Description of document:	National Science Foundation (NSF) response to Senators Grassley and Mikulski's letter dated April, 2009 related to NSF employee misconduct, 2009
Requested date:	01-November-2010
Released date:	06-December-2010
Posted date:	06-June-2011
Date/date range of document:	06-27-April-2009 *
Source of document:	National Science Foundation FOIA Officer (Rm 1265) 4201 Wilson Blvd Arlington, VA 22230 Email: foia@nsf.gov Fax: (703) 292-9041
Note:	* The dates on several items are redacted

NATIONAL SCIENCE FOUNDATION
4201 Wilson Boulevard
ARLINGTON, VIRGINIA 22230

OFFICE OF THE
GENERAL COUNSEL

Case #11-035F

December 6, 2010

This is in response to your November 1, 2010 Freedom of Information Act (FOIA) request for a copy of the complete NSF response dated April 2009 to Senator s Grassley and Mikulski in response to the Senators' letter dated April t, 2009 to Drs. Bement and Beering.

Records responsive to your request are enclosed. Personal identifiers have been withheld wherever they appear under the privacy protections of Exemption 6 of the FOIA. Your right of administrative appeal is set forth in Section 612.9 of the NSF FOIA regulation (copy enclosed).

There are no fees for FOIA services in this instance in accordance with 5 U.S.C. 552(a)(4)(A)(i) et seq.

Sincerely,

Leslie A. Jensen
FOIA/Privacy Act Officer

Enclosures

Telephone (703) 292-8060 FAX (703) 292-9041

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

April 6, 2009

Via Electronic Transmission

Dr. Arden L. Bement, Jr.
Director
National Science Foundation
4201 Wilson Blvd. Suite 1205
Arlington, VA 22230

Dr. Steven Beering
Chairman
National Science Board
National Science Foundation
4210 Wilson Blvd., Suite 1225
Arlington, VA 22230

Dear Dr. Bement, Jr., and Dr. Beering:

As senior members of the United States Senate and as the Ranking Member of the Senate Committee on Finance and Chairwoman of the Appropriations Subcommittee on Commerce, Justice and Science (Committees), it is our duty under the Constitution to conduct oversight into the actions of the executive branch, including the activities of the National Science Foundation (NSF/Agency). In this capacity, we must ensure that the NSF properly fulfills its mission to promote and advance scientific progress in the United States by competitively awarding grants and cooperative agreements for research and education in the sciences, mathematics, and engineering and that it make responsible use of the public funding provided for these research disciplines.

We are writing to inform you of our continued concerns about NSF management's apparent lack of response to investigations and recommendations made by the Office of Inspector General (OIG) related to employee misconduct. Within this letter we request further information as to how NSF intends to completely resolve these matters in a way that shows the Agency takes these issues seriously and intends to provide a professional work environment for all its employees.

As a result of a letter dated January 28, 2009, from us to the NSF Office of Inspector General (OIG), we received background materials surrounding, among other things, investigations on NSF employees viewing sexually explicit material at work and sexual harassment matters. The investigative materials provided by the OIG lead us to believe that employee misconduct involving the viewing of sexually explicit material at work and sexual harassment by NSF management may be fostering an intimidating and offensive work environment. Our review revealed that NSF apparently failed to respond to the OIG's recommendations that were set forth in a recent Management Implications Report.

The following sections breakout our concerns into four categories: Misconduct by NSF employees, Lack or Equal Employment Opportunity Programs for NSF employees, and OIG Recommendation Not Adopted by NSF Management. Each provides further details into our concerns for which we expect complete responses.

A. Employee Misconduct involving Sexually Explicit Materials, Lack of Management Responsiveness, and Fear of Retaliation.

i. Employee Misconduct

A review of the OIG investigative materials revealed 10 matters involving 13 NSF employees who engaged in viewing, storing and/or sharing sexually explicit material on their government computers. In one particular case, OIG determined that 4 NSF employees were circulating and sharing sexually explicit material with one another, with other NSF employees and contractors, and with unknown individuals outside NSF via the NSF email exchange. The OIG indicated that inappropriate emails were circulating for at least 10 years, which contained blatantly explicit subject lines and sexually explicit images and videos. During a review of the circulating emails, the OIG further identified a group of 21 employees and 2 NSF contractors who were also possibly violating NSF's policies regarding the personal use of NSF's IT resources.

Furthermore, the OIG materials contained documentation on yet another NSF employee who visited and downloaded inappropriate material off adult web sites containing pornographic material with a government computer. Using peer-to-peer file sharing software, this same employee also downloaded pornography that consisted of 17 sexually explicit images, 36 hardcore porn movie files, and 45 full length copyrighted movies. Additionally, a help desk technician conducting an upgrade to an NSF employee's computer hard drive inadvertently found 8,580 inappropriate files containing hard core sexual content that included: 7 large video files that were approximately 30 minutes/each in length, 101 movie clips running between 2 to 20 minutes/each in length, 219 bitmap image files, and over 8,151 photo image files. This particular employee's disciplinary action resulted in a counseling letter.

According to OIG Investigation Report #I08050031, another senior NSF staff member spent 20% of his official work time viewing pornography. This inappropriate behavior occurred over the course of 2 years. Interestingly, this particular senior NSF staff member took few, if any, steps to conceal his activities. At one point, he even had his monitor positioned in a way that allowed coworkers to view pornographic images from a nearby copy room. When discussing this staff member's behavior with the OIG, one employee requested anonymity "for fear of backlash from other senior staff members." That same employee stated that the senior staff member's "viewing habits were common knowledge."

This particular senior staff member used his NSF computer to view live sexual performances via a live webcam and engaged in sex-oriented online "chatting" with the "performers". He even emailed the pornographic website's customer service host from his NSF computer, and inquired about billing and site-usage. *(See attached email correspondence).* Contained in these emails was his NSF office auto-signature block indicating his NSF position and office contact information.

With regard to the issue of NSF employees viewing sexually explicit material at work, please respond to the following questions and requests for information. For this response, please repeat the enumerated request and follow with the appropriate answer.

1. What enforcement mechanisms has the Agency implemented to help prevent web access, file sharing, and storing of sexually explicit material by NSF employees? Please provide the current NSF policy as it relates to this activity, and any previous policies over the last 4 years.

2. Has NSF expanded its recently implemented internet filtering software to include email filtering software? If so, please explain.

3. What are NSF's disciplinary guidelines when NSF staff member are found to be viewing sexually explicit material on an NSF computer? Please provide specific each disciplinary action for this type taken by NSF over the last 4 years.

4. Why did it take NSF almost two years to deal with an employee who was spending large amounts of time viewing pornography when the individual's behavior was, according to one source, "widely known"?

ii. Lack of Management Response

We were disturbed not only by the content of the information provided to us by the OIG in response to our request, but by the current status of the actions taken by NSF in response to these matters as represented in the OIG case documentation involving pornography and sexual harassment. The OIG documents we reviewed note that in 5 of the 11 cases involving employees viewing explicit material or in the sexual harassment cases, NSF failed to: take any personnel action; adequately respond to the OIG requests for formal notification of personnel action; or conduct its own Agency re-investigation of an earlier conducted OIG investigation. Our concern lies not only with the NSF's failure to take timely action against those NSF employees involved with viewing, sharing and storing pornography and its decision to re-investigate matters. We are also worried that NSF's lack of action sends an unfortunate message to all NSF employees.

During our review of the pornography-related cases received from the OIG, we noticed that in several cases, NSF followed up with its own investigations into the same matters; one would assume for the benefit of gathering a human resource/management perspective. This included the case involving a 20-year NSF employee who used an NSF computer to view pornographic websites and videos that were audible to other NSF staff. However, as of late January 2009, NSF has yet to impose any disciplinary action upon this employee who even acknowledged having visited numerous porn websites on his NSF computer. Assuming these re-investigations were conducted on the basis of assessing any appropriate measures for confronting and disciplining the employee, the Committees do not understand how or why NSF failed to take action.

