

July 28, 2021

Office of Science and Technology Policy  
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Washington, DC 20502  
ScientificIntegrityRFI@ostp.eop.gov

**Re: Docket No. OSTP 2021-13640 - Request for Information To Improve Federal Scientific Integrity Policies**

***Introduction***

The Brennan Center for Justice at NYU School of Law submits this comment to the Office of Science and Technology Policy (OSTP).<sup>i</sup>

Episodes of political interference in the last several presidential administrations demonstrate the need for clear scientific integrity standards, procedures, and effective enforcement and accountability mechanisms at agencies across the federal government.<sup>ii</sup> Building on President Obama’s 2009 scientific integrity memorandum<sup>iii</sup> and former OSTP Director John Holdren’s 2010 memorandum providing guidance to agencies for the adoption of scientific integrity policies,<sup>iv</sup> President Biden’s January 27, 2021 Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking states that it is the policy of his administration to make evidence-based decisions guided by the best available science and data and calls for swift action to ensure “scientific findings should never be distorted or influenced by political considerations.”<sup>v</sup>

The Covid-19 pandemic has made clear the critical role that science, data, and expertise must play in federal policymaking and the need to protect against undue political manipulation. The Brennan Center documented numerous improper political interventions to suppress and manipulate government research and data, as well as to intimidate and muzzle government experts, especially during the first several months of the pandemic.<sup>vi</sup> Even before the pandemic, politicization of government research and data had reached a crisis point, hampering effective policymaking and eroding public trust in government.<sup>vii</sup>

Scientific integrity policies are a critical tool to safeguard against political interference and ensure that expertise plays a role in the policymaking process. This proved true, for example, in the wake of “Sharpiegate,” when, following President Trump’s repeated false claims that a hurricane would hit Alabama, the acting White House chief of staff instructed the secretary of commerce to have the National Oceanographic and Atmospheric Administration (NOAA) publicly disavow an earlier statement by NOAA’s National Weather Service (NWS) clarifying that Alabama was not in the storm’s path, and the secretary of commerce reportedly threatened to

fire top NOAA employees if they did not repudiate NWS's statement.<sup>viii</sup> NOAA subsequently led an investigation pursuant to the agency's scientific integrity policy,<sup>ix</sup> which determined that the policy had been violated and recommended the implementation of measures to safeguard against future abuse.<sup>x</sup>

Sharpigate shows that scientific integrity policies are critical, but there is a troubling lack of uniformity among policies across federal agencies. We applaud the administration's efforts to improve scientific integrity standards throughout the federal government. In response to OSTP's request for information,<sup>xi</sup> we respectfully submit the following recommendations for OSTP to consider as it implements the president's directive to strengthen scientific integrity in the federal government.

## *Recommendations*

### **I. Scientific Integrity Policies Should Be Required to Address Certain Critical Topics and a Have Broad Scope of Applicability**

As noted above, agency scientific integrity policies are not uniformly robust, nor are they uniformly enforced.<sup>xii</sup> That is why clear standards are needed across the board to better safeguard against abuse. First, scientific integrity policies should make clear that science and the scientific process at federal agencies shall be free from politics, ideology, and financial conflicts of interest.<sup>xiii</sup> Second, they should prohibit politically motivated manipulation and suppression of government research and data, while also prohibiting discrimination and retaliation against government researchers on the basis of their scientific conclusions.<sup>xiv</sup> Third, scientific integrity policies should apply to both employees and contractors who perform government and government-funded research at federal agencies, as well as federally funded research and development centers.<sup>xv</sup>

### **II. Scientific Integrity Policies Should Have Standard Procedures for the Evaluation and Public Presentation of Research and Data**

