



National Association of College and University Attorneys
Presents:

**Research Misconduct, Undue Foreign
Interference, and Creating a Culture of
Compliance on Campus**

Webinar

November 18, 2021

12:00 PM – 2:00 PM Eastern
11:00 AM – 1:00 PM Central
10:00 AM – 12:00 PM Mountain
9:00 AM – 11:00 AM Pacific

Presenters:

Nelson Dong
Dorsey & Whitney LLP

Amy Hass
University of Florida

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Research Misconduct, Undue Foreign Interference, and Creating a Culture of Compliance on Campus



Nelson Dong regularly advises corporations, private and public universities, other independent research institutions, engineering and medical societies and other organizations around the world on export control, economic sanctions and national security matters and on international technology law issues.

A partner in Dorsey's Corporate group, Chair of the National Security Law practice and co-Chair of the Asia-Pacific practice, Nelson has substantial experience in counseling e-commerce, semiconductor, electronics, computer hardware and software, and biomedical and biotechnology companies with special expertise in domestic and international technology licensing, outsourcing and manufacturing in

Asia and U.S. export control law, technology related business transactions between the U.S. and Asian or European countries, international strategic alliances, the Exon-Florio law on foreign investments in U.S. technology companies, university-based technology transfer, academic entrepreneurship, academic conflicts of interest and the financing and organization of high technology businesses. He has lectured on such topics throughout the United States and in Austria, Canada, England, the Netherlands, Hong Kong and the People's Republic of China.

Nelson was an Assistant U.S. Attorney in Boston (1980-82); Deputy Associate Attorney General, Department of Justice (1979-80); and White House Fellow and Special Assistant to U.S. Attorney General Griffin B. Bell, Department of Justice, Washington, D.C. (1978-79).



Amy Hass serves as the Vice President and General Counsel for the University of Florida, overseeing the legal affairs of the University and many of its affiliated entities. In addition, Amy represents and advises the University on legal matters relating to governance, research and fiscal compliance, constitutional issues, student affairs, athletics, international activities, litigation and governmental audits and investigations. She also provides advice relating to ethics laws and works closely with higher education counsel throughout the state and country on legislative and regulatory priorities.

Prior to joining the Office of the Vice President and General Counsel in 2006, Amy was a litigator with Sutherland Asbill & Brennan LLP (now Eversheds Sutherland LLP) in Atlanta and New York. While in private practice, Amy represented financial services companies and individuals in a wide range of government enforcement proceedings, civil litigation, white collar criminal defense, arbitrations and internal corporate investigations.

Amy graduated, with honors, from the University of Florida Levin College of Law and received her undergraduate degree from Furman University. She is a member of the Florida Bar and the State Bar of Georgia. Amy is a member of the AAU General Counsels Committee, the Council on Governmental Relations, and the National Association of College and University Attorneys. Amy has previously served on the Florida Bar's Education Law Committee and on the Editorial Board of the Journal of College and University Law.



Attendance Record Webinar

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November 18, 2021

If you are an attorney applying for Continuing Legal Education credits (CLEs), you must sign this attendance record to verify your attendance. Please complete and return this form no later than Friday, November 19 to NACUA (clewebinars@nacua.org).

***Total CLE Credits = 120 minutes**

Organization

PRINTED Name

SIGNATURE

State & Bar Number (If Applying for CLE)



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November 18, 2021

- **Attorneys from MD, MA, MI, SD, or DC:** These jurisdictions do not have CLE requirements and therefore require no report of attendance or filing.
- **Attorneys from AK, AZ, CA, CO, CT, DE, HI, IN, IA, KY, MN, MO, MT, NH, NJ, NY, VT, WI, or WY:** Do not return this form to NACUA. Please keep this form for your records to submit directly to your state CLE commission or in case your state bar audits you for CLE compliance. Please also remember to sign the attendance record.
- **Attorneys from all other states:** Please complete and return this form no later than Friday, November 19 to NACUA (clewebinars@nacua.org). Please also remember to sign the attendance record.

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Meredith L. McMillan

National Association of College and University Attorneys, CMP

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Research Misconduct, Undue Foreign Interference, and Creating a Culture of Compliance on Campus

November 18, 2021

FOR KANSAS, NEW YORK, OHIO AND PENNSYLVANIA ATTORNEYS ONLY

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Webinar

Foreign Interference, Research Misconduct, and Creating a Culture of Compliance

Nelson G. Dong, Partner, Dorsey & Whitney LLP

Amy Meyers Hass, Vice President & General Counsel, University of Florida

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WHITE HOUSE STRATEGIC VIEWS

TRUMP ADMINISTRATION

December 2017: White House National Security Strategy document

- Major global threats: China, Russia, Islamic fundamentalism
- Heavy focus on altering US-China trade, other bilateral relations

June 2018: White House report on China's "economic aggression" against US in technology and intellectual property

- "Non-traditional" collectors of scientific, technical information (e.g., graduate students)

May 2020: White House report pushes for new US strategic approach to China

- China's "military-civil fusion" to harness civilian and commercial technologies for military purposes requires new kinds of US defenses, responses

BIDEN ADMINISTRATION

March 2021: Quickly issued Interim National Security Strategic Guidance (INSSSG) document ahead of formal National Security Strategy (NSS)

- Offered deeply contrasting view of US fully engaged with its allies and rest of the world
- Recognized deep "strategic competition" with China but also accepted possible cooperation when in US self-interest

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NIH DIRECTOR DR. FRANCIS COLLINS “DEAR COLLEAGUES LETTER AUGUST 2018)

- His letter identified three particular areas of concern:
 1. *Diversion of intellectual property (IP) in grant applications or produced by NIH supported biomedical research to other entities, including other countries;*
 2. *Sharing of confidential information on grant applications by NIH peer reviewers with others, including foreign entities, or otherwise attempting to influence funding decisions; and*
 3. *Failure by some researchers working at NIH-funded institutions in the U.S. to disclose substantial resources from other organizations, including foreign governments, which threatens to distort decisions about the appropriate use of NIH funds.*
- His letter also noted further steps to be taken:
 - He would appoint an NIH special working group to outline policy changes
 - NIH Office of Extramural Research (OER) would do more outreach to institutions to confirm accuracy of interest disclosure forms filed by NIH-funded investigators

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NIH WORKING GROUP ON FOREIGN INFLUENCE REPORT (DEC. 13, 2018)

- “Blue ribbon” panel of leading private and public university research leaders
 - University of Washington, Ohio State University, University of Maryland, Stony Brook University, Wayne State University, MIT
- Panel report focused on (1) inaccurate or incomplete disclosure of ALL foreign support involved in proposed research, (2) improper sharing of confidential peer review materials, and (3) “talent recruitment” programs targeting US academic researchers
 - Sharp but not exclusive focus on China’s research program efforts
 - Cited China’s “*Thousand Talents*” program specifically
 - Cited suspected case at Duke University involving Chinese researcher in particular
- Many recommendations for NIH and for funded institutions to safeguard NIH-funded research and international collaborations from potential abuse
- Supported foreign nationals in NIH-funded research (e.g., noted that foreign-born scientists had helped to win 24% of “US” Nobel prizes)

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DEPARTMENT OF EDUCATION SECTION 117 REPORTS (2019-20)

- § 117 of Higher Education Act of 1965 requires:
“Whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the Secretary [of Education] on January 31 or July 31, whichever is sooner.”
- Multiple universities had filed late or incomplete such § 117 reports
- US Dept. of Education sent out multiple inquiry letters with large document requests to 19 universities, including: Georgetown, Texas A&M, Cornell, Rutgers, MIT, Maryland, Harvard, Yale, Texas, Case Western, Fordham Stanford, Alabama, Auburn, Florida State, Georgia State, Nevada, New Mexico and Wisconsin-Milwaukee
- In February 2021, AAU and 18 other groups sent joint letter to Acting Secretary of Education, asking to meet and discuss Section 117 reporting – hope for more constructive engagement with Biden Administration officials to clarify Section 117 scope

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NSF REQUEST TO JASON GROUP, MITRE CORPORATION (FEB. – DEC. 2019)

- JASON begun in 1960 to bring outstanding research scientists, scholars into regular dialogs with DOD, other federal agencies
 - Membership has included several Nobel laureates, multiple members of National Academy of Sciences and National Academy of Engineering and others
- JASON’s work supported by MITRE Corporation and its seven FFRDCs
- In Feb. 2019, NSF requested JASON report on federal policies for fundamental research and how to deal with undue foreign influence
- In Dec. 2019, JASON delivered 57-page report to NSF with nine key findings and nine strong recommendations
 - https://www.nsf.gov/news/special_reports/jasonsecurity/JSR-19-2IFundamentalResearchSecurity_12062019FINAL.pdf

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OSTP-LED INITIATIVE TO COORDINATE FEDERAL RESEARCH POLICIES (JULY 2019)

- National Science & Technology Council (NSTC) Joint Committee on Research Environments (JCOPE) added new Subcommittee on Research Security (SRS)
SRS role: “The Subcommittee discussed its focus on coordinating Federal efforts to effectively communicate and provide outreach to academic and research institutions, develop guidance and best practices for academic and research institutions, and standardize conflict of interest and commitment disclosure requirements and enforcement.”
- On January 14, 2021, President Trump issued National Security Presidential Memorandum 33 (NSPM-33) but had no time to implement it
- On August 10, 2021, President Biden’s own science advisor, Dr. Eric Lander, issued call for public comment on how best to implement NSPM-33 with “clear rules for research security and researcher responsibility”

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NEW US BARRIERS TO IMMIGRATION BY PRC NATIONALS (MAY 2020)

- President Trump issued Proclamation 10043 on May 29, 2020 to limit entry of Chinese students and researchers
 - Focused on “F” [exchange scholar] or “J” [student] visas
 - Based on Administration concerns about China’s “civil-military fusion strategy” to extract military uses from civilian or commercial technologies, especially from “critical” and “emerging” technologies coming out of university or company labs
- In September 2020, Dept. of Homeland Security revoked over 1,000 entry visas to what it called “high risk graduate students and research scholars” from China
 - Notable risk factors for visa denials or revocation: Student expenses paid by Chinese Government, state-owned enterprise (SOE) or entity linked to People’s Liberation Army (PLA) (e.g., hospital, university or company with known PLA ties)
 - New DOD and OFAC public lists of Chinese SOEs and other companies tied to PLA, Chinese security or intelligence services

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NEW BARRIERS TO IMMIGRATION FROM CHINA (OCTOBER 2020)

- **Oct. 2, 2020:** US Citizenship & Immigration Services (USCIS) announced policy that any foreign person who is or has been a member of or affiliated with a Communist or other totalitarian party will be ineligible to immigrate to US
 - New USCIS policy not explicitly addressed to China or any other particular country
 - Chinese Communist Party (CCP) is estimated to have over 90 million members, including some two million members of university student age
- New USCIS policy requires at least two years separation from such a party membership before seeking US visa
 - However, if such a political party also heads a totalitarian government, then separation requirement is raised to five years before person can be eligible for visa

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U.S. EXPORT CONTROL LIMITS ON CHINESE ACADEMIES, INSTITUTES AND UNIVERSITIES

BIS Entity List

- Beijing University of Aeronautics and Astronautics (BUAA), Beijing
- Nanchang University, Nanchang, Jiangxi Province
- National University of Defense Technology (NUDT), Changsha, Hunan Province
- Northwestern Polytechnical University, Xi'an, Shaanxi Province
- Sichuan University, Chengdu, Sichuan Province
- University of Electronic Science and Technology of China, Chengdu, Sichuan Province
- Plus approximately 50 independent "institutes" or "academies" based in various cities across China

BIS Unverified List

- Aisin Nantong Technical Center, Nantong
- Anhui Institute of Metrology, Hefei
- Beijing Institute of Nanoenergy & Technology, Beijing
- Center for High Pressure Science & Technology Advanced Research, Shanghai
- Changchun Institute of Applied Chemistry, Chinese Academy of Science, Changchun
- Guangdong University of Technology, Guangzhou
- Hefei Institutes of Physical Science, Chinese Academy of Science, Hefei
- Renmin University, Beijing
- Shanghai Institute of Applied Physics, Chinese Academy of Science, Shanghai
- Shanghai Institute of Technical Physics, Chinese Academy of Science, Shanghai
- Tongji University, Shanghai
- Xi'an Jiaotong University, School of Electrical Engineering, Xi'an

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NEW FEDERAL LISTS OF ENTITIES ASSOCIATED WITH PLA

- Department of Defense has issued its “Section 1237” list of companies that are said to be owned or controlled by Chinese PLA or other parts of China’s military, paramilitary, public security or intelligence services
- Department of the Treasury’s Office of Foreign Assets Control (OFAC) has separately issued its own Non-Specially Designated Nationals Chinese Military Industrial Complex Companies List (NS CMIC List) of companies that closely support the Chinese PLA or other parts China’s military, paramilitary, public security or intelligence services
- Several Chinese entities on DOD Section 1237 List or OFAC NS CMIC List already targeted by BIS Entity List barring U.S. exports of anything “subject to the EAR” without BIS export license (and with presumption of denial for any licenses)
 - Some or all of the other Section 1237 List or NS CMIC List Chinese entities could still end up on BIS Entity List

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US DEPARTMENT OF JUSTICE “CHINA INITIATIVE” (NOV. 2018 - PRESENT)

- US Attorney General Jeff Sessions before he resigned on November 7, 2018:
“Chinese economic espionage against the United States has been increasing—and it has been increasing rapidly. Enough is enough. We’re not going to take it anymore. I have ordered the creation of a China Initiative led by Assistant Attorney General John Demers and composed of a senior FBI Executive, five United States Attorneys including Alex, and several other Department of Justice leaders and officials, including Assistant Attorney General Benczkowski. This Initiative will identify priority Chinese trade theft cases, ensure that we have enough resources dedicated to them, and make sure that we bring them to an appropriate conclusion quickly and effectively.”
- Assistant Attorney General for National Security John Demers:
“China wants the fruits of America’s brainpower to harvest the seeds of its planned economic dominance. Preventing this from happening will take all of us, here at the Justice Department, across the U.S. government, and within the private sector. With the Attorney General’s initiative, we will confront China’s malign behaviors and encourage them to conduct themselves as they aspire to be: one of the world’s leading nations.”
- FBI Director Christopher Wray: FBI has >1,000 active investigations and DOJ has prosecuted dozens of cases from those investigations
- Under China Initiative, DOJ has filed a dozen criminal cases against ethnic Chinese university researchers with decidedly mixed results

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FEDERAL LAW ENFORCEMENT OPTIONS

- **Federal officials can investigate and prosecute for many crimes:**
 - EAR or ITAR export control violations
 - Economic espionage violations (either helping a foreign government or a foreign private party)
 - OFAC economic sanctions violations
 - Computer crime violations
 - Wire fraud, mail fraud, program fraud, tax fraud, other types of criminal fraud
 - Income tax law violations
 - “False statement” to federal officer
 - Immigration law violations
- **Investigation alone may affect employment, immigration or federal grant status**
 - Legal defense costs may be staggering
 - Reputational damage may be severe, irreparable
 - Side effects may harm spouses, children of individuals
 - Conviction may lead to federal debarment from grants, contracts
 - Conviction may also lead to loss of U.S. citizenship, deportation

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FEDERAL PROSECUTION OF YIHENG ZHANG, VIRGINIA TECH (2017-2019)

- **Zhang was professor of biological systems engineering studying artificial sweeteners**
 - Was also paid researcher for Tianjin Institute of Industrial Biotechnology (TIIB) in China where he also did research
 - Had started small private research company in Virginia that applied for SBIR and STTR grants from National Science Foundation (NSF) and Dept. of Energy (DOE) to fund company research for work he had already done at TIIB in China
 - Obtained \$600,000 in NSF funding for his company that he then applied to other research projects contrary to his NSF and DOE applications and statements to Virginia Tech
- **After Virginia Tech, NSF, DOE and FBI investigations, Zhang was indicted in Nov. 2017 for conspiracy to defraud U.S. Government and making false statements and claims**
- **After bench trial in Sept. 2018, Zhang was convicted in Feb. 2019 on multiple counts and sentenced in Sept. 2019 to three months imprisonment (with credit for time in custody after arrest) and two years of house arrest**

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FEDERAL PROSECUTION OF XIAOXING XI, TEMPLE UNIVERSITY (2015)

- Dr. Xi was world-famous expert on superconductivity and thin films; held Carnell endowed professorship in physics at Temple University; chair of its Physics Department
- May 2, 2015: Arrested by armed FBI agents and search warrant executed at his home while his wife and children watched; released on bail next day
- May 21, 2015: U.S. Attorney's Office obtained four-count wire fraud indictment in E.D. Penn., alleging Xi stole U.S. company technology ("pocket heater") to help secure lucrative company or academic positions for himself in China
 - Defense affidavits from "pocket heater" inventor, others showed Xi's device sent to China was not company device cited in indictment and was instead Xi's own university lab invention
- September 11, 2015: Justice Department dismissed indictment with no explanation or apology
- Collateral damage: Xi suspended from department chairmanship for several months; taken off several research grants with collaborators and lost substantial research funding, staff for his academic studies; spent personally over \$200,000 in defense counsel fees (unreimbursed); daughter forced to drop out of college temporarily due to family's dire finances
- Consolation: American Physical Society gave him 2019 Sakharov prize for defense of human rights

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FEDERAL PROSECUTION OF SONG GUO ZHENG, THE OHIO STATE UNIVERSITY (2020-21)

- M.D.-Ph.D. professor of internal medicine; was hired as chair of Ohio State's Division of Rheumatology and Immunology in Dept. of Internal Medicine
- Had secured \$4.1 million in NIH funding for his medical research
- Failed to disclose to Ohio State or NIH his participation in Chinese "talent program" and his other affiliations with a Chinese university when applying for his NIH funding
- In May 2020, he tried to flee United States when he became aware of investigations into his conduct and was arrested at Anchorage Airport on his way to China
- In November 2020, he pled guilty to a single count of making false statements to U.S. Government
- In May 2021, U.S. District Court in S.D. Ohio sentenced him to 37 months imprisonment and ordered him to pay more than \$3.4 million in restitution to NIH and about \$413,000 to Ohio State

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FEDERAL PROSECUTION OF ACADEMIC VISA FRAUD CASES (2020-2021)

- DOJ filed criminal visa fraud cases in 2020 against several Chinese scholars at various U.S. universities, alleging they had lied on their U.S. entry visa applications or in their visa interviews when they denied having current PLA or other Chinese military service connections, including:
 - Cancer researcher at University of California, Davis
 - Mathematics visiting scholar at UCLA
 - Ph.D. student in machine learning and artificial intelligence at Indiana University, Bloomington
 - Neuroscience visiting scholar at Stanford University
 - Medical visiting scholar at University of California, San Francisco
- DOJ added more charges in some of these cases, including obstruction of justice, lying to government agent, destruction of evidence, etc.
- With no real public explanation, DOJ abruptly dismissed all five cases in July 2021 “in the interest of justice” after arrests and detention in some cases exceeding likely time that would have been served even if convicted for misdemeanor offense of visa fraud

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FEDERAL PROSECUTION OF ANMING HU, UNIVERSITY OF TENNESSEE (2017-2021)

- Naturalized Canadian citizen; associate professor of engineering specializing in laser and inkjet printing, nano-manufacturing and optoelectronics
- 2012 Wolf Amendment precluded any use of NASA funds to work with Chinese institutional researchers; Hu received such NASA funds through UT-Knoxville
- FBI urged Hu’s prosecution for failure to reveal to NASA his ties to Beijing University of Technology where he had also been a faculty member, arresting him in February 2020
- Following his federal indictment in February 2020 on 3 counts of wire fraud and 3 counts of false statements to a federal officer, UT-Knoxville terminated him
- In June 2021 trial, jury deadlocked after two days, and, when DOJ sought to retry Hu in August, Judge Varlan granted defense’s F.R.Cr.P. Rule 29 motion, acquitting him of all counts with 57-page opinion criticizing DOJ theory and conduct of case from outset
 - Hu had repeatedly disclosed his Chinese university tie to UT-Knoxville, never used any NASA funds with Chinese collaborators, removed a proposed Chinese collaborator when asked to do so by NASA and delivered his report to NASA exactly as contracted with no Chinese input – no federal funds misused
 - UT-Knoxville has formally offered to reinstate Hu to his job with some back-pay and legal expenses

