

Policy for Risk-Based Security Reviews of Fundamental Research

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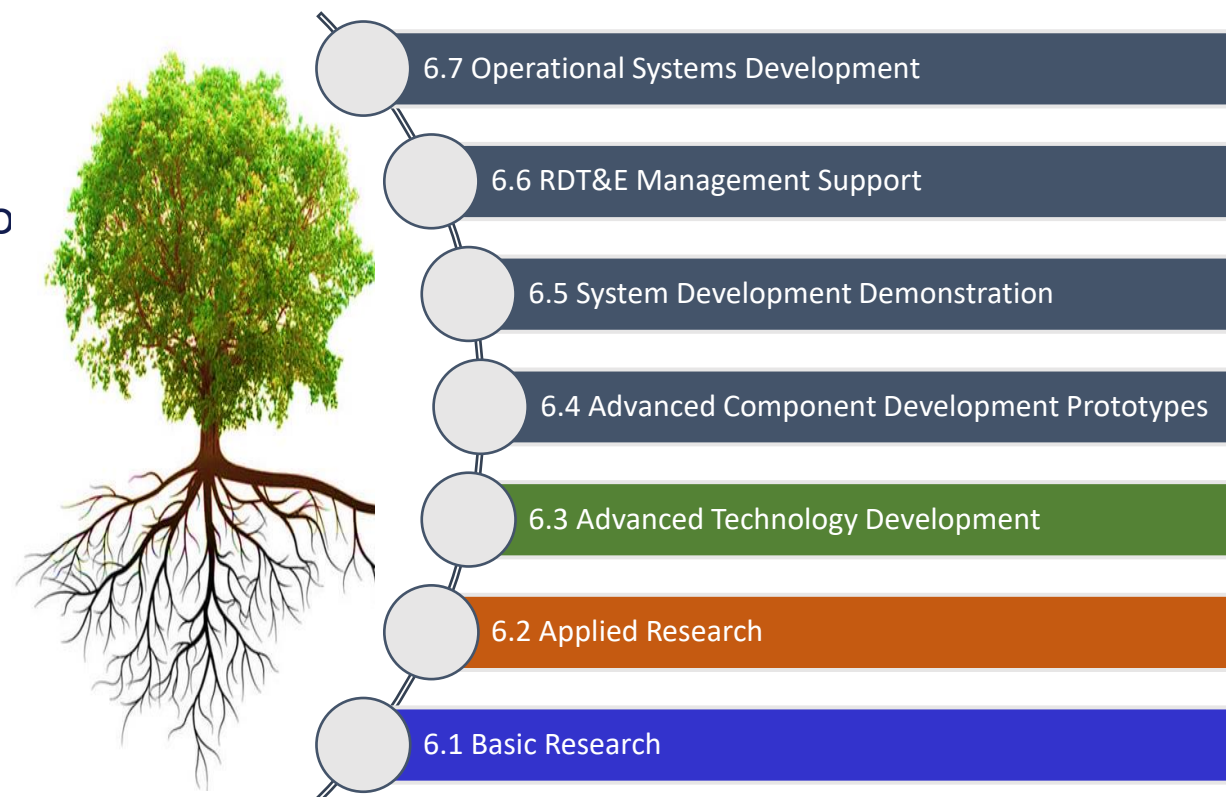
Outline

- Fundamental research and the open research enterprise
- Policy on risk-based security review processes pursuant to National Security Presidential Memorandum-33
 - New risk-based security review policy
 - DoD Component risk-based security reviews
 - Mitigation or rejection decisions
 - Oversight by the Office of the Under Secretary of Defense for Research and Engineering
 - Decision matrix
 - 1286 lists



Securing DoD Dominance in Science and Technology Requires Investment in Open Science

- DoD invests in high technology readiness level research to advance known technologies. It has many protections around this type of research and does not conduct it in the open
- Investing in today's known problems is not enough to secure DoD's future advantage in science and technology
- DoD invests in fundamental research to source **radical ideas** that will lead to breakthroughs that will **reshape the military capabilities of the future**
- **Radical ideas come from highly trained highly creative people who are engaged in the global science conversation**
- DoD only engages in open science when the benefit outweighs the risk





The Open Research Enterprise

- This brief is focused solely on proposals for fundamental research conducted by academic institutions. This means:
 - ☐ Research that is largely free from restrictions such as publication reviews or restrictions on foreign nationals.
- Fundamental research and open international collaborations are invaluable for scientific creativity that enables the DoD to maintain a competitive research advantage.
- The Department is enacting risk-based security reviews of fundamental research projects to comply with National Security Presidential Memorandum - 33



Current status on Department-Wide Risk Based Review Procedures

- The Deputy Secretary of Defense signed a memorandum on 14 Dec 2022 on National Security Presidential Memorandum – 33 Implementation
- The Office of the Under Secretary of Defense for Research and Engineering (OUSD(R&E)) is directed to ensure a consistent implementation of NSPM-33 across the Department and to ensure the Department's policies are aligned with the interagency and OSTP



DEPUTY SECRETARY OF DEFENSE
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DEC 14 2022

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Department of Defense Memorandum on National Security Presidential
Memorandum-33 Implementation

National Security Presidential Memorandum-33 (NSPM-33) on "United States Government-Supported Research and Development National Security Policy" (attached), dated January 14, 2021, directs a national response to safeguard the security and integrity of Federally-funded research and development in the United States. The Director of the Office of Science and Technology Policy (OSTP) is leading Federal research funding agencies, including the DoD, in developing research security measures and implementing NSPM-33. The National Science and Technology Council (NSTC) will serve as OSTP's lead office, charged to deliver an all-of-government approach to research security and a coordinated response to the threats facing the Nation's research enterprise.

