



February 26, 2024

Office of Legislation and Congressional Affairs
Regulations and Reports Clearance
Social Security Administration
6401 Security Boulevard
3rd Floor (East) Altmeyer Building, Mail Stop 3253,
Baltimore, Maryland 21235-6401.

RE: Comments on SSA Draft Scientific Integrity Policy/ Docket ID No. SSA-2023-0048

To Whom It May Concern:

These comments on the Social Security Administration (SSA) draft Scientific Integrity Policy are submitted on behalf of Public Employees for Environmental Responsibility (PEER). PEER has provided legal representation to federal scientist struggling with scientific integrity issues for more than 30 years.

PEER's work helped lay the foundation for the 2009 Obama Directive on Scientific Integrity.¹ During the Obama presidency, PEER has filed more complaints on behalf of scientists for violations of agency scientific integrity policies than any other organization.

Based upon this experience, we would like to express our profound disappointment with SSA's draft policy. In almost every respect it falls short of meeting President Biden's goal of restoring public trust in federal government science.

Our comments are as follows:

1. Where's the Beef? No Procedures for a Year

In its short discussion of the procedures needed to implement and enforce its provisions, the draft policy discloses only the following:

“The Scientific Integrity Official, in conjunction with other SSA career officials, shall expeditiously draft and prominently post on the agency's website the following procedures: addressing scientific integrity concerns, handling differing scientific opinions, clearance of scientific products, scientific communications, authorship and attribution, and other topics as needed. These policies shall be completed within one year of the release of this policy.” (Emphasis added.)

¹ [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/memorandum-for-the-heads-of-executive-departments-and-agencies-3-9-09)

This means that the scientific integrity policy once finalized cannot be used because there will be no procedures for making, investigating, or adjudicating complaints. Nor will there be any procedures in place to assign discipline for violators.

In addition, the SSA will also lack any concrete rules to prevent suppression or ensure the timely clearance of research. Similarly, SSA will not have any guidance for handling of differing scientific opinions, among other issues.

In short, without these procedures in place SSA's Scientific Integrity Policy will merely be unenforceable rhetoric upon finalization. It raises the question of what responsible SSA officials have been doing for the past more than three years since President Biden's original directive.

Disturbingly, the specific process for promulgation of implementing procedures is also not stated. For example, it is not clear that employees and/or the public will have an opportunity to review and comment on these procedures before they are finalized. Nor is the process for review and possible amendment of any such procedures even hinted at. Further, the phrase that procedures would be drafted on "other topics as needed" suggests that rule promulgation will proceed on an unscheduled *ad hoc* basis.

This complete lack of implementing procedures strongly suggests that the public has no basis for restoring its trust in SSA science.

[Recommendation:

This draft policy should be withdrawn and resubmitted when all the required procedures have been promulgated as part of the draft policy.]

2. Unintended Gag Order: Sloppy Drafting

The draft policy provisions designed to facilitate the free flow of scientific and technological information are ambiguous and poorly drafted.

Most notably, the draft contains this prohibition:

"SSA scientists and researchers shall refrain from making or publishing statements that could be construed as being judgments of, or recommendations on, SSA or any other Federal Government policy, unless they have secured appropriate prior approval to do so."

This prohibition is contained within a section relating to communications from scientists "in their official capacities at SSA" yet that qualification is not included in the "could be construed as" language, leaving its context unclear. By its clear terms, it applies to any statements by SSA scientists even on their own time – an application that is so broad that it raises constitutional free speech concerns.²

² See <https://peer.org/usda-sued-to-end-scientific-censorship/>

Moreover, this language clashes with the draft’s assurance that “SSA scientists and researchers may express their personal views and opinions; however, they should not claim to officially represent the agency or its policies or use the agency or other U.S. Government seals or logos.”

Further adding to the confusion is this provision from the same section of the draft:

“In response to media requests about the scientific or technological aspects of their work, agencies will offer knowledgeable spokespersons who can, in an objective and nonpartisan fashion, describe publicly releasable information concerning these dimensions (OSTP 2010). This does not include describing the policy implications of their work, which requires a separate permission.” (Emphasis added).