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COMMITTEE OF 100 STUDY OF APPARENT RACIAL DISPARITIES IN PROSECUTIONS

- Non-profit Committee of 100 in New York City released its September 2021 report on *“Racial Disparities in Economic Espionage Act Prosecutions: A Window into the New Red Scare”*
 - Andrew C. Kim, a Texas attorney and Visiting Scholar at South Texas College of Law, co-led C100’s research effort
 - Report analyzed all 190 EEA criminal prosecutions during 1996-2020 with 276 individual defendants tracked in Federal Public Access to Court Electronic Records (PACER) system
 - 1 in 3 Asian Americans initially charged with EEA violations were ultimately acquitted or had such charges dismissed
 - When imprisonment was ordered, on average, defendants with Asian/Chinese names were given jail sentences twice as long as defendants with more Western names
 - Justice Department much more likely to issue press releases in EEA prosecutions against defendants with Asian/Chinese names than defendants with Western names
- C100’s full report and other related materials available here: <https://www.committee100.org/initiatives/racial-disparities-in-economic-espionage-act-prosecutions/>

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COMMITTEE OF 100 STUDY OF ATTITUDES IN U.S. ACADEMIC SCIENCE COMMUNITY

- C100 also released on October 28, 2021 its report on *“Racial Profiling Among Scientists of Chinese Descent and Consequences for the U.S. Scientific Community”*
 - C100 and scholars at University of Arizona ran nationwide blind survey during summer 2021 of almost 2,000 science professors, post docs and graduate students at top U.S. universities
- Survey data show, as compared with their non-Asian scientific peers, scientists of Chinese or other Asian descent now report they face higher scrutiny:
 - Greater U.S. Government racial or ethnic profiling from U.S. Government
 - More difficulty in obtaining research funds
 - More fear and anxiety that they are surveilled by U.S. Government
- Survey data also show that scientists of non-Chinese descent are now behaving differently in scientific collaborations with China, even at expense of their own research:
 - Cutting or reducing ties with their potential collaborators in China
 - Declining to hire Chinese post docs
 - Limiting their communications with scholars in China
- Full C100 report and related materials are available here: <https://www.committee100.org/initiatives/racial-profiling-among-scientists-of-chinese-descent-and-consequences-for-the-us-scientific-community/>

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CONTINUED “WHOLE OF GOVERNMENT” APPROACH TO US-CHINA COMPETITION

- While Biden Administration seeks to develop, execute its own foreign policy and national security strategies with China, in its first year in office, has been more continuity of many former administration measures than might have been expected
- *Leaving NSPM-33 in place and having OSTP send out a formal invitation for public comment on how to implement that memorandum is surest signal to U.S. higher education that Biden Administration still takes protection of US research establishment very seriously and will hold both federally-funded researchers and research institutions responsible for proper disclosures and reporting of conflicts*
- AAU, many other academic groups still seeking to meet with Biden Administration officials to adopt more transparent and consistent policies and interpretations
- Many more organizations and university faculty members urging Justice Department to drop or at least to modify its China Initiative

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Questions???

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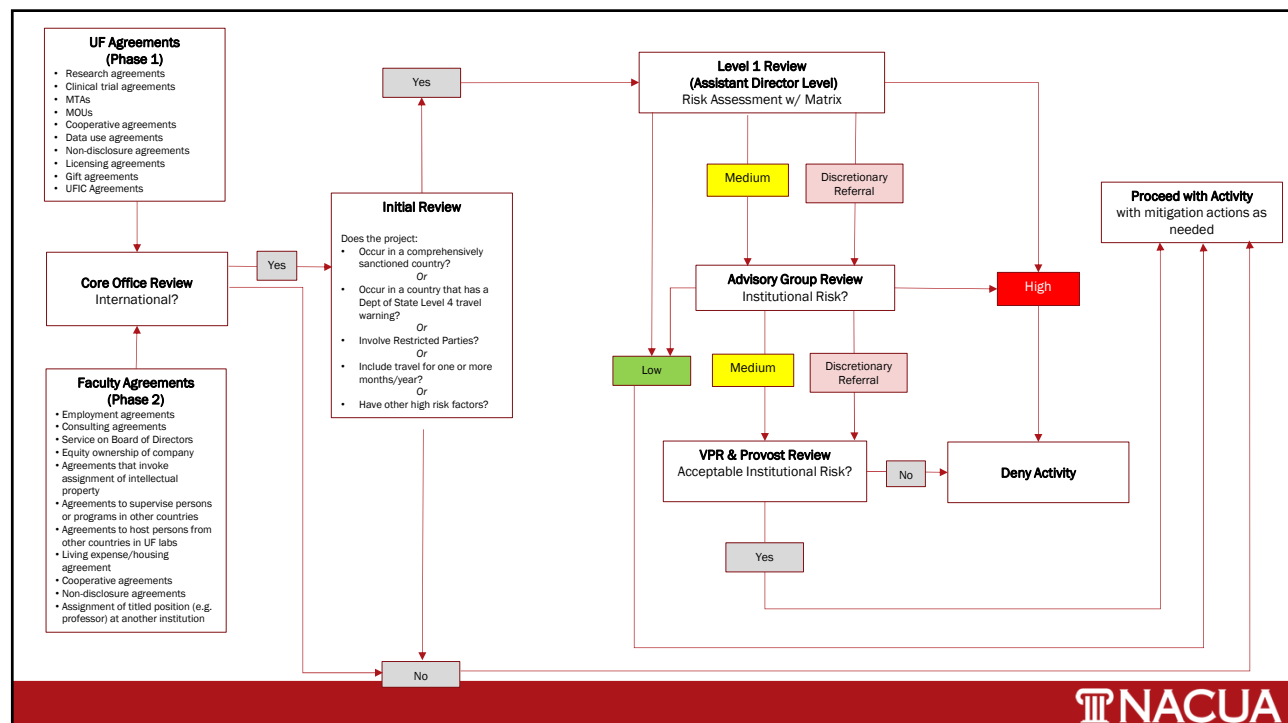
Avoiding Violations and False Claims in the Foreign Influence Space: A Robust Outside Activities Disclosure Process

- Education and training to specifically address the importance of disclosure of certain outside activities and interests
- Making disclosure clear and simple
- Centralizing the process and review function in an office with subject matter expertise (taking the conflicts out of conflicts)

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Event: Ancillary Review from UFOLIO for Foreign Employment Contract					
Risk Category	Low (1)	Medium (2)	High (3)	Unacceptably High (4)	Comments
Country			X		China
Activity			X		Foreign Government Talent Recruitment Program Formal Affiliation with Foreign University Req'd
IP Value			X		Contract requires waive IP
PI (Federal Funding, Research Agenda, etc.)		X			Large federal portfolio including NSF
Export Control (TCP)			X		Faculty projects include two TCPs Numerous TCPs within the department
Field of Expertise			X		Computer Engineering, focus on AI
Personnel (UF traveling to; Visitors to UF)			X		UF Faculty – minimum 3 month in China req'd Foreign university faculty and students visit UF
Dollar Value			X		UF Faculty to receive \$50,000/ year for 3 years
Military Entity or Government Affiliation	X				No known military affiliation of university
Restricted Party or Association	X				Not a restricted entity
Risk Totals	3	2	18	0	
Total Risk:	High			Determination:	Denied
	per Advisory Group Review			Mitigation:	None available

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THE WHITE HOUSE

WASHINGTON

January 14, 2021

NATIONAL SECURITY PRESIDENTIAL MEMORANDUM - 33

MEMORANDUM FOR THE VICE PRESIDENT

THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF THE INTERIOR
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE SECRETARY OF HEALTH AND HUMAN SERVICES
THE SECRETARY OF TRANSPORTATION
THE SECRETARY OF ENERGY
THE SECRETARY OF EDUCATION
THE SECRETARY OF VETERANS AFFAIRS
THE SECRETARY OF HOMELAND SECURITY
THE ASSISTANT TO THE PRESIDENT AND CHIEF OF STAFF
THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION
AGENCY
THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND
BUDGET
THE DIRECTOR OF NATIONAL INTELLIGENCE
THE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY
THE ASSISTANT TO THE PRESIDENT FOR NATIONAL
SECURITY AFFAIRS
COUNSEL TO THE PRESIDENT
ASSISTANT TO THE PRESIDENT, DEPUTY COUNSEL TO THE
PRESIDENT FOR NATIONAL SECURITY AFFAIRS, AND
NATIONAL SECURITY COUNCIL LEGAL ADVISOR
THE DIRECTOR OF THE OFFICE OF SCIENCE AND
TECHNOLOGY POLICY
THE DIRECTOR OF THE NATIONAL SCIENCE FOUNDATION
THE ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION
THE DIRECTOR OF THE FEDERAL BUREAU OF
INVESTIGATION
THE SECRETARY OF THE SMITHSONIAN
THE DIRECTOR OF THE NATIONAL INSTITUTES OF HEALTH

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

Section 1. Purpose. This memorandum directs action to strengthen protections of United States Government-supported Research and Development (R&D) against foreign government interference and exploitation. The United States Government provides significant support to R&D across a broad spectrum of research institutions and programs conducted both within and outside of the United States and its territories. This R&D, including both basic and applied research, is a key contributor to American science and technology (S&T) innovation and is essential to United States economic and national security.

Much of United States Government-supported R&D is broadly shared and includes fundamental research as defined in National Security Decision Directive (NSDD)-189 as well as scientific research using publicly available data. The open and collaborative nature of the United States R&D enterprise underpins America's innovation, S&T leadership, economic competitiveness, and national security.

Unfortunately, some foreign governments, including the People's Republic of China, have not demonstrated a reciprocal dedication to open scientific exchange, and seek to exploit open United States and international research environments to circumvent the costs and risks of conducting research, thereby increasing their economic and military competitiveness at the expense of the United States, its allies, and its partners. While maintaining an open environment to foster research discoveries and innovation that benefit our Nation and the world, the United States will also take steps to protect intellectual capital, discourage research misappropriation, and ensure responsible management of United States taxpayer dollars. This includes steps to ensure that participants with significant influence on the United States R&D enterprise fully disclose information that can reveal potential conflicts of interest and conflicts of commitment.

Sec. 2. Definitions. For the purposes of this memorandum:

(a) the term "participants in the United States R&D enterprise" includes researchers at academic research institutions, independent research institutes, medical centers

and institutes, private companies, and Federal Government research centers and laboratories, as well as those who participate in the process of allocating and awarding Federal R&D funding;

(b) the term "United States Government supported R&D" includes R&D projects funded by the United States Government, in whole or in part; projects that use United States Government equipment or facilities for conducting R&D; and R&D projects in which United States Government employee and contractor personnel participate, regardless of the project's funding source;

(c) the term "conflict of interest" or "conflicts of interest" means a situation in which an individual, or the individual's spouse or dependent children, has a financial interest or financial relationship that could directly and significantly affect the design, conduct, reporting, or funding of research;

(d) the term "conflict of commitment" or "conflicts of commitments" means a situation in which an individual accepts or incurs conflicting obligations between or among multiple employers or other entities. Many institutional policies define conflicts of commitment as conflicting commitments of time and effort, including obligations to dedicate time in excess of institutional or funding agency policies or commitments. Other types of conflicting obligations, including obligations to share improperly information with, or to withhold information from, an employer or funding agency, can also threaten research security and integrity, and are an element of a broader concept of conflicts of commitment;

(e) the term "foreign government-sponsored talent recruitment program" or "foreign government-sponsored talent recruitment programs" means an effort directly or indirectly organized, managed, or funded by a foreign government or institution to recruit S&T professionals or students (regardless of citizenship or national origin, and whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state

for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of Federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to United States entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation;

(f) the term "Federal personnel" means officers and employees of the Government of the United States and members of the uniformed services (including members of the Reserve Components); and

(g) the term "digital persistent identifier" or "digital persistent identifiers" means a unique digital identifier that permanently and unambiguously identifies a digital object or an individual.

Sec. 3. Roles and Responsibilities. (a) The heads of executive departments and agencies (agencies) that fund R&D activities (funding agencies) shall, consistent with applicable law:

(i) require that participants in the United States R&D enterprise who significantly influence the design, conduct, reporting, reviewing, or funding of Federally-funded research disclose appropriate information, consistent with section 4(b) of this memorandum, that will enable reliable determinations of whether and where conflicts of interest and commitment exist, consistent with applicable Federal laws and regulations;

(ii) cooperate with organizations receiving Federal funds to ensure that the organizations have established and administer policies and processes to identify and manage risks to research security and integrity, including potential conflicts of interest and commitment;

(iii) identify, in cooperation with agency Inspectors General and law enforcement agencies as appropriate and as consistent with applicable law, disclosures

that have the potential negatively to impact research funding, security, or integrity;

(iv) cooperate with agency Inspectors General and law enforcement, as appropriate, in investigation of suspected instances of failure to comply with disclosure requirements; and

(v) ensure the availability and application of appropriate and effective consequences for violations of disclosure policies and for engagement in other activities that threaten the security and integrity of the United States R&D enterprise.

(b) The Secretary of Education shall ensure that the Department of Education (ED) issues bi-annual public reports of information about gifts and contracts received by institutions from foreign sources disclosed from certain institutions that participate in the Title IV student assistance programs, as required by section 117 of the Higher Education Act, as amended.

(c) The Secretary of State is responsible for ensuring that the Department of State, in conjunction with the Department of Homeland Security (DHS), screens foreign individuals seeking to obtain a visa to participate in the United States R&D enterprise for national security risk, based on all applicable standards for visa eligibility. Additionally, the Secretary of State shall engage with key foreign allies and partners to limit the potential for foreign government exploitation of the international R&D enterprise.

(d) The Secretary of Homeland Security is responsible for ensuring that DHS, in conjunction with the Department of State, screens foreign individuals who are nonimmigrant students and exchange visitors seeking to participate or participating in the United States R&D enterprise for national security risks. The Secretary of Homeland Security is also responsible, consistent with applicable law, for ensuring that DHS maintains information regarding foreign students and researchers to protect national security while supporting lawful entry and stay of foreign individuals coming to the United States for educational and cultural exchange programs.

(e) The Director of the Federal Bureau of Investigation (FBI) is responsible for investigating violations of Federal law, including those related to research security and integrity,

that are not exclusively assigned to another agency, and, as vested by law and Presidential directive, carry out investigations within the United States of threats to the national security. Additionally, the Director shall:

(i) utilize established mechanisms as appropriate, including legal process, to access information disclosed to institutions and agencies that may be of evidentiary value in an investigation;

(ii) ensure that the FBI shares information regarding research security threats, as appropriate and consistent with applicable law, with agencies and research institutions; and

(iii) ensure that FBI Field Offices expand and enhance their existing relationships with universities and research institutions or, in cases where there is no current relationship, establish and maintain relationships with universities and research institutions within their area of responsibility, in coordination with other agencies.

(f) The Attorney General is responsible for enforcing, as appropriate, criminal laws relating to activities that undermine research security and integrity, such as economic espionage, theft of trade secrets, grant fraud, false statements to Federal officials, computer intrusions, and others.

(g) The Director of National Intelligence (DNI) shall coordinate Intelligence Community efforts to identify and assess the capabilities, activities, and intentions of foreign actors as they relate to the security of the United States R&D enterprise.

(h) The Director of the Office of Science and Technology Policy (OSTP), through the National Science and Technology Council (NSTC), shall coordinate activities to protect Federally funded R&D from foreign government interference, and outreach to the United States scientific and academic communities to enhance awareness of risks to research security and Federal Government actions to address these risks.

Sec. 4. Priorities. It is the policy of the United States to:

(a) Enhance Awareness of Research Security Risks and Protections.

(i) Consistent with applicable law, the Director of OSTP, in coordination with the DNI and heads of other agencies as appropriate, shall engage with the United States R&D enterprise to enhance awareness of risks to research security and integrity and policies and measures for mitigating these risks. This outreach will seek to:

1. Explain the threats posed by some foreign government-sponsored efforts, including some foreign government-sponsored talent recruitment programs, that seek to exploit the United States R&D enterprise;
2. Explain Federal policies and actions to mitigate risks to research security and integrity;
3. Promulgate guidelines for research institutions to mitigate risks to research security and integrity; and
4. Increase awareness among agencies and research institutions about existing law, regulations, and other mechanisms that can protect against the unauthorized transfer of United States technology and intellectual property (e.g., classification, economic sanctions, export controls, trade enforcement actions), and any relevant limitations of these regulations and mechanisms.

(ii) The DNI shall develop, in coordination with the heads of other agencies, information and intelligence products related to research security that are suitable for dissemination, in accordance with applicable law, to other agencies; to Federal, State, local, and tribal officials; to research institutions; the private sector; and to allies and partners. Where appropriate, the DNI should consider declassifying or reducing the level of classification of relevant information to ensure that decision makers in and out of government have the details they need to understand

research security threats and to develop targeted risk mitigation strategies and policies. These materials will seek to:

1. Explain foreign government supported collection methods and means of exploitation;
2. Help identify R&D activities and collaborations with significant risk of exploitation; and
3. Provide counterintelligence awareness training.

(b) Strengthen Disclosure Requirements and Processes. The heads of United States research funding agencies shall require the disclosure of information related to potential conflicts of interest and commitment from participants in the Federally funded R&D enterprise. Participants' disclosures should be provided to the organization applying for or receiving the Federal funding, the funding agency, or both, consistent with the funding agency policies and applicable laws and regulations. The appropriate disclosure requirement varies depending on the individual's role in the United States R&D enterprise. Disclosure requirements outlined in this memorandum should supplement, but do not replace, existing disclosure requirements set forth in law and United States Office of Government Ethics regulations, which apply to some elements of the United States R&D enterprise.

(i) Agencies shall require disclosure, as specified in section 4(b)(iii) below and where consistent with relevant United States law, regulation, contract, agreement and award, from the following segments of the Federally funded R&D enterprise:

1. Principal investigators (PIs) and other senior/key personnel seeking or receiving Federal R&D funding (i.e., extramural funding);
2. Individuals participating in the process of allocating Federal funding: program officers, peer/merit reviewers, and members of advisory panels and committees; and

3. Researchers at Federal agency laboratories and facilities (i.e., intramural researchers, whether or not Federally employed), including government owned, contractor-operated laboratories and facilities.

(ii) Agencies shall require the following disclosures, where consistent with relevant United States law, regulation, contract, agreement and award depending on the role of the individual in the United States R&D enterprise as specified in section 4(b)(iii) below:

1. Organizational affiliations and employment;
2. Other support, contractual or otherwise, direct and indirect, including current and pending private and public sources of funding or income, both foreign and domestic. For researchers, other support includes all resources made available to a researcher in support of and/or related to all of their professional R&D efforts, including resources provided directly to the individual rather than through the research institution, and regardless of whether or not they have monetary value (e.g., even if the support received is only in-kind, such as office/laboratory space, equipment, supplies, or employees). This includes resource and/or financial support from all foreign and domestic entities, including but not limited to, gifts provided with terms or conditions, financial support for laboratory personnel, and participation of student and visiting researchers supported by other sources of funding;
3. Current or pending participation in, or applications to, programs sponsored by foreign governments, instrumentalities, or entities, including foreign government-sponsored talent recruitment programs. Agencies or their Inspectors General shall require that individuals disclose associated contract(s), upon request of the recipient research institution or the funding agency, in addition to the fact of participation; and

4. Positions and appointments, both domestic and foreign, including affiliations with foreign entities or governments. This includes titled academic, professional, or institutional appointments whether or not remuneration is received, and whether full-time, part-time, or voluntary (including adjunct, visiting, or honorary).

