

September 11, 2023

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RE: Comment Submitted in Response to *Request for Public Comment on Common Disclosure Forms for the Biographical Sketch and Current and Pending (Other) Support for Use in Submission of Research Applications*

Submitted electronically to https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202308-3145-002 and splimpto@nsf.gov.

On behalf of our organizations representing the higher education and research university community, we submit these comments in response to the National Science Foundation's (NSF) Request for Public Comment on Common Disclosure Forms for the Biographical Sketch and Current and Pending (Other) Support for Use in Submission of Research Applications (the "Common Forms") published on August 7, 2023, in the Federal Register as [88 FR 52215](#), on behalf of the National Science and Technology Council's (NSTC) Research Subcommittee (the "Notice"). This Notice allows the community an opportunity to comment on the significant changes and clarifications to the Common Forms¹, as documented in the [comment table](#).

Our organizations and member institutions understand the tremendous importance of being good stewards of federal research funds, and they work diligently to ensure full transparency in meeting disclosure requirements. We support the principles guiding the implementation of NSPM-33, especially the recognition of the importance to our technological advantage of openness in the U.S. research environment, and the focus on the need for clarity and harmonization of research security requirements across federal research agencies.

We applaud the revisions made to address community feedback received in response to the first Federal Register notice published on August 31, 2022², including comments submitted by our associations on [October 31, 2022](#)³. We commend revisions to the NSPM-33 Definitions Appendix to define Institutional, Professional, and Academic

¹ See, ["New" Draft Common Form for Biographical Sketch](#) and ["New" Draft Common Form for Current and Pending \(Other\) Support Information](#)

² See <https://www.govinfo.gov/content/pkg/FR-2022-08-31/pdf/2022-18746.pdf>

³ Also see COGR's detailed response sent on [October 31, 2022](#)

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Positions and Appointments; increased burden assessments; modified certification language; and modifications to in-kind contributions, including updating the required data elements and establishing a \$5,000 reporting threshold. This is positive progress, for which we are thankful.

Additionally, we acknowledge the response to community concerns regarding the management and approval process for agency-specific requests to modify the Common Forms. Understanding that as per the Implementation Guidance, any proposed changes or modifications will require NSTC subcommittee review/vetting and that requests for non-statutory modifications will be scrutinized to a greater depth. We reinforce the position that this should be a clear and transparent process and that requests for modifications be held to the highest level of scrutiny to ensure the highest level of standardization. Changes to the forms should be as infrequent as possible and occur at a singular point with ample advance notice for the community to comment and implement.

We are mindful that the Notice requests comments on “fatal flaws” within the proposed Common Forms. We have identified four such areas pertaining to: 1) in-kind contributions, 2) the definition of malign foreign talent recruitment program, 3) consulting, and 4) person-month(s) per year devoted. In the spirit of continuous improvement, we also offer comments below pertaining to start-ups and appointments. ***We request that any of the areas highlighted in this letter not deemed a fatal flaw be instead clarified in FAQs, guidance documents, notices, or other resources developed to support the community in meeting its reporting requirements.***

Fatal Flaws

In-Kind Contributions

The CPS instructions, In-Kind Contributions, Summary of In-kind Contributions, specifies to *enter a summary of the in-kind contribution not intended for use on the proposal/active project, whether or not it has an associated time commitment.* This is inconsistent with the revised instructions to report in-kind contributions *with an estimated dollar value of \$5,000 or more and that require a commitment of the individual’s time.*

Recommendation: We recommend that the Summary of In-kind Contributions be revised to address the inconsistency, which presents as a fatal flaw. We recommend the following alternative language: “enter a summary of the in-kind contribution not intended for use on the proposal/active project, that require a commitment of the individual’s time.”

Definition of “Malign Foreign Talent Recruitment Program” (MFTRP)

The revised National Security Presidential Memorandum-33 Implementation Guidance Appendix: Definitions⁴ includes a new definition for MFTRP incorporating provisions from the CHIPS and Science Act of 2022, with a notable difference. The definition in the NSPM-33 Implementation Guidance Appendix Definitions modifies distinctive punctuation that appears to change the meaning of the definition. Specifically, the CHIPS and Science Act uses the punctuation “; **AND**” whereas the NSPM-33 Implementation Guidance Appendix Definitions uses the punctuation “. **AND**,”. While this may appear to be a minor issue, it raises concern that the definition is

⁴ See <https://www.nsf.gov/bfa/dias/policy/researchprotection/NSPM33Definitions.pdf>

different from the CHIPS and Sciences Act. CHIPS and Science defines an MFTRP as a program meeting the criteria listed in **(A) AND (B)**. In contrast, an MFTRP, as defined in the NSPM-33 Implementation Guidance Appendix Definitions, needs only to meet the criteria in **EITHER (A) OR (B)**. This ambiguity leads to distinct questions as to the interpretation and requirements of this provision.

Recommendation: We recommend clear guidance on the interpretation of this definition. We consider this a fatal flaw, as clarification is essential to ensure an accurate understanding of this requirement for use in institutional training efforts and to ensure the accuracy and completeness of the required certification.

