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Universities Brace for Guidance on Security Memorandum; Agencies Plan Implementation

By Theresa Defino

If a timeline announced by the White House is met, universities and others should receive guidance later this month on securing the research enterprise as the Biden administration moves forward with implementing a last-minute memorandum issued by former President Trump.

President Biden has embraced National Security Presidential Memorandum (NSPM-33), which seeks to “strengthen protections of United States Government-supported Research and Development (R&D) against foreign government interference and exploitation” while “maintaining an open environment to foster research discoveries and innovation that benefit our Nation and the world.”^[1]

Announced during the last week of Trump’s term, “the previous administration did not have time to develop implementation guidance for federal agencies,” wrote Eric Lander, scientific advisor to President Biden and director of the Office of Science and Technology Policy (OSTP).^[2] In a blog post on Aug. 10, Lander said his office was “working on how to implement NSPM-33 effectively, rigorously, and uniformly across the federal government in a way that protects the nation’s interests in both security and openness.”

In the post, Lander said OSTP would be working over the next 90 days to “develop clear and effective implementation guidance for NSPM-33, working in close partnership with the National Security Council staff, fellow Cabinet agencies, and other federal agencies through the National Science and Technology Council.”

OSTP’s guidance, Lander said, will address the following areas:

- “Disclosure Policy — ensuring that federally-funded researchers provide their funding agencies and research organizations with appropriate information concerning external involvements that may bear on potential conflicts of interest and commitment;
- “Oversight and Enforcement — ensuring that federal agencies have clear and appropriate policies concerning consequences for violations of disclosure requirements and interagency sharing of information about such violations; and,
- “Research Security Programs — ensuring that research organizations that receive substantial federal R&D funding (greater than \$50 million annually) maintain appropriate research security programs.”

‘Practices’ Document Also Recommended

Federal officials and representatives of universities discussed the effort during a recent meeting of the Federal Demonstration Partnership (FDP).^[3] Held virtually, the meeting also included presentations and comments by Rebecca Keiser, NSF chief of research security strategy and policy.

Keiser recommended that institutions read the NSPM, explaining that it “addresses why research security and

integrity are important. It outlines their key elements and talks about federal department and agency roles and responsibilities in this arena.” The memorandum describes how the roles of the funding agencies “complement but differ from” law enforcement agencies and the Department of Education, Keiser added.

She also called attention to a “complementary” document, “Recommended Practices for Strengthening the Security and Integrity of America’s Science and Technology Research Enterprise.”^[4]

“I want to say that, again, we look at research organizations as partners, and we’re here to help in this arena, and so we will provide any information that we possibly can to help identify and manage risks,” Keiser said.

Keiser has been part of the group working to develop the guidance, and she referred to the 90 days that Lander mentioned in his blog as a deadline. Although the guidance is “mostly for the U.S. government agencies,” Keiser said it also would “contain helpful information” for research institutions.

Agencies are “working hard on coordinating disclosure policy among funding agencies,” said Keiser, adding that Jean Feldman, head of the NSF’s Office of Policy, and Michelle Bulls, director of the NIH Office of Policy for Extramural Research Administration, are co-chairing a harmonization working group, which includes other agencies. In addition to harmonization, members also hope “to explain any differences and why those do exist,” Keiser said.

Agencies Aiming for ‘Clear’ Guidance

According to Keiser, “a lot of really wonderful work” has been going on, which will be “outlined in the implementation guidance.” The guidance will address “oversight and enforcement,” which Keiser said “has to do with being clear about potential consequences for violations.” Officials are similarly striving to be “as clear as possible” in this section.

For example, “there are—and will be—administrative remedies that agencies take based on business risk that’s presented, and then there are criminal and civil consequences,” she said. “We try as best we can to explain those in the implementation guidance and be clear about them.” Regarding the requirement for establishing a research security program, Keiser also emphasized the guidance should be “clear to you about what is going to be required,” adding that “we understand, very much, the need for flexibility.”

There have been several events to solicit input, including a “community forum,” involving NSF Director Sethuraman Panchanathan, Lander and representatives from university associations and from the National Academies, she said. A roundtable followed “where we received really helpful input on what’s important to the community in this implementation guidance. And we hear you loud and clear that there is the need for flexibility due to the large variety and types of research organizations out there,” Keiser said.

Those working on the implementation guidance “are taking that all to heart as we’re coordinating this guidance,” she said, and are “hoping that the guidance can be ready by November, by the 90-day deadline. We’re working hard.”

Many institutions have questions about “how do we institutions put in risk-based processes to determine when things become reportable and where” to make reports, “and how do we do this in a way that’s not overly burdensome for our faculty and for the researchers,” Jim Luther, Duke University associate vice president of finance, said during the FDP meeting.

The emphasis on harmonization “is great to hear,” Luther said.

Disclosures Not Required Also Highlighted

On its own, NSF has tried to standardize and formalize disclosure requirements in its newest Proposal & Award Policies & Procedures Guide, in effect as of Oct. 4, issuing a table to answer a lot of “detailed” questions NSF received on the draft PAPPG, Feldman said.^[5] A revised version of the table is dated Sept. 1.^[6]

The table is “not only an opportunity for us to express something instead of [providing] 20 pages of FAQs” or new PAPPG language, Feldman said. “The table is a single resource document that could be used by not just researchers, but sponsored projects offices, by the NSF program office and our division of grants and agreements,” she said.

