NSPM-33 Compliance: Are you Ready?

Amanda Humphrey, Northeastern University
Lori Schultz, University of Arizona
Pamela Webb, University of Minnesota

Session Description

This session will provide a broad overview of the proposed NSPM-33 program requirements. We will discuss which requirements are least likely to change and which have the greatest potential to change before the final guidance is released. We will host a dialogue about what participants are doing at their own institutions to prepare and where they are holding off. Finally, we will offer some ideas for how to start or keep the conversation going at your home institution.

Agenda

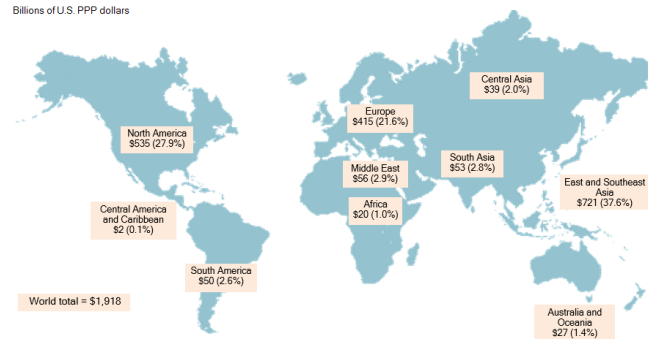Brief Overview of NSPM-33
Current Status
What can you do now?
What should you hold off on?

BRIEF OVERVIEW:
HOW WE GOT TO NSPM-33

R&D is a Critical Industry

Figure 4-5
Global R&D expenditures, by region: 2015

Billions of U.S. PPP dollars

North America $535 (27.9%)
Central America and Caribbean $2 (0.1%)
South America $50 (2.6%)
Europe $415 (21.6%)
Middle East $56 (2.9%)
Africa $20 (1.0%)
Central Asia $39 (2.0%)
South Asia $53 (2.8%)
East and Southeast Asia $721 (37.6%)
Australia and Oceania $27 (1.4%)

World total = $1,918

PPP = purchasing power parity.

Note(s): Foreign currencies are converted to dollars through PPPs. Some country data are estimated. Countries are grouped according to the regions described by *The World Factbook*, https://www.cia.gov/library/publications/resources/the-world-factbook/index.html.

Source(s): National Science Foundation, National Center for Science and Engineering Statistics estimates, October 2017. Based on data from the Organisation for Economic Co-operation and Development, *Main Science and Technology Indicators* (2017/1), and the United Nations Educational, Scientific and Cultural Organization Institute for Statistics Data Centre, data.uis.unesco.org, accessed 13 October 2017.

Science and Engineering Indicators 2018

- 85% global spending on R&D done by 15 countries
- $ 2.4 Trillion industry in 2021
- US & China lead in spending
- Theft of American IP valued at between $225-600 billion in 2018 alone

AH

NCURA
Supporting Research...*together*™

5

R&D Tensions

Transparency

Protection
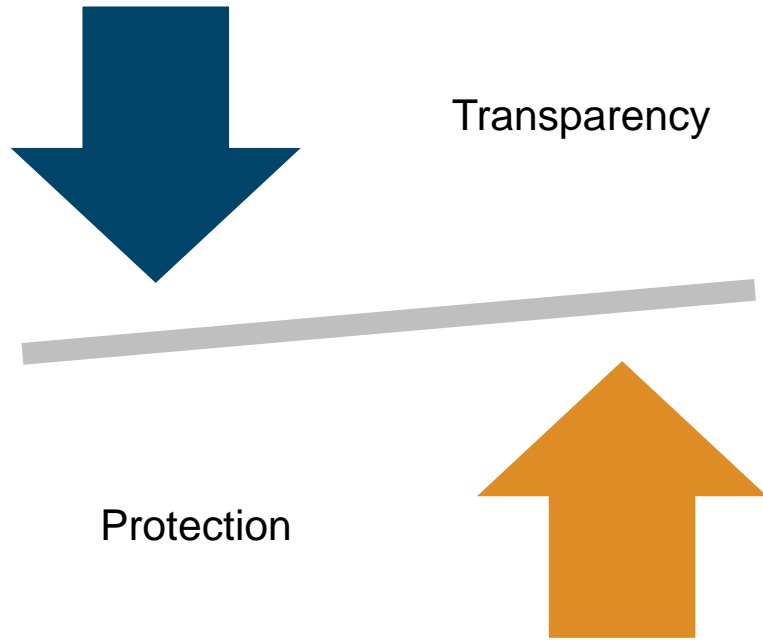
One of the First Cases…

United States Department of Justice

THE UNITED STATES ATTORNEY'S OFFICE
NORTHERN DISTRICT *of* WEST VIRGINIA

| HOME | ABOUT | NEWS | MEET THE U.S. ATTORNEY | PROGRAMS | JOBS |

U.S. Attorneys » Northern District of West Virginia » News

Department of Justice

U.S. Attorney's Office

Northern District of West Virginia

SHARE ➦

FOR IMMEDIATE RELEASE   Thursday, July 30, 2020

Former West Virginia University professor sentenced for fraud that enabled him to participate in the People's Republic of China's "Thousand Talents Plan"