Our review identified yet another related OIG case where NSF conducted its own independent re-investigation. This is reflected in a lengthy email exchange between the Assistant Inspector General for Investigations, and the NSF Director of the Office of

Information & Resource Management (OIRM). In that exchange, the OIRM Director stated (on behalf of the Agency), *"NSF Investigation Ongoing–Final Determination by February 2009; so far, unable to substantiate allegations sufficiently enough to support disciplinary action."* This statement is baffling because it refers to an OIG investigation where the subject **already admitted to receiving, viewing, and forwarding sexually explicit emails.** (emphasis added)

Accordingly, we would greatly appreciate your explanation into these matters. For each response, please repeat the enumerated request and follow with the appropriate answer.

5. Why is NSF failing to act on the OIG investigations that are substantiated and referred for appropriate administrative/disciplinary action? In those cases where the NSF took action, why has NSF failed to provide the OIG with a formal notification of what action(s) were or were not taken?

6. Why has the Agency not responded to OIG investigative reports in a timely manner, or within the requested 30 day time frame? Please be specific in responding to this inquiry.

7. If not for work force management purposes, why did NSF choose to conduct its own independent re-investigation of the earlier conducted OIG investigations (OIG Investigative Case #I08060044 and #I08040025)? What existing workforce management issues at NSF (such as union agreements) prevent the Agency from following through with any disciplinary actions?

iii. Fear of Retaliation

Additionally, we found it particularly disconcerting that although numerous individuals were involved in receiving, viewing, and forwarding sexually explicit materials at NSF and that numerous individuals at NSF were aware of this behavior, staff was afraid to bring the issue to NSF management. Particularly, the Senior Executive Service (SES) employee who was utilizing the live webcam was involved in deliberate, inappropriate behavior for 2 years before the OIG received its first of two anonymous hotline allegations. At the time the second allegation was anonymously reported, the OIG was already investigating. Both complainants, who wished to remain anonymous, were concerned that they would be subjected to retaliation for reporting inappropriate behavior to NSF, because the inappropriate behavior was being conducted by a high level NSF official.

In light of the fact that NSF staff members were afraid of retaliation if they reported obvious inappropriate behavior being conducted by a senior NSF staff member, please respond to the following question:

8. What actions has NSF taken to encourage employees to report inappropriate behavior to management?

B. Office of Equal Opportunity Programs

The OIG also indicated in its case documents that NSF employees were inadvertently encountering explicit images and sounds associated with pornographic material, coming from a co-workers computer. The employees then became acutely embarrassed and did not know how to respond. The OIG noted that the employees in general were not aware of how to contact NSF's Office of Equal Opportunity Programs (OEOP), as a reporting outlet for NSF employees who witnessed inappropriate behavior. Even the OIG encountered significant difficulties finding information about OEOP on the NSF website and employee directory. According to NSF sources, we also learned that the perception within NSF is that the OEOP is essentially a "buried office."

Please respond to the following questions about the actions NSF took to ensure that NSF employees can contact OEOP:

9. What actions has NSF taken to determine if web access, file sharing, and storing of sexually explicit material by NSF employees, is fostering a hostile work environment, and whether or not this is a systemic problem within the Agency?

10. Describe in detail what actions NSF has taken to promote access to the Office of Equal Opportunity among NSF employees.

C. Sexual Harassment

Also two alarming cases involving sexual harassment by NSF senior employees came to our attention. In both cases these senior employees utilized NSF travel funds to pursue intimate relationships with subordinate NSF employees.

In one instance, an NSF senior employee extended and initiated official business trips using taxpayer funds to facilitate intimate relationships with multiple female companions. The disciplinary action imposed upon this employee by NSF was that it: suspended the supervisor's international travel; required that he have all future domestic travel approved by his supervisor; and required that he reimburse NSF for some of the government funds improperly expended on travel.

A second matter involved sexual harassment pertaining to a NSF senior employee, who arranged taxpayer funded travel with a subordinate to facilitate an inappropriate sexual relationship. When this was investigated, the subordinate indicated to the OIG investigators discomfort with the relationship and described it as being manipulative and the equivalent of sexual abuse.

In this case, NSF contracted a private law firm to conduct a re-investigation of the inappropriate relationship and sexual harassment allegations. We are unclear why NSF hired a private law firm to re-investigate a matter that the OIG already investigated. The

NSF/OIG is an independent oversight organization that was expressly empowered by Congress to perform this exact function.

In light of the cases described above please respond to the following questions:

11. What actions has NSF taken to address the OIG recommendation that guidelines and training be developed to encourage the appropriate disclosure of inappropriate relationships to management, and to assist managers in addressing allegations or knowledge of such relationships?

12. What action(s) has NSF taken to reinforce the expectation that senior management should act with the highest level of integrity?

13. In the last year, what action has NSF taken to institute clear travel policies that, distinguish between personal and essential travel?

14. What actions has NSF taken to ensure that individuals cannot sign off on their own travel?

15. Why did NSF choose to contract with a law firm to conduct an independent re-investigation of the OIG investigation (OIG Investigative Case #I07120049)?

D. OIG Recommendations - Management Implication Report (MIR)

In addition to the aforementioned cases, there were multiple incidents in which the employees disregarded NSF policies related to viewing sexually explicit material while at work. All of the employees who were investigated for viewing sexually explicit material had previously completed NSF's mandatory IT Security Awareness Training.[1] Clearly, NSF's current policies and their implementation are apparently insufficient to deter, among other things, inappropriate web access for the purpose of viewing sexually explicit material.

Further, after conducting multiple pornography-related investigations and investigations of sexual harassment, the OIG became concerned with NSF's enforcement of policies prohibiting gender discrimination, offensive work environments, and retaliation. To deal with these problems, the OIG outlined some recommendations in a Management Implication Report (MIR), dated July 14, 2008. Clearly, the cases that OIG referenced in its MIR and in its most recent Semiannual Report to Congress demonstrate that NSF's current policies and practices fail to deter either inappropriate web access to pornography or concerns about the possible creation of a hostile workplace environment.

---

[1] *NSF Bulletin 05-07, Information Systems Security Awareness Training; "I understand that NSF IT resources, including e-mail accounts are for authorized Government use only and in accordance with NSF policy. Any activity that would discredit NSF, including seeking, transmitting, collecting or storing defamatory, discriminatory, obscene, harassing or intimidating messages or material is not permitted."*

With respect to this MIR, we would like to know in detail what NSF has done to address each OIG recommendation. For each response, please repeat the question and follow with a detailed response.

16. What actions has NSF taken to address the OIG's recommendations that pertain to the NSF IT Security Awareness Training? Please provide any/all supporting documentation as it relates to the applicable training.

17. What actions has NSF taken to address the OIG recommendation to limit the amount of server storage space available to employees? Please provide any/all supporting documentation as it relates to server storage space.

18. It is our understanding that NSF installed internet filtering software. If so, please do state; if not why not? Does this software include email filtering software? If not why not?

19. Please describe in detail what actions NSF has taken to ensure that the reports produced by the internet filtering software are examined to detect employee attempts to access inappropriate sites? In the event that NSF is maintaining reports on access to inappropriate sites please provide to us copies of all reports prepared to date.

20. What actions has NSF taken to address the OIG recommendation to screen share drives and computer hard drives for inappropriate content? Please provide any/all supporting documentation.

We look forward to hearing from you by no later than April 27, 2009. All documents responsive to this request should be sent electronically in PDF format to Brian_Downey@finance-rep.senate.gov. Should you have any questions regarding this matter, please do not hesitate to contact Misha Kelly or Paul Thacker of Senator Grassley's staff at (202) 224-4515 or Jeremy Weirich of Senator Mikulski's staff at (202) 224-7363.