As my representative to the NSTC, I am assigning the Under Secretary of Defense for Research and Engineering (USD(R&E)) the responsibility for oversight of NSPM-33 implementation for the DoD. In accordance with this assignment, the USD(R&E) is directed to ensure consistent implementation of NSPM-33 across the Department and to ensure that the Department's policies are aligned with those developed by other Federal agencies and those recommended by OSTP. To fulfill the requirements of NSPM-33, each of your Components is directed to take appropriate steps to secure Component-funded research efforts, including efforts for fundamental research, remain consistent with the NSTC's January 4, 2022 implementation guidance (attached) and any direction provided by the USD(R&E).

Within 30 days of this memorandum, I direct all Department Components to designate a point of contact for NSPM-33 implementation. Within 90 days of this memorandum, the USD(R&E) shall compile and disseminate a draft Department-level NSPM-33 implementation plan.

The USD(R&E) shall develop additional Department-level guidance, as necessary, to carry out the Department-level NSPM-33 implementation plan.

Attachments:
As stated



OSD005055-22/CMD006428-22



Policy for Risk-Based Security Reviews of Fundamental Research Policy

- The Countering Unwanted Foreign Influence in Department-Funded Research Institutions of Higher Education policy and enclosures was publicly released June 30, 2023
- **Policy for risk-based security reviews of fundamental research**
 - Intent is to ensure consistent application of risk-based security reviews for fundamental research project proposals across the DoD
- **DoD Component Decision Matrix to Inform Fundamental Research Proposal Mitigation Decisions**
 - A guide to assist program managers and DoD components in reviewing fundamental research proposals for potential conflicts of interest and conflicts of commitment.
- **FY22 Lists Published in Response to Section 1286 of NDAA 2019**
 - The 1286 List includes foreign institutions that have been confirmed as engaging in problematic activity as described in Section 1286(c)(8)(A) of the NDAA for FY 2019, as amended. It also identifies the foreign talent programs that have been confirmed as posing a threat to the national security interests of the United States as described in Section 1286(c)(9)(A) of the NDAA for FY 2019, as amended. Per the Decision Matrix, certain engagements with these institutions will require mitigation before a proposal can be funded.

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RELEASE
IMMEDIATE RELEASE

Department of Defense Strengthening Efforts to Counter Unwanted Foreign Influence on DOD-Funded Research at Institutions of Higher Education

June 30, 2023 | f t r

The Department of Defense today announced the publication of a list of foreign entities that have been confirmed as engaging in problematic activity as described in Section 1286 of the Fiscal Year 2019 National Defense Authorization Act, as amended. These include practices and behaviors that increase the likelihood that DOD-funded research and development efforts will be misappropriated to the detriment of national or economic security or be subject to violations of research integrity or foreign government interference.

"Protecting and maintaining the integrity of our research enterprise is integral to national security," said Heidi Shyu, Under Secretary of Defense for Research and Engineering (USD(R&E)). "The publication of these foreign entities underscores our commitment to ensuring the responsible use of federal research funding and safeguarding our critical technologies from exploitation or compromise."

<https://www.defense.gov/News/Releases/Release/Article/3445601/department-of-defense-strengthening-efforts-to-counter-unwanted-foreign-influen/>

<https://media.defense.gov/2023/Jun/29/2003251160/-1/-1/1/COUNTERING-UNWANTED-INFLUENCE-IN-DEPARTMENT-FUNDED-RESEARCH-AT-INSTITUTIONS-OF-HIGHER-EDUCATION.PDF>



Key Takeaways

- The Department is committed to preserving open science, international collaboration, and involvement of talented foreign students and researchers in DoD-funded fundamental research
- The Department's policy is to mitigate potential conflicts of interest listed in the Decision Matrix to the maximum extent possible
- Policy implementation will be transparent and consistent across the Department
- The Department will not discriminate on the basis of race or national origin
- The Department will not penalize researchers for activities believed acceptable prior to the USD(R&E) Griffin Letter to Academia, dated 10 October 2019
- The Department is interested in collecting feedback from the academic community as it implements its policy. The decision matrix may be updated to incorporate changes in law and policy, account for lessons learned, and ensure consistency with other Federal agencies.