CLARKSBURG – Dr. James Patrick Lewis, of Fairview, West Virginia, was sentenced today to three months incarceration for a fraud charge involving West Virginia University, the Department of Justice announced.

Lewis was also fined $9,363 for the cost of the incarceration and ordered to pay $20,189 in restitution to WVU, which is paid in full.

AH

NCURA
Supporting Research...*together*™

But there is nuance…

POLICY

All charges against China Initiative defendant Gang Chen have been dismissed

MIT professor Gang Chen was one of the most prominent scientists charged under the China Initiative, a Justice Department effort meant to counter economic espionage and national security threats.
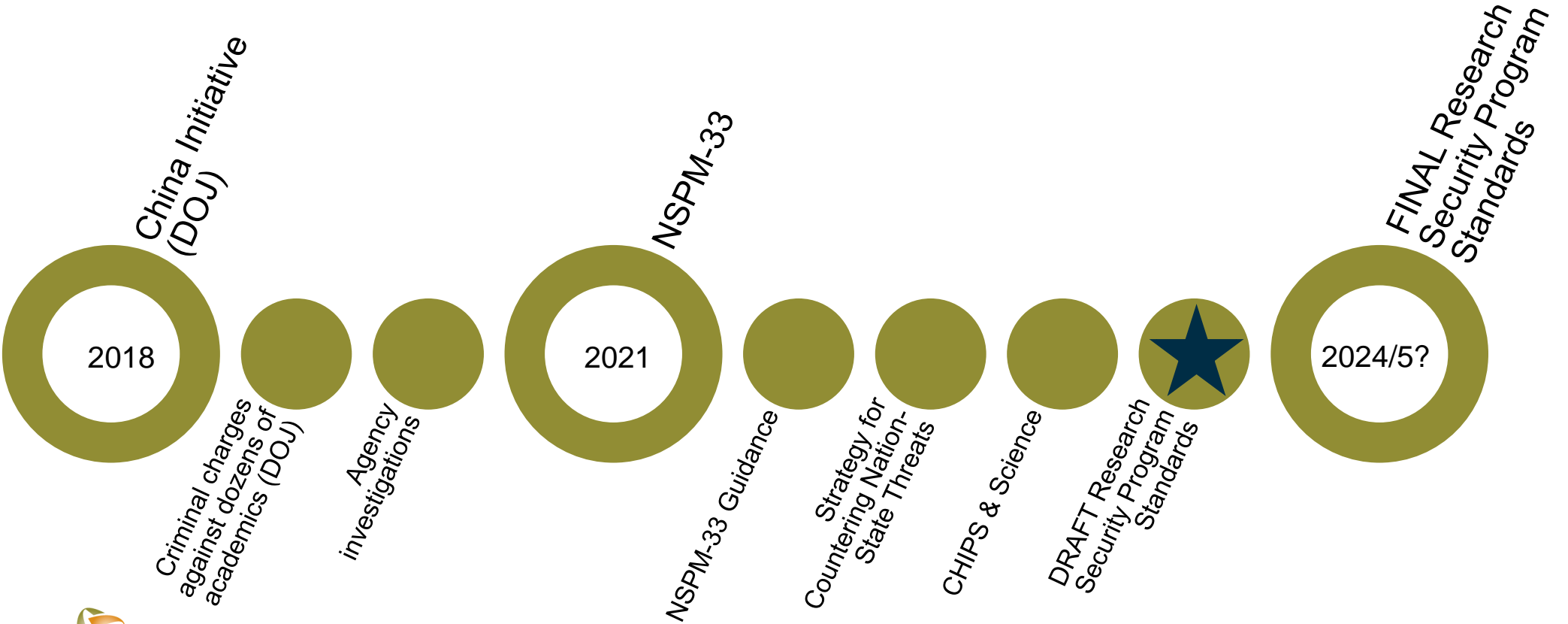
By Eileen Guo

January 20, 2022

'In the End, You're Treated Like a Spy,' Says M.I.T. Scientist

Gang Chen was arrested a year ago on charges of hiding his links to China. The charges were dismissed, but he said the damage — to him, and to American science — has lingered.