Sincerely,

Charles E. Grassley
Ranking Member
Committee on Finance

Barbara Mikulski
Chairwoman
Committee on Appropriations
Subcommittee on Commerce, Justice and Science

Date: Tue [redacted]
Subject: cam2cam
To: '[redacted]@chathostess.com'
From: "[redacted]" </O=NATIONAL SCIENCE FOUNDATION/OU=NSF/CN=
RECIPIENTS/CN=[redacted]>
Cc: [redacted], [redacted]

Lady/Sir:

I am trying to learn how to use cam2cam capability on your asianbabes.
com site. I do not seem to be able to do that. I have Windows Netmeeting
capability. Please Advise.

Thanks.

[redacted] [redacted]

Date: Wed [redacted] GMT
Subject: question
To: '[redacted]@chathostess.com'
From: "[redacted]" </O=NATIONAL SCIENCE FOUNDATION/OU=NSF/CN=
RECIPIENTS/CN=[redacted]>
Cc: [redacted], [redacted]

Dear Lady/Gentleman:

Membership ID [redacted]

Username [redacted]

Password [redacted]

I am not able able to buy credits apperently because I reached my 30-day limit. Since yesterday the 30 day period expired I thought I would be able to buy credits. Please let me know when I will be able to do so.

Thanks for your help.

[redacted]

Senior Advisor

Directorate for [redacted]

National Science Foundation

4201 Wilson Boulevard, Suite [redacted]

Arlington, VA 22230

Tel.: 703-[redacted]

Fax: 703-[redacted]

E-mail:[redacted]@nsf.gov

URL: www.nsf.gov

b6

Date: Fri [redacted]
Subject: RE: [redacted]: MEMBERSHIP ID
To: '[redacted]@camsupport247.com'
From: "[redacted]" </O=NATIONAL SCIENCE FOUNDATION/OU=NSF/CN=RECIPIENTS/CN=[redacted]>
Cc: [redacted], [redacted]

I have another question. When I try to get information about my account and enter all the required fields, I get a message saying that my record could not be found. What's going on?

Thanks for your help.

[redacted]

Senior Advisor

Directorate for [redacted]

National Science Foundation

4201 Wilson Boulevard, Suite [redacted]

Arlington, VA 22230

Tel.: 703-[redacted]

Fax: 703-[redacted]

E-mail:[redacted]@nsf.gov

URL: www.nsf.gov

-----Original Message-----

From: [redacted] [mailto:[redacted]@camsupport247.com]

Sent: Friday, [redacted] 7:02 PM

To: [redacted], [redacted] b6

Subject: [redacted]: MEMBERSHIP ID

http://secure.asianbabecams.com/[redacted]

The link above will allow you to recover your username and password.

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230
April 27, 2009

OFFICE OF THE
DIRECTOR

The Honorable Barbara Mikulski
Chairwoman, Subcommittee on
Commerce, Justice and Science
Senate Appropriations Committee
144 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Mikulski:

Thank you for your letter of April 6, 2009. Dr. Steven Beering and I understand the important role you play in conducting oversight of the Executive Branch and, like you, want to ensure that the National Science Foundation fulfills its mission to advance research and education in science and engineering while operating with the highest level of integrity. We have discussed your letter and the Agency response. As Director of the National Science Foundation, I want to assure you that I fully understand the seriousness of the issues involved and greatly appreciate this opportunity to respond to the questions you and Senator Grassley have raised.

Having performed a detailed review of the letter, it is clear that there are misunderstandings about the circumstances that have prompted your concerns. These inconsistencies relate to some of the facts regarding employees involved, as well as the severity and timeliness of the disciplinary actions taken. While we will address some of those items in the course of responding to the specific questions you have raised (Enclosure A), we have also included additional details about each of the cases (Enclosure B).

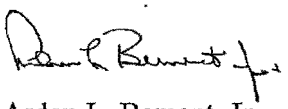
By law, NSF must verify and support all charges it intends to level against an employee, propose a disciplinary action, and then allow the employee time to respond (i.e., "due process") before making a final decision. This can be an exacting and time consuming process to provide, for example, time for the employees' union to intervene on behalf of the employee if a grievance is filed by the bargaining unit. If done effectively, disciplinary action serves as a deterrent for such future behavior by the employee and others. In addition, in order to meet our burden of proof on each case and to increase the chances that we will prevail before third parties, including the courts, it is important to note that each of the reports referred to NSF by OIG over the last year has required additional investigative work and case preparation. Given the complexity of the cases and the high standards NSF must meet, we have attempted to conduct our investigations and deliver appropriate outcomes in a timely and responsible manner.

I wish to acknowledge the cooperation of the Office of Inspector General (OIG) in reviewing your letter and this response. My staff and I have had a number of discussions with OIG to discuss the facts of the cases you have highlighted, as well as the different, complementary roles each of us is required to play in the investigation process. More importantly, we have reached agreement on new processes and procedures that will greatly improve our efforts to keep the OIG apprised of NSF management's progress in addressing OIG findings and recommendations. Based on these discussions, we are confident that we will be able to achieve continuing improvements in our communications and the exchange of required documentation.

Enclosures provide answers to each of the twenty questions you raised. I trust that these answers will assure you that the Foundation not only takes these issues very seriously but also has established policies and practices to provide a professional work environment for all of its employees.

I am sending an identical response directly to Senator Grassley. If you or Senator Grassley have any questions, please do not hesitate to contact me.

Sincerely,



Arden L. Bement, Jr.
Director

Enclosures
A: Response to April 6, 2009 Letter
B: Investigative Referrals from OIG
C: NSF IT Policies
D: 2.20.09 Memo from Director to ADs and Office Heads
E: NSF Travel Policies
F: Employee Survey Results

NATIONAL SCIENCE FOUNDATION
4201 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22230

April 27, 2009

OFFICE OF THE
DIRECTOR

The Honorable Charles E. Grassley
Ranking Member, Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510-6200

Dear Senator Grassley:

Thank you for your letter of April 6, 2009. Dr. Steven Beering and I understand the important role you play in conducting oversight of the Executive Branch and, like you, want to ensure that the National Science Foundation fulfills its mission to advance research and education in science and engineering while operating with the highest level of integrity. We have discussed your letter and the Agency response. As Director of the National Science Foundation, I want to assure you that I fully understand the seriousness of the issues involved and greatly appreciate this opportunity to respond to the questions you and Senator Mikulski have raised.

Having performed a detailed review of the letter, it is clear that there are misunderstandings about the circumstances that have prompted your concerns. These inconsistencies relate to some of the facts regarding employees involved, as well as the severity and timeliness of the disciplinary actions taken. While we will address some of those items in the course of responding to the specific questions you have raised (Enclosure A), we have also included additional details about each of the cases (Enclosure B).

By law, NSF must verify and support all charges it intends to level against an employee, propose a disciplinary action, and then allow the employee time to respond (i.e., "due process") before making a final decision. This can be an exacting and time consuming process to provide, for example, time for the employees' union to intervene on behalf of the employee if a grievance is filed by the bargaining unit. If done effectively, disciplinary action serves as a deterrent for such future behavior by the employee and others. In addition, in order to meet our burden of proof on each case and to increase the chances that we will prevail before third parties, including the courts, it is important to note that each of the reports referred to NSF by OIG over the last year has required additional investigative work and case preparation. Given the complexity of the cases and the high standards NSF must meet, we have attempted to conduct our investigations and deliver appropriate outcomes in a timely and responsible manner.

I wish to acknowledge the cooperation of the Office of Inspector General (OIG) in reviewing your letter and this response. My staff and I have had a number of discussions with OIG to discuss the facts of the cases you have highlighted, as well as the different, complementary roles each of us is required to play in the investigation process. More importantly, we have reached agreement on new processes and procedures that will greatly improve our efforts to keep the OIG apprised of NSF management's progress in addressing OIG findings and recommendations. Based on these discussions, we are confident that we will be able to achieve continuing improvements in our communications and the exchange of required documentation.

Enclosures provide answers to each of the twenty questions you raised. I trust that these answers will assure you that the Foundation not only takes these issues very seriously but also has established policies and practices to provide a professional work environment for all of its employees.

