NSPM-33 Implementation Guidance Disclosure Requirements & Standardization Talking Points for Institutions

October 2022

The proposed Standardized Disclosure Forms were released for public comment on August 31, 2022. This document includes critical themes for institutions to consider. These themes will be included in the COGR response.

Comments are due on October 31, 2022. NSF will serve as the steward for public comments collection and resolution. Comments should be sent to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation via email to *splimpto@nsf.gov*.

Individual institutional responses are encouraged to identify the impact on institutions (i.e., administrative burden & cost), areas that require clarification, and areas for harmonization.

The Federal Register Notice requests comments on four areas:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility.
The Federal Register Notice[1] states that *the purpose of the Biographical Sketch is to assess how well qualified the individual, team, or organization is to conduct the proposed activities*. The purpose of Current and Pending (Other) Support (CPS) is to *assess the capacity of the individual to carry out the research as proposed and to help identify any potential scientific and budgetary overlap/duplication, as well as overcommitment with the project being proposed.* Institutions are encouraged to comment if the listed activities in the NSPM-33 Implementation Guidance Pre- and Post-award Disclosures Relating to the Biographical Sketch and Current and Pending (Other) Support[2] meet the stated objectives for the Biographical Sketch and CPS and have practical utility. COGR will respond with examples of required information that do not appear to be relevant to the stated purposes of the Biographical Sketch or CPS and therefore add unnecessary administrative burden. Additionally, COGR will request that agencies provide information on the utility of the required information and how it is necessary for the agencies to function.

(b) The accuracy of the Agency's estimate of the burden of the proposed collection of information.
The notice estimates burden time as 1 hour for the Biographical Sketch and 1 hour for the CPS. It is not stated in the notice if the estimation is for completing the documents for the first time or updating them. Regardless, information from member institutions shows that this underestimates the time needed for the initial disclosure. Anecdotal information from faculty shows that the initial completion of the CPS forms takes 4-6 hours. COGR recently polled 70+ participants during its webinar "Overview of the NSPM-33 Standardization Disclosure Forms for the common Biographical Sketch and Current and Pending (Other) Support." Most attendees indicated it takes two or more hours to complete the Biographical Sketch and two or more hours to complete the CPS.

(c) Ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.
As noted in this document, there are still areas in the disclosure requirements that remain ambiguous (e.g., positions versus appointments, consulting, in-kind support, and reporting start-up companies

[1] https://www.govinfo.gov/content/pkg/FR-2022-08-31/pdf/2022-18746.pdf
[2] https://www.nsf.gov/bfa/dias/policy/nspm_disclosuretable/nspm33_disclosuretable_sept2022.pdf

based on non-organization-licensed-IP). Institutions are encouraged to provide examples of what remains unclear and alternatives to enhance the disclosure requirements for simple interpretation.

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.
It is expected that NIH and NSF will utilize SciENcv and leverage Digital Persistent Identifiers like ORCID (Open Researcher and Contributor ID). However, only NSF and the Department of Education are currently ready for users to move to SciENcv. Currently, no federal agency feeds proposal or award information to SciENcv or ORCID, leaving institutions responsible for populating these systems with Biographical Sketch and CPS information. COGR will request that consideration be given to allow institutions and researchers to comment on practical reporting formats, provide a period to test, and ample opportunity to transition and implement.

Themes COGR Will Address in its Response:

The common disclosure forms are a positive advancement in harmonization, and we look forward to working with the agencies**.** We greatly appreciate the opportunity to comment on the documents to identify helpful recommendations for the research community and ensure agency expectations are met. We acknowledge the tremendous efforts of colleagues at the agencies who worked diligently through cross-agency teams to create harmonization.

While we acknowledge the significant progress made, we identified opportunities to increase clarity and streamline processes. We look forward to partnering with the agencies to resolve.

- **Agency Variations and Deviations.** It is unclear at this time how agencies will handle agency-specific variations and deviations in the standardized disclosure forms (e.g., synergist activities and personal statements). As specified in the notice, variations among research agencies may be permitted as coordinated through NSTC or as cleared by OMB/OIRA. Agencies may request to supplement the forms or include agency-specific categories, which is counterproductive to creating true uniformity. Also, to note, the process should be coordinated across agencies for greater harmonization.

