



January 30, 2023

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

**RE: Egregious Flaw in OSTP Model Scientific Policy**

Dear Director Prabhakar:

I am writing you on behalf of Public Employees for Environmental Responsibility (PEER) concerning one particular provision of the Model Scientific Integrity Policy contained within the “Framework for Federal Scientific Integrity Policy and Practice” published by the White House Office of Science and Technology Policy (OSTP) on January 12, 2023. As you may know, PEER has provided legal representation to federal scientist struggling with scientific integrity issues for more than 30 years. Our work helped lay the foundation for the 2009 Obama Directive on Scientific Integrity.<sup>1</sup> During the Obama presidency, PEER filed more complaints on behalf of scientists for violations of agency scientific integrity policies than any other organization.

Since President Biden’s January 2021 Memorandum on Restoring Trust in Government through Scientific Integrity and Evidence Based Policymaking<sup>2</sup> PEER has provided substantial input to OSTP in your agency’s formulation first of the Scientific Integrity Task Force Report and then on this month’s Framework. While some of the provisions in your Model Scientific Integrity Policy are laudable, others are questionable.

One particular provision, however, is so inapt that it merits being singled out. On page 32 of that document in the Model Scientific Integrity Policy section entitled “Ensuring the Free Flow of Scientific Information” is this provision:

“[AGENCY] scientists shall refrain from making or publishing statements that could be construed as being judgments of, or recommendations on, [AGENCY] or any other Federal Government policy, unless they have secured appropriate prior approval to do so. Such communications shall remain within the bounds of their scientific or technological findings, unless specifically otherwise authorized.”

This sweeping restriction on discussing the implications of research has no place in a scientific integrity policy. As detailed below, this provision is not only bad policy but of dubious legality. I am writing today to ask you to take immediate steps to remove this provision from the Model Policy and so inform the recipient federal agencies.

<sup>1</sup> [Memorandum for the Heads of Executive Departments and Agencies 3-9-09 | whitehouse.gov \(archives.gov\)](https://www.whitehouse.gov/the-press-office/2009/03/09/2009-03-09-obama-directive-on-scientific-integrity)

<sup>2</sup> [Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking | The White House](https://www.whitehouse.gov/the-press-office/2021/01/20/2021-01-20-memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking)

This provision is apparently based upon a similar provision in the U.S. Department of Agriculture’s scientific integrity policy. On July 14, 2021, PEER wrote to OSTP specifically warning about this provision in the USDA policy.<sup>3</sup> The basis of that warning was that USDA had used this provision as the basis for ordering a staff entomologist represented by PEER to remove his name from a peer-reviewed journal article on how monoculture farming reduces diversity in insect populations, limiting beneficial pollinators. This same provision of the USDA policy was also cited as the basis for barring this scientist from speaking at a conference about the effects on pollinators from genetically modified crops and the insecticides used to treat them. He later resigned in frustration, convinced that he could no longer conduct meaningful research while employed at USDA.

The major point of our July 14, 2021 warning letter was that the Obama-era OSTP had exercised such poor oversight on the development of agencies’ scientific integrity policies that the USDA was allowed, in essence, to impose a gag order on its scientists under the banner of scientific integrity. PEER cited this provision as something to be avoided and certainly not embraced.

Beyond our entomologist client, PEER received reports from other USDA scientists that managers had initiated –

- Directives not to publish data on certain topics of particular sensitivity to industrial agricultural interests, such as pesticide manufacturers;
- Orders to rewrite scientific articles already accepted for publication in a peer-reviewed journal to remove sections that could provoke industry objections; and
- Inordinate, sometimes indefinite, delays in approving submission for publication of scientific papers that may be controversial;

In short, this provision that you want all agencies to adopt was used, and is still being used, to pressure USDA scientists working on topics with direct relevance to industry interests not to do anything to upset important “stakeholders.” Those concerns were documented in a USDA Office of Inspector General “Survey of USDA Scientists Regarding Scientific Integrity” released on April 13, 2017. The IG polled scientists from four branches of the agency: Agricultural Research Service, Forest Service, Economic Research Service and Natural Resources Conservation Service and found –

- Nearly a tenth of respondents (more than 120 scientists) reported their research findings have “been altered or suppressed for reasons other than technical merit.” However, not one filed a Scientific Integrity complaint;
- The vast majority felt USDA’s Scientific Integrity Policy made no difference in their work. Of those who saw a difference, more said it made matters worse rather than better; and
- A majority did not think that USDA strongly promotes scientific integrity or refused to venture an opinion.<sup>4</sup>