NSF also “tried to be incredibly cognizant of administrative burden,” Feldman said, and require only “the information that NSF needs.”

The table explains the types of pre- and post-award disclosures that would be included in the biographical sketch part of an award application and in current and pending support. Feldman expressed the “hope that folks can look at it and fully understand NSF’s expectations. We also added a final column called ‘Disclosure Not Required.’”

To those who’ve told Feldman that the agency should require more than just what’s specified in the table, she responded that, “If you want to make your faculty provide information that goes beyond what’s in that table... that is certainly something [that is] at the discretion of the proposing institution.”

Feldman acknowledged that the thinking on disclosures related to consulting has evolved. “Some folks really do want to provide every consulting activity that an individual is involved in,” Feldman said. “And where we ended up on that is to provide two different ways of saying it: that if you have consulting that’s permitted by your appointment and is consistent with the proposing organizations’ outside activities policies and procedures, that disclosure is not required.”

Otherwise, consulting “outside of that” will need to be disclosed “as part of current and pending support,” Feldman said. She added that NSF wants the research community, faculty members and program staff “to let us know” if the chart is missing any activities that should be reported.

Feldman added that NSF also requires organizations with 50 or more employees to comply with an institutional conflict of interest policy that calls for annual reporting. In addition, proposers must complete an Excel file that lists “collaborators and other affiliations,” providing information that may also be reported via the sketch or current and pending support, Feldman said.

NSF to Share Examples of ‘Concern’

During the meeting, Bulls said NIH had not issued its version of NSF’s table because of the pending guidance from the OSTP group. She said the harmonization and collaborative efforts taking place among the other agencies have been “extremely meaningful” as compared to past discussions.

Bulls added that research compliance officials “may or may not be okay with the outcome” but should know the discussions and decisions behind the implementation guidance have been “very thoughtful and meaningful.”

Luther noted that consulting and collaboration are defined differently at different institutions, and different risk assessments are being applied, and these may also change over time. He asked the federal officials to discuss what might occur from “an enforcement perspective, if we make the wrong decision” regarding disclosure.

Feldman noted that NSF isn’t seeing “clerical errors” or “inadvertent omissions.” Keiser added that NSF is developing a website that will list “specific case examples...with names and institutions redacted, that elaborate a

bit on the kinds of things where we needed to take administrative action,” which she said will be “very illustrative of the kinds of things that are of most concern” to the agency.

“I also just want to offer—any time there’s any question...about what needs to be disclosed, or whether there’s something that you find out after the fact might be concerning or not—just ask us. And we’re happy to talk about it,” Keiser said.

FDP Developing Clearing House, Risk Matrix

FDP members and other organizations aren’t waiting for the guidance—and it does come as some surprise that the Trump holdover is being implemented by this administration—but are developing tools that can be put in place to mitigate and manage foreign influences and other conflicts or award violations. This effort has been going for several years.

FDP created a Foreign Influence Working Group, which now has two subgroups: one working to develop a “key investigator clearing house” and another charged with creating an “activity risk assessment matrix” and a “transparency tool,” officials said at the meeting.

The clearing house responds to a call Lander made in his blog post that, to address disclosure, “one approach might be to enable researchers to provide disclosures and declarations through a simple, modular, uniform system that functions like an electronic CV, containing information about a scientist’s degrees, positions, affiliations, and funding sources, updated on a regular basis, that can be used for any federal grant.”

FDP to Create a ‘National Online Repository’

Pamela Webb, University of Minnesota associate vice president for research administration, said FDP’s goal is to create a “national online repository that would serve as a single point of entry for investigators relative to appointments, current and pending/other support, and basic conflict of interest/commitment information, with the data able to be harvested by agencies and institutions.” Investigators would have to give consent for such information to be shared, Webb explained, and who validates the data is among the issues that need to be resolved.

Members are working on the issue in a “very fast and very intense” way and are now coordinating with similar efforts that were already ongoing at the Association of American Universities, the Council on Governmental Relations and the Association of Public and Land-grant Universities, she said. During the September meeting, officials said a white paper on the potential repository was planned for October with a “deliverable” available sometime in January.

The other tools are still under development, with no timetables announced for completion.

1 The White House (archive), “Presidential Memorandum on United States Government-Supported Research and Development National Security Policy,” January 14, 2021, <https://bit.ly/2YUSRt7>.

2 Eric Lander, “Clear Rules for Research Security and Researcher Responsibility,” *OSTP blog*, August 10, 2021, <https://bit.ly/3E09S4r>.

3 Federal Demonstration Partnership, “Science and Security - Latest Developments in Managing Improper Foreign Influence,” September 22, 2021, <https://bit.ly/3DIJZ8W>.

4 Joint Committee on the Research Environment of the National Science & Technology Council, Subcommittee on Research Security, “Recommended Practices for Strengthening the Security and Integrity of America’s Science and Technology Research Enterprise,” January 2021, <https://bit.ly/3vijMer>.

5 National Science Foundation, “NSF Pre-award and Post-award Disclosures Relating to the Biographical Sketch and Current and Pending Support,” September 1, 2021, <https://bit.ly/3oMjToy>.

6 National Science Foundation, “NSF Pre-award and Post-award Disclosures Relating to the Biographical Sketch and Current and Pending Support September 1, 2021,” *Report on Research Compliance* 18, no. 11 (November 2021).

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