In order to further maintain scientific integrity and safeguard against abuse, scientific integrity policies should contain standard procedures for the evaluation and public presentation of government-generated research and data. First, agencies should have a procedure for handling disagreements about scientific method and conclusions, such as a dispute resolution process that ensures the merit of scientific conclusions, as proposed in the Scientific Integrity Act.<sup>xvi</sup> Second, agencies should have a procedure for experts at federal agencies to review content released publicly in their names or that significantly relies on their work as government scientists. This would enable them to respond to changes to, or inaccurate representations of, their work.<sup>xvii</sup> Third, agencies should have a clear, consistent, transparent, and predictable procedure for agency approval of government scientists' publications, presentations, and participation in scientific conferences.<sup>xviii</sup>

### **III. Scientific Integrity Policies Should Contain a Presumption That Research and Data Be Publicly Disclosed and Lay out Clear Standards for the Withholding of Such Publication**

There should also be standard procedures to increase public access to government research and data and safeguard against suppression of scientific information.

#### *Disclosure of Data and Research*

Agencies should establish standard procedures for the collection and prompt online disclosure of data and completed, peer-reviewed research that is federally funded.<sup>xxix</sup> Agencies should also establish clear standards for withholding research or removing it from public access.<sup>xxx</sup> This would help safeguard against a practice common throughout the Trump administration, but most prominently during the pandemic, of senior government officials restricting public access to politically inconvenient government research and data by slow-walking it, removing it from public view, and suppressing it outright.<sup>xxxi</sup> Safeguarding against this abuse is critical because withholding or removing completed taxpayer-funded research and data from public access hinders scientific progress, puts the health of the American people, the environment, and the economy at risk, and allows political officials to manipulate public support for their policies and avoid responsibility for negative consequences.<sup>xxxii</sup>

#### *Disclosure of Data and Research in the Regulatory Process*

A final measure to consider is to require agencies to publish the nonpolitical expert analysis underlying regulatory actions as part of the administrative record, along with any substantive alterations of the regulatory analysis made by or at the suggestion of political officials and an explanation of the changes made to the analysis.<sup>xxxiii</sup> This would shine a light on, and potentially deter, alteration and suppression of analyses of proposed regulations that hide politically inconvenient facts about the consequences of policy decisions.<sup>xxxiv</sup>

### **IV. Scientific Integrity Policies Should Have Effective Enforcement and Accountability Mechanisms**

The abovementioned standards and procedures are critical to protect scientific integrity, but there must be effective enforcement and accountability mechanisms built into agencies' scientific integrity programs to make sure that policies are respected and there are consequences when they are violated.<sup>xxxv</sup> Agency personnel should be educated about scientific integrity protections, protocols should be put in place to safeguard against violations, and there should be staff dedicated to administering scientific integrity policies, with relevant expertise and insulation from political pressure.

#### *Training*

Agencies should be required to conduct routine scientific integrity training for all agency personnel who use science to any significant degree in their jobs.<sup>xxxvi</sup> This would help experts and political officials alike learn what procedures and standards are in place to safeguard against abuse.

### *Protocols to Regulate Communications from Political Officials*

Another measure to improve accountability would be to require agencies to establish protocols to regulate communications between political officials and career researchers about substantive research issues during the technical stages of regulatory development and the preparation of scientific reports for Congress and the public.<sup>xxvii</sup> This would deter political pressure and create an accountability mechanism if the protocol were breached.

### *Scientific Integrity Officers*

Finally, agencies should be required to designate a nonpolitical agency official or officials, with relevant scientific expertise, to be charged with monitoring and supporting scientific integrity, with appropriate insulation from political officials.<sup>xxviii</sup> Scientific integrity officers should have the authority to investigate alleged violations of the policy, craft remedies when violations are found, and have effective avenues to obtain compliance with those remedies.

### *Conclusion*

Thank you for your consideration of these recommendations for federal scientific integrity policies. Additionally, we urge OSTP to make comments submitted in response to this Request for Information accessible to the public.