(iii) Within 12 months of the date of this memorandum, and consistent with applicable law, the heads of United States research funding agencies shall establish policies requiring disclosure of the information reflected in the table below. Depending on their particular circumstances, agencies may also require disclosure of additional information, and/or disclosure from a broader range of R&D enterprise participants, either as a matter of course or upon agency request. Disclosures and disclosure requirements may be modified or excluded when so authorized by agencies for national security purposes.

	Affiliations /Employment	Other support	Foreign government sponsored talent recruitment programs	Positions/ Appointments
<u>Tier I</u> <ul style="list-style-type: none"> • Principal Investigators & other key personnel • Program officers • Intramural funding recipients 	Y	Y	Y	Y
<u>Tier II</u> <ul style="list-style-type: none"> • Peer reviewers • Advisory Committee/Panel members 	Y	N	Y	Y

(iv) Consistent with applicable law, agencies shall require initial disclosures and updates to disclosure reporting. Relevant agency employees and contractor personnel should provide initial disclosure when hired or assigned relevant duties. Funding applicants should provide initial disclosure as part of the proposal or award process, per agency requirements. Updates should occur annually, or more frequently where appropriate to account for individuals' changing circumstances and for additions to funded research teams. Agencies should ensure that individuals have reasonable recourse to correct or address inaccurate or incomplete information.

(v) Consistent with applicable Federal laws and statutory authorities, within 1 year of the date of this memorandum, funding agencies shall establish policies regarding requirements for individual researchers supported by or working on any Federal research grant to be registered with a service that provides a digital persistent identifier for that individual.

(vi) Agencies shall standardize disclosure processes, definitions, and forms across funding agencies to the extent practicable. The Director of the Office of Management and Budget (OMB) shall work with OSTP, the Office of Government Ethics, and other agencies to coordinate the standardization of policies and forms related to disclosure of conflicts of interest and commitment. Where appropriate and consistent with applicable Federal laws and regulation, agencies should standardize forms for initial disclosures as well as annual updates, integrating digital persistent identifiers wherever appropriate and practicable, and should provide clear instructions to accompany these forms and to minimize any associated administrative burden.

(vii) The Secretary of Education shall continue to support the balance between academic freedom and national security by promoting financial transparency in the relationship between institutions of higher education (IHES) and foreign sources through enforcement of section 117 of the Higher Education Act. ED shall continue to ensure that it provides,

and updates as necessary, clear public guidance to IHEs on compliance with section 117 requirements, and shall continue to ensure that disclosed information is made publicly available in a format that is readily accessible and usable.

(viii) Agencies shall, as appropriate, work with their Inspector General, General Counsel, law enforcement, university program offices and security officers, and the private sector to strengthen mechanisms and capabilities to identify and investigate potential violations of agency disclosure requirements. Where appropriate, funding agencies or their Inspectors General shall cooperate and assist with administrative and law enforcement investigations and analyses aimed at uncovering violations, including sharing information from disclosure statements, to the extent that such sharing is consistent with privacy laws and other legal restrictions and does not interfere with law enforcement activities.

(ix) Agencies shall ensure appropriate and effective consequences for violation of disclosure requirements and engagement in other activities that threaten research security and integrity. Depending on the nature of the violation, agencies may consider a range of consequences including but not limited to the following:

1. Termination of Federal employment or contract;
2. Termination of a grant, cooperative agreement, contract, or award;
3. Preserving a grant, cooperative agreement, contract, or award, but requiring or otherwise ensuring that individual(s) do not perform work under the grant, contract, or award;
4. Ineligibility for participation in United States Government review panels and other activities;
5. Suspension or debarment of eligibility for Federal funding; and

6. Suspension or denial of Title IV funds.

In addition to these measures, civil and criminal penalties under United States Federal and State laws may apply in some cases, such as when individuals intentionally provide incomplete or incorrect information in the grant funding process, or misappropriate trade secrets or export controlled information. Federal agencies should consult with their Inspectors General, General Counsel, security officers, and/or law enforcement agencies as appropriate, to avoid compromising ongoing investigative and law enforcement activities when evaluating actions towards those who violate disclosure requirements or otherwise threaten research security and integrity.

(c) Limit Access and Participation.

(i) Heads of agencies shall ensure that their respective agencies have policies and processes to control and track access to and utilization of United States Government research facilities, consistent with applicable law and appropriations. These should include processes for controlling and tracking physical access, vetting and securely hosting foreign visitors, and evaluating research partnerships or contracts with outside entities.

(ii) Within 12 months of the date of this memorandum, and consistent with applicable law, heads of agencies shall establish policies, or clarify existing policies where applicable, that prohibit Federal personnel currently employed by their respective agencies who are also participants in the United States R&D enterprise from participating in foreign government-sponsored talent recruitment programs. Agency heads may consider agency-specific policies that would extend this prohibition to some or all agency contractor personnel to further protect research security and integrity. Agency heads may provide exemptions from this prohibition where they determine appropriate, and shall notify the President through the Assistant to the President for National Security Affairs (APNSA) within 30 days of any

establishment of or change in exemption criteria. For any personnel exempted from these prohibitions, disclosure requirements described in section 4(b) of this memorandum shall still apply.

(d) Vetting Foreign Students and Researchers. The Secretary of State, in coordination with the Secretary of Homeland Security, shall ensure that vetting processes for foreign students and researchers reflect the changing nature of the risks to United States R&D.

(i) The Secretary of State shall continue to apply a risk-based process to vet visa applicants seeking to study or conduct research activities in the United States, based on all applicable standards for visa eligibility. The Secretary shall take such steps as are necessary to ensure consular officers may collect and consider the following information pertaining to visa applicants, wherever relevant to the consular officer's adjudication of a visa application based on relevant standards under United States law:

1. Employment and employment history;
2. Sources of financial support;
3. Education history, including academic institutes, degree(s), and research advisor(s);
4. Current and prior R&D affiliations and projects;
5. Current and pending participation in foreign government-sponsored talent recruitment programs;
6. Program of study and/or research; and
7. Facility/facilities and location(s) of expected work.

(ii) The Secretary of Homeland Security shall assess, within 3 months of the date of this memorandum, any regulatory and technical updates necessary to require that relevant institutions:

1. Report the same information specified above in section 4(d)(i) in the Student and Exchange Visitor Information System (SEVIS), for foreign students and researchers subject to reporting in that system; and,
2. Provide updates in SEVIS annually, or more frequently where appropriate.
3. Within 3 months of the completion of this assessment, the Secretary shall provide to the APNSA a plan regarding implementation of such requirements.

(iii) The Secretary of Homeland Security, in coordination with the Secretary of State, shall assess, within 1 year of the date of this memorandum, the feasibility and utility of including the information specified in section 4(d)(i) in a searchable centralized database. This database should provide the capability to flag any disclosed or otherwise identified connections to organizations listed in Department of Commerce's Entity List.

(e) Information Sharing. To strengthen the effectiveness of response measures, heads of agencies shall share information about violators (e.g., those who violate disclosure or other policies promulgated pursuant to this memorandum, participate in foreign government-sponsored talent recruitment programs contrary to policies issued pursuant to section 4(c)(ii), or whose activities clearly demonstrate an intent to threaten research security and integrity) across Federal funding institutions and with Federal law enforcement agencies, the DHS, and State, to the extent that such sharing is consistent with privacy laws and other legal restrictions, and does not interfere with law enforcement or intelligence activities. Where appropriate and consistent with due process, privacy considerations, and all other applicable law, heads of agencies should consider providing notice to other Federal funding institutions in cases where significant concerns have arisen but a final determination has not yet been made. Where appropriate and consistent with applicable law and appropriations, funding agencies shall include within grant terms and conditions provisions that allow for such information sharing.

(f) The heads of funding agencies shall ensure that Federal agency personnel conducting R&D activities or participating in the process of allocating Federal R&D funding receive research security training. Training shall include, as appropriate, risks to the United States R&D enterprise, individuals' responsibilities related to research security and integrity, and circumstances and behaviors that may indicate risk to research security and integrity. Training programs shall include an initial orientation for new personnel, and annual refresher training.

(g) Risk Identification and Analysis. Within 12 months of the date of this memorandum, heads of funding agencies shall require that research institutions receiving Federal science and engineering support in excess of 50 million dollars per year certify to the funding agency that the institution has established and operates a research security program. Institutional research security programs should include elements of cyber security, foreign travel security, insider threat awareness and identification, and, as appropriate, export control training. Heads of funding agencies shall consider whether additional research security program requirements are appropriate for institutions receiving Federal funding for R&D in critical and emerging technology areas with implications for United States national and economic security.

(h) Promote and Protect International R&D Cooperation. The Secretary of State, in coordination with the Director of OSTP and the heads of other agencies, shall engage with foreign allies and partners with the goal of promoting policies and practices that increase awareness of risks to research security and improve cooperation on international protection and response efforts. Messaging should be designed to increase awareness and encourage foreign governments to undertake effective practices to assess and mitigate risks to research security and integrity.

Sec. 5. Implementation. The APNSA, in coordination with the Director of OMB and the Director of OSTP, shall coordinate the implementation of this memorandum, and, on an annual basis, shall prepare and submit a report to the President detailing activities taken by funding agencies to implement this memorandum.

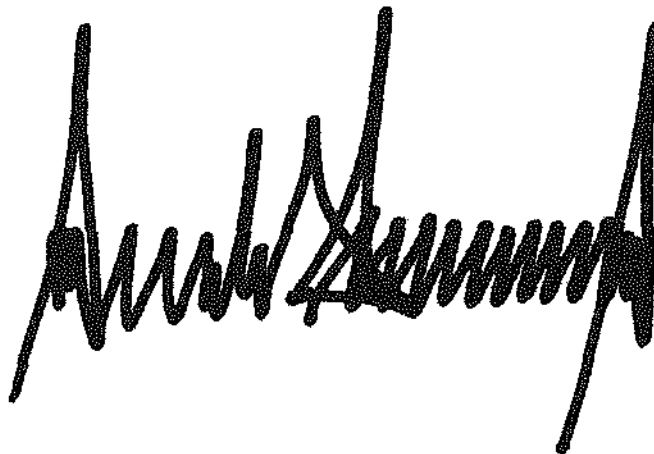
Sec. 6. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) The authority granted by law to an executive department or agency, or the head thereof; or

(ii) The functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and Presidential guidance, and subject to the availability of appropriations. The activities described in this memorandum should be conducted in a manner that is consistent with the Constitution; Executive Order 12333 of December 4, 1981 (United States Intelligence Activities), as amended; other applicable law and Presidential guidance; and policies and procedures pertaining to: (i) the appropriate handling of information about United States Persons (as defined in Executive Order 12333) and other individuals protected by United States law; (ii) the protection of sources, methods, and activities; (iii) privacy, civil rights, and civil liberties; and (iv) the protection of other sensitive information.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A large, stylized handwritten signature in black ink, appearing to be a cursive name, possibly "Andrew D. ...".



February 11, 2021

The Honorable Philip H. Rosenfelt
Acting Secretary of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Acting Secretary Rosenfelt,

On behalf of the higher education associations listed below, I am writing to request a meeting with the Department of Education to discuss requirements for foreign gift and contract reporting under Section 117 (Sec. 117) of the Higher Education Act of 1965 (HEA) and ways to improve reporting compliance. We appreciate the need for complete and accurate reporting under Sec. 117, and take seriously the risk of illicit technology transfer and undue foreign influence. Colleges and universities are committed to working with the Department to meet these obligations, and we believe the best way to accomplish that is through a constructive collaboration between the Department and stakeholders.

Unfortunately, despite repeated pleas over the past two years, the Department has refused to engage with the higher education community regarding Sec. 117. In January 2019, we wrote the Department to address confusion and specific concerns about Sec. 117 compliance.¹ The Department never responded. Instead, it sent a letter to ACE in July 2019² indicating that institutions did not need additional guidance.

In addition, instead of engaging in remediation efforts with colleges and universities to correct insufficient or inaccurate Sec. 117 reporting, the Department launched expansive and burdensome investigations of 19 major public and private universities that far exceeded the requirements of Sec. 117 foreign gift or contract reporting. Several of the institutions investigated had diligently tried to comply with Sec. 117 for many years. Other investigations targeted institutions that contacted the Department to update and self-correct records after discovering reporting oversights, as is clearly permitted under the law. The Department's continuing punitive and non-responsive actions towards Sec. 117 compliance have resulted in many institutions being afraid to ask the Department for guidance on reporting obligations and for help correcting errors. This runs counter to the goal of enhanced transparency of foreign gift and contract reporting.

Moreover, in public communications and a recently released report on these

¹ <https://www.acenet.edu/Documents/Letter-to-Dept-of-Education-Regarding-Section-117-of-HEA.pdf>

² <https://www.acenet.edu/Documents/ED-Section-117-Letter-to-ACE.pdf>

investigations, the Department deceptively asserted that there is vast and deliberate underreporting by colleges and universities of foreign gifts and contracts that threatens our national security.³ These claims are false and inconsistent with the actions of the higher education community in addressing national security concerns and, more recently, issues of malign foreign influence. Over the past several years, higher education associations and institutions have worked to respond to concerns from the administration and Congress, as well as actively engaged with a number of national security and science agencies on these critical issues. Regrettably, the Department of Education is the only federal agency that is unwilling to address compliance concerns. This is not in the best interests of colleges and universities, the Department of Education, or the country.

We would like to meet with the appropriate staff at the Department to discuss Sec. 117 foreign gift and contract reporting requirements as soon as possible. This is especially timely as the next reporting deadline is in July, and many of our institutions continue to struggle with the latest confusing Information Collection Request (ICR) put in place by the previous administration.

Thank you for your prompt attention to this important matter.

Sincerely,



Ted Mitchell
President

On behalf of:

American Association of State Colleges and Universities
American Council on Education
American Dental Education Association
Association of American Colleges and Universities
Association of American Universities
Association of Catholic Colleges and Universities
Association of Governing Boards of Universities and Colleges
Association of Independent Colleges and Universities in Pennsylvania
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Connecticut Conference of Independent Colleges
Council for Advancement and Support of Education
Council on Governmental Relations
EDUCAUSE
Hispanic Association of Colleges and Universities

³ <https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf>

NASPA - Student Affairs Administrators in Higher Education
National Association of College and University Business Officers
National Association of College Stores
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators

Clear Rules for Research Security and Researcher Responsibility

AUGUST 10, 2021 • OSTP BLOG

By: Dr. Eric Lander
President's Science Advisor and
Director of the Office of Science and Technology Policy

The Biden-Harris Administration holds a strong commitment to protecting research security and maintaining the core values behind America's scientific leadership, including openness, transparency, honesty, equity, fair competition, objectivity, and democratic values.

During its final week in office, the previous administration issued a National Security Presidential Memorandum (NSPM-33) to “strengthen protections of United States Government-supported R&D against foreign government interference and exploitation” while “maintaining an open environment to foster research discoveries and innovation that benefit our nation and the world.”

Given the timing of the release of NSPM-33, the previous administration did not have time to develop implementation guidance for federal agencies. The Office of Science and Technology Policy (OSTP) is working on how to implement NSPM-33 effectively, rigorously, and uniformly across the federal government in a way that protects the nation's interests in both security and openness.

Over the next 90 days, OSTP will develop clear and effective implementation guidance for NSPM-33, working in close partnership with the National Security Council staff, fellow Cabinet agencies, and other federal agencies through the National Science and Technology Council.

NSPM-33 implementation guidance will address three major areas:

- Disclosure Policy – ensuring that federally-funded researchers provide their funding agencies and research organizations with appropriate information concerning external involvements that may bear on potential conflicts of interest and commitment;
- Oversight and Enforcement – ensuring that federal agencies have clear and appropriate policies concerning consequences for violations of disclosure requirements and interagency sharing of information about such violations; and,
- Research Security Programs – ensuring that research organizations that receive substantial federal R&D funding (greater than \$50 million annually) maintain appropriate research security programs.

Below, we outline some of the principles that will guide this work.

Protect America’s Security and Openness

Since World War II, America’s research enterprise has been second to none, delivering profound benefits for our health, economy, and national security. We’ve led the world for two key reasons: because we invest heavily, and because we do science openly.

This openness matters a great deal – and there’s strong bipartisan support for it. It means ideas are better – because they have to compete in an open, global marketplace, where new concepts are critiqued and debated on their merits. It means we have the best people – because we welcome and are a magnet for outstanding scientific talent from around the world. And it ensures scientific progress moves forward rapidly – because every new breakthrough builds on those that came before it.

It has become clear, though, that some foreign governments, including the Chinese government, are working vigorously to illicitly acquire, and in some cases outright steal, U.S. research and technology. There have been efforts to induce American scientists to secretly conduct research programs on behalf of foreign governments or to inappropriately disclose non-public results from research funded by U.S. government sources. Such threats are real, serious, and completely unacceptable.

We thus have to guard against abuses and protect intellectual property rights – without undermining the openness that is central to both scientific discovery and our national character.

Be Clear

The vast majority of scientific researchers want to do the right thing. Here, doing the right thing means fully and transparently disclosing all relevant activities and information that bear on potential conflicts of interest and commitment.

Disclosing such information is part of the broader set of researchers' responsibilities to ensure objectivity, honesty, transparency, fairness, accountability, and stewardship. (These responsibilities are sometimes referred to as research responsibilities or research integrity.)

For researchers to fulfill their responsibility to disclose, the federal government needs to be clear about what should be disclosed and how. Establishing rules that are confusing, complicated, inconsistent, or unduly burdensome will not optimize security, because people and institutions tend not to follow such rules carefully.

We need policies and processes that are clear and uniform — so that well-intentioned researchers can easily and properly comply, and those with dishonest or malicious intent have little excuse for their actions.

For example, one approach might be to enable researchers to provide disclosures and declarations through a simple, modular, uniform system that functions like an electronic CV, containing information about a scientist's degrees, positions, affiliations, and funding sources, updated on a regular basis, that can be used for any federal grant.

We want to promote widespread understanding of the risks to research; provide a clear description of what relationships, appointments, and sources of funding pose potential conflicts of interest or commitment, and what information about them should be disclosed and when; ensure there are mechanisms to identify when policies and processes are violated; and ensure that there are clear and appropriate consequences for violation, coupled throughout to due process.

Ensure Policies Do Not Fuel Xenophobia or Prejudice

We have to assiduously avoid basing policies or processes on prejudice — including those that could fuel anti-Asian sentiments or xenophobia. Prejudice is fundamentally unacceptable, and will backfire because it will make it harder to attract the best scientific minds from around the world. We must affirm the integral role of Asian-Americans, Native Hawaiians, Pacific Islanders, and people of all national origins in this country; welcome international students and scholars; and avoid casting aspersions on people because of their identity or origins.

In designing policies, we should also avoid actions that are pointless or performative, such as requiring scientists to return honorary degrees from Chinese universities. And, it should never

be acceptable to target scientists for investigation based on their race or ethnicity. In protecting our nation, we must uphold its fundamental values.

As we work to develop this guidance and thereafter, we will continue to engage with America's diverse community of researchers and research institutions. We want to hear and incorporate the best ideas – especially ideas from those whose day-to-day work these policies affect. To send us your ideas on NSPM-33 implementation, email researchsecurity@ostp.eop.gov.

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INAPPROPRIATE FOREIGN INFLUENCE IN FEDERALLY FUNDED RESEARCH

November 10 – 12, 2021

Kris West, J.D., M.S.

Director, Research Ethics & Compliance
Council on Governmental Relations (COGR)

Jeff Seo, J.D. LL.M.