Timeline

- China Initiative (DOJ) — 2018
- Criminal charges against dozens of academics (DOJ)
- Agency investigations
- NSPM-33 — 2021
- NSPM-33 Guidance
- Strategy for Countering Nation-State Threats
- CHIPS & Science
- DRAFT Research Security Program Standards
- FINAL Research Security Program Standards — 2024/5?

NCURA
Supporting Research...*together*™

LS

What is NSPM-33?

- National Security Presidential Memorandum–33

- "[D]irects action to strengthen protections of United States Government-supported Research and Development (R&D) against foreign government interference and exploitation"

- Asserts government commitment to fundamental research, but balance against protecting economy

  - R&D / innovation is one of the largest sectors in the US

- Defines key terms; defines governmental R&R

- Sets priorities for government action, including through implementations of new administrative requirements

NCURA
Supporting Research...*together*™

NSPM-33 IMPLEMENTATION GUIDANCE

NSPM-33 Implementation Guidance

Disclosure requirements & standardization across agencies

Digital Persistent Identifiers (DPIs)

Consequences for violation of disclosure requirements

Information sharing

Research security programs

PW

Steps Before Implementation

AGENCIES DRAFTING THEIR REQUIREMENTS INTERNALLY

HARMONIZE WITH OTHER AGENCIES WHERE POSSIBLE

OSTP DRAFTS FINAL RULES FOR AGENCIES TO FOLLOW
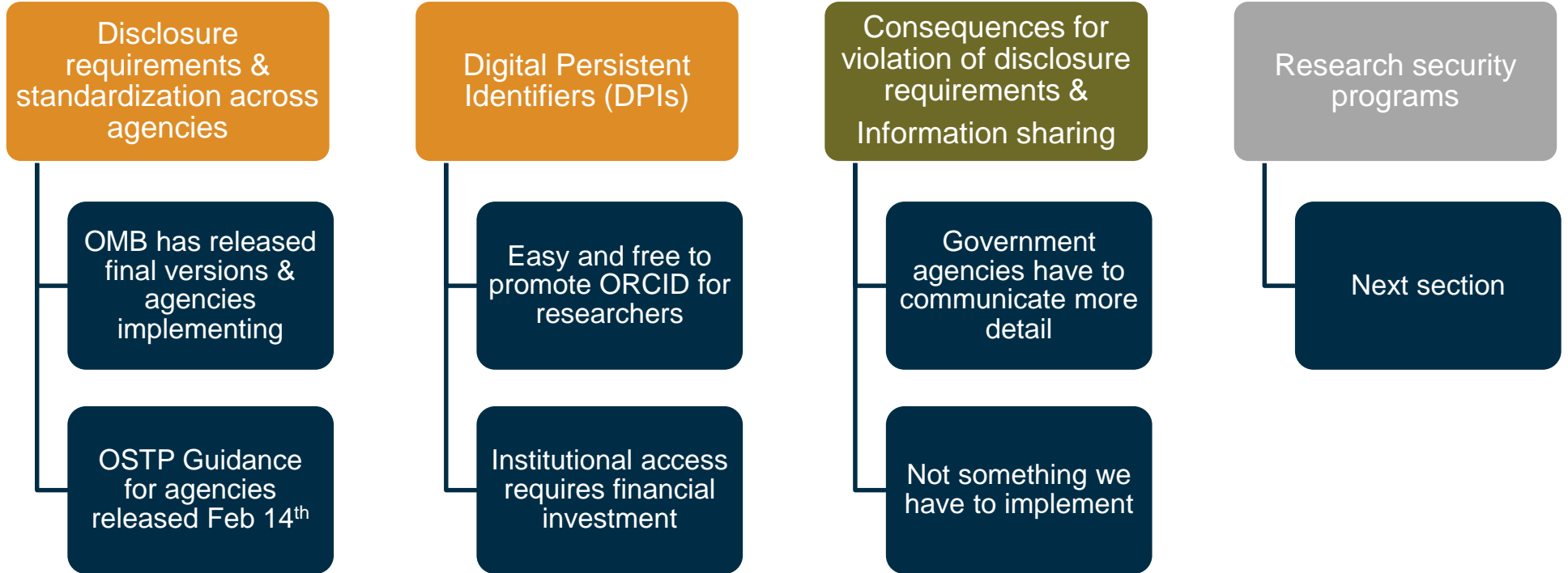
FINAL AGENCY REQUIREMENTS

INSTITUTIONS MUST IMPLEMENT & OPERATIONALIZE

NSPM-33 Implementation

- Agencies are working on the implementation guidance and different parts are in different phases
- Yet with so much to prepare for, we want to consider…
  - What should we act on now?
  - Where should we hold off on firm commitments?
- Our recommendations are based on internal & professional association discussions, but as always make your decisions based on your institutional needs

NCURA
Supporting Research...*together*™

NSPM-33 Implementation Guidance

Disclosure requirements & standardization across agencies

- OMB has released final versions & agencies implementing
- OSTP Guidance for agencies released Feb 14th

Digital Persistent Identifiers (DPIs)

- Easy and free to promote ORCID for researchers
- Institutional access requires financial investment

Consequences for violation of disclosure requirements & Information sharing

- Government agencies have to communicate more detail
- Not something we have to implement

Research security programs

- Next section

Final Common Forms Released!