Sincerely,

Martha Kinsella, Senior Counsel, on behalf of the Brennan Center for Justice

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<sup>i</sup> The Brennan Center advocates for reforms to improve scientific integrity and evidence-based policymaking, as well as to improve government accountability and systems of democracy. Our bipartisan National Task Force on Rule of Law & Democracy — a group of former senior government officials who have served in both Republican and Democratic administrations, co-chaired by former Environmental Protection Agency Administrator Christine Todd Whitman and former United States Attorney for the Southern District of New York Preet Bharara — has laid out a comprehensive agenda to safeguard against politicization of science and ensure that federal policy decisions are based on evidence and expertise. Preet Bharara, Christine Todd Whitman, et al., *Proposals for Reform, Volume II*, National Task Force on Rule of Law & Democracy, 2019, <https://www.brennancenter.org/our-work/policy-solutions/proposals-reform-volume-ii-national-task-force-rule-law-democracy>. The Brennan Center has also issued a set of recommendations for executive actions to safeguard scientific integrity in the federal government. Martha Kinsella et al., *Executive Actions to Restore Integrity and Accountability in Government*, Brennan Center for Justice, 2020, <https://www.brennancenter.org/our-work/policy-solutions/executive-actions-restore-integrity-and-accountability-government>. Additionally, our organization signed on to numerous recommendations for executive action to restore the critical role of science in federal policymaking in a report published by several organizations last year. Union of Concerned Scientists et al., *Restoring Science, Protecting the Public: 43 Steps for the Next Presidential Term*, 2020, <https://ucs-documents.s3.amazonaws.com/science-and-democracy/restoring-science-protecting-the-public.pdf>.

<sup>ii</sup> See Bharara, Whitman, et al., *Proposals for Reform, Volume II*, Appendix, 29. For examples, see, e.g., Helene Bottemiller Evich, “Agriculture Department Buries Studies Showing Dangers of Climate Change,” *Politico*, June 23, 2019, <https://www.politico.com/story/2019/06/23/agriculture-department-climate-change-1376413>; Annie Snider, “White House, EPA Headed Off Chemical Pollution Study,” *Politico*, May 14, 2018, <https://www.politico.com/story/2018/05/14/emails-white-house-interfered-with-science-study-536950>; Alan Rappaport and Thomas Kaplan, “Unhappy with Findings, Agriculture Department Plans to Move Its Economists out of Town,” *New York Times*, May 30, 2019, <https://www.nytimes.com/2019/05/30/us/politics/agriculture-department-economists.html>; and Andrew C. Revkin, “NASA Office Is Criticized on Climate Reports,” *New York Times*, June 3, 2008, <https://www.nytimes.com/2008/06/03/science/earth/03nasa.html>.