Assistant Vice Provost for Research Compliance
Northeastern University

I. Introduction

Since 2018, federally funded researchers at academic institutions have faced increasing scrutiny from funding agencies, law enforcement officials, and federal and state legislative bodies, concerning international research activities and support. Much of this attention has focused on researcher participation in “foreign government-sponsored talent recruitment programs” (FGTP) – efforts “directly or indirectly organized, managed, or funded by a foreign government or institution to recruit science and technology professionals or students (regardless of citizenship or national origin, and whether having a full-time or part-time position).”¹ Federal research funding agencies are particularly concerned about FGTP programs that are sponsored by foreign governments that agencies do not believe share U.S. norms regarding transparency and collaboration. Further, these agencies believe that in some instances foreign governments use these programs to illicitly acquire U.S. intellectual capital and technology.²

As governmental concern about “inappropriate foreign influence” has continued apace during 2021, academic research institutions have emphasized the need for a strong culture of transparency, while ensuring the protection and encouragement of international collaborations that are vital to scientific progress and the academic mission of broadly disseminating knowledge. Further, as many U.S. government agency efforts have focused on FGTP programs sponsored by the Chinese government institutions and faculty members have expressed concerns that such efforts may be motivated by xenophobia or prejudice.³

This paper will provide an overview of the “inappropriate foreign influence” landscape. It will begin with a discussion of important terms and concepts in this area, followed by summaries of

¹ Presidential Memorandum on United States Government-Supported Research and Development National Security Policy (“[NSPM-33](#)”) at Section 2(e) (Jan. 14, 2021). As drafted, the definition is unclear as to whether a private institution’s private recruitment efforts could be considered a FGTP; however, encompassing solely private action seems inconsistent with the notion of a “government-sponsored...program.” Note that there have been other definitions for this term that preceded the definition in NSPM-33. *See, e.g.*, NSF, “[Personnel Policy on Foreign Government Talent Recruitment Programs](#),” n. 1, (Jul. 11, 2019). Pending legislation contains yet other definitions for “malign foreign talent recruitment programs.” *See*, “[National Science Foundation for the Future Act](#),” H.R. [2225](#), § 7(a)(3), 117th Cong. (passed House Jun. 28, 2021).

² *See, e.g.*, F. Collins, [Statement on Protecting the Integrity of U.S. Biomedical Research](#) (Aug. 23, 2018).

³ *See, e.g.*, V. Ni, “[Abolish Trump-era ‘China Initiative.’ academics urge, amid racial profiling criticism.](#)” *The Guardian* (Sept. 14, 2021); E. Redden, “[Reconsidering the China Initiative](#),” *Inside Higher Ed* (Mar. 2, 2021);

key documents, recent enforcement actions, and high-profile cases. Finally, the paper will address items that institutions should consider as they develop effective practices to ensure compliance with these new requirements and promote a culture of transparency.

II. Overview of Issues in the Area of Inappropriate Foreign Influence

A. Concerns Regarding Researchers' External Activities

Unlike most commercial entities, academic institutions generally permit tenured faculty members to engage in external activities, such as consulting, because these activities often benefit both the faculty member and the institution. For example, permitting faculty members to consult with a commercial entity may improve their effectiveness as teachers or scholars by allowing them to put research theory into practice. Institutional policies governing participation in compensated external activities frequently limit participation in external activities to “20%” of compensated time or “one day a week.”⁴ These policies may contain other restrictions as well, such as prohibiting outside compensated teaching or research appointments without special permission; requiring department, school, or other administrative approval of the activity; or requiring that the activity be in the interest of both the faculty member and institution.⁵ Although participation in these external activities often confers benefits, it may also raise issues of conflict of interest, conflict of commitment, and transparency regarding sources of research support.

1. Financial Conflict of Interest

The National Institutes of Health (NIH) and the National Science Foundation (NSF) have long-standing regulations governing financial conflict of interests (FCOI) that may affect federally funded research. NIH’s FCOI regulations require institutions that receive Public Health Service (PHS) grants or cooperative agreements to “maintain an up-to-date, written, enforced policy on financial conflicts of interest” that complies with the requirements of [42 CFR Part 50, Subpart F](#). NSF’s standards requiring grantees to have FCOI policies are found in Chapter IX.A. of the [Proposal & Award Policies and Procedures Guide](#) (PAPPG). The National Aeronautics and Space Administration (NASA) has adopted the regulations at 42 CFR Part 50,⁶ while FDA has different FCOI regulations for investigators.⁷ Other agencies, including the Department of Energy and Department of Defense have no such agency-wide FCOI regulations.⁸ Although agency

⁴ See, e.g., Emory University, [Faculty Handbook](#), Chapt. 13.3, Conflict of Commitment (accessed Oct. 13, 2021); Georgetown University, [Faculty Handbook](#), § III.9. Outside Professional Activities (accessed Oct. 13, 2021); New York University, [Policy on Academic Conflict of Interest and Conflict of Commitment Policy](#), Sec. III.A (Sept. 1, 2013); Rice University, [Policy on Conflicts of Commitment and Outside Activities for Faculty](#) (rev. Jun. 8, 2020); University of Rochester, [Faculty Handbook](#) at p. 53 (updated Oct. 2021); University of Texas at Austin, [Handbook of Operating Procedures 2-2220](#), Faculty Consulting and Other Professional Activities, Including Outside Employment (Sept. 1, 1983); Yale University, [Guidance for Faculty Concerning Consulting and Other External Activities](#) (Nov. 12, 2020).

⁵ *Id.*

⁶ Office of the Chief Scientist, [NASA Guidelines for Promoting Scientific and Research Integrity](#) at p. 9 (Jun. 2018).

⁷ [21 CFR Part 54](#).

⁸ See, U.S. General Accounting Office (GAO), Testimony Before the Subcommittees on Investigations and Oversight and Research and Technology Committee on Science, Space, and Technology, House of Representatives, [Agency Actions Needed to Address Foreign Influence](#) at p. 5 (Oct. 5, 2021) (Department of Defense and Department of Energy have no agency-wide conflict of interest policies).

requirements differ in their terms (including their dollar thresholds for defining significant financial interests), they generally call for institutions to have policies that mandate researchers conducting agency-funded research to disclose significant financial interests that may impact the researcher's research or institutional responsibilities so that the institution can evaluate the interest to determine if a financial conflict of interest exists.

2. Conflict of Commitment

As previously discussed, academic institutions' policies on conflict of commitment (COC) typically concern the regulation of faculty external activities.⁹ To date, federal research funding agencies have not required funding recipients to adopt policies on COC.¹⁰ Federal concerns may arise, however, if researchers' external activities impact their ability to fulfill their responsibilities on federally funded research projects.¹¹ The regulations governing effort certification do not technically encompass these external activities.¹² Nonetheless, institutions must consider the "on-the-ground" calculation of whether a researcher can fulfill all their time commitments to institutional duties, federally funded research grants, and external activities without the necessity of super-human powers or time travel. Or, put more succinctly, how much time can an individual realistically work each 168-hour week?

3. Broadening the Concept of Conflict of Interest

In discussing COC and conflict of interest (COI) in the context of "inappropriate foreign influence," some governmental offices have recommended that research funding agencies broaden the definition of COI to include non-financial COI.¹³ In this respect, the U.S. Government Accounting Office (GAO) has gone further by labeling the term "Conflict of Commitment (*non-financial conflict of interest*)" (emphasis added). GAO defines this term as:

A situation in which an individual accepts or incurs conflicting obligations between or among multiple employers or other entities.

The definition goes on to note that while many institutional policies define COC as "conflicting commitments of time and effort, including obligations to dedicate time in excess of institutional or funding agency policies and commitments,"¹⁴ it may be broader. Specifically, GAO states that "obligations to improperly share information with, or to withhold information from, an employer or funding agency, can also threaten research security and integrity, and are elements of a broader concept of conflicts of commitment."¹⁵ GAO found that current research funding agency policies on COI do not address COC as a non-financial COI, and recommends that agencies "implement or update conflict of interest policies to include a definition on non-financial conflicts, . . . and

⁹ *Supra* n. 4.

¹⁰ See, GAO, [Agency Actions Needed to Address Foreign Influence](#) at p. 5-8.

¹¹ See, [2 CFR § 200.301](#).

¹² [2 CFR §200.430\(h\)\(2\)](#) ("[Institutional Base Salary] IBS excludes any income that an individual earns outside of duties performed for the [institute of higher education] IHE.")

¹³ See, e.g., GAO, [Agency Actions Needed to Address Foreign Influence](#) at p. 5. See, also, [NSPM-33](#) at §§ 2(d) & 4(b).

¹⁴ GAO, [Agency Actions Needed to Address Foreign Influence](#) at p. 5.

¹⁵ *Id.*

address these conflicts, both foreign and domestic.¹⁶ This view of COC as a specific flavor of COI is important because agencies with COI regulations on the books may consider amending them to include new definitions of “non-financial COI.”

Considering the federal government’s current focus on the intersection among COI, COC, and inappropriate foreign influence, many universities are examining their current policies and processes on COI and COC, including processes and systems for collecting, sharing, and validating/monitoring disclosures. For a very detailed discussion of this topic, including items that institutions may want to consider in developing/modifying institutional COC policies and processes, please see COGR’s September 2021 publication “[Principles for Evaluating Conflict of Commitment Concerns in Academic Research.](#)”

4. Disclosure of Sources of Support

Federal research funding agencies also are examining researchers’ sources of funding support under the lens of COI, particularly sources of support from other countries that may attach to the support “strings” that generate conflicts. For example, reviews of FGTP contracts with researchers have identified clauses:

- Providing that the U.S. and foreign institution will have joint ownership of intellectual property that would have belonged solely to the U.S. institution
- Requiring the researcher to recruit and train students from the foreign institution
- Requiring the researcher to list the foreign institution as the researcher’s primary affiliation in publications despite being a full-time employee of the U.S. institution¹⁷

Such clauses pose potential conflicts between the researcher’s obligations to the U.S. institution and the foreign institution, and institutions and agencies must be aware of these obligations to evaluate them and consider their impact.

Federal funding agencies also have made clear that they need to know about support for all of an investigator’s research endeavors from any source (foreign or domestic) to enable the agencies to evaluate whether they should allocate resources to fund the research. For example, NIH has advised grant recipients that in evaluating compliance risk stemming from various relationships, recipients must consider not only COI and COC, but also the potential for scientific and budgetary overlap.¹⁸

NIH and NSF have repeatedly stated that their disclosure requirements are not new, and that the numerous guidance and FAQs issued on this topic of late are merely reminders or clarifications of these requirements.¹⁹ Despite their insistence on this point, recent agency guidance documents are

¹⁶ *Id.* at p. 7.

¹⁷ [Staff Report, U.S. Senate Permanent Subcommittee on Investigations, Threats to U.S. Research Enterprise: China Talent Recruitment Plans](#) at p. 27-29 (Nov. 2019).

¹⁸ [NIH Frequently Asked Questions \(FAQs\), Other Support and Foreign Components](#), Preamble (accessed Oct. 14, 2021).

¹⁹ NIH, [NOT-OD-19-114](#), Reminders of NIH Policies on Other Support and on Policies related to Financial Conflicts of Interest and Foreign Components (Jul. 10, 2019) (“NIH has long required full transparency for all research activities both domestic and foreign and does not consider these clarification to be change in policy.”); F.

much more specific regarding the types of items that must be disclosed, and the range of these items is far broader than institutions or researchers ever previously contemplated. For example, both NIH and NSF have “clarified” that research support includes “in-kind” resources such as office/lab space, equipment, supplies, and employees, as well as certain consulting agreements.²⁰ Further, recent Biosketch guidance from NIH and NSF has made clear that reporting is required for all positions, appointments, and affiliations, whether academic, professional, titled, non-titled, paid, unpaid, full-time, part-time, voluntary, adjunct, visiting, or honorary.²¹

II. Key Documents in the Area of “Inappropriate Foreign Influence”

There are three key documents that set forth the U.S. government’s major concerns and requirements or recommendations regarding steps necessary to combat inappropriate foreign influence on federally funded research: Presidential Memorandum on United States Government-Supported Research and Development (NSPM-33)²², the Joint Committee on the Research Environment’s Recommended Practices for Strengthening the Security and Integrity of America’s S&T Enterprise (“JCORE Recommendations”)²³, and Section 223 of FY 2021 National Defense Authorization Act (“FY 2021 NDAA”)²⁴. Additionally, there are a number of agency guidance documents regarding appointment/affiliation and research support disclosures.

This section summarizes the major points of NSPM-33, the JCORE Recommendations, Section 223 of FY 2021 NDAA, and NIH and NSF disclosure guidance. For a very detailed analysis and comparison of NSPM-33, the JCORE Recommendations, Section 223 of FY 2021 NDAA, and NIH and NSF disclosure guidance documents, please consult COGR’s [“Chart Comparing Disclosure and Other Requirements/Recommendations among JCORE, NSPM-33, NDAA 2021, NSF & NIH \(including NIH NOT-OD-21-073.”](#)

A. NSPM-33

NSPM-33 was issued by the Trump administration on January 14, 2021 for the purpose of strengthening “protections of United States Government-supported Research and Development (R&D) against foreign government interference and exploitation.”²⁵ Section 4(b) outlines disclosures that federal research funding agencies must require from principal investigators and other key personnel on research funding awards and contracts, peer reviewers, and advisory committee/panel members. These disclosures include all “organizational affiliations and employment” and all “other support,” i.e., “all resources made available to a researcher in support of and/or related to all of their professional R&D efforts, including resources provided directly to the individual rather than through the research institution, and regardless of whether or not they

Cordova, NSF Office of the Director, [Dear Colleague Letter](#) (July 11, 2019)(“Since 1978, NSF has required senior project personnel on proposals to disclose all sources of support, both foreign and domestic.”).

²⁰ NIH, [NOT-OD-21-073](#), Upcoming Changes to the Biographical Sketch and Other Support Format Page for Due Dates on or after May 25, 2021 (Mar. 12, 2021); [NSF Pre-award and Post-award Disclosures Relating to the Biographical Sketch and Current and Pending Support](#) (Sept. 1, 2021) (“NSF Disclosures Table”).

²¹ *Id.*

²² [NSPM-33](#)

²³ National Science and Technology Council, [JCORE Recommendations](#) (Jan. 2021)

²⁴ [Pub. L. 116-283](#) (Jan. 1, 2021) (see text of enrolled bill).

²⁵ [NSPM-33](#) at § 1.

have monetary value . . .”²⁶ NSPM-33 gives agencies twelve months from the date of the memorandum to issue policies requiring such disclosures.

Another important provision of NSPM-33 requires research institutions that receive more than \$50 million per year in federal science and engineering support to “certify to the funding agency that the institution has established and operates a research security program” that addresses cybersecurity, foreign travel security, export controls (as appropriate), and “insider threat awareness and identification.”²⁷

After the election of President Biden, academic institutions waited to see if the new administration would continue with NSPM-33, or substantially modify, or abandon the document. On August 10, 2021, Eric Lander, the newly appointed Director for the Office of Science and Technology Policy (OSTP) published a blog post²⁸ that announced that within the next 90 days, OSTP would develop a cross-agency implementation plan for NSPM-33. Dr. Lander advised that the implementation plan would focus on the following three major topics: (a) disclosure policy to ensure full transparency regarding external activities with the potential for COI or COC; (b) oversight and enforcement that provides clear and appropriate consequences for violations of disclosure requirements; and (c) establishment of research security programs.²⁹ Significantly, Dr. Lander also stressed the importance of ensuring that standards across agencies are consistent to the greatest extent possible and ensuring that agencies “assiduously avoid basing policies or processes on prejudice — including those that could fuel anti-Asian sentiments or xenophobia.”³⁰

For a detailed discussion of items that institutions should consider as they prepare for the implementation of NSPM-33, please see COGR’s August 2021 publication [Federal Focus on Inappropriate Foreign Influence on Research: Practical Considerations in Developing an Institutional Response](#).

B. JCORE Recommendations

The JCORE Recommendations set forth 21 recommended practices organized under five broad themes: (a) Demonstrate Organizational Leadership and Organization; (b) Establish an Expectation of Openness and Transparency; (c) Provide and Share Training, Support, and Information; (d) Ensure Effective Mechanisms for Compliance with Organizational Policies; and (e) Manage Potential Risks Associated with Collaborations and Data. The practices are recommended, not required, and are to be applied using a “balanced risk-based approach” that recognizes both risks and benefits of open, international collaboration.³¹

Many of the JCORE Recommendations are similar to the provisions of NSPM-33, but in general the JCORE Recommendations are broader. For example, NSPM-33 requires agencies to establish affiliation and support disclosure requirements for senior and key personnel on grant awards.³²

²⁶ [NSPM-33](#) at § 4(b)(ii).

²⁷ [NSPM-33](#) at § 4(g).

²⁸ [Clear Rules for Research Security and Researcher Responsibility](#).

²⁹ *Id.*

³⁰ *Id.*

³¹ [JCORE Recommendations](#) at p. 4.

³² [NSPM-33](#) at §4(b).

The JCORE Recommendations, however, call for expanding disclosure requirements to additional segments of the research enterprise, including postdocs, graduate students, and visiting scholars who will be at an institution for an extended time.³³ Like NSPM-33, the JCORE Recommendations include a provision for the establishment of a “comprehensive security program,” but unlike NSPM-33, the JCORE Recommendations do not limit this recommendation to institutions that receive more than \$50 million in annual research funding.³⁴

Notably, the JCORE Recommendations call for institutions to consider a wide variety of controls that many academic institutions would not typically impose in “fundamental research” settings in which the results of the research are intended to be published and publicly disseminated. For example, the JCORE Recommendations include provisions regarding foreign travel review and “managing potential risks associated with foreign visitors and visiting scholars.”³⁵ Such provisions would not be unusual for research that involves items subject to export controls, but the JCORE Recommendations do not limit the recommendations to that context.

C. FY 2021 NDAA

On the legislative front, Congress passed the FY 2021 NDAA, which contains provisions per which federal research agencies are to require senior and key personnel on funding applications to disclose “all current and pending research support received by, or expected to be received by, the individual at the time of disclosure” and certify that the disclosure is “current, accurate and complete.”³⁶ Importantly, FY 2021 NDAA includes a provision that may limit enforcement against an institution for an individual researcher’s violation of disclosure provisions. Under Section 223(c)(3) of the Act, enforcement action may only be taken against an institution if:

- The entity failed to make the individual aware of the Act’s disclosure requirements; or
- The entity knew the individual failed to make required disclosures, and the entity did not take steps to remedy the nondisclosure before the funding application was submitted; or
- The federal research agency determines the entity is “owned, controlled, or substantially influenced” by the individual researcher who must make disclosures, and the individual knowingly failed to disclose the required information.

Institutions should be aware that the National Defense Authorization Act for FY 2022 (“FY 2022 NDAA”) under consideration in Congress contains provisions that would prohibit senior and key personnel on proposals for federal research funding from participation in “malign foreign talent recruitment programs”³⁷ (MFTP) from a foreign country of concern (i.e., China, North Korea, Russia, Iran, or other countries designated by the Department of State). The definition of MFTP encompasses transfer of intellectual property, materials, or data; recruitment of others for participation in the MFTP; or “establishing a laboratory, accepting a faculty position, or undertaking any other employment or appointment in the foreign state or entity contrary to the

³³ [JCORE Recommendations](#) at p. 8.

³⁴ *Id.* at p. 14.

³⁵ *Id.* at p. 14.

³⁶ [FY 2021 NDAA](#) at §223(a).

³⁷ [H.R. 4350](#) at § 6499E (117th Cong.) Sept. 23, 2021) (see text of engrossed bill).

standard terms and conditions of a federal research and development award.”³⁸ This definition is written quite broadly and, if enacted, it might encompass some typical academic activities, depending on how it is implemented.

D. Agency Guidance Documents

1. NIH and NSF Guidance Documents

NIH and NSF are the two federal research funding agencies that have gone farthest in issuing guidance specifying the details of what senior and key personnel³⁹ must disclose in terms of research support and outside appointments/employment/affiliations. Reporting must be done in dollar amounts (e.g., amount of monetary support or worth of in-kind support) and/or time commitments (e.g., time that senior/key personnel will be required to spend on an activity). The agencies will use this information to determine if there is any scientific, budgetary, or commitment overlap. Each agency also requires an institution to report non-compliance with disclosure requirements on the part of its researchers of which it becomes aware.⁴⁰

Below, Figure 1 lists key guidance documents from NIH and NSF, and Figure 2 shows key disclosure requirements for each agency.