    - **Harmonization of the Forms.** We recognize the need for agency variations and appreciate that OSTP created a review and approval process. However, the concern with permitting agency-specific variations in the common disclosure forms is that it will reduce the researcher's ability to maintain one form that can be utilized across the various agencies and create true harmonization. It also increases the likelihood that researchers will need to maintain multiple disclosure forms and update each separately according to the agency-specific form, increasing burden and opportunities for errors. A comprehensive form with clear and consistent requirements is necessary for recipients to develop systems and processes that will assure complete and accurate disclosures in a streamlined, efficient manner. We recommend that agency-specific information be collected separately from the standardized disclosure forms and be explicitly limited to additional (not revised or altered standardized) data elements. This will increase the likelihood that the standardized forms and associated data elements/definitions remain consistent across federal agencies and will promote clarity and accuracy of what needs to be disclosed.

    - **Harmonization of the Process.** Currently, the disclosure process varies across agencies, including timelines for when disclosures occur for initial submissions and updates. For example, at this time, only NIH delays the reporting of CPS for those projects likely to be awarded (e.g., at Just-In-Time (JIT). This is a significant benefit to the recipient community since only a fraction of proposals are awarded, and therefore time is not spent on CPS for unfunded projects.

Updates vary across the agencies. NSF and NIH require updates submitted in the annual progress report. However, the Department of Energy requires updated disclosures within 30 days of the change or on a timeline instructed by the program officer, which is a significant burden. Variances in reporting timelines increase the administrative burden and reduce the clarity of expectations for researchers to know when to report and update disclosures. There is also the question of the utility of this information during the award period, and what information is critical to review on an ongoing basis. Thoughtful answers to both questions could help reduce the burden.

We appreciate that OSTP will coordinate any subsequent changes to the model form, providing a comprehensive approach. We request that changes be reduced to a workable time frame, e.g., once a year, and apply to all agencies simultaneously. To help ensure coordination and consistency, any FAQs developed to assist the community should be posted on a single site (e.g., hosted by the NSF) or "one-stop shop." We also request sufficient advance notice to implement changes in the requirements, especially those that require changes in systems and business processes.

- **Need for Clarification**. As stated in the NSPM-33 Implementation Guidance, institutions, as well as agencies, desire clear and comprehensive instructions as the objective of the standardized forms is to *provide clarity regarding disclosure requirements (e.g., who discloses what, relevant limitations and exclusions), disclosure process (e.g., updates, corrections, certification, and provision of supporting documentation), and expected degree of cross-agency uniformity*.

  While we are pleased that the forms align agency requirements, we had hoped that the standardized forms and corresponding instructions would provide clarity to longstanding topics as provided below.

  - **In-kind contributions**. It is still unclear exactly what is required for in-kind contributions. According to 42 U.S.C §§ 6605 and the CPS instructions[3] (pg. 1), CPS *includes in-kind contributions requiring a commitment of time and directly supporting the individual's research and development efforts*, whereas the CPS instructions later state (pg. 4), *In this section, please disclosure [sic] ALL in-kind contributions related to current and pending support. In-kind contributions include, but are not limited to, office/laboratory space, equipment, supplies, and employee or student resources*. COGR requests clarification that the requirement to report in-kind contributions is limited to those contributions that (a) have an associated commitment of time on the part of the senior/key person, and (b) directly support the senior/key person's research and development efforts. If this is not the case, we further note that in-kind contributions usually do not have a defined or assigned "associated time commitment." This is also true for postdoctoral scholars, students, or visiting scholars. Moreover, the format for in-kind reporting requests start/end dates, person months, and dollar values, which in many cases are not known or do not apply to the contribution. For this reason, the format for in-kind should allow for the optional inclusion of start/end date, person months, and dollar values in order to address those situations in which these elements are not applicable. The criteria for in-kind also seems expansive as it does not limit the disclosure to high-value resources, provide a *de minimis* amount, or limit the reporting of in-kind resources to only those provided within the last three years (a welcome clarification previously provided by NIH). Finally, COGR encourages an assessment of the utility of this information in the review process.

  - **Consulting**. The NSPM-33 disclosure table specifies that 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*.

[3] https://www.nsf.gov/bfa/dias/policy/researchprotection/FederalRegisterCPSfinal.pdf

Disclosure is required *for consulting that falls outside of an individual's appointment/agreement*. We appreciate NSF's clarification at an FDP meeting and more recently a COGR meeting that the interpretation is that consulting that falls within institutional policies and permitted by the institution is excluded from disclosure. Consulting that is not part of an institutional policy requires disclosure. We request the language be altered to clarify this point for common understanding and interpretation of disclosure requirements.