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- <sup>iii</sup> Scientific Integrity, 74 Fed. Reg. 46 (March 9, 2009), <https://www.govinfo.gov/content/pkg/FR-2009-03-11/pdf/E9-5443.pdf>.
- <sup>iv</sup> John Holdren, Director, Office of Science and Technology Policy, “Scientific Integrity” (official memorandum, Washington, D.C.: Executive Office of the President, 2010), <https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf>.
- <sup>v</sup> Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking, 86 Fed. Reg. 26 (February 10, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-02-10/pdf/2021-02839.pdf>.
- <sup>vi</sup> Martha Kinsella et al., *Trump Administration Abuses Thwart US Pandemic Response*, Brennan Center for Justice, last modified July 26, 2021, <https://www.brennancenter.org/our-work/research-reports/trump-administration-abuses-thwart-us-pandemic-response>.
- <sup>vii</sup> Preet Bharara and Christine Todd Whitman, “Under Trump, The Integrity of Government Research Is In Shambles,” *Washington Post*, October 3, 2019, <https://www.washingtonpost.com/opinions/2019/10/03/age-trump-its-clear-government-scientists-need-protection-political-interference/>; and Union of Concerned Scientists, “Attacks on Science,” last modified July 13, 2021, <https://www.ucsusa.org/resources/attacks-on-science>.
- <sup>viii</sup> Matthew Choi and Rishika Dugyala, “Trump Secures a NOAA Walkback, Bending Another Agency to His Words,” *Politico*, September 6, 2019, <https://www.politico.com/story/2019/09/06/noaa-defends-trump-alabama-hurricane-claims-1484326>; Christopher Flavelle, Lisa Friedman, and Peter Baker, “Commerce Chief Threatened Firings at NOAA After Trump’s Hurricane Tweets, Sources Say,” *New York Times*, September 9, 2019, <https://www.nytimes.com/2019/09/09/climate/hurricane-dorian-trump-tweet.html>; and Peter Baker, Lisa Friedman, and Christopher Flavelle, “White House Pressed Agency to Repudiate Weather Forecasters Who Contradicted Trump,” *New York Times*, September 11, 2019, <https://www.nytimes.com/2019/09/11/us/politics/trump-alabama-noaa.html>.
- <sup>ix</sup> Craig N. McLean, “A Message from Craig McLean: Hurricane Dorian and Exceptional Service,” NOAA Research News, September 10, 2019, <https://research.noaa.gov/article/ArtMID/587/ArticleID/2489/A-Message-from-Craig-McLean-Hurricane-Dorian-and-Exceptional-Service>.
- <sup>x</sup> Andrew Freedman and Jason Samenow, “NOAA Leaders Violated Agency’s Scientific Integrity Policy, Hurricane Dorian ‘Sharpiegate’ Investigation Finds,” *Washington Post*, June 15, 2020, <https://www.washingtonpost.com/weather/2020/06/15/noaa-investigation-sharpiegate/>.
- <sup>xi</sup> Request for Information to Improve Federal Scientific Integrity Policies, 86 Fed. Reg. 34064 (June 28, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-06-28/pdf/2021-13640.pdf>.
- <sup>xii</sup> See Public Employees for Environmental Responsibility, “Scientific Integrity Policies by Agency,” accessed July 27, 2021, <https://www.peer.org/resource-center/scientific-integrity-policies-by-federal-agency/>; Gretchen Goldman et al., *Preserving Scientific Integrity in Federal Policymaking: Lessons from the Past Two Administrations and What’s at Stake under the Trump Administration*, Union of Concerned Scientists, 2017, <https://www.ucsusa.org/sites/default/files/attach/2017/01/preserving-scientific-integrity-in-federal-policymaking-ucs-2017.pdf>; and United States Government Accountability Office, *Scientific Integrity Policies: Additional Actions Could Strengthen Integrity of Federal Research*, GAO-19-265 (Washington, D.C.: Government Accountability Office, 2019), <https://www.gao.gov/assets/gao-19-265.pdf>.
- <sup>xiii</sup> See Scientific Integrity Act, H.R. 849, 117th Cong. § 2(3) (2021). While the Scientific Integrity Act would mandate certain safeguards, the president has ample authority to require them on his own initiative, even absent legislation.
- <sup>xiv</sup> See Scientific Integrity Act, H.R. 849, 117th Cong. § 3 (2021).
- <sup>xv</sup> The 2017 version of the Scientific Integrity Act would have required that scientific integrity policies apply “to each employee or contractor who conducts, handles, communicates, supervises, or manages federally funded scientific research for the [f]ederal agency or for a federally funded research and development center sponsored by the [f]ederal agency.” Scientific Integrity Act, H.R. 1358, 115th Cong. § 6(a) (2017); and Scientific Integrity Act, S. 338, 115th Cong. § 6(a) (2017). Of note, some of the scientific integrity policies that agencies have adopted apply to contractors, states, and other partners. Public Employees for Environmental Responsibility, *Scientific Integrity Report Card Factors*, § I(B)(2), accessed July 27, 2021, [https://www.peer.org/assets/docs/Factors\\_RC\\_Point\\_System.pdf](https://www.peer.org/assets/docs/Factors_RC_Point_System.pdf); and Public Employees for Environmental Responsibility, *Scientific Integrity Report Card Comparison Charts*, accessed July 27, 2021, [https://www.peer.org/assets/docs/SI\\_Report\\_Card\\_Comparison\\_Chart%20-%20Sorted%20by%20Score.pdf](https://www.peer.org/assets/docs/SI_Report_Card_Comparison_Chart%20-%20Sorted%20by%20Score.pdf).