Biographical Sketch

Current and Pending (Other) Support Information

Definitions

NSPM-33 Implementation Guidance Pre-Award and Post-award Disclosures Relating to the Biographical Sketch and Current and Pending (Other Support) (Jan 2024)

Home › Budget Finance & Award Managem... › Institution and Award Support ✉ Email 🖶 Print ↱ Share

NSTC Research Security Subcommittee
NSPM-33 Implementation Guidance
Disclosure Requirements & Standardization

Over the past several months, the National Science and Technology Council (NSTC) Research Security Subcommittee has worked to develop consistent disclosure requirements for use by senior personnel, as well as to develop proposed common disclosure forms for the Biographical Sketch and Current and Pending (Other) Support sections of an application for Federal research and development (R&D) grants or cooperative agreements.

The National Science Foundation (NSF) has agreed to serve as steward for these common forms as well as for posting and maintenance of the table entitled, *NSPM-33 Implementation Guidance Pre- and Post-award Disclosures Relating to the Biographical Sketch and Current and Pending (Other) Support.*

The objective of the *Disclosure Requirements and Standardization* section of NSPM-33 Implementation Guidance is to, "Provide clarity regarding disclosure requirements (e.g., who discloses what, relevant limitations and exclusions), disclosure process (e.g., updates, corrections, certification, and provision of supporting documentation), and expected degree of cross-agency uniformity".

COMMON DISCLOSURE FORMS FOR THE BIOGRAPHICAL SKETCH AND CURRENT AND PENDING (OTHER) SUPPORT

- **New!** Common Form for Biographical Sketch
- **New!** Common Form for Current and Pending (Other) Support Information
- **New!** Definitions

Guidance for Federal research funding agencies on obtaining approval from OMB/OIRA to use the Common Disclosure Forms may be obtained from your agency's Paperwork Reduction Act (PRA) Officer. For assistance in identifying your PRA officer, please contact Suzanne Plimpton at splimpto@nsf.gov.

NCURA
Supporting Research...*together*™

Sample of Table ..

NSTC Pre-award and Post-award Disclosures
Relating to the Biographical Sketch and Current and Pending (Other) Support
January 2024

Table Key

∗ = for new support only

♦ = If undisclosed at the time of application submission

Type of Activity	Biographical Sketch	Current & Pending (Other) Support	Facilities, Equipment & Other Resources	Project Reports	Post-Award
Professional Preparation (e.g., education and training)	✔				
Academic, professional, or institutional appointments and positions, whether or not remuneration is received, and, whether full-time, part-time, or voluntary	✔				
A list of products that demonstrate the individual's qualifications to carry out the project as proposed	✔				

Type of Activity	Biographical Sketch	Current & Pending (Other) Support	Facilities, Equipment & Other Resources	Project Reports	Post-Award Information Term & Condition	Disclosure Not Required
Current and pending (other) support – (a) All resources made available, or expected to be made available, to an individual in support of the individual's research and development efforts, regardless of (i) whether the source is foreign or domestic; (ii) whether the resource is made available through the entity applying for a research and development award or directly to the individual; or (iii) whether the resource has monetary value; and (b) includes in-kind contributions requiring a commitment of time and directly supporting the individual's research and development efforts, such as the provision of office or laboratory space, equipment, supplies, employees, or students.		✔		✔∗	✔♦	
In-kind contributions with an estimated dollar value of $5000 or more that support the research activity for use on the project/proposal being proposed			✔			
In-kind contributions (i) with an estimated dollar value of $5000 or more, (ii) not intended for use on the project/proposal being proposed, and (iii) have an associated time commitment		✔		✔∗	✔♦	

NCURA
Supporting Research...*together*™

© 2024 N

Current Agency Implementation - Common Forms

U.S. National Science Foundation

No form deviations

Effective 5/20/24

+

Synergistic Activities moved to Senior/Key Personnel documents

NCURA
Supporting Research...*together*™

OSTP Action on Common Forms

- Agency implementation plans due to OSTP by May 14, 2024

- The common forms should include a persistent digital identifier

- Deviations require OMB/OIRA review and clearance under the Paperwork Reduction Act

EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20503

February 14, 2024

MEMORANDUM FOR THE HEADS OF FEDERAL RESEARCH AGENCIES

FROM: ARATI PRABHAKAR
          DIRECTOR
          OFFICE OF SCIENCE AND TECHNOLOGY POLICY

SUBJECT: Policy Regarding Use of Common Disclosure Forms for the "Biographical Sketch" and the "Current and Pending (Other) Support" Sections of Applications by Federal Research Funding Agencies

I.   Purpose and Use of the Common Forms

This policy requires federal research funding agencies to use harmonized common disclosure forms for the Biographical Sketch and the Current and Pending (Other) Support portions of funding application packages for grants and cooperative agreements (i.e., the Common Forms), except as otherwise provided below. The National Science and Technology Council (NSTC) Research Security Subcommittee has worked to develop consistent disclosure requirements, as directed under section 4(b) of National Security Presidential Memorandum 33 (NSPM-33)[1], including with resolution of comments submitted through the Paperwork Reduction Act (PRA) notice published in the Federal Register. The Common Forms also provide general standards for agencies to develop forms for use in their own research and development (R&D) programs.

The Biographical Sketch Common Form[2] provides instructions for submission of a biographical sketch by each individual identified as a covered individual or senior/key person on a federally funded research project. The biographical sketch is used to assess how qualified the individual, team, or organization is to conduct the proposed activities.

The Current and Pending (Other) Support Common Form[3] is used to assess the capacity or any conflicts of commitment that may impact the ability of the individual to carry out the research effort as proposed. The information also helps assess any potential scientific and budgetary overlap/duplication with the project being proposed.

[1] https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-united-states-government-supported-research-development-national-security-policy/
[2] https://www.nsf.gov/bfa/dias/policy/researchprotection/commonform_biographicalsketch.pdf
[3] https://www.nsf.gov/bfa/dias/policy/researchprotection/commonform_cps.pdf

1

PW

Excellent news …. but ..

"There may be cases where agencies choose not to use these Common Forms for reasons specified by statute, regulation, specific agency authorities, or other compelling reasons. In some cases, agencies may choose not to use these Common Forms because of a need to collect additional information or to apply more stringent protections to protect R&D that is classified, export-controlled, or otherwise legally protected."

Digital Persistent Identifier/DPI

The term of art is "PID" – Persistent Identifier. These are:

- Permanent

- Findable

- Machine-Readable

- Unambiguous

DPIs/PIDs in Researcher Workflows

Digital Object Identifier (DOI)	Grant IDs	Research Resource ID (RRID)
• Publications • Data Sets	• Grants & Agreements • Individual Segments	• Equipment • Biologics • Core Facilities

LS

NCURA
Supporting Research...*together*™

What is ORCID?

Open Research & Contributor ID

- Persistent Identifier offered free of charge to researchers
- Digital record/CV connects information about the researchers
- Interoperability between ORCID record and member systems (paid)

NCURA
Supporting Research...*together*™

Why does ORCID matter for Research Security?

GUIDANCE FOR IMPLEMENTING NATIONAL SECURITY PRESIDENTIAL MEMORANDUM 33 (NSPM–33) ON NATIONAL SECURITY STRATEGY FOR UNITED STATES GOVERNMENT-SUPPORTED RESEARCH AND DEVELOPMENT
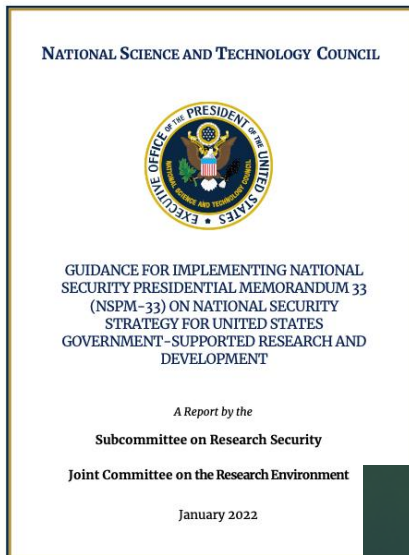
ORCIDs are portable, and identify a person no matter where they go

The PID universe connects people and their outputs, but also helps identify them

ORCID record holds information about appointments, publications, data, education, and much more

What can you do now?

