



Council On Governmental Relations

An Association of Research Institutions

Summary of NSTC Guidance for Implementing National Security Presidential Memorandum 33 Disclosure Requirements

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On Jan. 4, 2022, the Office of Science and Technology Policy acting through the National Science and Technology Council (NSTC) Joint Committee on the Research Environment (JCORE) Subcommittee on Research Security issued its long awaited “[Guidance for Implementing National Security Presidential Memorandum 33 \(NSPM-33\) on National Security Strategy for United States Government-Supported Research and Development](#)” (hereafter the “NSPM-33 Guidance”). NSPM-33 tasked the heads of U.S. research funding agencies with establishing policies on disclosure requirements for researchers regarding positions, other support, affiliations, and activities with foreign government-sponsored talent recruitment programs (FGSTP) by January 14, 2022. NSPM-33 also charged the Office of Science and Technology Policy (OSTP), in cooperation the Office of Management and Budget (OMB) and other agencies, to coordinate the standardization of disclosure policies and forms across research funding agencies. The NSPM-33 Guidance is a first step in this standardization effort. The document provides general guidance for federal funding agencies in implementing the January 14, 2021 “[Presidential Memorandum on United States Government – Research and Development National Security Policy](#)” (NSPM-33”) as well as more detailed instruction and advice in the following areas:

- Disclosure Requirements and Standardization
- Digital Persistent Identifiers (DPIs)
- Consequences for Violation of Disclosure Requirements
- Information Sharing
- Research Security Programs

This summary will highlight key points of the NSPM-33 Guidance’s disclosure requirements, including comparison of those provisions with current NIH and NSF requirements in this area. A separate summary document will be issued regarding the other NSPM-33 Guidance areas (e.g., DPIs, consequences, etc.).

Key Points on General Implementation of NSPM-33 Disclosure Guidance

- **Guidance as First Step:** The NSPM-33 Guidance is the first step by OSTP to assist federal funding agencies in harmonization/standardization of disclosure and other requirements.

- **Next Steps & Timeline:**
 - **Model Forms:** OSTP will develop model award proposal disclosure forms and instructions that will require researchers to disclose to funding agencies the same information in the same manner. Agencies may adapt these model forms as required by legal authorities.
Timeline: Next 120 days
- **General Guidance for Agencies:** Per the NSPM-33 Guidance, agencies should:
 - Avoid major implementation actions (e.g., “new” regulations, requirements, forms) unless such actions are coordinated through NSTC.
 - Integrate requirements of underlying statutes (e.g., Section 223 of [FY 2021 National Defense Authorization Act \(NDAA\)](#), Section 117 of the Higher Education Act of 1965 (HEA) ([20 U.S.C. Sec. 1011f](#)) in implementation requirements.
 - Engage with the research community during the implementation process (e.g., piloting, soliciting feedback, etc.) and avoid unnecessary administrative burden.
 - Avoid retroactive application of changes to regulations, policies, and procedures that would unnecessarily harm researcher.
 - Implement NSPM-33 in a nondiscriminatory manner.
- **Items to Note:**
 - The foregoing points were issued as guidance to agencies, except for the last point regarding non-discrimination, which is a requirement.
 - The guidance on avoiding “major implementation actions” may be of limited utility given that NIH and NSF are far down the NSPM-33 implementation path and have consistently claimed that they are not issuing “new” requirements, but rather explaining/clarifying existing requirements.

