



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

November 17, 2022

MEMORANDUM

SUBJECT: OIG General Comments to Preliminary Draft of Scientific Integrity Policy

FROM: Nicole N. Murley, Acting Deputy Inspector General *Nicole N. Murley*

TO: Dr. Maureen Gwinn, Principal Deputy Assistant Administrator and Agency
Chief Scientist
Office of Research Development

On October 18, 2022, the U.S. Environmental Protection Agency's Scientific Integrity Official produced, at the Office of Inspector General's request, the Agency's preliminary revised draft of the EPA Scientific Integrity Policy. The OIG is providing the following general comments for the Scientific Integrity Program's consideration as the draft SI policy continues to be revised:

- The OIG welcomes the expansion of the section regarding whistleblower protections in Section XI, subsection 6, and appreciates the explicit requirement that all allegations of retaliation, retribution, or reprisal be sent to the OIG Hotline. However, as outlined in the OIG's previous comments provided to the Scientific Integrity Program staff,¹ the reference to the Whistleblower Protection Enhancement Act of 2012 is incomplete without mention of the subsequent amendments by the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, [Pub. L. 115-73](#). Additionally, the policy makes no explicit reference to the disclosure of censorship relating to scientific research or analysis as a protected activity.
- Further, we reiterate that the definition of "differing scientific opinion" and what it entails must be clear, as it is a protected activity. While the current preliminary draft references the EPA's *Approaches for Expressing and Resolving Differing Scientific Opinions*, or DSO document, it does not specifically adopt the definitions included in the DSO document. Additionally, the draft is unclear as to whether an employee must follow the process in the DSO document for their differing scientific opinion to be protected from retaliation. This issue was raised in the OIG's March 9, 2022 comments. As we noted previously, it is hard to extend protections to an action that is vague or undefined and it also presents challenges in educating employees about their rights.
- Similarly, the SI policy protects employees from "retaliation or other punitive actions," yet this preliminary draft still does not provide clarity on what is meant by "other punitive actions." It reads as though the policy provides protection from actions beyond retaliation. It is difficult to

¹ These comments were sent via email on March 9, 2022, from the OIG's Deputy Assistant Inspector General for Administrative Investigations Kristin Kafka.

investigate violations of the policy (and educate employees regarding their rights) without clarification as to what employees are protected from. This issue was also raised in the OIG's March 9, 2022 comments.

- It appears that the current policy's language that "Scientific misconduct is normally adjudicated by the Office of Inspector General" has been removed, along with other mentions of coordination between the Scientific Integrity Official, or SIO, and OIG on scientific or research misconduct issues. The OIG continues to have important roles in investigating allegations of misconduct, mismanagement, censorship, and retaliation, retribution, and reprisal, as well as identifying potential systemic scientific integrity issues through OIG audits or evaluations. Those responsibilities should be reflected in the revised policy to avoid confusion by Agency employees as to which office handles what issues. We are happy to suggest specific language to reflect those responsibilities in the revised policy, potentially as its own subsection in Section XIV related specifically to the OIG.
- The roles and responsibility piece for the SIO in Section XIV, subsection 4(d) of the preliminary draft appears to suggest that the SIO would have independent oversight authority over the Agency response to SI allegations that have been "referred for an inquiry or investigation," which could be taken as meaning the SIO retains oversight of an allegation that has been referred to the OIG. While this subsection is obviously incomplete, the OIG's independent investigatory and oversight functions must remain separate from the SIO's, particularly for allegations that have been referred to the OIG by the SIO.
- Section XIV, subsection 4(j) of the preliminary draft, which requires the SIO to report criminal conduct to the OIG, appears to misunderstand the OIG's statutory responsibilities under the Inspector General Act of 1978, as amended. As the OIG has discussed extensively with the Scientific Integrity Program staff, in its mission to prevent and detect fraud, waste, abuse, mismanagement, and misconduct for the EPA, the OIG is not limited to receiving and investigating reports of criminal conduct as the draft language suggests. Similarly, the SIO's reporting responsibilities to the OIG go beyond that of reporting just criminal misconduct. This subsection should be updated to reflect this.
- The terms "scientific misconduct," "political interference," and "inappropriate influence" are referenced in the draft policy but appear undefined.

Please note that the general comments above do not address specific outstanding or draft recommendations from OIG reports and are not meant to be a substitute for the recommendation follow-up process.

Again, we recognize that the draft produced on October 18, 2022, is a preliminary draft that is actively being revised. We look forward to receiving the comprehensive draft of the revised SI policy.

cc: Jon Monger, Assistant Deputy Administrator
Jeffrey Prieto, General Counsel
Sean W. O'Donnell, Inspector General
Benjamin May, Counsel to the Inspector General