June 5, 2023

Kei Koizumi, Principal Deputy Director for Policy
Office of Science and Technology Policy (OSTP)
Eisenhower Executive Office Building
17th Street and Pennsylvania Avenue, NW
Washington, DC 20504

Re: Comment on Research Security Programs
Via email: researchsecurity@ostp.eop.gov

Dear Principal Deputy Director Koizumi,

On behalf of the American Council on Education and the undersigned higher education associations, I write to offer comments on the draft *Research Security Program Standard Requirement* developed as part of National Security Presidential Memorandum (NSPM)-33 for U.S. Government-Supported Research and Development (R&D). We appreciate the opportunity to comment on these proposed standard requirements and the continuing efforts to engage with the stakeholder community around the implementation of NSPM-33. We also hope OSTP and the administration will continue to commit to implementing NSPM-33 in a manner that does not discourage international students from studying at our institutions or discourage scholarly exchanges with international partner institutions.[1]

OSTP has asked for comments on the research security program standard requirement under the topics of (1) equity, (2) clarity, (3) feasibility, (4) burden, and (5) compliance. These broad community comments speak to all of these issues. In addition, we support the comments being submitted by the Association of American Universities (AAU), the Association of Public and Land-grant Universities (APLU), the Council on Governmental Relations (COGR), the Association of American Medical Colleges (AAMC), and EDUCAUSE. Those comments delve into greater depth on specific issues included in the draft Research Security Programs Standard Requirement. These comments focus on the broad impacts of the draft requirement, and its impact on the larger higher education community, including under resourced institutions and those institutions that may not yet be a "covered research organization." We also, along with the named associations above, continue to encourage the administration to hold listening sessions with stakeholders regarding this draft memorandum and implementation of NSPM-33.[2]

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[1] From January 2022 NSPM-33 Guidance for Implementing NSPM-33: "Agencies must implement NSPM-33 provisions and related requirements in a nondiscriminatory manner that does not stigmatize or treat unfairly members of the research community, including members of ethnic or racial minority groups." https://www.whitehouse.gov/wp-content/uploads/2022/01/010422-NSPM-33-Implementation-Guidance.pdf
[2] April 2023 association letter to OSTP regarding listening sessions: https://www.acenet.edu/Documents/Letter-OSTP-Listening-Sessions-041323.pdf

Identification of a "Covered Research Organization"

In regards to topics (1), (3), (4), and (5), we are concerned about how and when an emerging research institution will determine they are identified as a "covered research organization." As OSTP notes in the draft requirements, a "covered research organization" is defined as organizations that have received at least $50 million per year in federal science and engineering (S&E) support for each of the two consecutive fiscal years. Those covered research organizations must then ensure that they are in compliance and have established and maintain a research security program, with the elements spelled out in the draft requirements.

In order to determine if an institution of higher education is considered a covered research organization, OSTP states that organizations should proactively refer to USAspending.gov, in addition to their own financial records. Institutions may also use the National Science Foundation's (NSF) "Survey of Federal Science and Engineering Support to Universities, Colleges, and Nonprofit Institutions."[3] According to NSF data, there are around 150 institutions of higher education that currently qualify. As institutions pursue federal grants and contracts, and the administration works to expand the types of institutions receiving federal R&D grants, this number is expected to grow.

For under-resourced, non-R-1 institutions, there is a concern that they will need to self-identify as a "covered research organization." USAspending.gov and the NSF survey are very different. The NSF data is 2-3 years behind the current fiscal year, so it will likely be too outdated to determine if an institution, on the cusp of the $50 million threshold, is a covered research organization for that fiscal year.

USAspending.gov also does not include clear definitions of Science and Engineering (S&E) spending, therefore it would be up to each institution to determine which grants and contracts to include in its count of total federal S&E funds. This would lead to uncertainty and could put institutions at risk of mis-reporting due to inadequate data definitions. USAspending.gov also separates institutions into "parent" and "child" recipients, but the draft memorandum does not indicate how these should be counted toward the S&E funding total. Institutions will not be sure whether to add these funding amounts or report them separately.

