
- Increased investments in key domestic research agencies and programs, particularly in key strategic research areas critical to national defense and to our economic success. For example, strategic investments in AI, Robotics, Quantum Information Systems, and Advanced Manufacturing;

- Increased investments in existing programs and development of new scholarship, traineeship, and fellowship programs aimed at increasing the domestic talent base in key STEM fields; and
- Development of a mechanism that will allow the Department of Defense to better retain talented foreign students and scholars that can play a valuable role in advancing key scientific fields in the United States, including the development of an expedited pathway to U.S. citizenship for such talented individuals.

Foster Safe, Inclusive, and Equitable Research Environments

Promoting Policies and Practices to Ensure Safe and Inclusive Research Environments

For scientific research to thrive, we must work to ensure safe and inclusive academic work environments. This is an issue in which AAU and our institutions take very seriously. For example, research universities are working diligently to address sexual harassment and sexual misconduct in all its forms within the academic research environment. It is imperative that institutions are supported in their efforts to address sexual misconduct, allowing them to demonstrate their progress and develop initiatives that best support their communities.

Given the significant variation present in academic settings and institutional structures, there are a broad range of differing practices and policies that can effectively address harassment and foster a safe and inclusive research environment. To understand what these practices and policies may include, AAU through its Advisory Board on Sexual Harassment within the Academic Workforce is currently in the process of identifying and assessing current practices within its membership to surface common policies and procedures in place at our institutions to address sexual harassment within research environments.

When it comes to inclusion, there are specific federal efforts that have positively benefitted our campuses in this area. For instance, AAU encourages continued support for the NSF INCLUDES (Inclusion across the Nation of Communities of Learners of Underrepresented Discoverers in Engineering and Science) program. INCULDES has provided funding for multi-institutional efforts to encourage more inclusive research and educational environments and further support the development of talent from all sectors of society to build an inclusive STEM workforce. As identified by the National Science Board and others, many groups of Americans remain underrepresented among science and engineering degree recipients, resulting in challenges to find diverse applicant pools in the scientific workforce. NSF INCLUDES is critically important to address the barriers underrepresented populations face in entering and participating in the STEM pipeline and workforce.

Better Aligning Federal Agency and State Harassment Policies

JCORE could help the university community to more effectively address sexual harassment and misconduct by working to better align various federal policies in this area and help ensure that federal policies do not conflict with state policies. Current regulatory standards and policies regarding sexual misconduct, harassment, and gender discrimination across federal agencies (e.g. NSF, NIH, NASA, DOE, DOD, and the Department of Education) are not aligned with one another and, at times, conflict. Additionally, some federal standards and guidance conflict with state policies. When they conflict, this creates significant compliance difficulties for universities and further exacerbates negative campus climates.

AAU universities are best positioned to explain what current state laws, regulations, and policies exist in their states in these areas. Federal agencies are aware of these divergent and misaligned policies;

however, no federal agency has undertaken the process to align harassment policies or provide clarity when one agency's policy contradicts another. Agency coordination and alignment are critical to enable universities and those working within them to comply with regulations, protect their communities, and ensure safe and inclusive work environments.

To better align agency policies regarding sexual misconduct, harassment, and gender discrimination, we suggest the following to federal agencies and OSTP:

- Provide harmonization and clarity regarding sexual and other forms of harassment and discrimination policies across federal research agencies, aligning with evolving U.S. Department of Education Title IX requirements; and
- Ensure new policies do not contradict with state laws, regulations, and policies and provide clarity up front where legal interpretations are likely to indicate a contradiction.

The Department of Education's proposed changes to Title IX – the federal statute addressing sex-based discrimination in educational programs and activities – may conflict with various state laws and institutional policies. The department's proposed changes to Title IX may, in fact, make it *more difficult* for institutions to protect students, including graduate students, from sexual harassment. The proposed changes ignore the differences in various state laws and lack clear guidance on how institutions are to interpret the proposed regulation if it conflicts with state law. Given the detailed and specific nature of the department's proposed rule, it may require institutions to turn to outside Title IX legal experts (often at outside firms) to conduct preemption analyses on the federal regulations vis-a-vis relevant state laws in real time. This may delay institutional processes to hear and adjudicate sexual harassment complaints and investigations. See AAU's full comments on the department's Title IX NPRM [here](#).

Developing Metrics and Assessing Progress

Unlike in other areas where metrics can clearly measure outcomes, metrics intended to measure progress toward a safer campus climate are less clear. As such, metrics should not necessarily be standardized across institutions; rather, institutional efforts to address campus climate should be tailored to the culture present at each individual campus (NASEM Report on Sexual Harassment of Women in Academia, 2018). For instance, a metric showing a positive campus climate on its face could be indicative of a less safe environment and vice versa. As such, any federal mandatory reporting requirements or policies should carefully consider adverse effects these requirements can have on regulations institutions already follow (including state laws), existing institutional efforts to address sexual misconduct, and campus climates overall.

One effort that could greatly help to create safe and inclusive research environments by identifying, assessing, and recognizing institutional efforts to increase and support diversity and inclusivity is the American Association for the Advancement of Science's [STEMM Equity Achievement \(SEA\) Change initiative](#). As opposed to trying to identify metrics which seek to assess improvement over time in the campus climate, SEA change has developed a rating system for institutions of higher education using proven self-assessment processes to effect sustainable change with regard to diversity, equity, and inclusion in STEMM. SEA change awards and recognition are determined, in part, by institutional ratings using varying metrics to assess an institution's dedication and commitment to inclusive and diverse communities based upon the policies and practices they already have in place.

Conclusion

In closing, we are heartened by the work of JCORE and hopeful that its work will result in improvements that will firmly position our nation's research enterprise for a decade or more – thus securing the government-university partnership's ability to continue to drive U.S. competitiveness and enhance our nation's security.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink that reads "Mary Sue Coleman". The signature is written in a cursive, flowing style.

Mary Sue Coleman
President