- ORCID is free for researchers : socialize on campus
- Membership offers some benefits that help reduce admin burden– see if your institution is a member (https://orcid.org/members)
- SciENcv
- Work with your libraries

LS

DRAFT RESEARCH SECURITY PROGRAM STANDARDS

DRAFT Research Security Program Standards

- DRAFT RSP Standards closed for comment June 5, 2023
- Waiting for OSTP to release the final standards (weeks not months)
- Yet with so much to prepare for, we want to consider…
  - What should we act on now?
  - Where should we hold off on firm commitments?
- Our recommendations are based on internal & professional association discussions, but as always make your decisions based on your institutional needs

Overarching Program Standards

Applies to institutions receiving $50M or more annually in research funding

- Institutional certification in sam.gov
- Must have a research security point of contact
- Must have public information on the program (website)
- Requires routine self-assessments

NCURA
Supporting Research...*together*™

Foreign Travel Security

- Requires a foreign travel policy applicable to those on federal R&D projects & the policy must address:
  - Mandatory security briefings, including information on device safety/security (including loaner devices)
  - Record of travel
  - Advance disclosure & authorization of international travel
- Draft a policy, but wait until the final standards are out to finalize

NCURA
Supporting Research...*together*™

Research Security Training

- 9 required elements of the training program
  - Must be kept up to date
  - NSF has released final modules that fulfill requirement
- Training for all personnel
  - As appropriate for each faculty, staff, & students
  - Reference to RECR
  - Expectation the training is ongoing (no defined cadence)
- Maintenance of training records
- Specialized training following any research security breaches
  - Breach is not defined

NCURA
Supporting Research...*together*™

Cybersecurity

- 12 Protocols: we won't list them in detail because none of us are cybersecurity experts, but here are key issues
  - No specific standards or reference to existing standards, such as NIST 800-53
  - Ambiguity increases difficulty of consistent implementation & assessment of the program's adherence
  - Could lead to gaps in practice across institutions

Export Control Training

- Training on export controls for personnel responsible for vetting of international collaborations/collaborators
  - Implies a international collaboration vetting requirement
- Training for faculty on specific export control concerns
  - Limits of the fundamental research exclusion to include "applied" technologies?
  - Right-sizing the amount of information given to all faculty versus most at-risk faculty

Definitions: Examples

- New or changed definitions have the potential to change implementations further
- **Conflict of Interest**: COI defined to include "funding" of research, which is a new facet of COI
- **Covered International Travel**: this is a very broad scope with potential for large admin & financial burden
- **Research Security Breach/Violation vs. Security Incident**: only incident is defined in the appendix but we have to act on a Research Security Breach (and Violation) which is not defined

OTHER FACTORS

Other concerns with Research Security

NSPM-33
Overarching Challenges

- **Definitional clarity across agencies**

- **Harmonization of agency requirements (non-harmonization only when essential)**

- **Focus on a risk-based approach to managing risk**

- Fulfillment of NSPM promise for non-discrimination against international scholars (and students)

- Immense variance in size and type of recipients

- Budget cycles/data system cycles at institutions

- Realistic and cost effective timelines (particularly for enforcement)

- Building for nimbleness

- (Timely) remedies for perceived errors or overreach

- Evaluation and adjustment of requirements over time

PW

CHIPS and Science Act 2022[1]

Research security provisions:

- Prohibition of malign foreign government talent recruitment programs
- Requirement to establish a Research Security and Integrity Information Sharing and Analysis Organization (now SECURE)
- Research security training requirement for all covered personnel
- Inclusion of research security training as part of Responsible and Ethical Conduct of Research training
- Reporting on foreign financial transactions and gifts
- Prohibition of Confucius Institutes

[1]Excerpted from a slide from Rebecca Keiser 9/19/23

NCURA
Supporting Research...*together*™

OSTP [Memo on Foreign Talent Recruitment Programs](#)
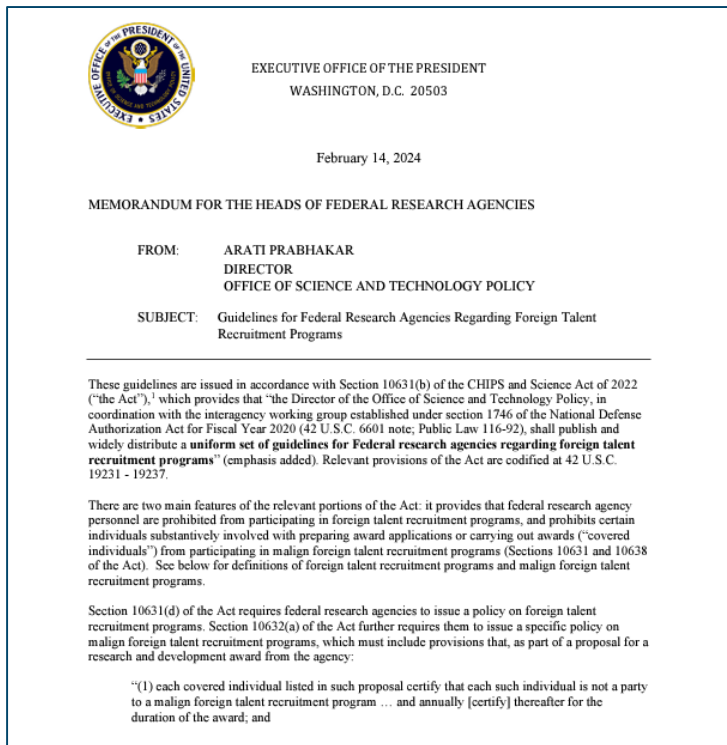
- Confirms definition of "covered individual", "FTRP," and "MFTRP"
- *Individual* must disclose participation in FTRPs *and* certify they are not a party to a MFTRP
- *Institution* must certify that each covered individual on the project (yours or ours) has complied
- Certifications required at time of each proposal and annually thereafter