Due to the confusing nature of USAspending, and the time lag with NSF data, rather than self-identifying as a "covered research organization" the federal government should inform institutions if they hit the qualifying $50 million threshold for 2 or more fiscal years. If USAspending.gov is specified as the data source institutions should use in determining the threshold, we ask that the finalized research security program standard specify the exact data fields that would be used to calculate the amount of S&E funding for the purposes of the qualifying threshold.

Support for institutions identified as "covered research organizations"

In regards to issues (4) and (5), we remain concerned about how burdensome compliance with these research requirements will be for smaller and/or emerging research institutions. NSF has

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[3] https://www.nsf.gov/statistics/srvyfedsupport/

stated that they will be creating training modules that will satisfy the training requirements included in the Research Security Programs Standard Requirement. Those modules should be made available before or at the same time these requirements are finalized, and focus implementation of these modules on keeping compliance costs down for smaller types of institutions.

Further clarify proposed definitions and requirements

Regarding (2), (4), and (5), the final Research Security Programs Standard Requirement must provide more clarity around the confusing definitions and requirements proposed in this draft. This includes:

- The final Research Security Programs Standard Requirement needs to make clear that institutions which become a "covered research institution" in future years, will have one year from reaching the threshold to establish the research security program that complies with this requirement. The proposed standard requirements states "Covered research organizations will have one year from the date of this memorandum to establish a research security program that complies with the standards established therein." The final memorandum should clarify that newly identified covered research institutions should have one year from reaching the threshold to establish a research security program.

- The final memorandum should clarify the definitions "research security violations"[4]; "research security incident"[5]; and "security incident"[6], which are similar, but unclear how they are being applied. The draft memorandum includes the requirement that covered research organizations must report "incidents of research security violations to the federal awarding agency or agencies." Within the definitional appendix, "research security incident" is defined as "an action regarding federal science and engineering support, such as failure to disclose information that could pose financial conflicts or interests or conflicts of commitment; misappropriation of research data or knowhow; and diversion of intellection property; among others, due to improper foreign influence." However, the definition appendix does not include a definition of "research security violation." In addition, "Security incident" has a different definition within the definitional appendix. If "violation" and "incident" are meant to be the same thing, that should be clarified. In addition, the definition of "research security incident" is extremely broad and it may be difficult for institutions to determine if these incidents are due to improper foreign influence. It will also be extremely burdensome for institutions if each federal agency has a different way of capturing this information or further defining improper foreign influence. This definition should be clarified to include what institutions need to report to federal agencies, and agencies should be strongly encouraged to use the same processes for such reports.

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[4] Page 3, under "Overarching Program Requirements and Certification"
[5] Page 9, under "Definitional Appendix"
[6] Page 9, under "Definitional Appendix"

- For the purposes of identifying if an institution is a "covered research organization" the draft memorandum states that "subawards must be included in the total award amount considered by each research organization." It is unclear from this sentence if this means institutions <u>making subawards</u> should count those towards the $50 million threshold, or if institutions <u>receiving the subaward</u> should count the subawards towards the qualifying threshold. This should be clarified in the final memorandum.

- The final memorandum should also note, for all participating agencies, that for those institutions that do not reach the $50 million threshold, they should not be penalized in federal grant competitions if they do not have a research security program in place. This includes smaller, emerging research institutions which may partner with a larger institution in competing for federal science and engineering funding, especially as NSF and other agencies commit to broadening the types of institutions receiving federal science and engineering funding and strengthening the pipeline of the STEM workforce.

We appreciate the ongoing efforts of OSTP to engage with the larger community in implementing NSPM-33, and we look forward to continuing to work with OSTP and the federal research agencies in finalizing these requirements for our institutions.

Sincerely,

Ted Mitchell, President

On behalf of:

American Association of Colleges of Nursing
American Association of State Colleges and Universities
American Council on Education
Association of Catholic Colleges and Universities
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-Grant Universities
Association of Research Libraries
Council for Christian Colleges & Universities
Council of Graduate Schools
EDUCAUSE
NAFSA: Association of International Educators
National Association of College and University Business Officers
National Association of Independent Colleges and Universities