

September 30, 2021

Dr. Eric Lander
Assistant to the President and Director
Office of Science and Technology Policy
Eisenhower Executive Office Building
17th Street and Pennsylvania Avenue, NW
Washington, DC 20504

Dear Director Lander,

On behalf of the undersigned higher education associations, we appreciate the efforts of the Office of Science and Technology Policy (OSTP) to engage with community stakeholders regarding the implementation of National Security Presidential Memorandum-33 (NSPM-33), “Presidential Memorandum on United States Government Support Research and Development National Security Policy.” We write to communicate our thoughts following the August 11 roundtable discussion with federal agencies regarding the implementation of NSPM-33.

Our organizations and member institutions are deeply committed to safeguarding the integrity of federally funded research and the intellectual property resulting from it, while also engaging in meaningful international scientific collaborations that are a cornerstone of modern scientific practice. We support the principles you communicated in your August 10 blog post that will guide the implementation of NSPM-33, especially the recognition of the importance of openness of the U.S. research environment, the focus on the need for clarity, and the urgency of ensuring that policies do not fuel xenophobia or prejudice.¹ In addition, we believe strongly that any new requirements should not impede or discourage international students and scholars from attending or partnering with U.S. institutions of higher education.

We understand that OSTP and the U.S. government as a whole are moving quickly to implement NSPM-33, and we appreciate and support efforts to standardize and coordinate federal agency research security policies. Harmonization promotes compliance and reduces administrative burden. Given the enormous undertaking of this coordination, we hope there will be ongoing opportunities for the scientific community to engage and comment on individual agency plans as they move forward. Some agencies including the Department of Defense (DOD) are already moving forward with implementing new research security policies, while others such as the National Institutes of Health (NIH) and National Science Foundation (NSF) have implemented guidance that addresses many of NSPM-33’s provisions. Any such measures that are developed outside of an overall coordinated effort will undercut cross-agency harmonization and make such efforts more difficult in the future.

In addition to these general themes, we have several more specific points we would like to highlight:

- Institutions have already taken many steps to promote principles of full disclosure and a culture of transparency. Therefore, research security efforts should evaluate and build upon existing community policies before implementing additional and more burdensome requirements.
- We support the creation and adoption of a digital, modular, uniform CV as a means for researchers to make appropriate disclosures and declarations to federal granting

¹ <https://www.whitehouse.gov/ostp/news-updates/2021/08/10/clear-rules-for-research-security-and-researcher-responsibility/>

agencies regarding relationships they have with or support they are receiving from foreign entities. This system should be easy for researchers to update and upload to their federal grant applications, be accessible to all federal agencies, and align research proposals with unique personal identification numbers. We not only support this concept; we stand ready to work with OSTP and federal agencies to develop and see that such a system is effectively implemented.