NCURA
Supporting Research...*together*™

Malign Foreign Talent Recruitment Program

What is a *Malign* Foreign Talent Recruitment Program (MFTRP)?

The National Science Foundation, Department of Defense, and other federal funding agencies are beginning to prohibit sponsored research personnel from participating in Malign Foreign Talent Recruitment Programs (MFTRPs), as required by the CHIPS and Science Act of 2022. But not all foreign talent recruitment programs are *malign*.

How do you know if an arrangement is a MFTRP? If the arrangement is described in Box A below, *and* has at least one factor from Box B *and* at least one factor from Box C, the arrangement falls within the CHIPS and Science Act's definition of a MFTRP. Please do not hesitate to contact the Export Controls Officer with any questions.

A. Any program, position, or activity that includes compensation in the form of cash, in-kind compensation, including research funding, promised future compensation, complimentary foreign travel, things of non de minimis value, honorific titles, career advancement opportunities, or other types of remuneration or consideration directly provided by a foreign country at any level (national, provincial, or local) or their designee, or an entity based in, funded by, or affiliated with a foreign country, whether or not directly sponsored by the foreign country, to the targeted individual, whether directly or indirectly stated in the arrangement, contract, or other documentation at issue—

B. Problematic Obligations/Activities
In exchange for the individual—
(1) engaging in the unauthorized transfer of intellectual property, materials, data products, or other nonpublic information owned by a United States entity or developed with a Federal research and development award to the government of a foreign country or an entity based in, funded by, or affiliated with a foreign country regardless of whether that government or entity provided support for the development of the intellectual property, materials, or data products;
(2) being required to recruit trainees or researchers to enroll in such program, position, or activity;
(3) establishing a laboratory or company, accepting a faculty position, or undertaking any other employment or appointment in a foreign country or with an entity based in, funded by, or affiliated with a foreign country if such activities are in violation of the standard terms and conditions of a Federal research and development award;
(4) being unable to terminate the foreign talent recruitment program contract or agreement except in extraordinary circumstances;
(5) through funding or effort related to the foreign talent recruitment program, being limited in the capacity to carry out a research and development award or required to engage in work that would result in substantial overlap or duplication with a Federal research and development award;
(6) being required to apply for and successfully receive funding from the sponsoring foreign government's funding agencies with the sponsoring foreign organization as the recipient;
(7) being required to omit acknowledgment of the recipient institution with which the individual is affiliated, or the Federal research agency sponsoring the research and development award, contrary to the institutional policies or standard terms and conditions of the Federal research and development award;
(8) being required to not disclose to the Federal research agency or employing institution the participation of such individual in such program, position, or activity; **or**
(9) having a conflict of interest or conflict of commitment contrary to the standard terms and conditions of the Federal research and development award;

C. Problematic Sponsorship
And is a program sponsored by—
(1) a foreign country of concern (FCOC), currently defined as:
- China,
- Iran,
- North Korea, and
- Russia;

(2) an entity based in a FCOC, whether or not the program is directly sponsored by the government of the FCOC; **or**
(3) an academic institution or a foreign talent recruitment program identified by the Department of Defense here on pages 18-21.

Last updated August 2023

NSF's MFTRP Implementation*

PAPPG (NSF 24-1) Summary of Changes

- Malign Foreign Talent Recruitment Programs (MFTRP)
  - Any individual who is a current party to a MFTRP is ineligible to serve as a senior/key person on an NSF proposal or award.
    - This requirement applies to any proposal submitted or due on or after May 20, 2024
  - Definition of MRTRP is contain in the PAPPG Introduction, Section D.
  - Each senior/key person must certify prior to proposal submission that they are not a party to a MTFRP (Biographical Sketch and Current and Pending (Other) Support).
  - Each PI and co-PI on any NSF award must certify annually thereafter.
  - A new term and condition will be added implementing this requirement post-award.
  - Organizations must certify upon proposal submission that all senior/key personnel have been made aware of and complied with the requirement that they are not a party to a MFTRP.