Figure 1: Key NIH & NSF Disclosure Guidance Documents

NIH	NSF
NOT-OD-19-114 , “Reminders of NIH Policies on Other Support and on Policies related to Financial Conflicts of Interest and Foreign Components”	Proposal & Award Policies & Procedures Guide (PAPPG), NSF-22 , especially §§ II.C.2.f & h
NOT-OD-21-073 , “Upcoming Changes to the Biographical Sketch and Other Support Format Page for Due Dates on or after May 25, 2021”	NSF webpage on Current & Pending Support
NIH	NSF
NOT-OD-21-110 , “Implementation of Changes to the Biographical Sketch and Other Support Format Page”	“ NSF Pre-award and Post-award Disclosures Relating to the Biographical Sketch and Current and Pending Support ” – disclosure table
FAQs on Other Support & Foreign Components	NSF webpage on Biosketch

³⁸ *Id.*

³⁹ NIH defines “Senior/Key Personnel” as “The PD/PI [Project Director/Principal Investigator] and other individuals who contribute to the scientific development or execution of a project in a substantive, measurable way, whether or not they receive salaries or compensation under the grant.” §1.2, [NIH Grants Policy Statement](#). NSF defines “Senior Personnel” as “the individual(s) designated by the proposer, and approved by NSF, who will be responsible for the scientific or technical direction of the project.” (NSF Proposal & Award Policies & Procedures Guide [PAPPG], [NSF 22-1](#), Oct.4, 2021).

⁴⁰ See, NIH [NOT-OD-21-973](#) (Mar. 12, 2021); [Revision of the National Science Foundation \(NSF\) Agency Specific Requirements to the Research Terms and Conditions](#) (Oct. 5, 2020)

NIH webpage “ Protecting U.S. Biomedical Innovation ”	Frequently Asked Questions Regarding Current and Pending Support (6/28/21)
NIH Grants Policy Statement (especially §§ 1.2, 2.5.1 & 8.1)	“ NSF Biographical Sketch and Current and Pending Support Fillable PDF Document FAQs ” (updated 9/27/21)
NIH Other Support webpage & FAQS	
NIH Biosketch webpage & FAQs	

Figure 2: Key NIH & NSF Requirements for Reporting Research Support and Employment/Affiliations

	NIH	NSF
Disclosure of Research Support		
Overall Requirement	Report all resources made available to Principal Investigator/Program Director or other Sr./Key Personnel in support of and/or related to all of their research efforts/endeavors, regardless of whether or not they have monetary value and regardless of whether they are based at the institution the researcher identifies for the current grant.	Report all resources made available to Sr/Key Personnel in support of and/or related to all of their research efforts regardless of whether or not they have monetary value.
Consulting	Report consulting activity that falls outside of the individual's appt. with the institution and is not in line with the award recipient/proposer institution's policy on external activities.	Report consulting activities that involve research AND "fall outside of an individual's appointment, separate from institution's agreement."
Students/Post-docs	<ul style="list-style-type: none"> •Report post-docs, students and visiting scholars supported by an external entity and for whom there is an associated time commitment. •Mentoring must be reported if Sr./Key Personnel receive support from outside entity for the mentoring. 	<ul style="list-style-type: none"> •Report postdocs, students or visiting scholars who are working on research activities in Sr./Key Personnel's lab and who are supported by an outside entity. •Mentoring of students funded by outside entity and supporting Sr./Key Personnel research must be reported.
Collaborations	No specific mention of “collaborations,” but report all projects (ongoing or under consideration) that receive support from any source.	Report collaborations that directly benefit Sr./Key Personnel's research endeavors.

In-kind Support	Report in-kind contributions made for use on the project/proposal and in-kind contributions not for use on the project/proposal that have an associated time commitment.	<ul style="list-style-type: none"> •Report in-kind support (e.g., lab/office space, supplies, equipment, employees) with/without time commitment from Sr./Key Personnel. •Report financial support for laboratory personnel, and provision of high-value materials that are not freely available. Do not report materials that are broadly shared (e.g., core facilities).
Provision of Supporting Documentation & Researcher Certification	<ul style="list-style-type: none"> •No requirement to provide supporting documentation •No requirement for researcher certification of disclosures. 	<ul style="list-style-type: none"> •Must provide a copy of any foreign contract, grant, or other agreement (translated if not in English) pertaining to Sr./Key Personnel foreign appts., affiliations, and/or employment with a foreign institution. – eff. 1/25/22. •Sr./Key Personnel certification required – eff. 1/25/22.
	NIH	NSF
Disclosure of Employment/Affiliations		
Employment, Affiliations, etc.	Report all academic, professional, or institutional appointments – compensated, uncompensated, full-time, part-time, voluntary.	Report all positions and scientific appointments both domestic and foreign, including affiliations with foreign entities or governments. This includes titled academic, professional, or institutional appointments, whether compensated or non-compensated and whether full-time, part-time, or voluntary (including adjunct, visiting, or honorary).
Prohibition of FGTP Participation	Not prohibited, but must be reported	Not prohibited, but must be reported

3. Other Research Funding Agency Disclosure Requirements

Other federal funding agencies also have guidance regarding disclosure and/or participation in FGTP. For example, the Department of Energy (DOE) issued an order⁴¹ prohibiting DOE and contractor personnel from participating in FGTP. Additionally, DOE funding announcements require disclosure of Biosketch and of “other support” information that is similar to what is required by NIH and NSF.⁴²

One agency that has taken a very different approach to the issue of inappropriate foreign influence is the Defense Advanced Research Projects Agency (DARPA). In September 2021, DARPA published a memorandum⁴³ outlining its “Countering Foreign Influence Program” (CFIP), an “adaptive risk management security program designed to help protect the critical technology and performer intellectual property associated with DARPA's research projects by identifying the possible vectors of undue foreign influence.”⁴⁴

Notably, the risk stratification paradigm posed by this document is not based on the type of research involved (e.g., lower risk fundamental research requiring fewer controls v. higher risk research involving sensitive or controlled information requiring greater controls). Instead, risk categorization for “negotiation of a fundamental research grant or cooperative agreement award” is based on perceived risks associated with the persons conducting the research.⁴⁵ In this regard, DARPA provides a rubric⁴⁶ that categorizes as “very high risk” key personnel who “have direct foreign ties, some of which are with strategic competitors (i.e., Russia, China) or other countries with a history of targeting U.S. technologies (CWHTUST) for unauthorized transfer.” Key personnel are considered to pose a “high risk” if they “have some foreign ties, some of which are with strategic competitors (i.e., Russia, China) or other countries with a history of targeting U.S. technologies for unauthorized transfer, [and n]o Indicators of a direct foreign affiliation or tie.”⁴⁷ Under this rubric, even key personnel that have “some foreign ties (family, friends, professional, financial) but none are with strategic competitors (Russia, China) or other countries with a history of targeting U.S. technologies for unauthorized transfer” are classified as “moderate risk.”⁴⁸ Further, for grant proposals classified as high or very high risk, grant proposers will be required to agree to a risk mitigation plan that reduces the risk to a low or moderate level, or chance not being permitted to continue with the proposal.⁴⁹

These types of country-specific controls are seen in export-controlled research, but they are novel in the area of fundamental research. It remains to be seen how the CFIP will be implemented, but the factors considered by the CFIP in setting risk level (e.g., family, personal, financial ties) may raise concerns regarding “profiling” based on ethnicity and/or nationality.

⁴¹ Dept. of Energy, [Order 486.1A](#) (Sept. 4, 2020).

⁴² See, e.g., Dept. of Energy, [Office of Science FY 2021 Continuation of Solicitation for the Office of Science Financial Assistance Program, Funding Opportunity Announcement \(FOA\) Number: DE-FOA-0002414M](#) (Oct. 1, 2020) at p. 66.

⁴³ DARPA, [Memorandum for DARPA Staff and Contractors, DARPA Countering Foreign Influence Program \(CFIP\)](#) (Sept. 17, 2021).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ [Senior/Key Personnel Foreign Influence Risk Rubric](#) (Sept. 16, 2021).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Supra* n. 43.

III. Recent Enforcement Action and High-Profile Cases

Over the past few years, academic institutions have observed a significant shift in the federal government's focus on confronting inappropriate foreign influence on research institutions. Beyond traditional efforts of the government targeting apparent cases of espionage and theft of intellectual property or proprietary information, enforcement was expanded to include allegations of a lack of transparency, mainly in proposals for federally funded research. In 2018, the NIH issued a series of targeted letters to the research community regarding foreign influence in research. These letters caused research institutions to examine the external commitments of individual researchers (which may have been disclosed as part of institutional conflict of interest disclosure processes), to meet with the investigators in question, and to respond to the NIH with its findings. Subsequently, reports of several notable enforcement actions were made public.

A. Case Examples

Below are some examples of enforcement actions reported in the media.

1. VAN ANDEL RESEARCH INSTITUTE (VARI)

December 2019

- Accused of violating the False Claims Act by submitting federal grant applications and progress reports to the National Institutes of Health (NIH) in which VARI failed to disclose Chinese government funding.
- The Justice Department reported that a settlement of \$5.5M was reached with VARI.

2. MOFFIT CANCER CENTER

December 2019

- The CEO, among other leaders and researchers, resigned over possible exploitation of American-funded research by China.
- Internal investigation into the hospital's partnership found compliance violations.
- Most violations were linked to Moffitt employees' personal involvement in a program that was designed to recruit foreign-educated scientists.

3. HARVARD UNIVERSITY

January 2020

- The chair of university's chemistry department allegedly lied about contacts with a Chinese state-run initiative that sought to draw foreign-educated talent.
- The chair was arrested and criminally charged for making a false statement to federal authorities about his financial relationship with the Chinese government, and his participation in a program to attract foreign talent to China.

4. CLEVELAND CLINIC

May 2020

- A professor of molecular genetics at Cleveland Clinic and Case Western University was arrested and charged with making false statements and wire fraud related to NIH funding received ‘under false pretenses.’
- In tandem with his federally funded research program, the professor served as a dean at the University in Wuhan, China and hid his participation in China’s Thousand Talent’s Program.

5. UNIVERSITY OF CALIFORNIA, DAVIS

July 2020

- The FBI alleged that a visiting researcher made false claims related to her connection to the Chinese military to obtain a U.S. visa.

6. WEST VIRGINIA UNIVERSITY

August 2020

- Dr. James Lewis was sentenced to prison for “federal program fraud” and ordered to pay restitution due to his undisclosed participation in the Chinese government’s 1000 Talents Program.

7. M.I.T.

January 2021

- Professor Gang Chen indicted for allegedly failing to disclose contracts, appointments, and awards from various entities in the People’s Republic of China (PRC) to the U.S. Department of Energy.

8. VAN ANDEL RESEARCH INSTITUTE (VARI)

September 2021

VARI entered into a second settlement agreement (\$1.1 million) for failing to disclose a foreign component of an NIH award resulting in the loss of its expanded authority and removal of all of its grants from the automated Streamlined Non-Competing Award Process (SNAP).⁵⁰ The temporal proximity to the first settlement is explained by the DOJ in that shortly following the first settlement announcement, a former VARI researcher subsequently employed at Harbin Institute of Technology in China was stopped by customs agents at the Detroit Metropolitan Airport with undeclared biological samples intended for a VARI researcher. Further investigation revealed that following the submission of a 2017 NIH proposal, VARI negotiated a research collaboration with the Harbin Institute of Technology that overlapped with the NIH proposal, and VARI failed to

⁵⁰ [Department Of Justice Reaches Million-Dollar Settlement With Van Andel Research Institute To Resolve Allegations Of Undisclosed Foreign Ties To NIH Grants | USAO-WDMI | Department of Justice](#)

notify NIH of the foreign component.⁵¹ Additionally, the materials transferred to VARI from Harbin would have qualified as Other Support triggering yet another disclosure from VARI.

9. Acquittal of Dr. Hu Formerly of University of Tennessee (Knoxville) September 2021

Indicted in February 2020, Dr. Hu was accused of hiding his relationship with Beijing University of Technology from NASA which awarded several grants to the University of Tennessee at Knoxville.⁵² Following a mistrial, a judge dismissed the charges against Dr. Hu, concluding that no rational jury could find that Dr. Hu defrauded NASA.⁵³ In other words, NASA received the benefit of the bargain and there was no evidence introduced that demonstrated that Dr. Hu received funding from Beijing University of Technology for the same work. Reportedly, the University of Tennessee Knoxville has offered to re-hire Dr. Hu.

Of the examples noted, the VARI situation represents the lone instance in which a research institution was held liable. Apparently, VARI employed several investigators who had disclosed to VARI their respective participation in FGTPs. The basis of the settlement, however, lies with VARI's alleged failure to then examine the disclosures for overlap with NIH awards, and potentially disclose these conflicts to the NIH. Here, the significance of grantees' obligations under the Public Health Service (PHS) Conflict of Interest regulation (42 C.F.R. Part 50 Subpart F) is highlighted. Arguably, had VARI been able to demonstrate and document that it examined the disclosures of its investigators on these NIH awards and determined that the obligations under the FGTP awards did not overlap with the NIH awards, liability might have been avoided.

It is also interesting to compare the arrests of Professor Charles Lieber of Harvard University and Professor Gang Chen at Harvard. A closer look at the chronology of both cases reveals subtle but important differences. In Professor Lieber's case, he was charged with two counts of making false statements, presumably arising out of statements made to federal agents denying the extent of involvement with China's Thousand Talent Plans⁵⁴ The Press Statement from the Department of Justice (DOJ) indicates that Harvard had received an inquiry from the NIH in 2018 seeking clarification of Dr. Lieber's role with Wuhan University of Technology in China, and that Harvard responded after confirming with Dr. Lieber that such involvement ceased in 2012.

In contrast, the indictment of Professor Chen of M.I.T. does not appear to have included any outreach to the grantee by any federal sponsor prior to the arrest. The charges in this case include two counts of wire fraud, one count of failing to file a foreign bank account report, and one count

⁵¹ A "foreign component" is defined as "the performance of any significant scientific element or segment of a project outside of the United States, either by the recipient or by a researcher employed by a foreign organization, whether or not grant funds are expended," and requires prior approval by NIH. [[NIH GPS § 1.2](#)].

⁵² [Researcher at University Arrested for Wire Fraud and Making False Statements About Affiliation with a Chinese University | OPA | Department of Justice](#)

⁵³ [University offers to rehire prof acquitted of ties to China - ABC News \(go.com\)](#)

⁵⁴ [Harvard University Professor Indicted on False Statement Charges | OPA | Department of Justice](#)

of making a false statement in a tax return.⁵⁵ The DOJ Press Release highlights Dr. Chen’s roles with two FGTPs, as well as the fact that one federal sponsor (Department of Energy) had no knowledge of these external commitments prior to awarding a grant to M.I.T. on which Dr. Chen was the Principal Investigator. In Professor Chen’s case, the M.I.T. community rallied to his defense as evidenced by a faculty letter to the M.I.T. President in his support.⁵⁶

Summary

These cases are a significant part of a trend of increased government enforcement efforts to mitigate the risks of inappropriate foreign influence on research institutions. Prosecutions proceed under the premise of financial fraud, and the perceived lack of transparency is being interpreted as an intentional act of deceit against the government. Despite varying opinions on the approach and tactics applied, most research institutions have paid close attention to these developments and re-assessed their respective internal controls related to foreign influence. For example, the University of North Texas) abruptly terminated its relationship with students funded through the Chinese Scholarship Council⁵⁷ Other institutions have terminated their relationships with Confucius Institutes,⁵⁸ and many have taken additional measures to improve processes in this area, including updating conflict of interest questionnaires, enhancing screenings for international vendors/subcontractors/visitors, and forming work groups to assess the oversight of visiting researchers.

IV. Considerations in Developing Effective Practices to Address Inappropriate Foreign Influence on Federally Funded Research

As institutions await OSTP’s unveiling of its NSPM-33 implementation plan, many are considering changes to their processes and systems for collecting and reviewing disclosures from their federally funded researchers. Some of the major points that institutions may want to consider in these reviews are summarized below.

A. Updating Disclosure Processes

As the forgoing discussion indicates, although some agencies have insisted that disclosure obligations are not new, institutions must now contend with collecting and providing information that was not previously contemplated, e.g., in-kind support, honorary appointments. Many institutions’ disclosure processes were built around FCOI regulatory requirements and institutional policies on external activities. These processes will need to be revamped to accommodate the additional types and detail of information that must be disclosed. For example, how will the dollar value of “one-of-a-kind” shared lab specimens or data sets be set and who will make this determination? How will researchers determine the amount of time they might spend on mentoring a postdoc in their lab who is supported by an outside agency?

⁵⁵ [MIT Professor Indicted on Charges Relating to Grant Fraud | USAO-MA | Department of Justice](#)

⁵⁶ [Faculty Letter to President Reif in Support of Professor Gang Chen - MIT Faculty Newsletter](#)

⁵⁷ [Visiting Chinese scholars left with unanswered questions after university terminates relationship with Chinese Scholarship Council – North Texas Daily \(ntdaily.com\)](#)

⁵⁸ [confucius-institutes-that-closed-updated-february-16-2021.pdf \(nas.org\)](#)

A. Integrating Systems and Information Flows

Many universities are decentralized and have siloed pockets of information. Institutions will need to consider how information flows, and the information technology systems that handle those flows, can best be aligned to support institutions and researchers in achieving the objectives of providing current, complete, and accurate disclosures to agencies. Given on-going agency investigations, law enforcement activity, and the upcoming NIH researcher certification requirement, the stakes for ensuring accurate disclosures are higher than ever. Requiring researchers to enter the same information into multiple systems is not only inefficient, but also poses risk of inconsistencies and errors.

In designing these processes and systems, institutions will also need to consider privacy and confidentiality. Some institution may not have previously reviewed consulting agreements. Now these agreements may require reporting, or in the case of NIH, disclosure of the actual agreement in some cases. Researchers will naturally be concerned about who will have access to this information and how it will be protected from inappropriate access.

B. Monitoring

One of the NSPM-33 requirements (and JCORE Recommendations) is that federally funded researchers have a digitally persistent identifier (DPI) that will be uniquely associated with them, their research funding, and their publications. Agencies may use these DPIs as another tool to assist in comparing a researcher's affiliations and support as reported in publications with that reported to the agencies, and they may then make inquiries regarding any inconsistencies. Indeed, some institutions may already have received requires from funding agencies regarding such inconsistencies.

To address this issue, some institutions are considering monitoring or other processes they can employ to provide quality control for their disclosure processes. Institutions will need to consider whether and how monitoring should be conducted (e.g., risk-based, sampling), as well as what unit(s) may be responsible for its conduct (e.g., internal audit, compliance, etc.).

C. Examining Research Security Programs

It is clear from both NPSM-33 and the JCORE Recommendations, that governmental funding agencies are expecting institutions to put some type of research security program in place not just for export-controlled research, but fundamental research as well. This is new territory for many institutions, particularly those that focus on fundamental research and conduct basic research that does not typically involve intellectual property. Further, such institutions may not have a great deal of experience in dealing with foreign travel and lab visitor security protocols that the JCORE Recommendations advocate.⁵⁹

Indeed, fundamental research, by definition, requires publication and dissemination, and labs conducting fundamental research also may use open science platforms for publishing data as it is collected. Under the balanced, risk-based approach advocated by the JCORE Recommendations such research would pose little risk and arguably require few controls. Yet under DARPA's CFIP rubric, the nature of the research does not impact the risk assessment, rather the rubric looks solely at the researchers. Thus, despite NSPM-33's call for inter-agency consistency, it may well play out that the structure of an institution's security program will depend not only on the type of research conducted, but also on the agency funding that research.

Security programs will also need to consider how the institution will work with funding agencies and law enforcement. NIH and NSF require reporting of disclosure violations,⁶⁰ and the JCORE Recommendations call for reporting to funding agencies of COCs and COIs.⁶¹ Notably, NSPM-33 calls for agencies to share information with each other and with law enforcement about "violators" and "persons whose activities clearly demonstrate an intent to threaten research security and integrity," to the extent such sharing is consistent with privacy laws and does not compromise law enforcement/intelligence activities.⁶² Given the high stakes, institutions will need to consider how to ensure disclosed information is accurate, when reporting thresholds for noncompliance are met, and who will make any reports of noncompliance. Institutions will also need to consider how they might best work with law enforcement agencies to keep abreast of new research security risks. Further, as many law enforcement agencies may be more accustomed to working on cases involving industrial espionage at commercial entities, it will be up to academic institutions to educate these agencies regarding differences in academic operations.