- **Inconsistencies and Gaps**. Also identified across the forms are inconsistencies or gaps between the common forms, the summary of data elements, and the NSPM-33 disclosure table. For example, the Proposed Instructions for Submission of the Biographical Sketch[4] list the Certification as an item that is not required. However, the data elements table data elements table[5] lists it as a required item. It is assumed that the latter is true. Additionally, the Biographical Sketch instructions do not address page limits, and the CPS instructions specify there is no page limit. Also noted the in-kind contributions section for *Summary of In-Kind Contributions* in the CPS specify: *Enter a summary of the in-kind contribution....whether or not it has an associated time commitment*, which is contrary to the NSPM-33 disclosure table which specifies an *associated time commitment*.

- **Define Terms**. Noticeably absent throughout the documents are defined terms. Definitions, qualifiers, and examples provide much-needed clarity for respondents. A great example defined in both documents is senior/key personnel. It is recommended to define essential (i.e., titled, professional, etc.) and vague terms (i.e., in-kind) and list qualifiers and examples. Confusion can result in inadvertent non-compliance in disclosure reporting, creates an unnecessary administrative burden, and leads to agency-specific or even program manager-specific interpretation. Adding defined terms and qualifiers can minimize confusion and give researchers clear and explicit instructions on what items require disclosure.

- **Format for Non-Project-Based Activities**. There are several types of activities that are not project-based (i.e., start-up company based on non-organization-licensed-IP). However, the proposed CPS reporting format attempts to fit them into a project-based format. These activities include in-kind, consulting, postdoctoral scholars, students, visiting scholars, sponsored travel, and startup companies based on non-organization-licensed IP. These activities may not have a dollar value, start/end date, associated time commitment, etc. The forms should provide a format that fits the requested activity and provide flexibility to indicate "not applicable."

- **Appointments and Positions**. The Proposed Instructions for Submission of the Biographical Sketch include instructions to list *all the individual's academic, professional, or institutional appointments and positions, beginning with the current appointment (including the associated organization and location).* However, the subsequent paragraph states that for professional appointments, *senior/key personnel must only identify all current domestic and foreign professional appointments*. We would welcome confirmation that this means we are required to list all past and present academic and institutional appointments but only current professional appointments. Clarification on the differences between academic, institutional, and professional appointments (and examples thereof) would be welcome, as would differentiation and explicit instruction on academic, institutional and professional positions (again with examples). Finally, the Proposed Instructions state that, "Appointments and positions include any titled academic, professional, or institutional position…" Clarification is requested regarding what is meant by "titled". Defining "titled" with examples would be helpful.

[4] https://www.nsf.gov/bfa/dias/policy/researchprotection/FederalRegisterBiographicalSketchfinal.pdf
[5] https://www.nsf.gov/bfa/dias/policy/researchprotection/Biosketch_CPS_Fields_8.10.22_for_FR.xlsx

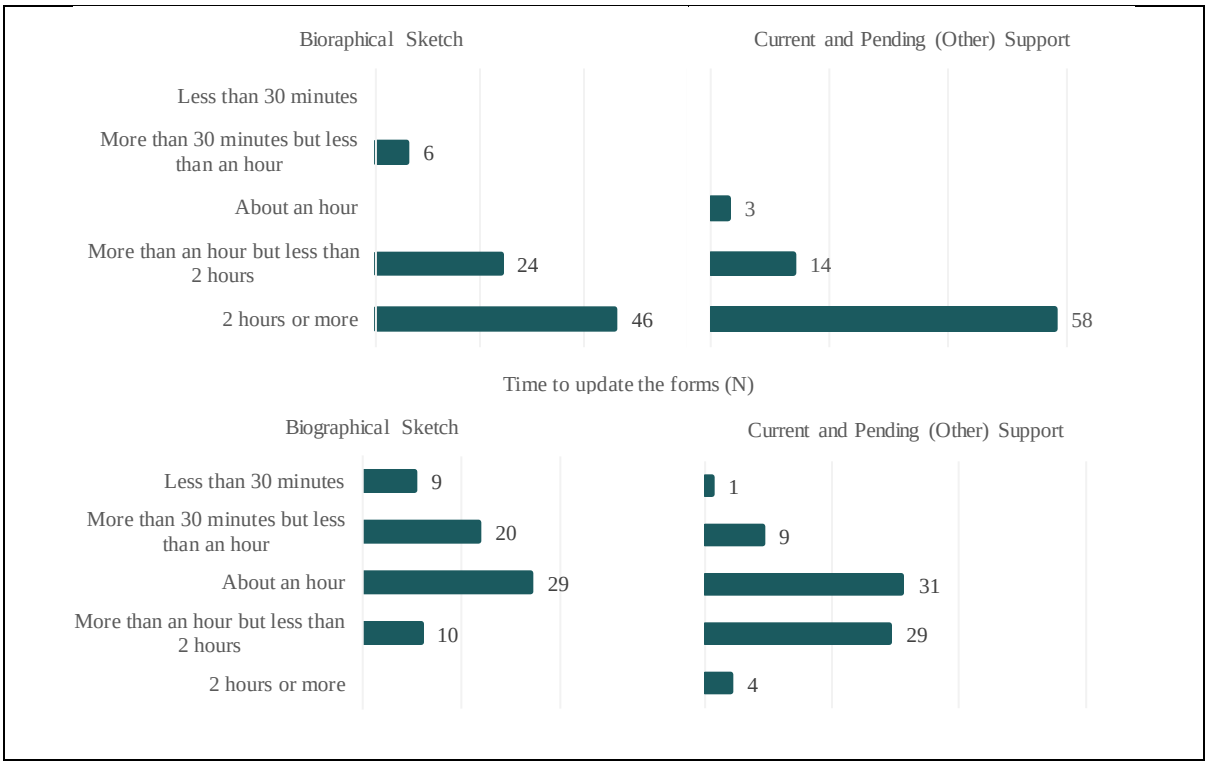
- **Certification**. Both forms list the following certification statement, *When the individual signs the certification on behalf of themselves, they are certifying that the information is current, accurate, and complete. This includes, but is not limited to, information related to domestic and foreign appointments and positions. Misrepresentations and/or omissions may be subject to prosecution and liability pursuant to, but not limited to, 18 U.S.C. §§ 287, 1001, 1031 and 31 U.S.C. §§ 3729-3733 and 3802.* There are questions about the intent for the first part of the statement "when the individual signs the certification on behalf of themselves." This could simply state, "I certify that…the information is current". As currently worded, it could appear to allow for an alternate signature or prompt individuals not to sign but have the institutional Authorized Signing Official sign. The language also does not address unintentional omissions. NIH's current language for other support ("false, fictitious, or fraudulent statements") seems to be a better representation.

