



OFFICE OF INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY

April 11, 2024

MEMORANDUM

SUBJECT: OIG Comments to Revised Draft of Scientific Integrity Policy

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

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

On January 8, 2024, the U.S. Environmental Protection Agency's scientific integrity official, or SIO, provided the Office of Inspector General with the updated revised draft of the EPA *Scientific Integrity Policy*. We are providing the following comments for the Scientific Integrity Program's consideration as it continues to revise the *SI Policy*:

- Section IV, "Effective Date and Policy Amendments." Given the OIG's role in investigating scientific misconduct and protecting scientific integrity, any updates to the *SI Policy* should be sent to the OIG for review and comment.
- Section VII, "Definitions."
 1. The definition of "allegation" should be an objective standard based on the content of an accusation or complaint. It should not be dependent on any designation made by the submitter or whether the submitter seeks information or assistance from the SIO or any deputy SIO. Allegations of violations of the *SI Policy* should promptly be reported, documented, and reviewed as soon as they are submitted.
 2. EPA employees are governed by the *Standards of Ethical Conduct for Employees of the Executive Branch*, 5 C.F.R. part 2635. These standards include requirements for managing conflicting financial interests and maintaining impartiality in the performance of official duties. To ensure consistency and clarity, these standards should be referenced in the definitions of "appearance of conflicts of interest" and "ethical behavior."
 3. Within the definition of "Differing Scientific Opinion (DSO)," the explanation of "substantively engaged in the science" is different than what is listed in the EPA's [Approaches for Expressing and Resolving Differing Scientific Opinions](#), dated October 8, 2020.
 4. In the definition of "inappropriate influence," consider further explaining how to determine whether a scientific method or theory is "well-accepted."

5. The definition of “professional practices” does not provide the criteria used to determine such practices. As the failure to adhere to professional practices can lead to a loss of scientific integrity, the *SI Policy* should explain how these practices will be determined.
 6. The *SI Policy* references the term “scientific issues” but does not define it.
- Section VIII, “Policy Provisions.”
 1. Subsection one, “Protecting Scientific Processes,” should reference the applicable federal ethics standards and EPA policies and procedures governing the disclosure, evaluation, documentation, and elimination of conflicts of interests or the appearance of conflicts of interest with external parties. Additionally, while this subsection prohibits political interference, it does not state how such interference will be reported, addressed, reviewed, or corrected. We have discussed extensively with Scientific Integrity Program staff the need for allegations of political interference by senior Agency employees to be promptly reported to the OIG.
 2. In subsection five, “Ensuring Accountability”:
 - a. Clarify what enforcement mechanisms the Agency will use to ensure compliance and accountability under the Agency’s *SI Policy*. For example, incorporate a statement noting that employees found to have violated the policy may be subject to discipline.
 - b. The draft procedures referenced in section VIII, subsection 5(c) appear to be the same procedures the Agency proposed to address Recommendation 7 from OIG Report No. [20-P-0173](#). As the Agency indicated that these procedures would be completed by June 30, 2024, the language in this subsection should include a specific reference to these procedures.
 - c. The *SI Policy* references but does not explain the difference between an informal or formal consultation with the SIO or any deputy SIO. As noted above, an allegation of a violation of the *SI Policy* should be defined by an objective standard based on the content of an accusation or complaint. Whether a submitter chooses to consult with the SIO in an informal or formal capacity should not have any bearing on whether the information the submitter provides constitutes an allegation.
 - d. Guidance on reporting concerns and allegations of *SI Policy* violations should be clearly and specifically outlined in the policy.
 3. In subsection six, “Protections for Employees”:
 - a. It is unclear whether the Agency continues to expand the protections of the Whistleblower Protection Act of 1989, the Whistleblower Protection Enhancement Act of 2012, and the Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 to employees who raise **any** differing scientific opinion or report a loss of scientific integrity, or whether employees’ differing scientific opinions or

To report potential fraud, waste, abuse, misconduct, or mismanagement, contact the OIG Hotline at (888) 546-8740 or OIG.Hotline@epa.gov.

reports must meet the definition of a protected disclosure under 5 U.S.C. § 2302(b) to be protected from reprisal under the *SI Policy*. Clarity on this point is vital for both employees and personnel who conduct reprisal investigations. Additionally, if the Agency is expanding whistleblower protections to any differing scientific opinion or reported loss of scientific integrity, the policy should clarify whether the mandatory proposed disciplinary actions outlined in 5 U.S.C. § 7515 would also apply.

- b. We are disappointed to see that the Agency removed the language that required the prompt reporting of retaliation, retribution, and reprisal to the OIG. We propose the following language for section 6(f):

“Require all allegations of retaliation, retribution, or reprisal, whether experienced or observed, be promptly reported to the EPA Office of Inspector General Hotline. Employees may report such allegations to the EPA Labor and Employee Relations, to the U.S. Office of Special Counsel, to their unions, or to Congress, in addition to the OIG.”

- c. As noted in our November 17, 2022 memorandum, *OIG General Comments to Preliminary Draft of Scientific Integrity Policy*, the policy makes no explicit reference to the disclosure of censorship relating to scientific research or analysis as a protected activity.

- Section XI, “Roles and Responsibilities.”

1. As noted in our November 2022 general comments, the *SI Policy* must make clear that the SIO’s oversight of the Agency response to scientific integrity allegations does not extend to allegations that the OIG is investigating. This clarity is particularly needed for allegations that the SIO has referred to the OIG. The OIG maintains independent investigatory and oversight functions that are separate from any oversight role the SIO may have under this policy.
2. As noted in our November 2022 general comments, the SIO’s reporting responsibilities to the OIG go beyond the limited reporting categories listed here. Under EPA Manual 6500, *Functions and Activities of the Office of Inspector General (1994)*, chapter 3, any instances of or suspected violations of law, rules, or regulations, or mismanagement, gross waste of funds, or abuse of authority are to be promptly reported to the OIG. Further, EPA Order 3120.5, *Policy and Procedures for Addressing Research Misconduct*, requires immediate notification to the OIG of allegations of research misconduct. Finally, we have had extensive discussions with Agency leaders to ensure that any allegations of senior Agency employee misconduct are promptly reported to the OIG. These reporting responsibilities apply to the SIO and should be accurately reflected in the *SI Policy*.

To report potential fraud, waste, abuse, misconduct, or mismanagement, contact the OIG Hotline at (888) 546-8740 or OIG.Hotline@epa.gov.

3. Similarly, employee reporting responsibilities to the OIG go beyond the limited reporting categories listed here. EPA Manual 6500 requires employees to promptly report indications of wrongdoing or irregularity to the OIG and to cooperate and provide assistance during any audit or investigation. As noted above, employees also have specific reporting requirements under EPA Order 3120.5. These reporting responsibilities should be accurately reflected in the *SI Policy*.
4. We are disappointed to see the lack of language addressing the OIG's important role in protecting scientific integrity. Specifically, the OIG investigates allegations of misconduct, mismanagement, censorship, retaliation, retribution, and reprisal, and identifies potential systemic scientific integrity issues through OIG audits or evaluations. As an independent office, the OIG can receive such allegations, including those related to scientific or research misconduct, without fear of improper influence. Additionally, unlike the SIO, the OIG can grant confidentiality protections to complainants under the Inspector General Act of 1978, as amended.

Please note that these comments are not meant to be a substitute for the recommendation follow-up process.

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