I am sending an identical response directly to Senator Mikulski. If you or Senator Mikulski have any questions, please do not hesitate to contact me.

Sincerely,

Arden L. Bement, Jr.
Director

Enclosures
A: Response to April 6, 2009 Letter
B: Investigative Referrals from OIG
C: NSF IT Policies
D: 2.20.09 Memo from Director to ADs and Office Heads
E: NSF Travel Policies
F: Employee Survey Results

NSF Response to April 6, 2009 letter
from Senator Grassley and Senator Mikulski

1. **What enforcement mechanisms has the Agency implemented to help prevent web access, file sharing, and storing of sexually explicit material by NSF employees? Please provide the current NSF policy as it relates to this activity, and any previous policies over the last 4 years.**

NSF utilizes a multi-tiered approach to ensure appropriate use of Foundation resources. The approach combines 1) dissemination of policy and guidance, 2) mandated user education to ensure that employees are informed of policy requirements and standards of conduct, and 3) technical controls to support established policy or prevent misuse. The agency's efforts with respect to communication and enforcement of policies related to appropriate use extend back many years.

NSF information products that address policies in this area include:

- NSF Staff Memorandum O/D 08-15, "Appropriate Use of NSF Technology and Communications Resources" (transmitted December 8, 2008); describes technical controls to prevent access to sexually explicit, gambling, and other inappropriate web sites and reminds staff of NSF policies and personal responsibilities with regard to use of IT resources.
- NSF Bulletin 08-18, "Personal Use Policy for NSF Technology and Communications Resources" (last revision September 15, 2008; originally published July 13, 1998); defines acceptable personal use of equipment and computing services, and provides guidelines for the personal use of IT resources. It specifies that use may not be offensive and cannot involve access to sexually explicit or inappropriate web sites...
- NSF "User Responsibilities -- Rules of Behavior" (updated March 17, 2009); detail the responsibilities and expectation for NSF staff using IT resources, including the following promise, "I will not seek, transmit, collect, or store obscene, pornographic, or sexually inappropriate material." Rules of Behavior are included in annual IT Security Awareness Training, Staff are required to acknowledge that they accept responsibility for complying with NSF policies and expectations, including those associated with appropriate use. In addition, staff must accept that they understand that failure to comply with the Rules of Behavior or other requirements of NSF policy may result in disciplinary action, sanctions, personal liability, and/or civil or criminal penalties.
- NSF Bulletin 04-15, "Peer-to-Peer File Sharing Policy" (last revision January 11, 2008; originally published June 14, 2004); forbids use of peer-to-peer applications at NSF and advises users of potential consequences if peer-to-peer file sharing is detected.

Copies of these policies may be found in Attachment C.

In addition, the following summarizes the enforcement mechanisms established to support these policies:

Web access. In August 2008, NSF implemented a commercial enterprise-level Internet filtering

product that technically prevents NSF individuals from accessing inappropriate web sites. The Blue Coat WebFilter™ database contains over fifteen million website ratings for billions of web sites. NSF uses this product to block web access to sites that are categorized as pornography, child sexual abuse sites, gambling, peer-to-peer file sharing, spyware, phishing, malware, proxy avoidance. If anyone attempts to access an inappropriate site, they cannot proceed, and will receive a message that states, *"NSF has blocked access to this site. If you believe you have received this message erroneously, with respect to an appropriate site, please submit a request to IT Help Central."* We have not received any such requests since the product was installed.

NSF has used a wide range of other commercial enterprise-level products to provide email filtering and, in fact, we have different products implemented at multiple levels and layers of access. In March 2009, 88% of incoming email messages (7.8 million of 8.8 million email messages directed to NSF staff) were blocked by NSF's email filters and this is a typical month. NSF uses a wide range of products to filter email before it enters the NSF email system; to filter email once it is received within NSF's email system; and to filter email once it is accessed from a desktop. This defense-in-depth approach is consistent with industry best practices since inappropriate email messages not detected at one layer or by one product may be captured by another.

File sharing. Over the past five years, NSF has taken action to prevent peer-to-peer file sharing, including the following:

- In June 2004, NSF issued a policy to prohibit the use of peer-to-peer file sharing software. This policy was revised in January 2008 to include additional examples of file sharing technology, to codify new federal requirements, and to include clear enforcement mechanisms and consequences of violation.
- At the time NSF's initial policy on peer-to-peer file sharing was established, NSF used an open-source product to monitor and detect file sharing; when file sharing software was discovered, it was deleted from the network.
- In April 2008, NSF implemented strict desktop controls to prevent installation of peer-to-peer file sharing software on an NSF desktop.

In September 2008, NSF implemented an additional layer of file sharing filtering through the use of an enterprise-level commercial product to block access to sites with peer-to-peer file sharing capabilities.

Storage. After blocking incoming inappropriate content via web and email filtering, and reminding NSF staff of appropriate use, NSF began work to identify and expunge inappropriate content that may have been previously stored on the network. To execute this task, NSF engaged a security company with special expertise in this area. It is currently performing a technical review of data stored on NSF's network, including data storage for individual and collaborative use, to identify inappropriate digital information in a manner consistent with current industry capabilities.

When this review is completed, NSF will examine the results, take appropriate action with respect to any inappropriate files located on NSF storage, and consider implementation of any recommended changes to data management practices and storage. In addition, we plan to conduct these types of reviews on a periodic basis.

2. **Has NSF expanded its recently implemented Internet filtering software to include email filtering software? If so, please explain.**

NSF has expanded its Internet filtering software. The current status of implementation is outlined below, and remains under review to determine its effectiveness.

Email Filters Between the Internet and NSF's Email System
Since April 2004, NSF has been using the Cisco IronPort email filtering devices, which filter Internet email before messages enter the NSF email system. This is NSF's first layer of email filtering. These email filtering devices examine the complete context of a message, including its content, how the message is constructed, who is sending the message, and where the message directs the reader (e.g., embedded links to web sites). The context of each message is compared against an extensive proprietary database, which includes real-time data on more than 25% of the world's email and web traffic contributed by over 100,000 organizations and networks. Each incoming message is evaluated and, if not rejected, sent through a second set of filtering devices that search for viruses using the McAfee/Sophos Anti-Virus software packages. These filtering processes occur before an email message is allowed into the Foundation's email system.

Email Filtering Within NSF's Email System
If an email successfully passes through the IronPort email filtering devices, NSF uses another layer of commercial, enterprise level filtering products within the NSF email system to provide additional safeguards against the delivery of unwanted messages. Here NSF has employed Microsoft's anti-virus and anti-spam security tools, which leverage industry-leading technologies to detect potential email threats and prevent infiltration of viruses, worms, and spam. These products use a variety of commercial scanning utilities to review and identify messages that may present a threat to NSF recipients.

Email Filtering on the Desktop
If an email successfully passes through the IronPort email filtering devices and the Microsoft suite of email filtering devices, it must pass another layer of commercial, enterprise-level filtering products at the desktop level. NSF uses Microsoft and other software products on the desktop to provide yet another layer of protections against undesirable messages. This includes filtering for certain attachment file types and additional software scans to detect potential malicious file types, and includes individual settings to filter "junk" email.

3. **What are NSF's disciplinary guidelines when NSF staff members are found to be viewing sexually explicit material on an NSF computer? Please provide specific (information pertaining to) each disciplinary action for this type taken by NSF over the last 4 years.**

Generally, NSF has applied the following distinctions in making an initial assessment of a proposed penalty in cases where an NSF employee is found to be viewing inappropriate or illegal material on an NSF computer, after which it applies the twelve (12) Douglas factors.