Key Points on Disclosure Requirements and Standardization

- **Definitions:** Many of the definitions used in the NSPM-33 Guidance are consistent with definitions for the same terms in either the NSPM-33 and/or Section 223 of the FY 2021 NDAA (e.g., definitions for “Covered Individual,” “Federal Research Agency” and “Research and Development Award” align with definitions in the FY 2021 NDAA, and the definition of “FGSTP” aligns with the NSPM-33 definition of that term). Additional notable points regarding NSPM-33 Guidance definitions include:
 - Different Terms but Consistent Definitions: The term “research organization” is used in the NSPM-33 Guidance. This term does not appear in either Section 223 of the FY 2021 NDAA or in NSPM-33, but the Section 223 definition of the term “entity” mirrors the NSPM-33 Guidance
 - Definitions of “Current and Pending Research Support” and “Other Support”: The NSPM-33 Guidance defines “Other Support” and “Current and Pending Research

Support,” although the NSPM-33 itself only defines “Other Support.” The NSPM-33 Guidance states that these terms have the same meaning, but there are some noteworthy wording distinctions. For example, the NSPM-33 Guidance definition of “Current and Pending Research Support” qualifies in-kind contributions as those “requiring a commitment of time and directly supporting an individual’s research and development efforts,” while the document’s definition of “Other Support” contains no such modifier. Similarly, the NSPM-33 Guidance definition of “Current and Pending Research Support” refers to resources in support of an individual’s “research and development efforts,” while its definition of “Other Support” refers to “professional R&D efforts.” The types and sources of support covered by the NSPM-33 Guidance definitions for “Current and Pending Research Support” and “Other Support” are similar in scope to those encompassed by corresponding NIH and NSF terms, but there also are wording distinctions that could bear on term meanings. For instance, neither the NIH definition for “Other Support,” nor the NSF definition for “Current and Pending Support,” encompass both research *and* development efforts. [See, NSF [Proposal and Award Policies and Procedures Guide \(PAPPG\)](#), Section II.C.2.h. and [NIH Grants Policy Statement](#), Section 1.2]

- Definitions of Conflict of Interest and Conflict of Commitment: The NSPM-33 Guidance retains separate definitions of “Conflict of Commitment” and “Conflict of Interest” in line with NSPM-33.
- Additional Definitions: The NSPM-33 Guidance includes the following defined terms related to disclosure requirements that are not included in Section 223 of the FY 2021 NDAA or NSPM-33:
 - Controlled Unclassified Information (CUI): The Guidance’s definition for CUI bears similarity to definitions used for that term by the National Institute of Standards and Technology (NIST). [See, NIST, [Computer Security Resource Center, Glossary](#)].
 - Gift: The definition of “gift” is similar to that used by the Office of Government Ethics at [5 CFR Section 2635.203\(b\)](#), but includes examples of “gifts” that may be more common in the research arena (e.g., research data, samples).
 - Honorarium: Notably, the NSPM-33 Guidance definition of this term is somewhat different from the definition for “Honoraria” that NIH included in its [December 2021 revised Grants Policy Statement](#) (Section 1.2). The NSPM-33 Guidance definition refers to a payment of anything of value for an appearance, speech, article or “other form of compensation or award,” but the NIH definition draws a distinction between payments in support of professional services and those related to research. With respect to the latter, the NIH definition states that if the payment is related to “research