D. Training and Communication

Most importantly, research institutions will need solid lines of communication with researchers and efficient and effective training in disclosure responsibilities. Given the headlines generated by recent enforcement efforts, researchers know that "inappropriate foreign influence" is a top issue for funding agencies, but they also need to be keenly aware of their new obligations regarding

⁵⁹ [JCORE Recommendation](#) at p. 14.

⁶⁰ See, NIH [NOT-OD-2-073](#); [NSF Research Terms & Conditions, Agency Specific Requirements](#) at Art. 38 (eff. Oct. 5, 2020).

⁶¹ [JCORE Recommendations](#) at p. 7-8.

⁶² [NSPM-33](#) at §4(e).

what need to be disclosed, how it needs to be disclosed, and the impact of non-disclosure and certification obligations. Such training is fundamental to protecting both researchers and the institution from disclosure errors that can damage reputations and result in corrective action that requires countless hours and dollars.

V. Conclusion

The issue of inappropriate foreign influence of federally funded research has been a major compliance concern for research universities over the past three to four years, and it will remain at the top of the list in 2022 as well. In addition to the anticipated NSPM-33 implementation plan and the new NIH certification and supporting document requirements that will roll out in January 2022, there have been numerous bills and amendments addressing this topic introduced in the United States Congress that ultimately may pass. In addition, to date, at least one state has enacted laws⁶³ on this topic as well. Accordingly, institutions will need to take stock of their current processes, systems, and training to make sure that they emphasize the need for full transparency regarding research support and affiliations and enable researchers to make all required disclosures in complete, accurate and efficient manner.

⁶³ See, [Foreign Influence, H. 7017](#), (2021 Regular Sess. Fl. Leg.), Chapter No. 2021-76 (passed Jun. 9, 2021)

A VIEW FROM THE GOVERNMENT: FOREIGN INFLUENCE, RESEARCH SECURITY, AND RESEARCH FUNDING INTEGRITY

June 21 – 25,2021

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- I. *Principles for Evaluating Conflict of Interest Concerns in Academic Research* (Council on Government Relations) (February 2021)
- II. [*Reminders of NIH Policies on Other Support and on Policies Related to Financial Conflicts of Interest and Foreign Components*](#) (National Institutes of Health, July 10, 2019)
- III. [*Upcoming Changes to the Biographical Sketch and Other Support Format Page for Due Dates on or after May 25, 2021*](#) (National Institutes of Health, March 12, 2021)
- IV. [*Recommended Practices for Strengthening the Security and Integrity of America's Science and Technology Research Enterprise*](#) (National Science and Technical Council) (January 2021)
- V. [*Fundamental Research Security*](#) (JASON Report, Commissioned by the National Science Foundation) (December 2019)
- VI. [*Significant Changes and Clarifications to the PAPPG*](#) (National Science Foundation) (June 2020)
- VII. [*Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans Staff Report*](#) (United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs)
 - i. Appendix A: [*China's Talent Recruitment Plan Contracts*](#)
 - ii. Appendix B: [*China's Talent Recruitment Plan Case Studies*](#)

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Council On Governmental Relations

An Association of Research Institutions

Principles for Evaluating Conflict of Commitment Concerns in Academic Research

This Framework is provided as a tool to the COGR Membership with the understanding that COGR is not providing legal, regulatory, or policy advice.

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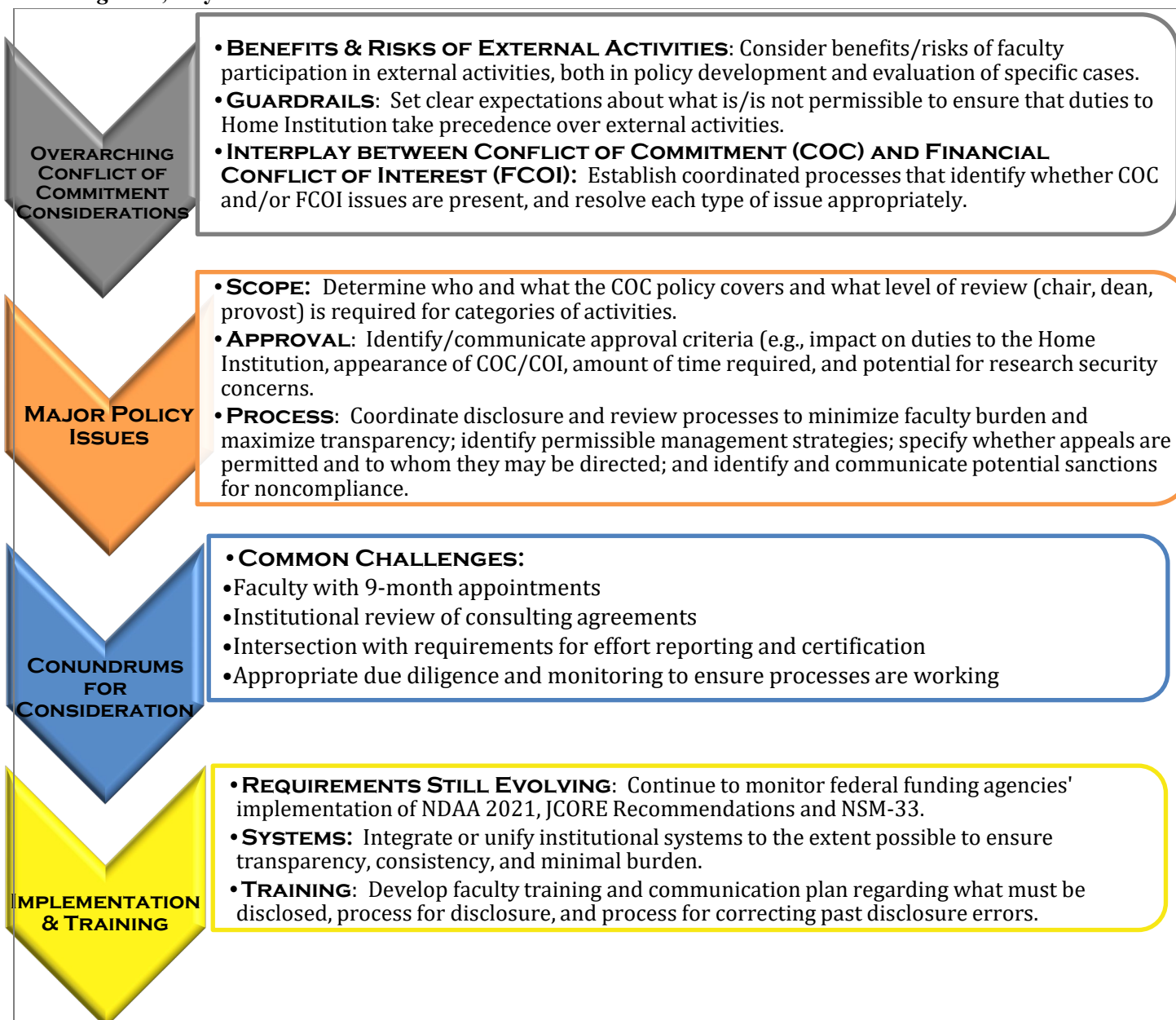
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Overview

Recently, many research institutions have begun evaluating their policies and processes concerning conflict of commitment. This evaluation was initiated, in part, as a response to federal research funding agencies' focus on disclosure of international research activities and support. This document discusses major principles that institutions might consider in conducting such policy/process evaluations, followed by illustrative case studies. Below is a summary of the document's key points:

Figure 1, Key Points: Evaluation of Conflicts of Commitment



Introduction

Research institutions have long maintained policies that address the concept of “conflict of commitment.” These policies may date back many years and focus on engagements that a faculty member enters as a private individual and that may interfere, or appear to interfere, with the faculty member’s primary obligations to their institution. These competing engagements may be compensated, such as consulting, or uncompensated, such as serving as a volunteer member of an editorial board. Typically, concerns have focused on whether faculty members are fulfilling their obligations of teaching, research, service, and, for academic medical centers, clinical care, or whether time, attention, and potentially institutional resources, are being diverted inappropriately to the outside activity.

Over the past few years, many institutions have started to review and evaluate their conflict of commitment (COC) policies in response to questions about the possibility of inappropriate foreign influence on federally funded research (“Inappropriate Foreign Influence”). Key points in this area include faculty member involvement in research and activities at institutions other than the researcher’s home institution (“External Entities”), especially when these activities are undertaken pursuant to a formal employment agreement and involve non-U.S. entities. As such activities have come to light, they have presented COC questions, among other issues.

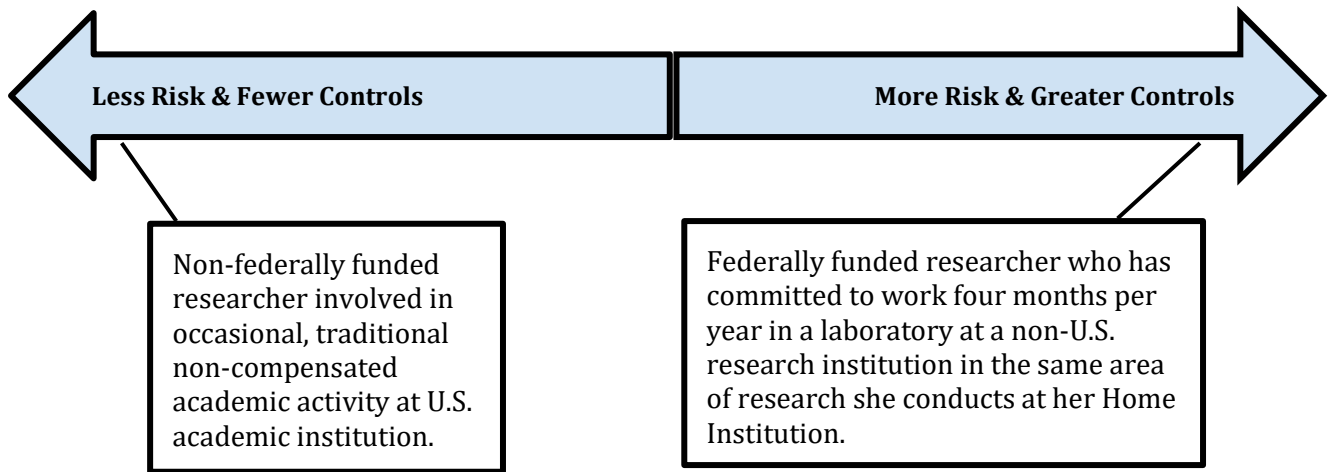
In mid-January 2021, institutional concerns regarding COC policies and processes took on new urgency with the release of the recommendations from the National Science and Technology Council (NSTC) Joint Committee on the Research Environment’s (JCORE) Subcommittee on Research Security: “Recommendations for Strengthening the Security and Integrity of America’s Science and Technology Research Enterprise” (“2021 JCORE Recommendations”).¹ At the same time, the White House released its “Presidential Memorandum on United States Government-Supported Research and Development National Security Policy” (“NSM-33”),² which contains directives to federal research funding agencies to strengthen conflict of commitment disclosure requirements for funding recipients.

There is no “one size fits all” policy or process for addressing COC because institutions vary tremendously in terms of research portfolio, size, culture, and employment models. In addition, institutional risk assessment also influences policy and process development.

¹ Available at <https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/NSTC-Research-Security-Best-Practices-Jan2021.pdf>.

² Available at <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-united-states-government-supported-research-development-national-security-policy/>

The 2021 JCORE Recommendations recognize the role of risk assessment and advocate the use of a “balanced, risk-based approach” that recognizes the benefits and risks of international collaboration.³



In light of this renewed focus on COC, COGR developed this document to provide a reference framework for institutions as they evaluate their COC policies and processes.⁴ This document (“Framework”) recognizes that Inappropriate Foreign Influence is just one of many issues that institutions must consider in evaluating COC policies and processes, and thus it begins by discussing the broader principles that underlie COC policies and practices and the distinction between financial conflict of interest (FCOI) and COC. The Framework next examines points to consider when drafting or evaluating COC policies, taking account of the 2021 JCORE Recommendations, NSM-33, and Section 223 of the National Defense Authorization Act for Fiscal Year 2021 (NDAA 2021)⁵, which includes some similar requirements albeit using slightly different language. Finally, the Framework explores common conundrums that institutions encounter with COC oversight and concludes with several illustrative case studies, set forth in **Appendix A**, that may serve as a basis for institutional discussion and training.

The language in the 2021 JCORE Recommendations, NSM-33 and NDAA 2021 has not yet been implemented through the issuance of agency regulations, guidance, or frequently asked questions.

³ *Supra* n. 1 at p. 4 (“This approach must seek to apply protective measures commensurate with identified risks, accounting for both likelihood of occurrence and impact, weighed against tangible benefits and any accompanying cost or administrative burden resulting from mitigation measures.”)

⁴ Such policies and processes may take many forms including external/outside activity policies, conflict of commitment policies, combined conflict of interest and conflict of commitment policies, and faculty handbook provisions. *See, e.g.*, University of North Carolina Charlotte, [University Policy 102.1](#), “External Professional Activities of Faculty and Other Professional Staff,” (rev. Aug. 28, 2019); Vanderbilt University, [Faculty Manual, Chapt. 3](#), “Conflict of Interest and Commitment,” (accessed Feb. 12, 2021).

⁵ [Pub. L. 116-283](#) (Jan. 1, 2021). *See, also*, [Conference Report 116-617](#) (Dec. 3, 2020).

Given this evolving situation, this Framework responds to the current conditions and will be updated as needed.

Scope & Relevant Definitions

Scope:

This discussion focuses on the activities of tenured or tenure-track faculty members at academic research institutions. The Framework takes this approach because many academic research institutions permit only these faculty members to spend some portion of their institutional time engaged in outside activities. Nonetheless, the principles that are discussed also may be applied to other research personnel.

Definitions:

As used in this Framework, the terms below have the following definitions:

Conflict of Commitment (COC): A situation in which an individual accepts or incurs conflicting obligations between or among multiple employers or other entities.⁶

(Many institutional policies reference “COC” but only cover a faculty member’s distribution of time and responsibilities between their Home Institution and their outside activities.⁷ Until the publication of the 2021 JCORE Recommendations and NSM-33, there was no official definition of COC at the federal level that applied to research funding recipients; both documents include the foregoing definition.)

Financial COI (FCOI): A situation in which an individual, or the individual’s spouse or dependent child, has a financial interest or financial relationship that could directly and significantly affect the design, conduct, reporting or funding of research.⁸

Foreign Government Sponsored Talent Program (FGTP) or Recruitment: An effort, directly or indirectly organized, managed, or funded by a foreign government or institution to recruit

⁶ *Supra* n. 1 at p. 2, n. 2; *supra* n. 2 at Section 2(d).

⁷ *See, e.g.*, University of Arizona, “[Conflict of Commitment Policy](#),” (rev. June 2017); Oregon State University, “[Conflict of Commitment Policy](#),” (eff. Feb. 1, 2012).

⁸ *Supra* n. 1 at p. 2, note 1; *supra* note 2 at Section 2(c). This definition is similar to that used for “financial conflict of interest” in the Public Health Service regulations for “Promoting Objectivity in Research” at 42 CFR Section 50.603 (“PHS Regulations”). The PHS Regulations, however, do not address FCOI in the context of the funding of research, only in “design, conduct or reporting,” and they also focus on “Significant Financial Interests” as defined therein.

science and technology professionals or students (regardless of citizenship or national origin, and whether having a full-time or part-time position).⁹

External Entity: An institution, company, government entity, foundation, professional organization, or other type of entity that is not the faculty member’s Home Institution.

Home Institution: The academic research institution or other entity that is the primary employer of the faculty member.

Institutional Responsibilities: A faculty member’s Home Institution responsibilities including, e.g., research; teaching; administration; clinical care; conference attendance, research presentations or lectures at other universities or uncompensated publication review; and service on institutional committees.

Outside Activity: An activity that a faculty member performs, or commits to perform, at or for an External Entity.

Major Principles and Objectives to Consider when Formulating/Evaluating COC Policies

Benefits of Faculty Participation in External Activities

Academic research institutions (“institutions”) are unique because they often have policies that explicitly permit faculty to spend a specific portion of their time (e.g., one day per week) engaged in Outside Activities, and may even encourage them to do so.¹⁰ This approach differs from that of commercial research enterprises, which typically disallow employee participation in any compensated external activity and may require employees to enter into non-compete and non-disclosure agreements as a pre-requisite for employment.

⁹ *Supra* n. 2 at Section 2(e). As drafted, the definition is unclear as to whether a private institution’s private recruitment efforts could be considered a FGTP but encompassing solely private action seems inconsistent with the notion of a “government-sponsored... program.” Note that there are other definitions that preceded the definition for FGTP found in the 2021 JCORE Recommendations and NSM-33. *See, e.g.*, NSF, “[Personnel Policy on Foreign Government Talent Recruitment Programs](#),” n. 1, (Jul. 11, 2019)

¹⁰ *See, e.g.*, Rice University, “[Conflicts of Commitment and Outside Activities for Faculty](#),” (rev. Jun. 2020), (“As a general rule, it is a COC if Faculty Members spend more than 20% of their total professional effort, on non-Rice professional Outside Activities, the equivalent of one day a week on average, cumulative for all Outside Activities.); Georgetown University, Office of Research Oversight/Regulatory Affairs, “[Approval of Extramural Activity](#),” (accessed Dec. 31, 2020) (outside activity “does not exceed an average of eight hours a week”).

Institutions take a more flexible approach to Outside Activities because participation in Outside Activities enables faculty to:

- Disseminate knowledge and education to the broader public;
- Gain real-world experience to help ensure that teaching and research are applicable to the “real world” and that resulting findings can be broadly applied;
- Identify research questions that are relevant to communities outside of academia;
- Collaborate and share expertise with industry to answer broad questions;
- Promote community engagement with research institutions;
- Enhance funding opportunities and enable access to unique resources;
- Strengthen technology transfer;
- Develop professional growth opportunities for faculty and trainees; and
- Engage globally in research, education, and service.

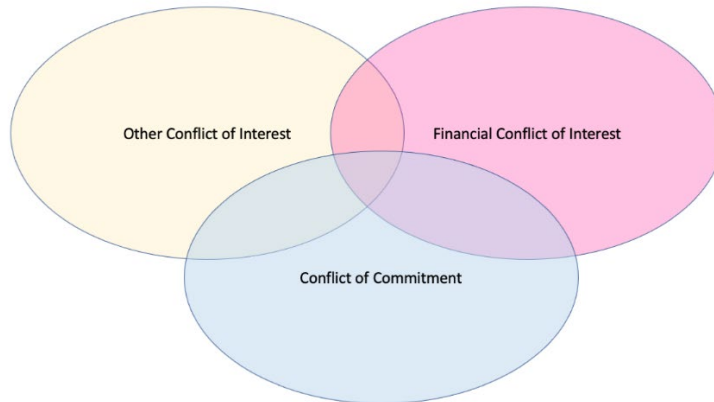
The Need for Guardrails

Although institutions permit faculty to engage in Outside Activities, such participation may not take precedence over the duties owed to the Home Institution. This is particularly true in the case of tenured faculty who are provided with a lifetime academic appointment and tremendous freedom in their research and teaching activities, in part as exchange for making their primary commitment of time and intellectual abilities to the Home Institution and its students, fellow faculty, and programs. To ensure that faculty may participate in Outside Activities without jeopardizing their ability to perform their Institutional Responsibilities, COC policies (and other documents that may define the faculty member’s responsibilities, such as employment contracts and faculty handbooks) should focus on addressing the following objectives:

- Clearly establish that the faculty member’s primary obligation is to the Home Institution and ensure faculty commitment to their Institutional Responsibilities.
- Protect university resources and intellectual property from being diverted to External Entities via Outside Activities or being used inappropriately for the personal gain of the faculty member.
- Safeguard the reputation of the Home Institution and its faculty from the appearance of dual loyalties or undue influence by an External Entity.
- Provide faculty members with the flexibility to conduct Outside Activities but set boundaries and establish expectations for those activities.
- Ensure transparency and accountability about the type, nature, and extent of faculty member’s Outside Activities, including identification, management, and/or elimination of any COIs and/or COCs.
- Protect against Inappropriate Foreign Influence and promote objectivity in research.