Actions	Reprimand to 3 day suspension	4 - 14 Day Suspension	Suspension of More Than 14 days to Removal
Time Frame	Very short history	Short History ranging from a couple of months to less than 2 years	Lengthier History
Distribution	No Record of Distribution	None to very limited evidence of sending images to others	Multiple offensive e-mails often with attached images sent to NSF Employees and to others outside of NSF
Content	Very few files	Some combination of images mostly containing nudity and semi-nudity with some hardcore images; some access to pornographic websites; and generally low volume of pornographic videos found on computer	Some combination of numerous inappropriate images, often containing hardcore sexual activity, female genitalia, nude and semi-nude images; several sexually explicit videos and PowerPoint; and/or access to numerous pornographic websites

Case precedent established by the Merit Systems Protection Board requires that each set of circumstances in an adverse action case be viewed independently and that, where appropriate, the Douglas factors be applied in order to make a reasoned determination on the proper penalty. The 12 Douglas factors are:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

3. The employee's past disciplinary record;

4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;

6. The consistency of the penalty with those imposed upon other employees for the same or similar offenses;

7. The consistency of the penalty with any applicable agency table of penalties;

8. The notoriety of the offense or its impact upon the reputation of the agency;

9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

10. The potential for the employee's rehabilitation;

11. The mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and,

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

As defined by over 28 years of case decisions, not all 12 *Douglas* factors will apply in every case. The relevant factors must be balanced in each case to arrive at the appropriate penalty.

Please refer to Attachment B for detailed information on all agency investigations into the viewing of sexually explicit material on government computers over the last four (4) years, as well as the disciplinary action taken in each case .

4. Why did it take NSF almost two years to deal with an employee who was spending large amounts of time viewing pornography when the individual's behavior was, according to one source, "widely known?"

We believe this statement refers to case # I-08050035, involving a Senior Advisor at the Foundation. The earliest known disclosure of the misuse was made to the OIG by NSF staff on April 25, 2008. The first time the individual's managers, the Office of the Director, or the Division of Human Resource Management were made aware of the activity was when we received the OIG's report dated June 25, 2008. Once NSF received the report, it took expeditious action to obtain information to fully support an adverse action. In addition, we began monitoring his Internet activity to ensure that the misuse did not continue during the course of our investigation. The Senior Advisor was served with a notice of proposed removal on August 25, 2008 and received a decision sustaining the removal on September 25, 2008. He subsequently opted for retirement from Federal service in advance of the effective date of the removal (September 30, 2008), a decision NSF had no legal authority to prevent or delay.

Although NSF management took action once informed about the conduct of the Senior Advisor in April 2008, there is concern why the behavior was not reported earlier. As indicated in the answer to Question 8, NSF is taking steps to encourage reporting of inappropriate behavior to management.

Please see Attachment B for detailed information on case # I-08050035.

5. **Why is NSF failing to act on the OIG investigations that are substantiated and referred for appropriate administrative/disciplinary action? In these cases where the NSF took action, why has NSF failed to provide the OIG with a formal notification of what action(s) were or were not taken?**

NSF has and continues to take action on all investigations referred by OIG. The burden of proof on an agency to pursue an administrative case against a Federal employee is significant. There are significant legal consequences for NSF if it fails to prove, in a rigorous manner, all elements of the disciplinary action it takes or fails to consider a variety of legal factors in deciding an appropriate penalty. Before making any recommendations for disciplinary action, the Agency ensures that it understands and can support all facts and must assess potential liabilities to ensure that its recommendations fully meet all aspects of established legal and regulatory requirements, including 30 years of legal case precedent.

Improvements in the communications practices between NSF and the OIG have been agreed upon by the NSF Director and the OIG and are being implemented. We fully expect that these improvements will expedite notifications and the submission of supporting documentation.

6. **Why has the Agency not responded to OIG investigative reports in a timely manner, or within the requested 30 day time frame? Please be specific in responding to this inquiry.**

The OIG agrees that the 30-day time frame is normative and may not accommodate the amount of additional work required to bring a case up to the legal standard needed to prevail before a third party. It is expected that, with the agreed upon improvements in communication between NSF management and the OIG, the OIG will be kept better informed of NSF progress in responding to their investigative reports.

7. **If not for workforce management purposes, why did NSF choose to conduct its own independent re-investigation of the earlier conducted OIG investigations (OIG Investigative Case #I-08060044 and #I-08040025)? What existing workforce management issues at NSF (such as union agreements) prevent the Agency from following through with any disciplinary actions?**

Congress has set forth a very specific set of requirements for Federal agencies regarding how they pursue actions against employees. In particular, Congress requires that agencies support their cases against employees by a preponderance of evidence. That standard has been interpreted by both the Merit Systems Protection Board, by arbitrators, and by courts, and must be applied in those contexts by Federal agencies. Case law with regard to taking actions against employees is routinely revisited and revised. This requires that Federal agencies be aware of and apply the most recent case law and consider any affirmative defenses an employee may present in order to prevail. Also, aspects of the investigation regarding sexual harassment are not within the jurisdiction of the OIG.

There are no workforce management issues that prevent the Agency from taking action. However, there are both Congressional and Union requirements for due process.

Please see Attachment B for detailed information on cases I-08060044 and #I-08040025.

8. **What actions has NSF taken to encourage employees to report inappropriate behavior to management?**

NSF has taken several actions to further encourage employees to report inappropriate behavior. A Staff Memorandum was recently sent to all employees reminding them of the Employee Suggestion Box that provides direct communication to the Director and Deputy Director. This suggestion box has a filter so the sender may remain anonymous. In addition, the Office of Equal Opportunity Programs and the OIG both provide employees the opportunity to report information anonymously.

The Director also required all NSF Assistant Directors and Office Heads to conduct "all-staff" meetings (please see Attachment D) to impress upon staff the importance of responsible use of IT resources. It has been certified that all these sessions were held and all employees attended a session. A purpose of the sessions was to help create an open dialogue on these issues across the Foundation.

Also, the No FEAR Act training provides employees with information on reporting information and their protection from retaliation. The current bi-annual No FEAR Act training is now underway, and steps are being taken to increase the effectiveness of this training.

While it may take some time to determine the collective effectiveness of these activities, NSF will monitor them and explore other mechanisms to help ensure that employees report inappropriate behavior.

B. Office of Equal Opportunity Programs

9. **What actions has NSF taken to determine if web access, file sharing, and storing of sexually explicit material by NSF employees, is fostering a hostile work environment, and whether or not this is a systemic problem within the Agency?**

Among the purposes of the "all-hands" meetings was to identify the root causes of the referred to behaviors and to develop corrective actions. A root cause analysis has been initiated in order to investigate the circumstances and environment that may contribute to these behaviors. At this stage of the analysis, we are organizing the potential contributing factors into two categories: (1) Management Infrastructure/Policies, and (2) Attitudes, Beliefs and Values of NSF employees.

In addition, the new director of the Office of Equal Opportunity Programs (selection anticipated by May 20, 2009) will be a member of NSF Senior Management and participate in the weekly meeting of the Senior Management Roundtable chaired by the NSF Deputy Director.

The ethical environment includes conflict of interest matters as well. The Conflicts of Interest training must be taken annual by anyone who files financial disclosure forms. These sessions rely on case studies and the NSF Manual 15 to introduce participants to the criminal conflicts laws; the basic standards of conduct regulations; specific rules for NSF staff; and the rules covering proposal handling, recusals, acceptance of travel expenses, outside employment and activities, and acceptance of gifts.

With regard to determining whether this is a systemic issue, we have contracted with an independent commercial security company to perform data discovery and forensic analysis of digital information stored on the NSF network and on desktops that are connected to the NSF network. Their data discovery and analysis efforts, which began in March 2009 are ongoing, and are focused on identifying inappropriate material found in video, picture and Microsoft PowerPoint file types using state-of-the-art automated commercial and manual examination tools. We anticipate that the first phase of the independent data discovery and forensic technical analysis will be completed in May. Results of this effort will be reviewed by NSF management and any information that indicates potential misuse will be investigated as appropriate. Also, next steps regarding such data discovery and analysis will be determined. Any indication of illegal activities will be referred to the OIG for investigation.

