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U.S. Department of Education
400 Maryland Avenue, SW
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RE: Comments on Department of Education Proposed Changes to Title IX

The American Society for Biochemistry and Molecular Biology (ASBMB) is an international nonprofit scientific and educational organization that represents more than 10,000 students, researchers, educators and industry professionals. The ASBMB strongly advocates for strengthening the science, technology, engineering and mathematics (STEM) workforce, supporting sustainable funding for the American research enterprise, and ensuring diversity, equity and inclusion in STEM.

The U.S. Department of Education released a notice of proposed rulemaking to amend the regulations implementing Title IX of the Education Amendments of 1972. The ASBMB is writing in support four of the proposed amendments and to make an additional recommendation to Title IX.

A [2018 National Academies report](#) on sexual harassment in academic science, engineering and medicine, stated that women in STEM experience sexual harassment at alarmingly high rates with women in the academic workplace experiencing the second highest rate of sexual harassment. Since then, the Association of American Universities found that [13% of college and graduate students report nonconsensual sexual contact](#) when surveyed, with the highest rates occurring among female undergraduates at 25.9% and college students who identified as gay, transgender or non-binary at 22.8%.

With no protections from sexual-based harassment for gay, transgender, or non-binary individuals under the current ruling, the numbers will only continue to increase. Amending Title IX guidance and rules to expand coverage of protection to lesbian, gay, bisexual, transgender, queer or questioning, intersex and asexual (LGBTQIA+) individuals will ensure that institutions of higher education are safer learning and work environments for all individuals in STEM across the country.

On June 11, 2021, the [ASBMB responded to the department of education's office for civil rights virtual public hearing to gather information for the purpose of improving enforcement of Title IX](#), recommending the department clearly define sexual harassment, remove the requirement for live hearing with cross-examinations, and use preponderance of evidence in sexual harassment cases.

In the current draft of proposed rulemaking for amendment to Title IX, the agency included language that incorporates the ASBMB's recommendations, and the ASBMB applauds the department for this. However, we urge the department to keep the current language in the proposed amendment as it pertains

to (1) defining sexual harassment, (2) eliminating mandatory live cross examinations, (3) including Include Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, Asexual and other non-straight, no-cisgender identities (LGBTQIA+) individuals, (4) clarifying and confirming protections against retaliation and add language (5) including post-doctoral trainees in Title IX.

1. Defining sexual harassment

The ASBMB recommends that the department keep the amended changes to include the definition of sexual harassment as “sex discrimination, including related to a hostile environment under the recipient’s education program or activity, as well as discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identity”. The ASBMB is pleased to see the department broaden the definition of sexual harassment beyond the [three categories of sexual assault, quid pro quo and sexual harassment](#) to the expanded definition that covers all forms of sex-based harassment. This expanded definition of sexual harassment will reinstate regulations from the Obama administration and will ensure that all forms of sexual harassment and violence are covered.

In addition to expanding the definition, the department’s definition of sexual harassment should align with Title VII and other civil rights laws. Aligning definitions with Title VII will ensure consistency and clarity regarding protections for postdoctoral trainees and fellows who are not considered employees by postsecondary institutions.

2. Suspend mandatory live cross examination

The ASBMB recommends that the department keep the proposed language to make live cross-examinations optional instead of mandatory for postsecondary institutions. The previous language requiring live cross-examinations was [damaging as it would require a survivor of sexual harassment or violence to possibly relive their abuse](#). Removing the requirement and allowing institutions to proceed with the [single-investigator model](#) when needed is better for avoiding direct confrontation between the accuser and the accused. The department should continue to do all it can to ensure survivors feel safe to report cases of sexual harassment and violence.

3. Amend Title IX to include lesbian, gay, bisexual, transgender, queer or questioning, intersex, asexual and other non-straight, non-cisgender identities (LGBTQIA+)

The ASBMB recommends that the department keep the proposed language to protect lesbian, gay, bisexual, transgender, queer or questioning, intersex, asexual and other non-straight, non-cisgender identities (LGBTQIA+) individuals under Title IX. This will ensure the department is consistent with President Joe Biden’s executive order titled “[Guaranteeing an Educational Environment free from discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity](#).” It is imperative that the agency protect LGBTQIA+ individuals as part of its efforts to ensure equity in institutions it funds. By protecting LGBTQIA+ students, the department will be [creating safer and less hostile learning environments](#) not only for LGBTQIA+ students but for all students, resulting in more optimal learning outcomes.

4. Clarify and confirm protection from retaliation for students, employees and other individuals in federally funded institutions of education.

The ASBMB recommends that the agency keep the proposed language to include the multiple distinctions of retaliation. It is important for victims to be safeguarded not only from retaliation from their superiors but also from their peers. While [keeping language broad so that multiple situations can apply is beneficial, explaining different forms of retaliation is key to upholding communication](#) between the department and those protected by Title IX. Moreover, updating

Title IX to specifically state the prohibition of peer retaliation is important to ensure more victims feel safe to come forward without fear of ostracization by their peers.

5. Include clear protections for postdoctoral trainees in Title IX

The ASBMB recommends that the proposed amendment include clear language to include postdoctoral trainees as complainants in Title IX grievances. The current proposed amendment states that “a recipient’s grievance procedures must be published and must provide for the resolution of complaints made by a student, employee, third party participating or attempting to participate in the recipient’s education program or activity or the Title IX Coordinator alleging any action that would violate Title IX or its regulations.”

While this language directly applies to postdoctoral trainees who are employees, not all postdoctoral trainees/fellows are classified as employees, leaving many in limbo in regards to employee protection. Listing postdoctoral trainees/fellows as protected individuals will eliminate confusion.

We urge the agency to insert direct language — for postdoctoral trainees/fellows and all individuals training under institutions of higher education covered by all of Title IX — to all amendments, including the amendments to [prohibit discrimination against pregnant individuals or those who are parenting](#).