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<sup>3</sup> [https://peer.org/wp-content/uploads/2021/07/7\\_14\\_21-SI-Should-Not-Vary-from-Agency-to-Agency.pdf](https://peer.org/wp-content/uploads/2021/07/7_14_21-SI-Should-Not-Vary-from-Agency-to-Agency.pdf)

<sup>4</sup> See USDA Office of Inspector General “Survey of USDA Scientists Regarding Scientific Integrity” April 13, 2017 [16-010-01.pdf \(peer.org\)](#)

Comments from individual USDA scientists were illustrative, including statements on USDA's scientific integrity policy, such as –

“...seems like it is designed to protect the agency only not a code for individual scientist interacting with other scientists.”

“Some topics that are interpreted as highly controversial are closely monitored and any interaction with media for instance is either discouraged or highly scrutinized before being allowed to speak.”

“Nothing has really changed, because the SIP still provides managers with the ability to stop communication of anything they want. The wording has changed and sounds better, but reality has not changed.”<sup>5</sup>

The scientific experience within USDA does not appear to be one that should be emulated. Yet, it is unclear whether OSTP staff working on the Framework was even aware of these concerns.

Beyond failing to examine the USDA experience, OSTP staff should have had second thoughts about advocating a broad prohibition against speaking or publishing any “statements that *could be construed* as being judgments of, or recommendations on” their own agency’s policies “or any other Federal Government policy.” (Emphasis added)

Such a far-reaching restriction is bound to create a chilling effect among scientists, just as it did at USDA. Rather than encouraging sharing of information by federal scientists, it has the opposite effect of constraining it.

Moreover, the sentiment behind this provision seems to be that federal scientific research is fine so long as it does not ruffle any feathers. It fails to recognize that only scientific research that carries policy implications is at the greatest risk of suppression or political manipulation – for precisely that reason.

With the broad fashion in which it is written, it is not difficult to imagine many scenarios in which this provision could be used to threaten scientists or stifle controversial research across a wide range of topics. For example –

- U.S. Environmental Protection Agency (EPA) research showing that toxic PFAS or other pollutants are migrating off of military bases due to inadequate controls could be construed as criticism of Pentagon environmental policies or of EPA enforcement oversight at military facilities;
- Centers for Disease Control research showing that dangerous viruses and other pathogens are at risk of release from U.S. Geological Survey (USGS) wildlife research laboratories could be construed as commenting upon USGS's weak biosafety policies or a recommendation that it obtain independent accreditation of its wildlife disease labs; or
- USGS research showing that water degradation is caused by overgrazing resulting from Bureau

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<sup>5</sup> See [4 20 17 USDA Scientists in Their Own Words.pdf \(peer.org\)](#)

of Land Management permits on its livestock allotments could be construed as criticism of BLM for lax permit standards or for not enforcing its own Landscape Health Standards. Similarly, USGS research showing that fish mutations can be traced to rising levels of unregulated emerging chemicals in our waterways could be construed as a judgment on EPA's weak approach on endocrine disrupters.

In addition, this provision of the OSTP model policy as written arguably requires that the scientist must have permission not only from their own agency but also from the agency whose policy is commented upon. If it is the latter, that would be a daunting task indeed and could result in agencies censoring the research from sister agencies.

Finally, OSP should recognize that this policy would be unconstitutional as applied to government scientists speaking or writing as private citizens. On their own time, government scientists retain the free speech rights of any citizen. This provision could be used to violate a government scientist's First Amendment right to speak freely in their capacity as citizens on matters of public concern. In addition, this provision can be used to prevent agency scientists, as well as private scientists collaborating with or contracting with a federal agency, from even discussing the policy implications of vital research.

The First Amendment is not absolute, however, and courts apply a balancing test that weighs the public importance of the speech versus any potential disruption of efficient government operations.<sup>6</sup> In all likelihood, such a calculus should weigh heavily in favor of the public interest value of research conducted by a federal government scientist against potential embarrassment to a government agency.

Significantly, OSTP claims that it seeks to promote a free and open exchange of scientific information. Yet, this poorly worded, overly broad provision clearly does the opposite.

In closing, on behalf of PEER, I urge you to send a bulletin to all of the agencies to which you sent the Framework informing them that this restriction on scientist speech and writing has been removed from OSTP's Model Scientific Integrity Policy.

Sincerely,



Tim Whitehouse  
Executive Director

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<sup>6</sup> See *Pickering v. Board of Education*, 391 U.S. 563 (1968)