- oversight, research supervision, or co-authorship of a research paper, the payment should be considered research funding.”
- **Research and Development (R&D):** The definition of this term closely parallels definitions found in [OMB Circular A-11 \(2021\), Section 84, Character Classification, Schedule C](#).
- **Standardization of Disclosure Requirements & Forms/Formats:** The NSPM-33 Guidance states that disclosure requirements and forms/formats should be standardized across agencies to greatest extent possible.
 - **Disclosure Variations:** Variations in agency disclosure requirements should be confined to the following circumstances: (a) when required by law; (b) for classified, export-controlled or other legally protected research and development; and (c) “other compelling reasons” consistent with agency authorities and as coordinated through NSTC. NSTC will work with member agencies and OMB to develop Biosketch templates and Current and Pending Support forms. Existing forms will be leveraged for this purpose. Disclosure will be required from “Covered Individuals” per the definition of that term in Section 223 of FY 2021 NDAA.
 - **Mandatory Disclosures:** Table 1 in the NSPM-33 Guidance lists broad disclosure categories required across all agencies for Principal Investigator (PIs) and Senior/Key Personnel (“PIs/Sr., Key Personnel”) and peer reviewers/advisory committee members. The disclosure categories (i.e., organization affiliations/employment, positions/appointments, Current and Pending/Other Support) align with current NIH/NSF requirements.
 - **Requiring Disclosures from Students:** The NSPM-33 Guidance advised agencies to limit disclosure requirements to (a) “Covered Individuals”; and (b) other individuals explicitly identified in NSPM-33. Agencies should “not generally require disclosures from broader classes of individuals” including graduate and undergraduate students, except in circumstances listed above under “Disclosure Variations.”
 - **Item for Consideration:** Note that the definition of a “Covered Individual” can be quite broad – an individual “who contributes in a substantive, meaningful way to the scientific development or execution of a research and development project.” [See, [Section 223 FY 2021 NDAA](#)]. However, the definition *also requires* that the individual be designated as covered by the federal research funding agency. The NSPM-33 Guidance discourages agencies from designating as Covered Individuals undergraduate and graduate students who may otherwise meet this definition.
 - **Disclosures from PIs/Sr., Key Personnel in Award Application Process & Comparison with Current NIH/NSF Disclosures:** Table 2.a. in the NSPM-33 Guidance lists more specific required disclosures for PIs/Sr., Key Personnel. The table in “Appendix

1” compares requirements of Table 2.a. with information in current [NIH](#) and [NSF](#) Disclosure Tables.¹

- **Exclusions from Disclosure Requirements in Research and Development Award Application Process:** The NSPM-33 Guidance states that funding agencies should not require disclosure of the following items, except in the circumstances listed above under “Disclosure Variations”:
 - Completed support
 - Honoraria
 - Consulting “that is permitted by an individual’s appointment and consistent with the proposing organization’s policies and procedures”
 - Gifts (defined as “resources provided with no expectation of anything in return”). [NOTE: Gifts must still be disclosed as required by Sec. 117 of the HEA.]
 - Mentoring as part of appointment
 - Teaching commitments at awardee institution
 - Academic or calendar year salary earned at awardee institution

- **Key Differences:** There are key differences in how the NSPM-33, NIH, and NSF treat certain items. These are discussed below and are summarized in the table in “Appendix 2”:
 - **Honoraria:** NSF and the NSPM-33 Guidance do not require disclosure of honoraria. [See, [NSF Disclosure Table \(Jan. 10, 2022\)](#)²], but NIH does. Specifically, NIH’s webpage] “[Protecting U.S. Biomedical Intellectual Innovation](#)” requires disclosure of “honoraria in support of an individual’s research endeavors” as “Other Support.”
 - **Mentoring:** The NSPM-33 Guidance and NSF do not require disclosure of mentoring as part of an appointment with the awardee institution [see, [NSF Disclosure Table \(Jan. 2022\)](#)], but NIH does. NIH states in its [FAQs on Other Support and Foreign Components](#), A.21 that mentoring must be reported as in-kind Other Support “[i]f the post-doc or graduate student is performing research activities in support of the PD/PI or other senior/key personnel’s research endeavors, then their support must be reported as an in-kind resource.” The FAQ goes on to state that if “the relationship is

¹ Note that both NIH and NSF have periodically updated their disclosure tables. The NIH website maintains only the current table version, but NSF [website](#) includes the most recent January 10, 2022 version of the table, along with previous archived versions (Jun., Aug., and Sept. 2021). The Jan. 2022 NSF Disclosure Table did not alter any of the disclosure information contained in the Sept. 2021 version of the chart, but it did add provisions stating that startup packages provided to an individual from the proposing organization need not be reported, but packages from other than the proposing organization must be disclosed as current and pending support. NSF also updated its [FAQs on Current and Pending Support](#) in Jan. 2022 to renumber/reorder previous FAQs, and to add a FAQ that a brief statement of overall objectives is required for all current and pending project/proposals and/or in-kind contributions that are listed in current and pending support information.

solely a mentor/mentee arrangement, with no research activities (e.g., associated time commitment), then it is not a resource, and does not need to be reported.”