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- <sup>xvi</sup> Scientific Integrity Act, H.R. 849, 117th Cong. § 3 (2021). See also Holly Doremus, “Scientific and Political Integrity in Environmental Policy,” *Texas Law Review* 86 (2008): 1645 (advocating for creation of dissent channels at agencies where scientific research is performed).
- <sup>xvii</sup> See Scientific Integrity Act, H.R. 849, 117th Cong. §§ 2(5), 3 (2021).
- <sup>xviii</sup> See Scientific Integrity Act, H.R. 849, 117th Cong. § 3 (2021); and Doremus, “Scientific and Political Integrity,” 1647–48 (“Outside of regulatory agencies, federal research units modeled along academic lines should allow scientists to speak out just as academic scientists are free to do. Within regulatory agencies, there is some justification for overseeing contacts with the press; at some level those agencies must speak with one voice. But no such concern exists with respect to research science units. . . . It is never appropriate for any political appointee or public affairs officer to screen submissions of scientific literature.”).
- <sup>xix</sup> Sarah Lamdan, “Lessons from DataRescue: The Limitations of Grassroots Climate Change Data Preservation and the Need for Federal Records Law Reform,” *University of Pennsylvania Law Review Online* 166 (2018): 242 (noting that the Freedom of Information Act makes federal agency records access a right, part of which is the proactive disclosure of records of public importance, see 5 U.S.C. § 552(a)(1)–(2)(2012) (requiring proactive disclosure of many types of public records), and arguing that all federal records management rules should be crafted with this right in mind). The Fair Access to Science and Technology Research Act (FASTR Act) would require public dissemination within six months after publication in peer-reviewed journals. H.R. 3427, 115th Cong. § 4(b)(4) (2017); and FASTR Act, S. 1701, 115th Cong. § 4(b)(4) (2017).
- <sup>xx</sup> Kinsella et al., *Executive Actions*, 14.
- <sup>xxi</sup> Kashmira Gander, “Coronavirus Cases Tested in U.S. Removed from CDC Website, According to Congressman: ‘American People Deserve Answers,’” *Newsweek*, March 3, 2020, <https://www.newsweek.com/coronavirus-cases-tested-us-removed-cdc-website-according-congressman-american-people-1490158>; Richard Rubin, “Treasury Removes Paper at Odds with Mnuchin’s Take on Corporate-Tax Cut’s Winners,” *Wall Street Journal*, September 28, 2017, <https://www.wsj.com/articles/treasury-removes-paper-at-odds-with-mnuchins-take-on-corporate-tax-cuts-winners-1506638463>; Union of Concerned Scientists, “Department of Treasury Deletes Economic Science Paper from Website,” September 28, 2017, <https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/departments-treasury-deletes-economic-science-paper#.WphdW2rwbc>; and Helene Bottemiller Evich, “Agriculture Department Buries Studies Showing Dangers of Climate Change,” *Politico*, June 23, 2019, <https://www.politico.com/story/2019/06/23/agriculture-department-climate-change-1376413>.
- <sup>xxii</sup> Kinsella et al., *Executive Actions*, 14.
- <sup>xxiii</sup> Bharara, Whitman, et al., *Proposals for Reform, Volume II*, 14; and Kinsella et al., *Executive Actions*, 14.
- <sup>xxiv</sup> See, e.g., Lydia Wheeler, “Report: Labor Department Hiding Unfavorable Report on Impacts of Tip-Pooling Rule,” *The Hill*, February 1, 2018, <http://thehill.com/regulation/labor/371798-report-labor-department-hiding-unfavorable-report-on-impacts-of-tip-pooling>; Eric Levitz, “Trump DOL Hid Report Showing Its Tips Rule Would Likely Cost Workers Billions,” *New York Magazine*, February 1, 2018, <http://nymag.com/daily/intelligencer/2018/02/dol-hid-study-showing-tips-rule-could-cost-workers-billions.html>; and Ben Penn, “Mulaney, Acosta Override Regulatory Office to Hide Tips Rule Data,” *Bloomberg Law*, March 1, 2018, <https://news.bloomberglaw.com/daily-labor-report/mulaney-acosta-override-regulatory-office-to-hide-tips-rule-data-1>. There are many other examples detailed in the appendix of the Brennan Center task force’s report. See Bharara, Whitman, et al., *Proposals for Reform, Volume II*, Appendix, 36–37.
- <sup>xxv</sup> Bharara, Whitman, et al., *Proposals for Reform, Volume II*, 8–9.
- <sup>xxvi</sup> See Scientific Integrity Act, H.R. 849, 117th Cong. § 3 (2021); Doremus, “Scientific and Political Integrity,” 1648 (advocating training on the roles of technical and political staff); and Kinsella et al., *Executive Actions*, 12.
- <sup>xxvii</sup> Kinsella et al., *Executive Actions*, 13. The Scientific Integrity Act calls for agencies to have “the appropriate rules, procedures, and safeguards . . . in place to ensure the integrity of the scientific process within the covered agency.” Scientific Integrity Act, H.R. 849, 117th Cong. § 3 (2021); and Dana Remus, Counsel to the President, “Prohibited Contacts with Agencies and Departments” (official memorandum, Washington, D.C.: Office of Counsel to the President, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/07/White-House-Policy-for-Contacts-with-Agencies-and-Departments.pdf>.
- <sup>xxviii</sup> Kinsella, et al., *Executive Actions*, 12; Scientific Integrity Act, H.R. 849, 117th Cong. § 3 (2021); and Doremus, “Scientific and Political Integrity,” 1645–46 (calling for independent scientific ombudsmen to whom agency technical staff could forward concerns about scientific underpinnings of regulatory decisions and public communications). Congress has created similar positions, such as the director of the Office of Research Integrity in