DoD component risk-based security review

Every fundamental research proposal selected for award based on technical merit will undergo a risk-based review

Component policies must:

- Ensure a proposal is fundamental research
- Use the Decision Matrix
- Use the disclosures and Standard Form 424 submitted by the proposing institution for all covered individuals listed in fundamental research project proposals selected for award to identify potential research security risks and employ relevant publicly available information, at a minimum, to verify the information submitted in the disclosures and Standard Form 424
- Conduct annual reviews of funded research projects using the Research Performance Progress Report
- Not discourage international research collaboration
- Not impact time to award if no mitigation is necessary.
 - Working with the institution to mitigate conflicts of interest may result in additional time to award
- Define the level of research security risk mitigation determination that is appropriate for the components to follow their customary process to recommend and make funding decisions and when a decision by component leadership (or designee) is required



Mitigating potential risks

- Mitigation is the preferred option for Components to take concerning any risks uncovered
- Mitigation measure examples:
 - Require the covered individual(s) to complete insider risk awareness training;
 - Require increased frequency of reporting by the covered individual(s) through the Research Performance and Progress Report (RPPR);
 - Replace individuals listed in the fundamental research project proposal who are deemed a research security risk;
 - Provide DoD the covered individual's(s') contracts for review and clarify relationships, affiliations, and/or associations considered risky; and
 - Require the covered individual(s) to resign from positions deemed problematic by the risk-based security review.



Denials

- Denials shall only occur when risks are unable to be mitigated or if required by law
- Denials must be explained in writing to proposing institutions, including unclassified rationale
- Institutions may challenge a denial and OUSD(R&E) will mediate



OUSD(R&E) Oversight

- Denials must be reported to OUSD(R&E) and other Components
- Components shall provide OUSD(R&E) with a summary of risk-based security reviews including number of reviews, denials, and description of denials on an ongoing basis
- OUSD(R&E) may also conduct periodic spot checks independent of the Component process
- OUSD(R&E) must ensure that Components' policies and implementation are in line with other Components' and Federal agencies' policies



Decision Matrix



Decision matrix considers four factors to determine whether mitigation measures are needed

- **Foreign talent recruitment programs** – is a way a Foreign Country of Concern (FCOC) corrupts the open research enterprise by conducting secretive dealings between recipients and the FCOC, including transfer of knowledge and personnel outside of norms
 - Malign foreign talent recruitment program – defined in CHIPS
- **Funding sources** – accepting funding from FCOCs may create a conflicting obligation to that FCOC
- **Patents** – patents arising from US-funded research filed in a foreign country before being filed in the U.S. can be an indicator of undisclosed agreements with a foreign country
- **Entity lists** – problematic actors that affiliation or association with could create a conflict of interest or conflict of commitment
 - Affiliation = Academic (not including undergraduate or graduate students), professional, or institutional appointments or positions with a foreign government or a foreign government-connected entity, whether fulltime, part-time, or voluntary (including adjunct, visiting, post-doctoral appointment, or honorary), **where monetary reward, non-monetary reward, or other quid-pro-quo obligation is involved.**
 - Association = Academic (not including undergraduate or graduate students), professional, or institutional appointments or positions (including adjunct, visiting, voluntary, post-doctoral appointment, or honorary) with a foreign government or a foreign government-connected entity **where no monetary reward, non-monetary reward, or other quid-pro-quo is involved.**



1286 Lists

FY22 Lists Published in Response to Section 1286 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), as amended



FY22 Lists Published in Response to Section 1286 of Public Law 115-232, as amended

- The 1286 List includes foreign institutions that have been confirmed as engaging in problematic activity as described in Section 1286(c)(8)(A) of the NDAA for FY 2019, as amended. It also identifies the foreign talent programs that have been confirmed as posing a threat to the national security interests of the United States as described in Section 1286(c)(9)(A) of the NDAA for FY 2019, as amended.
 - Table 1: List of Institutions of the People's Republic of China, Russian Federation, and other Countries with Specific Characteristics
 - Table 2: Foreign Talent Programs that Pose a Threat to National Security Interests of the United States
- Documentation on problematic behaviors engaged in by the institutions on the 1286 list can be found in USG published sources
 - Entities List
 - Justice Department Court Cases



Contact Us

- Contact the **Academic Liaison** for any questions/concerns/issues pertaining to research security at institutions of higher education at:
osd.mc-alex.ousd-r-e.mbx.academic-liaison@mail.mil
- DoD research security information:
 - **Academic research security pertaining to fundamental research**
Basic Research Office website at:
<https://basicresearch.defense.gov/Programs/Academic-Research-Security/>
 - **Efforts to balance the promotion and protection of critical and emerging technology through the technology development cycle**
Science and Technology Program Protection Office's Maintaining Technology Advantage website at: <https://rt.cto.mil/stpp/mta/#>
 - **DoD's public release of the Policy for Risk-Based Security Reviews** including the decision matrix and 1286 lists: Defense.gov:
<https://www.defense.gov/News/Releases/Release/Article/3445601/departments-of-defense-strengthening-efforts-to-counter-unwanted-foreign-influences/>