10. Describe in detail what actions NSF has taken to promote access to the OEOP among NSF employees.

NSF has numerous mechanisms to help promote access to the Office of Equal Opportunity Programs (OEOP). As indicated below, several of the existing mechanisms are being enhanced to increase their effectiveness and additional actions are planned. Current mechanisms include:

- Signs on each floor of both NSF buildings that provide contact information for OEOP. One of these signs describes the equal employment opportunity complaint process. The other sign provides the essential elements of a "Model EEO Program."
- The NSF Announce Channel, which provides a rolling display of information on monitors on each floor of the Stafford I building, includes contact information for OEOP.
- An OEOP-maintained website, which is accessed through both the NSF Internal and NSF External Home pages. Previously identified problems with web-links have been resolved. In addition, on its external homepage NSF posts a link to its No FEAR data, which includes information about the No FEAR policy and OEOP.
- The New Employee Orientation includes a 20-30 minute presentation on equal employment opportunity information. The presentation is conducted by OEOP staff.
- The Program Manager Seminar, which is a four-day orientation primarily designed for new program staff, includes information about OEOP.
- The bi-annual No FEAR Act training for all employees includes information about OEOP. The current bi-annual training is now underway, and steps are being taken to increase the effectiveness of this training.

- The bi-annual EEO training provided for managers and supervisors includes information about OEOP. This training was last provided in Fall 2007 and will be provided next in Fall 2009.
- To enhance the rigor of the EEO training program, employees will now be required to receive certification in both the No FEAR Act and EEO training for managers and supervisors.
- There are numerous brochures on different EEO topics that have been prepared for NSF staff. These include information about OEOP.

In addition to the above mechanisms that are currently in place, several additional steps are being taken to promote access to OEOP. These include:

- NSF is currently conducting a search for the Director of the Office of Equal Opportunity Programs. The appointment will be at the SES level. We expect a selection to be made by May 20. The director will be a member of NSF Senior Management and participate in the weekly meeting of the Senior Management Roundtable chaired by the NSF Deputy Director.
- Working with the Division of Human Resource Management, OEOP staff will meet with all individuals when they are appointed to a supervisory position.
- NSF is near completion of all criteria established by the Equal Employment Opportunity Commission for the Agency to have a Model EEO Program, which include several approaches to promote access to OEOP.

C. Sexual Harassment

11. What actions has NSF taken to address the OIG recommendation that guidelines and training be developed to encourage the appropriate disclosure of inappropriate relationships to management, and to assist managers in addressing allegations or knowledge of such relationships?

NSF currently provides training in these areas through the bi-annual No FEAR training for all employees and the bi-annual EEO training for supervisors and managers. However, increased attention to these particular issues will be provided in the future through these bi-annual training sessions. In addition, NSF is currently planning for mandatory training for all employees on sexual harassment.

12. What action(s) has NSF taken to reinforce the expectation that senior management should act with the highest level of integrity?

The importance that senior management act with the highest level of integrity is emphasized in the selection and appointment of senior officials. A recent example in which this expectation was reinforced occurred on February 20, 2009, when the Director reiterated to all senior officials (Assistant Directors and Office Heads) at the Foundation in writing the *Standards of Ethical Conduct for Employees of the Executive Branch* to ensure that they and their employees respect

and adhere to the principles of ethical conduct required of Federal employees. The memo stated that *"each of us has a responsibility to ensure that every citizen has complete confidence in the integrity of the Federal Government. As employees of the Executive Branch, each of us must respect and adhere to the principles of ethical conduct required of federal employees....Public service is a public trust, and every executive branch employee is responsible for earning that trust each and every day as we work on behalf of the American people."* To emphasize the importance of this message for both senior managers and all NSF employees, senior managers were required to hold meetings with their staff to discuss these issues.

In addition, management will continue its commitment to take prompt action in the event that senior management officials do not adhere to these standards.

13. In the last year, what action has NSF taken to institute clear travel policies that distinguish between personal and essential travel?

On February 18, 2009, NSF issued an official bulletin entitled, *Travel - Definition of Official Travel* for the purpose of clearly defining official (essential) travel. On the same day, NSF issued a second official bulletin entitled, *Travel - Use of Leave While On Official Travel* for the purpose of explaining and clarifying the proper way to take personal leave while on official travel.

These bulletins were distributed to all NSF employees and serve to clearly explain the characteristics of official travel and clarify that personal leave is permissible while on official travel but must be accounted for properly. Copies of both bulletins can be found in Attachment E.

14. What actions has NSF taken to ensure that individuals cannot sign off on their own travel?

NSF investigated approval chains in the electronic travel system and determined that local administration of approvals resulted in the introduction of improper approving officials into the system. NSF is now implementing a plan to further strengthen internal controls governing travel, which will include the following:

- Identify proper approving officials for all travelers throughout the Agency;
- Limit the approval chains to a primary and secondary approving official;
- Centralize the administration of the approving official chain data and not allow improper approving officials to be introduced into the system;
- Continue to prohibit travelers from approving their own expense reimbursements; all reimbursements must be approved by the proper approving officials as recorded in the system approval chain (per the current policy).

15. Why did NSF choose to contract with a law firm to conduct an independent reinvestigation of the OIG investigation (OIG Investigative Case #I-07120049)?

NSF contracted with a law firm that specializes in EEO cases and has significant legal background on what constitutes sexual harassment. The OIG's investigation on Case #I07120049 was initiated based on allegations of misuse of travel funds. It did not independently make a determination as to whether the legal standard of sexual harassment existed in the relationship since sexual harassment is not within the jurisdiction of the OIG. The responsibility for conducting an investigation into these allegations was appropriately transferred to the Agency to handle.

Please see Attachment B for detailed information on case #I-07120049.

D. OIG Recommendations – Management Implication Report (MIR)

16. What actions has NSF taken to address the OIG's recommendations that pertain to the NSF IT Security Awareness Training? Please provide any/all supporting documentation as it relates to the applicable training.

NSF has completed all actions to address the OIG recommendations that pertain to the NSF IT Security Awareness Training. At the time of the OIG's July 14, 2008 report, NSF was transitioning to a new mandated training course developed by the Office of Personnel Management, and we acknowledged our intent to incorporate the OIG recommendations to: (1) consider additional ways to communicate expectations and restrictions; (2) explicitly state the consequences for policy violation; and, (3) require certification by the trainee that they understand and accept Rules of Behavior and the consequences for violating them. NSF made changes to the overall training program for FY2009 to address the initial OIG recommendations. In February 2009, the OIG provided additional recommendations for improving the courseware as well as course content. As described in our March 17, 2009, memorandum to the NSF Associate Inspector General for Investigations, NSF accepted and implemented all subsequent OIG recommendations pertaining to NSF IT Security Awareness Training.

As background, NSF has required all staff and contractors to take IT Security training since 2002. The IT Security training covers legislative requirements, Government-wide and Agency-level policies and guidance, staff responsibilities, and industry best practices. Instructor-led and on-line training options are available. The training is mandatory for all new NSF employees, and an annual refresher course is required for all staff and contractors. The Foundation enforces this requirement by restricting account access for anyone who does not take the training within the specified time period.

This year, all NSF staff must complete a three-part training session by September 15, 2009, including the following steps:

- Complete the government-wide IT Security Basics course provided by the Office of Personnel Management. This section provides an overview of the importance of information security as it relates to the critical missions of Federal government agencies.

- Complete the NSF IT Security course. This section references all general NSF information technology (IT), and IT Security and Privacy policies and provides additional information on 3 key topics: appropriate use of resources, privacy, and protection of mobile devices.

- Read and agree to the User Responsibilities and Rules of Behavior. These Rules of Behavior detail the responsibilities of and expectations for all NSF employees and contractors that use IT resources. NSF staff must affirm that they will comply with policies and expectations which are specifically described, including those associated with appropriate use and protection of sensitive information by acknowledging, "I Accept." For example, two of the rules which must be acknowledged are:

- "I will not seek, transmit, collect, or store defamatory, discriminatory, harassing, or intimidating material that could discredit NSF or damage its public reputation.