  In the consideration for reducing administrative burden, we request that the agencies assess the number and types of certifications they are imposing on applicants. NIH, for example, will presumably require four levels of certifications (CPS form, Biosketch form, PI/Multi-PI certification per NIH GPS 2.3.7.6, and the institutional certification on the PHS 398 cover page). Consistency would be welcome as well, considering the standardized forms do not ask for a certification that the information provided is true, and certification in the cover page and as specified per NIH GPS 2.3.7.6 do not ask to for a certification that the information provided is current.

- **Transparency of OMB/OIRA Clearance Process.** The notice specifies that variations among research agencies will be limited and coordinated through the NSTC. Additionally, *modification and/or supplementation of these common forms will require clearance by OMB/ OIRA under the PRA process*. We appreciate that form variations will be managed through a review process. However, as noted above, we urge NSTC and federal agencies to request that variations occur outside the common forms and recommend that a board of stakeholders is included in the review process. Finally, NSTC should support and advocate only for those changes that are necessary *to meet programmatic requirements* and have practical utility.

- **Administrative Burden.** As mentioned, the notice estimates a 1-hour burden to complete the Biographical Sketch and 1 hour to complete the CPS. This is an underestimation of the actual time it takes to complete considering the complexity of disclosure requirements and frequent policy updates. Due to limited resources, the cost and administrative burden may be significantly greater at emerging institutions. COGR conducted a poll during its "Overview of the NSPM-33 Standardization Disclosure Forms for the common Biographical Sketch and Current and Pending (Other) Support" on September 23, 2022. The results from the poll are included in Figure 1. As noted, 60% of attendees indicated it takes two hours or more to complete the biographical sketch for the first time, with 43% indicating it takes about an hour to update. Additionally, 77% of attendees indicated it takes two hours or more to complete the current and pending support for the first time, with 42% indicating it takes about an hour to update. We recommend working with organizations like the Federal Demonstration Partnership to identify a more accurate estimation of burden, and to understand pain points for researchers.

Figure 1: Results from a poll during presentation "Overview of the NSPM-33 Standardization Disclosure Forms for the common Biographical Sketch and Current and Pending (Other) Support"



Bioraphical Sketch
Current and Pending (Other) Support
Less than 30 minutes
More than 30 minutes but less than an hour
About an hour
More than an hour but less than 2 hours
2 hours or more
6
3
24
14
46
58
Time to update the forms (N)
Biographical Sketch
Current and Pending (Other) Support
Less than 30 minutes
More than 30 minutes but less than an hour
About an hour
More than an hour but less than 2 hours
2 hours or more
9
1
20
9
29
31
10
29
4