- Some faculty remain concerned about past failures to disclose out of concern that additional investigative efforts, and any attendant consequences, will not appropriately consider the nature of the potential violations, including lack of criminal intent. To incentivize self-disclosure, federal agencies should discourage criminalization of unintentional errors. Further, there needs to be an understanding of the difference between an inadvertent failure to disclose and malign intent to hide foreign support or to engage in economic espionage. This is particularly true given that some agencies have expanded interpretations of their disclosure requirements to include items that were never previously reported. Agency policies and sanctions for non-compliance should be clarified and standardized across agencies after which they should be uniformly and consistently applied going forward. The implementation of NSPM-33 should allow faculty and institutions to self-identify past mistakes and misreporting with major consequences being narrowly imposed only in cases where intentional deception or malign intent can be proven.
- Certification of an individual researcher's disclosures by our institutions is a challenge because it is difficult, if not impossible, for institutions to certify things that are outside of their control. For example, institutions would have no knowledge if an individual researcher is receiving income or research funding that has not been disclosed by the individual to the university. In this regard, we urge OSTP to fully implement the provisions of Section 223(c)(3) of the 2021 National Defense Authorization Act (NDAA), which limits institutional responsibility to ensuring that individual researchers are informed of existing requirements to disclose such information at the time of their grant awards.
- Regarding the requirement for institutions with over \$50 million in federally funded research to establish and operate a research security program, we have questions about the parameters for such programs. Care should be taken with regard to broad cybersecurity mandates and "insider threat" terminology. As we look to the example of the Department of Defense implementation of its Assessment Methodology and the Cybersecurity Maturity Model Certification (CMMC) Framework, our members have expressed concerns that standards being applied are based on industry research capabilities and planning has not adequately accounted for their lack of applicability to fundamental research conducted at our institutions.
- Standards that may work in the commercial sector may not always translate to the non-profit higher education sector. This is particularly true with the terminology and procedures for insider threat awareness and identification. Universities that engage in classified research in specialized laboratories may have these procedures in place, however the vast majority of university research is open and unrestricted. Universities should not be expected to impose restrictions or special monitoring of certain groups of students or faculty based on specific research fields or national affiliations.
- We want to ensure that these implementation efforts do not conflate financial conflict of interest and conflict of commitment. To date, institutions typically have had separate disclosure systems to address agency requirements for financial conflict of interest and

effort certification, but neither system encompasses the breadth of disclosure required under NSPM-33.

- We remain concerned that the Department of Education (ED) has to date failed to engage with stakeholders regarding concerns we have with Section 117 implementation and enforcement. Section 117 reporting remains confusing, does not have a clear process for institutions to ask questions when completing reports, and currently includes two databases which are not regularly updated and reflect different data. We continue to ask that ED engage with stakeholders on this important requirement so there is clarity and transparency in the process.
- The efforts to implement NSPM-33 should take into account the additional burdens and costs for institutions to comply with new requirements (e.g., the requirement to develop and operate research security programs). These costs should be carefully weighed against the security benefits that will be achieved as OSTP and federal agencies move to implement new NSPM-33 requirements.
- Finally, we encourage OSTP and federal agencies to consider pilot programs to find the right balance on these issues and to continue to engage with stakeholders as the implementation discussion continues.

We very much appreciate OSTP/NSTC's efforts to date, especially the formation of JCORE and the work of the JCORE subcommittees. And we are especially grateful that you are seeking stakeholder input as you move toward implementation of NSPM-33. We hope this will remain an ongoing and productive engagement.

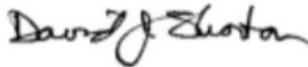
Sincerely,



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The Association of American Universities (AAU) is an association of 63 U.S. and two Canadian leading research universities that transform lives through education, research, and innovation. AAU member universities collectively help shape policy for higher education, science, and innovation; promote best practices in undergraduate and graduate education and strengthen the contributions of leading research universities to American society. The Association of Public and Land-grant Universities (APLU) is a research, policy, and advocacy organization with a membership of over 240 public research universities, land-grant institutions, state university systems, and affiliated organizations in the U.S., Canada, and Mexico, that is dedicated to strengthening and advancing the work of public universities. The AAMC (Association of American Medical Colleges) is a nonprofit association dedicated to transforming health through medical education, health care, medical research, and community collaborations. Its members are all 155 accredited U.S. and 17 accredited Canadian medical schools; approximately 400 teaching hospitals and health systems, including Department of Veterans Affairs medical centers; and more than 70 academic societies. The American Council on Education (ACE) is the major coordinating body for American higher education. Its more than 1,700 members reflect the extraordinary breadth and contributions of four-year, two-year, public and private colleges and universities. ACE members educate two out of every three students in accredited, degree-granting U.S. institutions. The Council on Governmental Relations (COGR) is an association of 190 research universities and affiliated academic medical centers and research institutes. COGR concerns itself with the impact of federal regulations, policies, and practices on the performance of research conducted at its member institutions.