*From Jean Feldman's PAPPG Webinar on 3/12/24

PW

NCURA
Supporting Research...*together*™

MFTRPs – Other Questions

What training/education do you do for faculty on this topic?

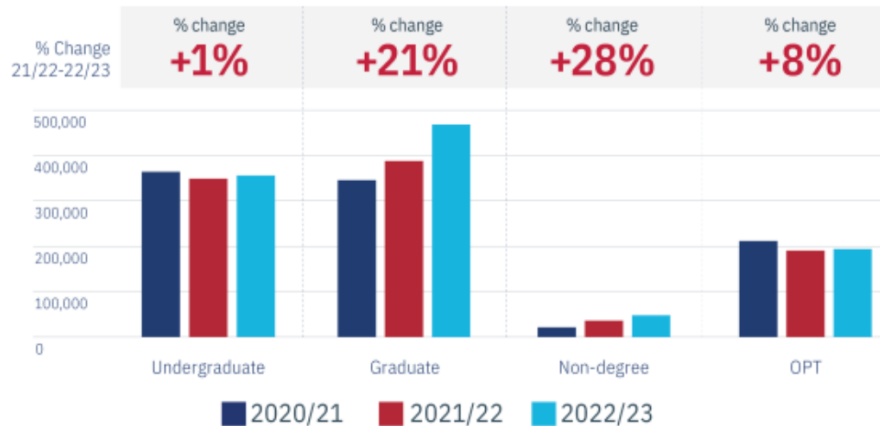Institutional systems to record this? How frequently updated?

What is our obligation institutionally to fact check?
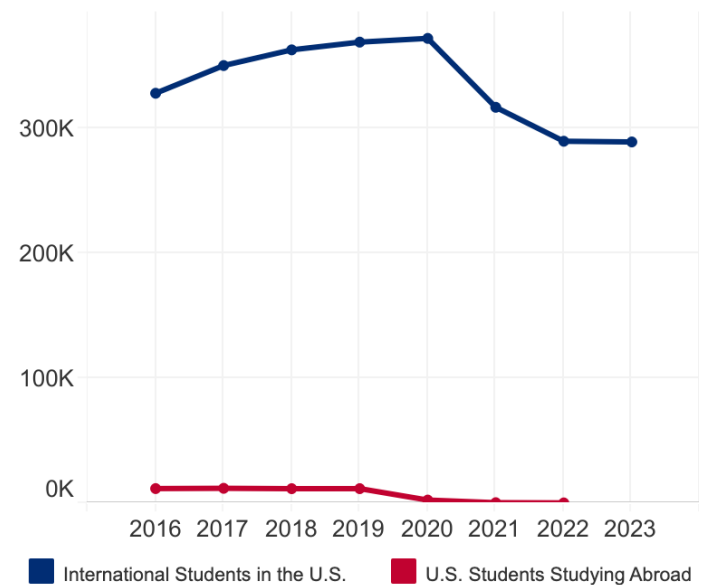
How will other agencies implement?

NCURA
Supporting Research...*together*™

Foreign Students

International Enrollment

ACADEMIC LEVELS OF INTERNATIONAL STUDENTS

| % Change 21/22-22/23 | % change +1% | % change +21% | % change +28% | % change +8% |

Courtesy of the Institute of International Education

Enrollment with China

2015/16-2022/23

Uniform Guidance Updates

OMB is weeks away from publishing revisions to Uniform Guidance

Nothing in there specifically about research security, but the DRAFT updates implied removing the fixed amount subaward ceiling (likely there will be a ceiling in the final version)

Section 113 changes when we notify the government about reportable instances of fraud, waste, abuse from after our internal reviews are complete to at the time we have credible evidence

NCURA
Supporting Research...*together*™

Looking Ahead

SECURE Center funded by NSF will be announced this year (May?)

Not clear yet how this will impact PTE/Sub relationships

AH

NCURA
Supporting Research...*together*™

Recommendations

Assess where you are today

Connect with colleagues across institution

Gather information

Assess potential areas for investment / costs

Prepare a timeline for implementation

DON'T MAKE ANY BIG CHANGES YET!

Tee up everything, then wait until the final rules come out

Pause on signing contracts for new systems

Make small tweaks that would improve your business process anyway

NCURA
Supporting Research...*together*™

Discussion / Questions & a HUGE Thanks!

a.humphrey@northeastern.edu

pwebb@umn.edu

lschultz@arizona.edu