

Statement and Supporting Background and Questions for OSTP

APA Justice Task Force

January 21, 2022

On January 18, 2022, the Office of Science and Technology Policy (OSTP) hosted a briefing on NSPM-33 Implementation Guidance (Guidance) for the Asian American, Native Hawaiian, and Pacific Islander (AANHPI) communities. The APA Justice Task Force attended the briefing and respectfully submits the following statement and requests with additional background and questions to support our views expressed in the briefing.

Statement and Requests

APA Justice is encouraged by the OSTP leadership and the constructive efforts and progress that many key federal agencies have made to date. They are positive and heading in the right direction. We are also thankful for your outreach to our communities. In moving forward, we request your continuing engagement with the Asian American academic/research and civil rights communities and your strong support of our active participation.

More specifically, our requests cover three major topics:

1. The creation of a centralized website including the current non-classified disclosure policies, oversight and enforcement practices, and research security programs, as well as revisions and new products that will be rolling out. One-stop websites such as data.gov and usajobs.gov provide transparency and promote consistency so that grant applicants, academics, and the public can access, review, and measure progress.
2. The establishment of a transparent and consultative process for the research and civil rights communities to identify, report, and track issues and problems. We seek to prevent and avoid repeating the disturbing part of the DARPA risk matrix experience while creating the opportunity to produce constructive and positive results.
3. The continuing engagement of the AANHPI research and civil rights organizations with scheduled meetings to address key issues that have consequential impact on the implementation of NSPM-33. Examples include (a) the shared understanding of the roles and responsibilities of law enforcement and national intelligence in research integrity and potential misconduct issues and (b) existing laws, rules and regulations, and pending legislation that may complicate or impede the implementation.

Background and Questions

1. When the Federal government announces vacancies, applicants can go to usajobs.gov. When the public wants to access government data, they can go to data.gov. One-stop websites are now common and effective practices. They make use of technology to provide clarity and transparency, as well as to promote consistency. Non-classified disclosure policies, oversight and enforcement practices, and research security programs are presumably already available online but located in separate websites of the federal agencies. A central repository would allow grant

applicants, academics, and the public to access, review, and measure progress of the implementation of NSPM-33.

Question: Will OSTP commit to stand up such an initial informational website in the next 120 days of the development period?

2. On the day before the Guidance was released, Professor Ed Lazowska of the University of Washington [described his efforts](#) to correct the original version of the DARPA risk matrix in an APA Justice monthly meeting. It was disturbing to hear the many layers he went through with high level officials of multiple agencies and organizations before a positive result was achieved. It is difficult to envision the ad hoc steps taken by Professor Lazowska can be repeated and sustained when another similar situation arises.

We are glad to hear in the briefing that the original DARPA risk matrix was recognized to be a regrettable mistake, but we still have concerns about the matrix approach itself.

For example, according to the [Science Magazine](#), the DARPA approach “could be adopted by NIH or NSF.” At the same time, the Department of Energy is also reportedly working on a different risk matrix based on specific technologies of concern, rather than examining the foreign ties of the leading scientists on the project. Each may have different civil rights implications and consequences on Chinese American scientists, but they may not be represented at the table.

Questions: Going forward, how will OSTP establish a transparent and accountable process involving the Asian American community to allow direct or coordinated consultation on identified issues? Has OSTP decided on whether the risk matrix is the approach to be taken by NIH, NSF, and other civilian funding agencies? How will the perspectives of the Chinese American scientists be represented in this and other similar decisions?

3. We appreciate and agree with Dr. Lander’s Foreword in the Guidance: “if our policies to address those actions significantly diminish our superpower of attracting global scientific talent — or if they fuel xenophobia against Asian Americans — we will have done more damage to ourselves than any competitor or adversary could.”

We also applaud the Guidance’s requirement that “[a]gencies 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.”

However, law enforcement and national intelligence agencies that have caused fear and suspicion and inflicted pain and suffering under the “China Initiative” for the past three years were noticeably absent in the briefing although the Departments of Homeland Security and Justice, the Federal Bureau of Investigations, and the Office of the Director of National Intelligence are listed as members of the Subcommittee on Research Security.

According to the Guidance, “[a]gencies should engage with the research community throughout the implementation process and should consider stakeholder and community input and concerns. Engagement should include testing, piloting, and the solicitation of feedback during development of policies and forms, where practicable.” It is unclear how this is being accomplished

successfully without the participation of and coordination with law enforcement and national intelligence agencies.

The Guidance also states that “[a]gencies should integrate implementation of NSPM-33 requirements with implementation of applicable statutes, including Sec. 223 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 and Section 117 of the Higher Education Act (HEA) of 1965, as amended.”

Section 5712 of the FY 2020 National Defense Authorization Act (NDAA) (pages 989-990 <https://bit.ly/3eVEHgY>) also mandated the Director of National Intelligence, acting through the Office of Civil Liberties, Privacy, and Transparency, to submit an unclassified report to the congressional intelligence committees containing (1) a review of how the policies, procedures, and practices of the intelligence community that govern the intelligence activities and operations targeting the People’s Republic of China affect policies, procedures, and practices relating to the privacy and civil liberties of Americans of Chinese descent who may be targets of espionage and influence operations by China; and (2) recommendations to ensure that the privacy and civil liberties of Americans of Chinese descent are sufficiently protected. This report is now overdue by more than 18 months. We recommend that this report should be taken into account by the federal funding agencies.

We strongly recommend the continuing engagement with the AANHPI research and civil rights organizations by scheduling multiple meetings in the next 120-day period to address key issues that have consequential impact on the implementation of NSPM-33.

Questions:

- What are the roles and responsibilities of law enforcement and national intelligence agencies in the administrative processes addressing research integrity and misconduct issues? In particular have they agreed to a secondary role instead of their “first responder” role under the “China Initiative?”
- Are law enforcement and national intelligence agencies also expected to ensure that their policies do not fuel xenophobia or prejudice? If so, how will they be held accountable?
- Are there any applicable statutes, rules and regulations, or pending legislation that may impede, interfere, or conflict with the implementation of NSPM-33?
- When does OSTP plan to fully engage the White House Initiative on AANHPI in communicating with the entire communities?