- **Consulting:** Treatment of consulting remains a point of potential confusion and/or inconsistency among NSPM-33 Guidance, NIH, and NSF.

(1) First, NIH and NSF descriptions of consulting that must be reported do not completely align, and the NSPM-33 Guidance uses elements of both the NIH and NSF descriptions. For example, in describing consulting that must be reported as Current and Pending/Other Support, the NSPM-33 Guidance Disclosure Table uses a portion of NIH’s current description of consulting, i.e., “paid consulting that falls outside of an individual’s appointment; separate from institution’s agreement.” [See, [NIH FAQs on Other Support and Foreign Components](#), B.4]. Many institutions are unclear as to the meaning of the phrase “separate from institution’s agreement,” and the NSPM-33 offers no clarification of this point.

Looking at NSF guidance on the treatment of this issue, it requires reporting as Current and Pending Support consulting “that falls outside of an individual’s appointment” without reference to “the institution’s agreement.” Importantly, the NSPM-33 Guidance and NSF do concur in their description of consulting that *does not need* to be disclosed, i.e., “[c]onsulting that is permitted by an individual’s appointment and consistent with the proposing organization’s ‘Outside Activities’ policies and procedures.” [See, [NSF Disclosure Table \(Jan. 2022\)](#)].

(2) A second major difference is that unlike NSF guidance and the NSPM-33 Guidance, NIH states in current FAQs that only consulting involving research should be reported as Other Support. [See, [NIH FAQs on Other Support and Foreign Components](#), B.4.] Note, however, that the latest [NIH Disclosure Table](#), does not similarly state that consulting should involve research, and thus NIH’s current guidance on this topic is inconsistent. The NSPM-33 Guidance goes further in drawing a distinction between research activities and consulting activities when it states that research organizations “should ensure that scientists do not inappropriately characterize research activities or involvement in foreign-government-sponsored talent recruitment programs” as consulting and advises that authorship/co-authorship is a “manifestation of an activity that involves research.”

- **Disclosing Participation in Foreign Programs:** Table 2.a. in the NSPM-33 Guidance and NIH’s most recent [Disclosure Table](#) requires disclosure of “current or pending participation in, or applications to, programs sponsored by foreign governments, instrumentalities, or entities, including FGSTP.”

Currently, NSF does not specifically refer to FGSTP in its disclosure table or FAQs. [See, [NSF Disclosure Table \(Jan. 2022\)](#)].