It is common in peer-reviewed publications and in conference presentations for scientists to discuss the potential applications of their research findings. These discussions are important to helping place the research findings into real world contexts. Thus, the prohibition against scientists even discussing the policy implications of their research findings works to undermine rather than facilitate the “free flow of scientific information.” In PEER’s opinion, such prohibitions have no place in a scientific integrity policy.

Moreover, scientists should not face potential discipline (assuming enforcement procedures are ever finalized) for answering a reporter’s question about potential policy implications of research. The SSA draft policy would impose a restriction that is imposed on no other federal worker.

Finally, this SSA stance put this agency at odds with other agency draft policies allowing free discussion of policy implications with an appropriate disclaimer.³

When restricting the speech of its scientific and technical staff, a federal agency owes them a precision of language that avoids any confusion. In that regard, SSA’s draft fails this basic test.

[Recommendations:

1. Rewrite the language about “could be construed as being judgments of, or recommendations on” a federal policy to remove ambiguity. Official spokespersons should have the leeway to answer questions by the media and others in a factual fashion. A reference to a particular fact or set of facts “could be construed” as a judgment, even though it is accurate. Instead, the policy should simply direct persons speaking on behalf of the agency to be accurate and strive to correct any statements that are deceptive or prove to be inaccurate.
2. Make it clear that any such prohibition applies only when the scientist is functioning as an official spokesperson.
3. Strike the cited language about “describing the policy implications” as vague and creating a needless chilling effect.

³ See <https://peer.org/new-integrity-rules-differ-on-allowable-scientist-speech/>

4. Repeated references in the draft on the need for compliance with federal ethics rules without a specific citation to which rule or which aspect of a rule is being references creates confusion and leaves inappropriate uncertainty as to what scientists may say. A scientific integrity policy should be precise and not promote ambiguity. To do so, the proposed policy, either in its text or a footnote, should cite the specific ethics rule in enough detail to provide clear guidance to the scientist.]

3. Lack of Independence: Relies upon Agency Self-Policing

As with many agency policies, the key implementing official is the designated Scientific Integrity Officer. SSA's draft policy stipulates that the SIO is "full-time equivalent, career employee who has agency appropriate scientific credentials and is appointed at a senior level..."

The principal job of the SIO to prevent or call out political interference with science inevitably involves potential clashes with that official's chain-of-command. Asking the SIO to investigate the senior officials to which he or she reports – either directly or indirectly – is simply untenable.

The nature of the work also entails potentially embarrassing the agency by confirming high-level wrongdoing. This potential carries with it the inherent risk of reprisal against an SIO for performing this job well. This concern is not theoretical. In one case, for example, PEER provided legal representation for an SIO at the Bureau of Reclamation who was fired after he filed a scientific integrity complaint against the Secretary of Interior's press office for the slanted way it summarized the science on a complex and controversial issue.⁴

[Recommendations:

1. The SIO should not be placed within any sub-office of SSA but should report directly to the Administrator.
2. Subject to Administrator veto, the SIO should be able to call upon and direct agency resources to investigate and adjudicate allegations of misconduct.
3. SIOs should be selected from retired annuitants or academics and given fixed terms to help secure some modicum of independence from the chain-of-command they are being asked to scrutinize and, in some circumstances, investigate. To obviate pressures on this term appointee, there should be a requirement that the term is not renewable, thus freeing the SIO to work without concern about his or her continued tenure,
4. There must be an appeal mechanism to review decisions by the SIO not to investigate allegations of misconduct. A principal purpose of these scientific integrity policies, in the words of President Biden's memorandum, is "Restoring Trust" by the public in the quality of government science. Yet, the draft policy confers on SSA the prerogative to simply decline to investigate allegations of misconduct without any outside review of that decision. This lapse enables SSA to continue covering up scientific fraud under the guise of their scientific integrity policies.