- I will not seek, transmit, collect, or store obscene, pornographic, or sexually inappropriate material."

It is our understanding that all OIG recommendations related to IT Security Awareness training are considered by OIG to be closed.

17. **What actions has NSF taken to address OIG recommendation to limit the amount of server storage space available to employees? Please provide any/all supporting documentation as it relates to server storage space.**

NSF assigns storage space on the NSF network for individual and collaborative use (i.e., for groups of individuals). The storage is provided to support business needs, which require NSF staff to store information in a wide range of file formats including media (video, audio, image), documents, and PowerPoint, etc. These data are essential for NSF staff to carry out grant oversight and management. NSF continues to take actions to improve the operational management of storage for data files, email, and other information.

Operational Storage Review
In October 2008, NSF initiated an operational review of file storage and to assess how it is used. The objective was to gain a better understanding of NSF staff requirements for file storage, and to identify potential areas for improvement both in the near-term and in the long-term. During the review, NSF assessed utilization of existing file storage by individuals and workgroups, and found that most NSF individuals use about 2 gigabytes of file storage, which is considered well within acceptable limits.

Improved Storage Operations
Since 1998, NSF has been using a commercial tool to manage storage capacity and ensure the optimal utilization of available space. This tool continuously monitors server storage utilization, and alerts support staff of anomalous behavior such as spikes in space allocation so that we address issues when unusual conditions arise. NSF has also taken steps to improve storage operations and monitoring:

- Purchased a new product to provide more depth and breadth of operational information about files and metadata on the NSF network or on NSF desktops.
- Assigned dedicated resources to evaluate specific improvements to address alternative technologies for deleting, retaining, and archiving older or less frequently accessed information.
- Initiated an overall assessment of "best practices" in server storage; we plan to use an independent external resource with specialized expertise to assist us in this assessment.
- Implemented enterprise-wide commercial collaborative tools to organize information using an architecture that limits the need to transmit and store redundant copies.

Technical Review of NSF Data
After blocking incoming inappropriate content via web and email filtering (as described in our responses to Questions 1 and 2), and reminding NSF staff of appropriate use (as described in our response to Question 1), NSF began work to identify and expunge any inappropriate content that may have been previously stored on the network. To execute this task, NSF engaged a security company with special expertise in this area. It is currently performing a technical review of data stored on NSF's network, including data storage for individual and collaborative use, to identify inappropriate digital information in a manner consistent with current industry capability.

When this technical review is completed, NSF will examine the results, take appropriate action with respect to any inappropriate files located on NSF storage, and consider implementation of any recommended changes to data management practices and storage, including those recommended by the OIG.

18. **It is our understanding that NSF installed Internet filtering software. If so, please do state; if not why not? Does this software include email filtering software? If not why not?**

Yes, NSF has installed Internet filtering software. As described in our response to Question 2, NSF uses a range of commercial, enterprise-level email filtering products in conjunction with the Internet filtering software. These email filtering products are deployed as part of a multi-layered, multi-product, multi-function defense-in-depth operational strategy, which is consistent with industry best practice.

19. **Please describe in detail what actions NSF has taken to ensure that the reports produced by the Internet filtering software are examined to detect employee attempts to access inappropriate sites? In the event that NSF is maintaining reports on access to inappropriate sites please provide to us copies of all reports prepared to date.**

As described in NSF's August 29, 2008, and October 2, 2008, responses to the NSF Associate Inspector General for Investigations, the internet filtering software used by NSF prevents staff from accessing over 15 million inappropriate web sites, including sites that are categorized as pornography, child sexual abuse sites, gambling, peer-to-peer file sharing, spyware, phishing, malware, and proxy avoidance. If an individual attempts to access such a site, they receive a "blocked access" message and are prevented from proceeding further or accessing the site. Each time an individual attempts to access such a site, they will receive the same message, and remain blocked from access. This solution has been implemented in a redundant configuration so that if one Internet filtering device malfunctions another will take over, ensuring round-the-clock protection for NSF staff.

Because the filtering product prevents attempts, we do not log or produce reports that track individuals who attempt to access (either intentionally or in error) a site that is considered to be inappropriate.

As previously mentioned, we recently contracted with an independent commercial security company to perform data discovery and forensic analysis of digital information stored on the NSF network and on desktops that are connected to the NSF network. Their data discovery and analysis efforts, which began in March 2009 and are ongoing, are focused on identifying inappropriate material found in video, picture, and Microsoft PowerPoint file types using state-of-the-art automated commercial and manual examination tools. We plan to conduct routine file content scans to detect inappropriate material on the NSF network; reports resulting from the scans will be used to address inappropriate use. We are confident that the combination of: 1) internet filtering, and, 2) routine file content scanning will be the most effective way to address inappropriate use and we will monitor these processes to assess their effectiveness. Any indication of illegal activities will be referred to the OIG for investigation.

20. **What actions has NSF taken to address the OIG recommendation to screen share drives and computer hard drives for inappropriate content? Please provide any/all supporting documentation.**

NSF has taken action to address the OIG recommendation on screening drives for inappropriate content. In January and February 2009, to address the concern that files containing inappropriate information may have been previously stored on the NSF network, NSF completed scans of network storage to inventory files by characteristics such as file-type and size, and generated reports to facilitate analysis. We had previously assessed the use of keywords to flag potentially inappropriate content, but concluded that typical filenames are not a good indicator of actual content. We analyzed results to determine options for identifying inappropriate content in files, with a specific focus on media (video and picture) files.

In March 2009, NSF contracted with an independent commercial security company to perform data discovery and forensic analysis activities for digital information stored on or connected to the NSF network. Our product and market research activities during January and February revealed this company's position as a unique provider in a specialized industry.

There is no 100% perfect or guaranteed methodology for locating inappropriate content, but this company's proposed approach for identifying inappropriate material leverages their forensic expertise along with their use of current state-of-the-art tools. One tool looks at picture files by hashing files and comparing the results to their pornographic database of pictures. It is the only product identified in this marketplace to directly target pornographic-specific content. Another tool looks at a broader range of file types including 300 content types, and focuses analysis on two criteria: skin tone detection and the files' metadata as obtained from the file source information. This tool produces results that are designated as having a high, moderate, or low probability of pornographic content.

The scope of the review will be to search files on any device that is directly or routinely connected to the NSF network. The data discovery tools will search individuals' hard drives as well as information on the network.

This work started in late March 2009. We anticipate the first phase of the independent data discovery and forensic technical analysis will be completed in May 2009. In addition, we plan to conduct these types of reviews on a routine basis and will be able to report on these activities and findings as requested.

April 24, 2009

Employee Misuse of Government IT Resources
Agency Investigations – FY2005-2008
OPEN CASES

OIG Investigative Report	Description	Status/Action Taken
#I-08040025 Date of report: 9/30/08	Access of pornographic websites through a personal online account, using NSF computer. NSF investigated to determine extent of misconduct and appropriate penalty.	• This employee also named in Memorandum from OIG dated 10/31/08. • **10-day suspension proposed** by supervisor on 3/18/09 based on investigation resulting from multi-case referral; employee presented written reply. • Deciding Official currently reviewing employee's reply and other case materials; decision expected within 10 days.
Memorandum from OIG Date: 10/31/08	Alleged access of pornographic websites and downloading and distribution of inappropriate material by 23 NSF employees and contractors. OIG did not conduct investigations as they did in previous cases, citing too heavy a workload and higher priorities. NSF investigated 20 individuals (two employees had already left agency and one employee was already under proposed removal and was subsequently removed based on NSF findings resulting from OIG referral in #I-08050035) to determine extent of misconduct and appropriate penalty. Investigations involved nine NSF employees and 11 contractors.	• Four contractors suspended by contract firm for 5 days during week of February 16, 2009 • Three contractors counseled by contract firm during the week of February 16, 2009 • One contractor terminated by contract firm during week of February 23, 2009 • Three contractors terminated by contract firm during the weeks of March 16 and March 23, 2009 (including two who had previously received 5 day suspensions during week of February 16, 2009). • No action supportable for two remaining contractors. • One employee received notice of proposed suspension during week of March 16, 2009. Final decision will be issued before end of April • Three NSF employees received notices of proposed removal during week of April 13, 2009. Final decisions will be issued before end of May • Two employees had previously served 10 day suspensions based on investigations conducted by NSF resulting from OIG referrals in #1-08020014 and #1-08010004. No new findings resulted from multi-referral investigation that would have justified further discipline • NSF has three employee cases pending. Appropriate action to propose will be decided before end of April