- **Travel:** The NSPM-33 Guidance, [NSF](#), and [NIH](#) Disclosure Tables are in alignment regarding the disclosure of travel “supported/paid by an entity other than own institution to perform research activities with an associated time commitment.”
- **Providing Copies of Foreign Contracts:** The NSPM-33 Guidance requires disclosure of “contracts associated with participation in programs sponsored by foreign governments, instrumentalities, or entities” including FGSTPs *on request* of the awardee institution or federal research funding agency. This “on request” language is in line with NSF and NIH’s current practices. Beginning January 25, 2022, however, NIH will require “that recipients submit copies of contracts, grants or any other agreement specific to senior/key personnel foreign appointments and/or employment with a foreign institution as supporting documentation” for Other Support. [See, [NIH NOT-OD-21-073](#)]. The NSPM-33 Guidance permits this practice by stating that agencies “may require broader disclosures and/or disclosures as a standard part of their award documentation.”
- **Timing of Information Submittal:** Per the NSPM-33 Guidance, agencies have the discretion to require disclosures at Just-in-Time (JIT) or earlier. Updates to disclosures must be made prior to the award, annually, or more frequently, and in connection with the addition of covered individuals to an award. This is consistent with current NIH and NSF guidance regarding disclosures for Research Performance Progress Reports (RPPRs) and in compliance with post-award terms and conditions.
- **Correcting Disclosures:** The NSPM-33 Guidance states that agencies should develop pre- and post-award processes and standard award terms and conditions that enable PIs/ Sr., Key Personnel and/or awardee organizations to correct inaccurate/incomplete submissions. NSF currently has such a term and condition. [See, [NSF Grant General Conditions, #47](#)].
- **Individual Certification Process:** NSPM-33 Guidance and the [NIH Disclosure Table](#) state that individuals must certify that the “information disclosed is accurate, current and complete.” However, NIH goes on to state that this is done via the individual’s signature, and it will require this signature beginning January 25, 2022. [See, [NIH NOT-OD-21-073](#)]. NSF does not presently require the individual applicant’s signature on such a certification.
- **Institutional Certification Processes:** The NSPM-33 Guidance states that research agencies will require applicant organizations to certify that Covered Individuals have been made aware of all relevant disclosure requirements, including those specified in Section 223 of the FY 2021 NDAA. The NSTC Subcommittee will draft standard language to this effect that agencies may adopt. The NSPM-33 Guidance does not prohibit agencies from requiring other certifications from organizations; however, it does limit the application of “an administrative remedy or enforcement action” against a research organization only in the following cases, consistent with Section 223 of the FY 2021 NDAA:

- the organization did not meet requirements for making Covered Individuals award of disclosure requirements; or
- the organization knew a Covered Individual failed to make a required disclosure and did not take steps to remedy the non-disclosure before the application was submitted; or
- the head of the research agency determines that the organization is owned, controlled, or substantially influenced by a Covered Individual who knowingly failed to disclose required information.

The NSPM-33 Guidance goes on to identify actions that are considered an “administrative remedy or enforcement action” and makes clear that agencies also may impose “non-enforcement administrative actions and remedies.” The NSPM-33 Guidance provides examples of both “administrative remedies or enforcement actions” and “non-enforcement administrative actions and remedies.” Notably, the remedy of “wholly or partly suspend[ing] or terminat[ing] the Federal award” appears in both categories.

Point of Contact for Additional Information:

For additional information or questions regarding this summary document, please contact Kris West, Director Research Ethics & Compliance at kwest@cogr.edu.

Appendix 1:

Chart Comparing Disclosure Requirements Among NSPM-33 Guidance, NIH & NSF

Activity to be Disclosed	Biosketch			Current & Pending or Other Support			Project Reports			Post-Award Terms/ Cond.			Facilities/Other Res.			Notes
	NSTC	NIH	NSF	NSTC	NIH	NSF	NSTC	NIH	NSF	NSTC	NIH	NSF	NSTC	NIH	NSF	
Professional preparation (e.g., degrees, training)	✓	✓	✓													
Organizational affiliations	✓	✓														NSF references appts., not affiliations
Academic, professional, or institutional appts. (PT, FT, Pd., Un-Pd.)	✓	✓	✓													
All projects - ongoing & under consideration - from any source, with support from proposing or other organization or directly to individual. Support may be monetary or in-kind.				✓	✓	✓	✓	✓	✓	✓	✓	✓				
Current, pending participation in or applications to programs sponsored by for. gov., instrumentality, or entity including FGSTP	✓	✓		✓	✓	✓ NSF doesn't specify foreign prog. or projects References all projects	✓	✓	✓	✓	✓	✓				✓
In-kind Contributions – not for use on proposed project				✓	✓	✓	✓	✓	✓	✓	✓	✓				
In-kind Contrib. for use on proposed project					✓			✓			✓		✓		✓	
Startup-pckg. from nonproposing org.						✓			✓			✓				