- Ensure that responsibilities to research sponsors are met.
- Ensure students, trainees, and staff are not adversely affected by faculty participation in Outside Activities.

Delineating the Boundaries between COC and COI



The boundaries between COC and the various types of COIs, financial and otherwise, are not always clear and may overlap. For example, a faculty member who owns a start-up company related to her research and spends three days a week focusing on company business may have both a FCOI and a COC. If the faculty member is a “silent partner” who does not spend any time on the start-up, she would not have a COC, but may still have a FCOI. Moreover, if she “volunteers” (without receipt of any compensation or ownership interest) to work three days a week at the company to gain access to company data for her overall research, she may have a COC, and her receipt of company data may create a non-financial, “other” COI concern. Institutions, therefore, need to review each fact pattern carefully to discern what types of COCs and COIs are involved and to ensure that relevant policies and procedures are applied appropriately.¹¹

¹¹ Recently, some federal agencies have used the term “non-financial conflict of interest” (NFCOI) to describe conflicts of commitment and possibly other types of conflicts as well. *See*, General Accounting Office’s (GAO), “[Federal Research - Agencies Need to Enhance Policies to Address Foreign Influence](#),” (Dec. 2020). It is difficult to define the activities encompassed by the term NFCOI; to determine whether, or how, such activities affect research pursuits; and whether regulation of such pursuits may, in some cases, be perceived to impermissibly chill freedoms of association and speech. *See, also*, Editorial, “[Nature journals tighten rules on non-financial conflicts](#),” *Nature* 554, p. 6 (Jan. 31, 2018) (Requiring disclosure of “...non-financial competing interests” including “membership of governmental, non-governmental, advocacy or lobbying organizations, or serving as an expert witness.”).

Special Concerns Raised by Foreign Government-Sponsored Talent Recruitment Programs

Faculty participation in Foreign Government-Sponsored Talent Recruitment Programs (FGTP) may raise special COC concerns. Such programs may require participants to sign contracts that bind faculty to obligations that could interfere with or appear to divert faculty time and attention away from obligations to the Home Institution. The chart below sets forth actual examples of common provisions found in FGTP contracts¹² along with the potential COC issue they present.

FGTP Provision Category	FGTP Contract Specific Provisions	Concern
Teaching and Recruitment Provisions	“On average, teach one graduate course per year.”	Obligations such as teaching, advising, and recruiting students could interfere or compete with obligations to carry out these activities for students at the Home Institution.
	“On average, advise two undergraduate students and recruit three graduate students.”	
	“Provide letters of recommendation for students.”	
Copyright and Intellectual Property Provisions	“Any copyrightable or patentable materials, and other related or similar intellectual properties ... which are created or developed by [U.S. faculty member] ... at [non-U.S. institution] ... shall be applied and publicized in the names of both [non-U.S. institution] and [U.S. faculty member]. ([Non-U.S. institution] shall be the first author affiliation).”	Unless there is a clear boundary between the Outside Activity and the U.S. Home Institution activity, intellectual property that would otherwise be the sole property of the U.S. Home Institution now becomes jointly owned with the External Entity. This shared ownership may run afoul of multiple Home Institution policies and federal funding agency requirements.
Team-Building Provisions	“Assist in introducing the research institution to core domestic and international talent, helping build a high-level research team.”	Helping to build a team at an External Entity could divert energy away from similar activity at the Home Institution and could compete against the Home Institution’s recruitment efforts for the same talent.
Publication Provisions	“[W]e expect that you will author publications based on your work in our country. You will have the right to publish the results of your research in our country without restriction. In any publication describing research that was conducted in our country, you will list our institution as your primary affiliation and your other place of employment as your secondary site of appointment.”	Publications that list another institution as the primary affiliation may dilute the Home Institution’s academic reputation and leadership in the field and do not appropriately acknowledge the Home Institution’s investment in the faculty member’s research. In the case of Inappropriate Foreign Influence, such provisions also may raise concerns if the affiliations were not appropriately disclosed.

¹² U.S. Senate, Permanent Subcommittee on Investigations, “[Threats to the U.S. Research Enterprise: China’s Talent Recruitment Plans](#),” [Appendix A](#) (Nov. 18, 2019).

FGTP Provision Category	FGTP Contract Specific Provisions	Concern
Extensive Time Commitments & Work Obligations	The job objectives and tasks that [U.S. faculty member] should complete include... leading the development of the school’s translational medicine discipline, advancing the building of the discipline and the talent team, undertaking tasks of teaching undergraduate and postgraduate courses and talents training work, and vigorously introducing outstanding talents, improving teaching and research skills, expanding international exchanges and cooperation, enhancing the international influence of the discipline, achieving innovative research results, and promoting the pace of building our university into a first-class university.”	Carrying out such an extensive portfolio, which appears to include leadership activities, teaching, recruiting, and talent development, could interfere with obligations to the Home Institution and could compete against, and divert energy from, the Home Institution.
	“Each year the work time shall be not less than 2 months.”	Contracts that contain specific periods of work commitment must be evaluated against time commitments to the Home Institution, including time committed on sponsored projects.

Points to Consider for COC Policies and Processes

As noted, no universal COC policy exists that could address the unique circumstances of each research institution. Despite the variety in institutional requirements, however, each COC policy should address the following core questions:

- **Whom does the policy cover?**

Although discussion in this document is focused on tenured faculty members, institutions must consider whether COC policies also should apply to non-tenured faculty and staff. This decision may be impacted by factors such as:

- The Home Institution’s status as public or private
- Applicable provisions of collective bargaining agreements (if any)
- Level of risk that dual employment may pose to the Home Institution
- Sponsor/funding agency requirements

- **How will the Home Institution address concerns about Inappropriate Foreign Influence?**

Although federal funding agencies have not yet specifically responded to NSM-33’s mandate to issue policies requiring disclosure of information related to COC, NIH and NSF already had been moving in the direction of mandating greater disclosure.¹³ The passage of the NDAA 2021 continued this trend, and the publication of the 2021 JCORE Requirements did so as well. At a

¹³ See, [NIH, NOT-OD-19-114](#), “Reminders of NIH Policies on Other Support and on Policies related to Financial Conflicts of Interest and Foreign Components,” (July 10, 2019); [NIH 2020 Virtual Seminar Presentation Materials](#), “Commitment Transparency” presentation, (last updated Jan. 13, 2021); [NSF FAQ on Current and Pending Support PAPPG](#) (NSF 20-1) (updated Dec. 9, 2020).

minimum, institutional policies regarding COC will need to meet regulatory and agency requirements. **Appendix B** sets forth a chart comparing COC-related requirements of the 2021 JCORE Recommendations, NSM-33, NDAA 2021 and current NIH and NSF requirements, to facilitate institutional implementation.

- **What activities must be disclosed for review/approval? Will some types of activities be considered pre-approved or exempt?**

The types of activities that are required to be disclosed for institutional review/approval will be influenced by funding agency requirements, applicable laws, existing institutional policies, and risk tolerance. Institutions should consider how to address a variety of scenarios, including faculty who have numerous Outside Activities; a single Outside Activity that requires a significant time commitment; or an Outside Activity with a minimal time commitment, but which competes with Institutional Responsibilities. Additionally, institutions should be prepared to address *quid pro quo* appointments, where the faculty member is offered an affiliation or other benefit by an External Entity with an expectation that the faculty member will, in return, host visiting students or scientists from the External Entity. These arrangements could undermine the institution's authority to determine to whom this privilege should be granted.

Institutions may require different levels of review depending on the type of activity, and its perceived risk level. Some activities may require prior approval; others, just disclosure. For example, serving as an editor for a scholarly journal, as a peer reviewer for a funding agency, or as an officer for a professional society are traditional academic activities with a much lower risk of conflict, and thus may require limited, or no, disclosure and/or review, unless the time commitment is such that it interferes with academic activities on which the Home Institution places higher priority (e.g., teaching assigned classes).¹⁴

- **What are the criteria for approval?**

For activities that require prior approval, institutions should consider addressing the following questions in their COC policies:

- What standards will be used to evaluate the commitment? For example, the University of Minnesota's *Policy on Outside Consulting and Other Commitments* calls for the institution to evaluate Outside Activities to determine if they interfere with the performance of regular

¹⁴ See, e.g., University of California Office of the President (UCOP), APM-025, "[Conflict of Commitment and Outside Activities of Faculty Members](#)," (Jan. 15, 2020); University of Texas Rio Grande, "[Decision Matrix for Approval of Outside Activities and Conflict of Interest Disclosures](#),"(accessed Jan. 17, 2021).

employment duties, compete with coursework offered by the university, and/or compete with services offered by the employee's unit.¹⁵

- How reviewers should consider activities that give rise to the appearance of COC, as well as actual COC?
- Does the activity being reviewed pose a potential research security risk considering federal standards and regulations?
- Is the scope of the Outside Activity sufficiently distinguished from the scope of research commitments at the Home Institution?
- What is the duration of approval? When should the activity be for re-reviewed?
- **How will the amount of time spent on Outside Activities be measured?**

Institutions must determine: (a) whether and how to establish a maximal time allowance for institutional time that faculty can spend on Outside Activities; and (b) how faculty should quantify the time spent on Outside Activities to ensure that they do not exceed any such limits. In terms of an upper limit, many institutions allow faculty to devote an average of one day per week to Outside Activities.¹⁶ Quantifying time spent is much more difficult, however, and raises the issue of how the denominator should be defined (e.g., Five or seven-day week? Eight-hour day or longer? Average over 52 weeks, or only weeks actually worked, excluding vacation days?).¹⁷ Institutions also need to consider whether documentation or tracking mechanisms are appropriate or necessary.

- **Who will perform the review, and will there be an appeals process?**

Processes should include an opportunity for review at the supervisory, departmental and/or dean's office level to ensure that institutional leaders who are most knowledgeable about the faculty member's Institutional Responsibilities have an opportunity to evaluate the Outside Activity's impact on those responsibilities. Some institutions may choose to have COCs evaluated by a faculty review committee. Certain types of Outside Activities may require review by central administrative units, such as export control, conflict of interest, or technology transfer offices. Review and approval by the provost's office also may be warranted for some situations. Further, assessing senior leaders' Outside Activities may require particular care to ensure transparency and a fully independent review.

¹⁵ (Dec. 7, 2020), available at <https://policy.umn.edu/operations/outsideconsulting>

¹⁶ *Supra* n. 10.

¹⁷ *See, e.g.*, Princeton University, Dean of the Faculty, "[Outside Professional Activities](#)," (accessed Jan. 27, 2021) ("The University interprets the one-day-a-week rule as permitting one working day per calendar week (*i.e.*, one eight- to twelve-hour day out of seven) to be devoted to outside professional activities.").

Outside Activities that go to the heart of the academic mission, such as teaching or performing research for an External Entity, may require special permissions.¹⁸ Finally, institutions also must consider whether their processes will incorporate an appeals process, and if so, who will be responsible for reviewing appeals.

- **How will the review process for COC interface with other disclosure, review, and approval processes?**

There are distinct criteria for the review of COC and COI concerns, and review processes typically encompass distinct reviewing/approving units as well. Thus, many institutions have separate COC and COI disclosure/review/approval processes. For example, the University of California system has one system for the disclosure/review/approval of Outside Activities for COC and another for COI.¹⁹ Other institutions may have a combined system for collection of information pertaining to Outside Activities, and this system then disseminates the information that is collected to the various units that are responsible for COC and COI review/approval.²⁰

In any event, as discussed above, it is possible for a single Outside Activity to present both COC and COI concerns, forcing institutions to consider how to coordinate review to ensure the activity is thoroughly vetted for both types of concerns. The timing and frequency of reporting (COC vs. COI) also should be considered (e.g., annually vs. rolling). Disclosure mechanisms such as forms, routing, software systems, and review processes should be tailored to promote:

- Appropriate involvement by departmental and central administrative units (e.g., conflict of interest office, office of sponsored programs, export controls office, provost's office);
- Receipt of complete and consistent information by those offices;
- Ease of use and ability to update the collected information;
- Reduction of duplicative data entry by faculty members through well-constructed entry forms, the ability to carry-over information from one reporting period to the next, and the use of a single disclosure system accessed by multiple offices where possible; and

¹⁸ See, Virginia Commonwealth University, "[Outside Professional Activity & Employment Policy, Research and Continuing Education](#)," (Jan. 1, 1983). See, also, Harvard University, Office of the Provost, "[Statement on Outside Activities of Holders of Academic Appointments](#)," (accessed Jan. 1, 2021), ("Persons holding full-time academic appointments at Harvard should devote their teaching efforts primarily to the education of Harvard students. Faculty members may not hold a regular faculty appointment at another institution, except in connection with a Harvard-sponsored joint program with that institution, or similar arrangement as approved by their Dean.").

¹⁹ University of California San Francisco, "[FY20 Outside Activity Tracking System \(OATS\) Annual Certification Notification](#)," (July 9, 2020).

²⁰ University of Chicago, "[COI-COC Processing](#)," (accessed Jan. 17, 2021).

- Consistency between information reported to federal sponsors and what is reported to the Home Institution.

As federal funding agencies look to roll out new policies for COC disclosure, institutions may want to consider combining COC and COI disclosure and review processes for efficiency and thoroughness. In this regard, the 2021 JCORE Recommendations suggest that institutions maintain a repository of disclosure filings from all employees involved in the research enterprise, whether they receive federal research funding or not.²¹ Additionally, high-level “cross-training” of personnel involved in COC and COI review processes may be helpful.

- **What are potential management strategies for conflicts of commitment?**

Institutions should consider including potential COC management strategies in COC policies, as well as the development of COC management plans for individual cases. Possible strategies could include the following items:

- Transparency and disclosure
- Enhanced, mandatory COC training
- Full or partial leave of absence or use of sabbatical leave for the Outside Activity
- Restructuring research responsibilities to manage the conflict, such as adding an additional principal investigator or mentor
- Oversight by senior faculty or administrators, such as regular check-ins to ensure appropriate mentoring and lab supervision
- Elimination, reduction, or suspension of the Outside Activity
- Reduction in the Home Institution appointment to accommodate the Outside Activity

- **What are the Sanctions for Failure to Disclose?**

In the context of FCOI, institutions are required to include in their FCOI policies the sanctions for failure to disclose and other policy violations. In the context of COC, institutions should assess whether the same sanctions should apply, or whether there should be a different approach.

JCORE suggests that institutions prescribe “appropriate and effective consequences for violation of disclosure requirements and other activities that threaten research security and integrity.”²² The

²¹ *Supra* n. 1 at p. 8.

²² *Id.* at p. 13.

recommendations go on to suggest a range of possible consequences from removing an individual from performing activities on a research contract or grant to termination of tenure and expulsion.²³

Institutions should consider that some FGTPs and other programs require participants to withhold and not disclose such participation to their Home Institutions and should make clear that any such requirement violates the Home Institution's disclosure policies. This type of withholding of information could, in and of itself, indicate that a COC is present. In many cases, however, non-disclosure may result from an innocent omission or confusion regarding requirements. Sanctions should take into account a range of scenarios and mitigating factors.

Addressing Common COC Conundrums

Most institutional policies regarding faculty External Activities have three similar elements, which are listed here.

- An assertion that the faculty member's primary allegiance should be to the Home Institution.²⁴
- The specification of a certain number of days, or a percentage of time (generally equivalent to one day per week), of institutional time during which faculty members can engage in External Activities.²⁵
- A description of the process for Outside Activity disclosure, review, and approval to ensure that the activities do not interfere with faculty member obligations at the Home Institution.²⁶

²³ *Id.*

²⁴ See, e.g., Emory University, *Faculty Handbook*, Chapt. 13, Section 13.3, "[Conflict of Commitment](#)," (accessed Jan. 1, 2021)("Emory faculty owe their primary professional allegiance to the university; their primary commitment of time and intellectual energies is to the education, research, and other programs supporting the university's mission."); New York University, "[Academic Conflict of Interest and Conflict of Commitment Policy](#)," Section III.A, (Sept. 1, 2013)("Full-time NYU faculty members owe their primary professional allegiance to NYU, and their primary commitment of time and intellectual energies should be to NYU's teaching, research, and clinical programs.").

²⁵ See, e.g., University of Pittsburgh, "[Faculty Use of University Time for Outside Professional Activities](#)," (accessed Jan. 1, 2021)("University time spent on outside professional activity must not exceed an average of one (1) day per week, up to 35 days (for 8-month appointees) or 48 days (for 11-month appointees) each academic year."); University of Washington, "[Outside Professional Work Policy](#)," Section 2.B., (May 20, 2015)("Subject to approval in advance, full-time members of the faculty, librarians, and academic personnel may engage in outside consulting work for remuneration to the maximum extent of 13 calendar days each academic quarter in which the individual is employed (averaging no more than one day per seven-day week.")).

²⁶ See, e.g., University of Alabama at Birmingham, *Faculty Handbook*, "[External and Internal Activities](#)," Section 3.11.1, (accessed Jan. 1, 2021)(requiring advance written approval to participate in external activities from dean through department chair).

To address the issues that arise in the Inappropriate Foreign Influence area, however, Outside Activity policies also must consider certain conundrums that frequently arise in this space. These conundrums are discussed in the following subsections.

Nine-month Faculty Appointments

Faculty in some disciplines traditionally have nine-month appointments, and frequently pursue employment or other activities with External Entities during the prescribed summer break. Although this situation may not create a COC based on the time involved, it may still involve activities that compete with Institutional Responsibilities. Faculty, however, may assert that the institution does not have authority over Outside Activities during a period in which the faculty are not compensated.²⁷ On the other hand, the PHS Regulations on FCOI require disclosure of any Significant Financial Interests, regardless of when these interests are acquired.²⁸ Further, funding agencies have recently made clear that they require disclosure of payments from non-U.S. institutions of higher education as well as disclosure of unpaid or honorary appointments.²⁹ Finally, some summer activities (or, in some cases activities undertaken during a sabbatical period) - especially those involving research - may “bleed over” into the academic year. In light of these factors, institutions may have a reasonable basis to seek disclosures of activities outside the academic year, but they may want to consult with legal counsel when establishing the basis and parameters of disclosure and review.

Review of Agreements for Outside Activities - Consulting

As discussed above, agreements between faculty and External Entities may contain numerous provisions that are problematic for the Home Institution such as employment conditions, authorship requirements, and provisions affecting intellectual property. In light of these provisions, Home Institutions must weigh the pros and cons of reviewing such agreements. These include the following items:

- **Potential Advantages**
 - Helps ensure that Outside Activities are permissible and in accordance with all relevant institutional policies
 - Protects Home Institution interests such as intellectual property (IP)
 - Allows for Home Institutions to understand breadth and scope of Outside Activities

²⁷ Note that institutions may take different approaches regarding faculty with 9-month appointments. Generally, such faculty members remain employees of the institution throughout the year and continue to receive benefits. Some institutions may pay the faculty member’s 9-month salary over a 12-month period, and faculty may continue to access and use the Home Institution’s resources during this time.

²⁸ 42 CFR Section 50.604(e)

²⁹ See, e.g., NIH NOT-OD-19-114, *supra* n. 13.