April 24, 2009

Employee Misuse of Government IT Resources
Agency Investigations – FY2005-2008
CLOSED CASES

OIG Report	Description	Status/Action Taken
Report # unknown Date of report: 12/20/04	Employee visited online gambling sites and adult sites containing pornographic material from NSF computer, and downloaded pornographic materials to NSF computer.	• Because employee was on student temporary appointment, adverse action procedures and right of appeal/grievance procedures did not apply. • **Notice of termination of student appointment issued** by supervisor on 2/9/05. • **Termination effective 2/22/05.** • **NSF case closed.**
#I-04100039 Date of report: 12/20/04	Employee maintained pornographic and other inappropriate material of a sexual nature on NSF computer and forwarded such material from NSF computer. Employee also installed and used peer-to-peer software on NSF computer in violation of NSF policy.	• **12-day suspension proposed** by supervisor on 4/1/05; employee did not reply. • **Suspension upheld** by deciding official, but reduced to 5-day suspension. • **5-day suspension served** by employee 5/23-27/05. • **NSF case closed.**
#I-07070023 Date of report: 11/14/07	Employee downloaded peer-to-peer file sharing software and material from inappropriate websites. NSF investigated to determine extent of misconduct and appropriate penalty.	• Because employee was on student temporary appointment, adverse action procedures and right of appeal/grievance procedures did not apply. • Employee admitted to misconduct. • **Removal action recommended.** • **Employee resigned** effective 12/31/07. • **NSF case closed.**
#I-08020014 Date of report: 3/31/2008	Employee's network drive contained peer-to-peer file sharing software and images and videos downloaded from inappropriate websites. Employee received inappropriate material via email. Employee's "Favorites" folder contained links to inappropriate websites. NSF investigated to determine extent of misconduct and appropriate penalty.	• **10-day suspension proposed** by supervisor on 6/25/08; employee presented oral reply; • **Suspension upheld** by deciding official 8/8/08 • **Suspension served** by employee. • **NSF case closed.** • Union invoked arbitration – arbitration withdrawn.
#I-08010004 Date of report: 5/12/08	Employee's network drive contained peer-to-peer file sharing software and images and videos downloaded from inappropriate websites. Employee received, viewed, stored, and forwarded inappropriate material. Employee's "Favorites" folder contained links to inappropriate websites. NSF investigated to determine extent of misconduct and appropriate penalty.	• **10-day suspension proposed** by supervisor on 6/24/08; employee presented oral reply; • **Suspension upheld** by deciding official on 7/30/08; • **Suspension served** by employee. • **NSF case closed.** • Union invoked arbitration – pending.

#I-08050031 Date of report: 6/25/08	Management official accessed pornographic websites, downloaded inappropriate material, and conducted online chats. OIG received two anonymous complaints in April and May, 2008. OIG referred case to NSF at the end of June, 2008. NSF investigated to determine extent of misconduct and appropriate penalty.	• **Removal proposed** by supervisor on 8/25/08; employee presented oral and written reply. • **Removal upheld** by deciding official on 9/25/08. • **Employee retired** effective 9/30/08. • **NSF case closed**.
#I-08060044 Date of report: 8/29/08	Employee accessed pornographic websites and subjected co-worker to offensive and embarrassing audible material. NSF investigated to determine extent of misconduct and appropriate penalty.	• **10-day suspension proposed** by supervisor on 2/3/09. • **Suspension upheld** by deciding official on 2/19/09. • **Suspension served** by employee. • **NSF case closed.**
#I-08050035 Date of report: 9/4/08	Employee stored inappropriate material on his work computer and downloaded peer-to-peer file sharing software. NSF investigated to determine extent of misconduct and appropriate penalty.	• Employee previously issued letter of reprimand in 2007 for related misconduct. • **Removal proposed** by supervisor on 12/1/08; employee presented oral and written reply on 1/7/09. • **Removal upheld** by deciding official on 1/15/09. • **Employee removed from Federal Service 1/23/09.** • **NSF case closed.** • Union invoked arbitration – pending.

April 24, 2009

Alleged Misuse of Travel Funds and Inappropriate Intimate Relationships
Agency Investigations – FY 2005-2008

OIG Report	Description	Status/Action Taken
#I-07120049 Date of report: 6/24/2008 Supplemental Report 11/10/2008 **Alleged Misuse of Travel Funds**	OIG report alleges that two senior officials and of the same NSF Division, took trips of questionable duration to further their personal relationship and therefore misused federal travel funds. OIG reviewed 47 joint trips over a 2.5 year period, and concluded that it was possible that 3 trips may have each been inappropriately extended by one day. Supplemental report provides no new conclusions. NSF investigated to determine extent of any misconduct.	In September, 2008, OIG advised NSF of its intention to re-open its investigation of allegations of misuse of travel funds. As a result, NSF delayed completion of its own investigation into these allegations until after receipt of the OIG addendum to investigative report #I-07120049 in November, 2008. Senior management who directly oversee the subject and reviewed the history of joint travel by the subjects, with particular emphasis on the 3 trips questioned by the OIG in the original 6/24/08 investigative report. They concluded that, "After reviewing the case file, we could find no compelling evidence that reimbursement for travel should be required..."
#I-07120049 Date of report: 6/24/2008 **Inappropriate Intimate Relationship**	OIG report states that two senior officials admit to an intimate relationship. Report further states that described relationship as "asymmetric," and described it as "a burden at times." OIG concluded that pursuit of by left NSF vulnerable to charges of hostile work environment and/or gender discrimination, however, the OIG did not investigate whether the conduct rose to the level of discrimination or harassment.	• The OIG informally notified senior management in March 2008 that an intimate relationship existed between the and • admitted there was an intimate relationship. • **April 13, 2008** - NSF reassigned from direct supervision over into a non-supervisory position. • **April 2008** - NSF rescinded previously approved nomination for resulting in a financial loss of $33,500. • **September 8, 2008** - NSF hired an outside contractor, a premier expert in the field of EEO, to conduct a thorough investigation into the issues raised to determine whether sufficient proof existed to establish that sexual harassment/hostile work environment had occurred • **September 2008** - s removed from key duties to ensure, to maximum extent possible, that there would not need to be interactions between he and the pending outcome of legal investigation. • **October 3, 2008** - NSF issued letter of instruction to stating that he was not to have any non-work related communications with the and that work-related communications had to be cleared by his supervisor. • **December, 2008** - ated minimally successful on performance appraisal due to failure to show good managerial judgment. As a result eceived no bonus or pay increase. • **January, 2009** - Report received from outside contractor and

		results reviewed by NSF. Findings from the investigation did not support a determination that sexual harassment occurred. NSF considers the matters that were the subject of the contractor's review to be closed. • **February 2009** - Subject [redacted] were advised of the results of the investigation and the conclusion reached by the agency.
#I-08060042 Date of report: 9/25/2008	OIG report alleges that NSF senior official misused NSF travel funds and used NSF travel to further personal relationships. The report identified 5 trips that were possibly inappropriate, either in whole or in part..	• NSF agreed that a portion of the Subject's NSF-funded travel over five examined trips was based, in part, on personal rather than NSF business. • NSF required Subject to reimburse Foundation for $1,215.50. • NSF prohibited subject from going on international travel for duration o[redacted] enure with NSF. • NSF required subject to get all domestic travel approved by Deputy Director. • Subject was verbally reprimanded by NSF Director.