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HHS. 42 U.S.C. § 289b(a)(2). The director is required by statute to be experienced and specially trained in the conduct of research and have experience in the conduct of investigations of research misconduct and is appointed by the secretary of the department.

Some agencies have scientific integrity officers to administer scientific integrity policies. See, e.g., U.S. Environmental Protection Agency, *Scientific Integrity Policy* (Washington, D.C.: Environmental Protection Agency, 2017), 10, [https://www.peer.org/assets/docs/epa/17\\_EPA\\_Final\\_SIP.pdf](https://www.peer.org/assets/docs/epa/17_EPA_Final_SIP.pdf); Centers for Disease Control and Prevention, “Maryam Daneshvar, PhD, Director, Office of Scientific Integrity,” accessed July 27, 2021, <https://www.cdc.gov/od/science/aboutus/maryam-daneshvar.htm>; U.S. Department of the Interior, “Scientific Integrity Officers,” accessed July 27, 2021, <https://www.doi.gov/scientificintegrity/Scientific-Integrity-Officers>; U.S. Department of Agriculture, “Agency and Departmental Scientific Integrity Officers,” accessed July 27, 2021, <https://www.usda.gov/our-agency/staff-offices/office-chief-scientist-ocs/agency-and-departmental-scientific-integrity>. See also Jeff Ruch, “Emerging Law of Scientific Integrity — A Bumpy Birth,” *Fisheries* 42 (2017): 354–55 (emphasizing need for independent review of scientific integrity complaints).