⁴ See <https://peer.org/purged-science-advisor-tests-interiors-integrity-policies/>

The threshold for determining whether a complaint should be investigated should be resemble a probable cause standard, and that standard should be consistently followed. There should be an opportunity for appeal to an outside body any decision to not even investigate complaints. In addition, any such review should be publicly posted so that the public can be assured the decision not to investigate was based on the merits (or the lack thereof) of the allegation.]

4. No Clear Protections for Scientists: Policy Offers Beacon of False Hope

As with many agencies draft policies, the only legal protection SSA offers scientists is the declaration that it will abide by the requirements of the Whistleblower Protection Act and related statutes. This assurance has little meaning, since SSA is already required by law to abide by these statutes.

The SSA draft does reference any legal protection is available for scientists who face reprisal after submitting a differing scientific opinion. Nor does it offer any legal protection for scientists suffering retaliation because their work is controversial or carries “policy implications” that do not support the official talking points. These individuals are not whistleblowers, and their disclosures are not covered by the Whistleblower Protection Act. Yet, protecting these scientists should be a core concern for any meaningful scientific integrity policy.

In the absence of a new statute, there is an administrative path to address enforcement of scientific integrity policies. Apart from protecting whistleblowers, the U.S. Office of Special Counsel (OSC), the entity charged with enforcing the Whistleblower protection Act, also has very broad but little used 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.)

For example, OSC uses this authority to remedy and prevent discrimination on the basis of sexual orientation in the federal workplace by enforcing an executive order to that effect.⁵ Similarly, OSC could extend protection to scientists if they were covered by an executive directive to that effect, or a directive from Cabinet Secretaries or agency heads.

Through this mechanism, OSC could start enforcing against punishing scientists for assembling politically sensitive data, making controversial findings, or expressing differing professional opinions – all actions that are by themselves beyond the scope of the Whistleblower Protection Act.

In addition, OSC could make this jurisdiction even clearer by sending a letter to agencies urging them to include information about reports of scientific integrity lapses when informing their

⁵ [Memorandum of Understanding Between U.S. Office of Special Counsel And Equal Employment Opportunity Commission | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)

employees about their whistleblower rights. Further, OSC could integrate scientific integrity policy information into its required certification of agencies' WPA training programs.⁶

[Recommendation:

The SSA Administrator should formally request that the U.S. Office of Special Counsel enforce protections against reprisal for activities protected under SSA's scientific integrity policy in the same manner as it now enforces workplace discrimination, whistleblower, or other civil service rules.]

5. No Clearance Process for Publication of Scientific Information

The draft policy states that it will –

“Require 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.”

This language suggests that SSA currently lacks clearance process to facilitate the timely public release of information and that such a process remains to be created. Further, the draft policy does not define what constitutes an “unreasonable delay” or specify what recourse is available to a scientist who is the victim of such undue delay. Nor is it stated which official will ensure that these clearance processes do not result in unreasonable delay and/or suppression of scientific product.

Without a formal enforceable clearance process, the policy's assurance that it allows the free flow of scientific information remain mere suggestions.

[Recommendations:

1. SSA should adopt an agency-wide publication clearance process as part of its scientific integrity policy. This process should define precisely what is meant by “unreasonable delay” of scientific products.
2. SSA's policy should also specify what recourse is available to a scientist who is the victim of such undue delay. SSA should consider adopting the long-established procedures governing the approval of scientific information for publications, including timelines and avenues for appeal.⁷]

Conclusion

For the reasons articulated above, PEER recommends that SSA withdraw this draft policy and fill in proposed procedures need to implement any such policy before resubmitting it for public comment. Further, as part of this rewrite process, SSA should solicit and publicly summarize the

⁶ 5 U.S.C. § 2302(c)

⁷ See National Oceanic and Atmospheric Administration. NOAA Research Council. Scientific Integrity Commons. (n.d.) NOAA Policy, Communication Research

concerns raised by its employees during an internal review process before the new draft is submitted for public comment.

If PEER can provide you any additional supporting information, further examples from other agencies, or suggested draft language for implementing procedures, please do not hesitate to let us know,

Cordially,

A handwritten signature in black ink, appearing to read "Jeff Ruch".

Jeff Ruch
Pacific PEER Director