

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

[Version 2.0 (January 11, 2022) – Revised to add fn. 1 & update links and chart

On Jan. 4, 2021, the Office of Science and Technology Policy acting through the National Science and Technology Council (NSTC) Joint Committee on the Research Environment (JCOPE) Subcommittee on Research Security issued its long awaited [Guidance for Implementing National Security Presidential Memorandum 33 \(NSPM\) on National Security](#) (Stram 5-2 (-)-2 (-4 (U)3 (o))JT Jr cSec J) (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) cooperation the Office of Management and Budget (OMB) and 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 [Jan 14, 2021 Presidential Memorandum on United States Government Research and Development National Security Policy” \(NSPM\)](#) as well as more detailed instruction and advice in the following areas:

- Disclosure Requirements and Standardization
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- 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 17 of the Higher Education Act of 1965 (HEA) ([20 U.S.C. Sec. 1011](#))) 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

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 are also wording distinctions that could bear on term meaning. For instance, neither the NIH definition for “Other Support,” nor the NSF definition for “Current and Pending Support” compass 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 for “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 (CU): 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 Sec 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 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 A11](#)

1” compares requirements of Table 2.a. with information in current [NIH](#) and [NSF](#) Disclosure Tables¹

- Exclusions from Disclosure Requirements in Research and Development Award Application Process The NSPM33 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 ~~NSM~~ 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 \(Jan. 10, 2022\)](#), 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 NSPM33 Guidance and NSF do not require disclosure of mentoring as part of an appointment with the awardee institution, [NSF Disclosure Table \(Jan. 2022\)](#), but NIH does. NIH states in its [FAQs on](#)

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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 agreemt." 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	5953	rg36.24	114.24	80.52	36.6	ref*	MC /P	6BDC	41.4	138.6	70f35.76	151.32	0.481	24.4	ref1(nge2	0824 175.8c.Tj-0 Tm())TjBD7	

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	

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			