Consulting

The Current and Pending (Other Support) (CPS) instructions include new language for reporting consulting activities. Per the new language in the CPS, *consulting activities must be disclosed under the proposals and active projects section of the form when any of the following scenarios apply:*

- *The consulting activity will require the senior/key person to perform research as part of the consulting activity;*
- *The consulting activity does not involve performing research, but is related to the senior/key person's research portfolio and may have the ability to impact funding, alter time or effort commitments, or otherwise impact scientific integrity; and*
- *The consulting entity has provided a contract that requires the senior/key person to conceal or withhold confidential financial or other ties between the senior/key person and the entity, irrespective of the duration of the engagement.*

Recommendation: We recommend that the new language be aligned with the consulting disclosure requirements specified in the NSPM-33 Implementation Guidance Pre- and Post-award Disclosures Relating to the Biographical Sketch and Current and Pending (Other) support. Currently, it is unclear if the new language is dependent or independent of the table⁵. The superseded table states disclosure is required in CPS for “consulting that falls outside of an individual’s appointment/agreement” and disclosure is not required for “consulting that is considered part of an individual’s appointment/agreement with their home organization and consistent with the proposing organization's "Outside Activities" policies and procedures.” Furthermore, the formal definition of Current and Pending (Other) Support is defined as “all resources made available, or expected to be made available, to an individual in support of the **individual’s** research and development efforts”...[Defined in the NSPM-33 Implementation Guidance Appendix: Definitions]. Therefore, the new language should align with these requirements. If, in fact, the new language replaces these two concepts and it is the intention for all consulting to be reported, that should be made clear, and significant additional clarifications would be required. For example, is the intention for all consulting to be reported as CPS and for consulting to be evaluated for FCOI only if it

⁵ See, https://www.nsf.gov/bfa/dias/policy/nspm_disclosuretable/nspm33_disclosuretable_sept2022.pdf

meets the current significant financial thresholds and other requirements for review under current agency FCOI regulations and requirements?

While we applaud efforts to improve clarity by providing the new language, ultimately, there is still resounding confusion. We believe this can be addressed through explicit guidance consistent with the table and CPS definition. Additionally, FAQs and examples are welcomed. We believe this to be a fatal flaw, as clarification is essential to ensure an accurate interpretation of this requirement for use in institutional training efforts and to ensure the accuracy and completeness of the required certification.

Person-Month(s) (or Partial Person-Months) Per Year Devoted to the Proposal/Active Project

The instructions for the Current and Pending (Other) Support Common Form have been modified to change reported Person-Months (or Partial Person-Months) from “committed” to “devoted” in response to line #27 in the summary table.

Recommendation: *We recommend that the language used in the name of the data field (and in the instructions for the same) be changed to “Committed” to remain consistent with (a) the stated purpose of the form 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” [emphasis added in bold], (b) the stated purpose of this section of the CPS form which specifically requests a senior/key person to “enter how much **time the individual anticipates is necessary to **complete the scope** of work on the proposal and/or active project” [emphasis added in bold/underline], and (c) the definition of “conflicts of commitment” in the National Security Presidential Memorandum-33 Implementation Guidance Appendix Definitions.***

Given that neither the term “devoted” nor the term “commitment” are defined in Federal guidance, we suggest that most researchers and research administrators interpret the former to mean “how much time is or will be spent on a project” and the latter to mean “how much time is anticipated in order to complete the scope of the project.” The upshot of this common understanding is that most awardees allow a senior/key person to devote as much time or as little time to a project as they like, as long as they do not commit less time to a project than they are obligated to under the terms and conditions of the award. (For example, a PI with one Federal award may choose to devote 8 person-months to that single project (because they have no other funding), but if another project were to be funded, the PI could reduce the amount of time devoted to the original project to as few person-months as they have committed in the original award (say 2 person-months).

For this reason, we suggest that cumulative number of person-months committed to the projects listed in a completed CPS Form is a better measure for assessing “the capacity or any conflicts of commitment that may impact ability of the individual to carry out the research effort as proposed” or “any potential scientific and budgetary overlap/duplication with the project being proposed”. We consider this a fatal flaw as this distinction can create undue audit risks.

Other Clarifications

Start-ups

The comment table addresses several responses from the community related to disclosures for start-up companies. Line #3 in the comment table specifies that this information is needed for agencies to assess “the capacity of the individual to carry out the research,” noting disclosure is required for *start-up companies that are unrelated to intellectual property licensed by the applicant institution*.

Recommendation: As this is a relatively new item introduced in disclosure requirements, we recommend providing additional clarification to the community to ensure accurate interpretation. Specifically, what is meant by “start-ups” not based on institutional licensed IP? What about “start-ups” based on IP licensed by a faculty member’s prior U.S. university employer? When does an entity become a start-up based on institutionally-licensed IP – when the license is executed?

If the intention for all start-ups not associated with the current home institution’s owned Intellectual Property is to be reported as CPS and evaluated for FCOI only if it meets the significant financial thresholds and other requirements for review under current agency FCOI regulations and requirements, that should be clarified. If there is concern regarding conflict of commitment, then similar to in-kind contributions, we recommend that disclosure be limited to roles with start-ups that require a commitment of the individual’s time.

Appointments and Positions

The instructions for the Submission of the Biographical Sketch include the following new language, “Senior/key person must only identify all domestic and foreign professional appointments and positions outside of the primary organization for a period up to three years from the date the applicant submits the application to the agency for funding consideration.”

Recommendation: While this statement seems to imply listing appointments and positions for the prior three years up to the submitted application date, the language is unclear. Please consider revising if this is the correct interpretation.

Conclusion

We recognize the need to ensure the integrity of research and protect the U.S. research enterprise by ensuring full transparency in disclosure requirements. Equally important is the need for unambiguous instructions that provide concise reporting requirements. This is critical for institutional training efforts and the accuracy and completeness of disclosure reports. As such, we offer the recommendations in this letter and stress the need for additional FAQs and resources to help the community successfully meet disclosure requirements.

We appreciate the efforts of the NSTC Research Security Subcommittee and all the agencies who partnered to respond to the original comments and this opportunity to provide comments on the revisions. In the event that you have any questions regarding this letter, please feel free to contact any of the association representatives listed below:

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