Activity to be Disclosed	Biosketch			Current & Pending or Other Support			Project Reports			Post-Award Terms/ Cond.			Facilities/Other Res.			Notes
	NSTC	NIH	NSF	NSTC	NIH	NSF	NSTC	NIH	NSF	NSTC	NIH	NSF	NSTC	NIH	NSF	
Visiting Scholars funded by outside entity				✓	✓	✓	✓	✓	✓	✓	✓	✓				NIH limits to visiting scholars “in labs” NSF limits to cases with assoc. time commitment.
Students/post-doc researchers funded by external entity				✓	✓	✓	✓	✓	✓	✓	✓	✓				NSF limits to cases with assoc. time commitment.
Travel supported/pd. By external entity to perform research activity w/assoc. time commitment				✓	✓	✓	✓	✓	✓	✓	✓	✓				
Consulting* *See definitions of “consulting” that must be reported here and under Notes column. NSF – report “consulting that falls outside individual’s appt.”				✓	✓	✓	✓	✓	✓	✓	✓	✓				NIH – report “consulting that falls outside individual’s appt; separate from institution’s agreemnt.” May also require consulting to “involve research.” NSTC – Same description as NIH with addition of “paid” before “consulting.”
Start-up/non-org. lic’d IP						✓			✓			✓				
Supporting doc. (contracts, etc.)					✓			✓			✓					NSTC & NSF – Per agency request

**Appendix 2:
 Summary of Key Differences Among NSPM-33 Guidance, NIH Guidance, and NSF Guidance re.
 Required Disclosures**

Area of Difference in Disclosure & Other Requirements	NSPM-33 Guidance	NIH	NSF
Consulting	<ul style="list-style-type: none"> •Disclose “paid consulting that falls outside individual’s appointment; separate from institution’s agreement.” •Do not disclose consulting that is “permitted by an individual’s appointment and consistent with proposing organization’s ‘Outside Activities’ policies and procedures.” •No requirement that consulting involve research. •Seems to draw distinction between consulting activities and research activities. 	<ul style="list-style-type: none"> •Disclose “consulting that falls outside individual’s appointment; separate from institution’s agreement.” •No reference to “paid” consulting. •Discrepancy between current FAQs and most recent disclosure table as to whether consulting must involve research. 	<ul style="list-style-type: none"> •Disclose “consulting that falls outside of an individual’s appointment.” •Do not disclose consulting that is “permitted by an individual’s appointment and consistent with proposing organization’s ‘Outside Activities’ policies and procedures.”
FGTP Participation	Requires disclosure of current or pending participation in, or applications to, programs sponsored by a foreign government, instrumentality, or entity, including FGSTP	Requires disclosure of current or pending participation in, or applications to, programs sponsored by a foreign government, instrumentality, or entity, including FGSTP	<ul style="list-style-type: none"> •Does not specifically reference participation in “programs” or “FGSTP.” •Likely encompassed under other disclosure requirements for projects and affiliations.
Honoraria	Defines “honorarium” and does not require disclosure.	Requires disclosure as “Other Support” of honoraria “in support of research endeavors.”	Does not require disclosure of honoraria.
Mentoring	Does not require disclosure of mentoring done as part of appointment with applicant institution	Requires disclosure of mentoring as Other Support if mentee “is performing research activities in support of the PD/PI or other senior/key personnel’s research endeavors.”	Does not require disclosure of mentoring done as part of appointment with applicant institution.

Area of Difference in Disclosure & Other Requirements	NSPM-33 Guidance	NIH	NSF
Providing Foreign Contract Copies	<ul style="list-style-type: none"> • Defers to agency. • Agency may seek copies on request or institute a standard disclosure requirement. 	Requires copies of foreign contracts as part of standard Other Support disclosure process.	Requires copies of foreign contract per agency request.
Individual Certification	Requires certification by individual that information disclosed is accurate, complete, and current.	<ul style="list-style-type: none"> • Requires certification by individual that information disclosed is accurate, complete, and current. • As of Jan. 25, 2022, e-signature of this certification will be required. 	No current requirement for individual certification signature.