- Promotes compliance with funding agency requirements, including any requirements to provide agreements³⁰
- Provides an opportunity to discuss with faculty the pros and cons of entering into particular agreements

- Potential Disadvantages
 - Demands additional resources and processes dedicated to agreement review
 - May give rise to inconsistent review outcomes, based on different reviewer perspectives
 - May delay Outside Activity approval and/or COI/COC determinations
 - Increases the risk that review will be construed as providing legal advice to faculty members and thus increase institutional legal exposure
 - Increases potential reputational and regulatory risk from implied endorsement of the Outside Activity by the Home Institution

When an institution decides to incorporate consulting agreement review as part of its Outside Activity review and approval process, additional conundrums are raised:

- How will the institution review and approve Outside Activities for which the faculty member states that no agreement exists?
- What does “review” of the agreement imply? A clear differentiation between a review for permissibility versus individual legal representation must be established in policy and practice.
- Will institutional resources be allocated for direct negotiations with External Entities or will the affected faculty members act as a go-between?

Some institutions have addressed these issues by providing faculty with template consulting agreements or boilerplate provisions that address Home Institution concerns for incorporation into consulting agreements.³¹

³⁰ [NIH 2020 Virtual Seminar Presentation Materials, Commitment Transparency](#), (Jan. 13, 2021) (advising that NIH will impose a requirement that grant recipients provide copies of investigator’s grant and contract agreements with external foreign entities).

³¹ See, e.g., Penn State University Altoona, [“Guidelines for Faculty Consulting Agreements,”](#) (accessed Feb. 12, 2021) (sets forth terms recommend for inclusion in faculty consulting agreements and terms that should be avoided); University of Rochester, [“Faculty Consulting Agreement Template,”](#) (accessed Feb. 12, 2021).

Effort Reporting and Certification

Federal agencies are rightly concerned that Outside Activities may interfere with effort commitments on sponsored projects. Grants management approaches to effort reporting, however, exclude, by definition, effort outside the institution. As set forth in the Uniform Guidance, “effort” is based on Institutional Base Salary (IBS), which does not include external activities by definition and is not based on a particular number of hours per week or other metric. Thus, in accordance with longstanding grants management regulations, “100% effort” is the total time spent on activities for which the individual receives IBS.³² This metric is only partly useful in assessing an individual faculty member’s “capacity” to take on Outside Activities because, as stated, it cannot, by definition, encompass Outside Activities. Despite this definition, at some point, a faculty member’s commitment to perform an Outside Activity may require a “real-world” evaluation. This analysis requires some type of quantification of the amount of time that the faculty member has committed to Institutional Responsibilities and comparing that commitment to the time that the faculty member will commit to the Outside Activity. Of course, this quantification can never be precise, given that faculty do not punch time clocks or work a 40-hour week, rather they have schedules that constantly shift among their Institutional Responsibilities.

Detecting Undisclosed Outside Activities & Due Diligence

The 2021 JCORE Recommendations state that institutions “need to develop the means to identify instances where disclosures are incomplete or inaccurate, or when disclosure policies are otherwise violated.”³³ A recent survey conducted by the Department of Health and Human Services Office of the Inspector General regarding academic institutions’ responses to Inappropriate Foreign Influence may supply some clues in this regard. This survey asked institutions whether they employed certain monitoring or due diligence efforts, including collecting copies of agreements with External Entities, contacting External Entities to confirm disclosure details reported by researchers, and comparing information disclosed by researchers with information found in external sources such as web searches and journal articles. Yet, given most institutions’ limited resources for monitoring activities, such efforts may not be feasible, or at best, applied to a sample of cases through a risk-based approach. This use of sampling, coupled with training regarding disclosure requirements, may provide an alternate method for quality assurance in this area.

³² 2 CFR Section 200.430.

³³ *Supra* n. 1 at p. 12.


Conclusion

Ensuring the right balance between Outside Activities and institutional obligations remains a central issue for institutions, particularly now with the additional overlay of concern regarding Inappropriate Foreign Influence. It seems likely that federal agencies will continue their focus on COC issues, given the bipartisan nature of such concerns, the passage of the NDAA 2021 with its disclosure requirements, and the fact that numerous federal agencies were involved in developing the 2021 JCORE Recommendations.

Though the specific details of federal funding agency requirements for COC policies are not yet known, it is clear that agencies will be issuing additional requirements. Accordingly, institutions may want to consider this Framework when reviewing current COC policies and processes and determining whether changes may be warranted. Any such changes must not only address Inappropriate Foreign Influence, but also ensure that COC policies continue to enable faculty members to engage in Outside Activities that benefit faculty, their Home Institutions, and the U.S. research enterprise as a whole.

Appendix A: Case Studies and Possible Review Considerations

Case Study No. 1: Leadership of a Not-for-Profit Association

 **Key Words:** Travel, not-for-profit, officer

Prof. Washington is elected as president of a prestigious national not-for-profit association. This position aligns with the Home Institution's mission, although there is no relationship, including no research funding, between the association and Home Institution. As president, Prof. Washington receives no compensation, only reimbursement of travel expenses. However, the position requires multiple trips a year to various engagements and involves much more of a time commitment than the one day/week the Home Institution permits for faculty Outside Activities.

- Could there be a risk that the association would compete against the Home Institution for donations, sponsored funding, talent, or other resources? What facts would be needed to assess this potential risk?
- Is there a possibility, in some cases, that Prof. Washington might be required to prioritize responsibilities to the not-for-profit over those to the Home Institution?
- Whose input would be needed to assess this potential COC? The department chair could provide input regarding departmental obligations such as teaching and service, but is dean or provosital input needed as well? Why or why not?
- Should a partial leave of absence be considered for this Outside Activity? Could the president's term be limited? Are there other management strategies?

Case Study No. 2: Expert Witness for Software Company

 **Key Words:** IP, software, consulting, non-disclosure or confidentiality agreement, agreement review

Prof. Adams created software-related intellectual property (IP) several years ago. The Alpha Company has a non-exclusive license for the IP through Prof. Adams' Home Institution, and Prof. Adams receives a portion of the licensing revenue, per Home Institution policy. Alpha Company asks Prof. Adams to consult regarding its legal actions against Bravo University, which licensed related technology to the Alpha. The consulting agreement has a non-disclosure agreement covering all information Prof. Adams receives about or related to the Alpha Company. Prof. Adams fears the consulting agreement could interfere with her responsibility to support her Home Institution if problems arise concerning the licensing agreement between Bravo University and Alpha Co.

- Who, if anyone, should review the agreement to advise Prof. Adams as to whether this proposed consulting activity could result in a COC?

- Should Prof. Adams confer with others at her Home Institution to gain advice?
- Who should decide whether the proposed consulting arrangement is a COC
- If it is, could it be managed? How?
- Can Prof. Adams' Home Institution prohibit Prof. Adams from participating in the consulting activity if it finds a COC?

Case Study 3: Deanship at a Non-U.S. University

 **Key Words:** Dean, honorary appointment, sabbatical, summer/winter break

Prof. Jefferson took sabbatical to serve as a visiting professor at Charles University in China. During his sabbatical, he accepted an appointment as the dean of academic affairs at Charles University. After his sabbatical, he returned to his U.S. Home Institution, but he maintained his role as a dean at Charles U. Prof. Jefferson did not disclose his appointment as a dean to his Home Institution, and he continues to spend several weeks in the summer and during winter break travelling back to Charles University.

- Under what circumstances, if any, would this scenario not create a COC?
- What additional information is needed to evaluate the risk here? Questions could include:
 - Is Charles University a restricted entity? Is it known to have ties to the Chinese military?
 - What is the nature of Prof. Jefferson's research, if any? Does his work involve any export controlled or proprietary information?
 - Has Prof. Jefferson signed a contract with Charles University? What is the term of his commitment? What does the contract require?
 - What are Prof. Jefferson's responsibilities as a dean? Are they similar to the expectations of such a position in the U.S.?
 - How much time does Prof. Jefferson spend on Charles University activities?
 - How is Prof. Jefferson described on the Charles University website?
- Prof. Jefferson states that his role at Charles University is purely honorary and that he is just a "figurehead." How might his statement be validated? Even if his role is truly non-substantive, does it nonetheless create an appearance of a COC? How harmful is such an appearance?

Case Study 4: Consultant to Perform Company Research

 **Key Words:** Consulting, part-time job

Prof. Madison is a professor of ceramic engineering at Home Institution. Home Institution allows faculty to spend one day per week on Outside Activities that are related to their field of

expertise. Faculty members who want to exceed the time limit must request approval from their dean and justify it with an explanation of how the activity will benefit the Home Institution.

Prof. Madison also is a consultant for Delta Company, a cutting-edge ceramics manufacturer. Prof. Madison works for Delta one day a week, on average, providing scientific advice. Delta asks Prof. Madison to begin performing research work for the company, and this new activity would increase the time she works for Delta to 20 hours per week.

The Dean denies Prof. Madison's request to engage in 20-hours per week of Outside Activities. Prof. Madison argues the work will help her keep her students current with industry trends. The Dean states the commitment will reduce the time Prof. Madison spends with her students and views the 20-hour per week consulting commitment as a part-time job. Prof. Madison insists that she works 80 hours or more per week for Home Institution.

- Rather than conducting the research consulting as an Outside Activity, could Prof. Madison carry out this work as sponsored research at Home Institution? Under what circumstances would that be appropriate, or inappropriate?
- Is there an opportunity to involve graduate students in the work to gain real world experience? Would this be allowed under institutional policies (e.g., involving students in Outside Activities)?
- Is Prof. Madison's institutional intellectual property (IP) licensed to Delta Company?
- Is the work Prof. Madison will perform for Delta Company sufficiently separate and distinct from her ongoing institutional research (i.e., no scientific overlap which could lead to IP ownership concerns between Home Institution and Delta)?
- Can the Dean offer Prof. Madison a reduced institutional appointment to allow for the additional consulting time per week?
- Should the Dean be required to explain his reasoning in support of his decision? Does the Dean have facts to support his decision (e.g., complaints about Prof. Madison's lack of availability)?
- Does the policy allow for an "appeal" - if so, to whom? What should the criteria be for review?

Case Study 5: Co-direct a Laboratory at another Institution

 **Key Words:** Grant proposal, thesis committee, lab co-director, collaboration

Prof. Monroe is a professor of pharmacology at Home Institution. Prof. Monroe travels frequently to conferences and to collaborate with other scientists. Echo University recently invited Prof. Monroe to be co-director of a lab at Echo. This position will require Prof. Monroe to spend, on average, one day per week working on projects at Echo. Prof. Monroe will submit

grant proposals through Echo in which Monroe will be listed as Key Personnel. Prof. Monroe also will chair a doctoral student's thesis committee at Echo.

Prof. Monroe's dean states that Prof. Monroe is not permitted to be a lab co-director or a thesis committee chair at another institution. Prof. Monroe argues that scholarly collaboration with peers at other institutions is expected of faculty. The dean cites the significant time commitment and states that the nature of the activities impermissibly diverts Prof. Monroe's intellectual energy and creativity, and potential grant funding, away from Home Institution.

- Does Home Institution's policy explicitly state activities such as this are prohibited or is it "assumed"? Is an explicit statement necessary?
- What if Echo University was an international institution? Would this make a difference?
- What if Prof. Monroe accepted the position at Echo University without disclosing it to Home Institution?
- Is there a way for Prof. Monroe to collaborate with Echo University that would take into account the dean's concerns? What might that relationship look like (e.g., institutional collaboration agreement with a defined statement of work and research objectives)?
- Would the dean or someone in leadership need to be involved in negotiating the relationship with Echo University?
- Are there other possible management strategies? For example, could Prof. Monroe take a sabbatical for a year to work on this collaboration? Instead of chairing the doctoral committee, could Prof. Monroe be a member?

Case Study 6: Highly Compensated Consultant with Access to Company's Proprietary Data Set

 **Key Words:** Data set, proprietary, leave, employment offer


Prof. Jackson is a computer science professor who is being recruited by Foxtrot Company. Prof. Jackson wants to remain in academia, but Foxtrot is offering a very significant salary increase and will provide Prof. Jackson access to a unique data set collected from users of Foxtrot's technology. Prof. Jackson negotiates an alternative offer. She will take one semester of leave from Home Institution to work full-time at Foxtrot Co. Thereafter, she will spend one day a week at Foxtrot, for which Foxtrot will pay her an amount equivalent to one-third of her annual Home Institution salary. Foxtrot also will provide Prof. Jackson, and two of her six graduate students, with access to the proprietary data set.

Prof. Jackson will be allowed to publish research on the data set but the data themselves cannot be made publicly available, per a data use agreement between Prof. Jackson and Foxtrot Co. Prof. Jackson explains to her dean that the subject matter of her engagement with Foxtrot Co.

will be similar to the subject of her NSF grant, and she will be able to validate her research results using Foxtrot's unique data set. When Prof. Jackson's dean expresses some concerns about the arrangement, Prof. Jackson says maybe she was wrong to reject Foxtrot Co.'s offer of full employment, and she threatens to leave Home Institution.

- Does the fact that Prof. Jackson's time commitment is one day per week alleviate any COC concern? Does the analysis change when the significant compensation from Foxtrot is considered? Is there a COC, or the appearance of a COC, although there is not compensation?
- Does the Foxtrot payment create a FCOI with respect to the NSF grant? What factors should be considered in this regard? How might such a conflict be managed?
- What are the ramifications of the data use agreement? If the data set cannot be made public, is there a risk that Prof. Jackson may not be able to comply with funding agency or journal data sharing requirements?
- What about the fact that only two of Prof. Jackson's graduate students will have access to the Foxtrot Co. data? Will such limited access create an appearance of preferential treatment for those students or other issues in the lab?
- What are the benefits of access to the Foxtrot data? Will it enable a more robust application of Prof. Jackson's research to real-world requirements?
- What impact does Prof. Jackson's engagement with Foxtrot have on her ongoing research activities and resulting institutional IP? Is there a possibility that Foxtrot will push for joint ownership of institutional IP because the research scope and company business are so closely related?
- Will access to the data by the graduate students require a separate agreement? If so, is it an employment agreement requiring assignment of IP to Foxtrot?

Case Study 7: Adjunct Faculty Position at Non-U.S. University

 **Key Words:** 9-month appointee, adjunct faculty, access to laboratory and office space

Prof. Van Buren is the world's expert in a rare disease that is prevalent in southern India, but not in the United States. Golf University in southern India wants to develop expertise in this field to help patients there. Golf University invites Prof. Van Buren to become an adjunct faculty member so that Prof. Van Buren will help the university build capacity in this area.


Prof. Van Buren is a 9-month appointee at Home Institution. Golf University asks Prof. Van Buren to commit to spending 2 months a year on site and offers him access to laboratory and office space during those months, as well as a 2-month salary. Golf University expects Prof.

Van Buren to help set up the laboratory with appropriate equipment, to develop research ideas and projects, and to mentor junior faculty and trainees.

Ultimately, if any new treatments emerge from these collaborations, Golf University plans to work quickly to bring them to market. Prof. Van Buren recently lost all U.S. federal funding for this line of research because the disease in question is so rare in the U.S.

- Does Prof. Van Buren’s arrangement with Golf University constitute a COC? As Prof. Van Buren is on a 9-month appointment at Home Institution, isn’t he allowed to spend his summer months on activities outside Home Institution?
- Is it realistic to assume that Prof. Van Buren’s activities at Golf University (i.e., lab activity, mentoring junior faculty and trainees) will be confined to two summer months? Could the activities at Golf University interfere with Prof. Van Buren’s commitment to Home Institution?
- Isn’t part of the academic mission to disseminate expertise so that others around the world can learn and build upon the progress made, to benefit their own communities? How is this mission reconciled with concerns about “diversion of intellectual capital”?
- Does the fact that Prof. Van Buren lost U.S. funding for his research on the rare disease establish a boundary between the work he would do in India and the work he does at Home Institution?
- Prof. Van Buren argues there is a moral obligation to assist a developing country to develop new treatments for diseases common in that region. How should the institution respond?

Case Study 8: Founding a Non-profit Spin-out

 **Key Words:** Non-profit, co-founder, spin-out, failed to report


Prof. Harrison is a department head who endorsed an institutional ‘affiliation’ with a non-profit entity – the Juliette Company – spun out of a departmental program he created without Home Institution’s review and approval. Prof. Harrison is listed as a co-founder and advisor at the Juliette Company. Juliette Company’s mission is to help underprivileged youth and students gain access to training opportunities in the biotech sector, an area unrelated to Prof. Harrison’s research at Home Institution or to the research interests of his department.

At the very public announcement by the Juliette Company of this “collaboration,” the mayor of the city where Juliette Company is headquartered expressed his excitement at collaborating with Prof. Harrison and Home Institution. Prof. Harrison was present at the event with his Home Institution credentials on full display. Also present at the ‘launch’ with her Home Institution credentials on display, was Prof. Tyler, a senior researcher who reports to Prof. Harrison at Home Institution. Prof. Tyler also serves as the vice-president and co-founder of

the Juliett Company. Prof. Harrison failed to report his engagement with the Juliett Company in his annual Outside Activities report, but Prof. Tyler did.

- Were Home Institution policies for reporting outside professional activities followed? Would other policies be applicable (e.g., interactions with the media, use of Home Institution name and logo)?
- Is Prof. Harrison required to review and get approval from his Dean prior to entering into an affiliation agreement with External Entities?
- Are Prof. Harrison and Prof. Tyler required to disclose Outside Activities annually even if the activity is uncompensated?
- Is it appropriate for a faculty member to involve a subordinate in the faculty member's Outside Activities?
- Is there possible misuse of Home Institution's name when a collaboration is not approved by an appropriate institutional official?
- Were the titles assumed by Prof. Harrison and Prof. Tyler in line with what is permitted for full-time researchers and faculty at Home Institute engaging in Outside Activities?
- Were Home Institution resources being used to support Outside Activities?
- What risks may have been assumed by the Home Institution and/or Prof. Harrison and Prof. Tyler? Reputational? Legal? Financial?
- Can this case be effectively managed?

Case Study 9: Academic Medical Center Case Study

 **Key Words:** Hospital, clinical trials, recruit, consultant, mentorship

Dr. Wilson is a leading orthopedic surgeon with an extensive practice at Home Institution academic medical center. Dr. Wilson also leads several clinical trials on hip and knee replacements. He has been invited by a rural hospital – Oscar Hospital – in Peru to help establish a best-practice joint replacement program. Most of the work will be conducted via Zoom, but Dr. Wilson will need to spend at least two weeks a year at Oscar Hospital.

Oscar Hospital also hopes that Dr. Wilson will encourage medical students from Home Institution to participate in internships at the hospital and help recruit newly qualified surgeons to join the hospital's practice. Dr. Wilson will act as a consultant physician for specific patients at Oscar Hospital, but he will never be the physician of record. He will be paid an hourly consulting fee for his activity at Oscar Hospital, and the hospital plans to publicize his "mentorship" to patients and the public.

- Does this engagement constitute a COC for Dr. Wilson? What information would be needed to assess the potential conflict?

- If this engagement constitutes a COC, could it be managed? What changes might be required to manage the conflict?
- How could the arrangement be monitored to ensure that Dr. Wilson continues to meet his commitments at Home Institution?
- Does this engagement involve the practice of medicine in Peru? If so, does that present additional risks? Will Dr. Wilson be covered by malpractice insurance? If so, whose insurance will cover these activities?
- Are there any patient privacy concerns regarding Dr. Wilson's consulting physician activities? If so, are they only issues under Peruvian law, or could U.S. law be implicated?

Case Study 10: International Health Initiative Case Study

 **Key Words:** Fundraiser, satellite clinical care, federal grants

Dr. Polk is the chief of Sierra Academic Medical Center's (AMC) Global Health Initiative. Dr. Polk spends 100% of his time working in Kenya at Tango Hospital, which is owned by Sierra and supported by federal agencies, private foundations, and individuals. Dr. Polk is a successful fundraiser, and he has generated significant donor revenue that he has used to develop satellite clinical care offerings for Tango.

Sierra AMC allows clinical faculty to spend one day per week on outside professional activities related to their field of expertise. These activities must be approved by the faculty member's chief of service or Sierra's president if the faculty member is a chief of service.

Dr. Polk approached Sierra's president seeking approval to consult for Victor International Hospital (Victor) for 40 hours/month. Dr. Polk's consulting would focus on assisting Victor in fundraising within Kenya and obtaining U.S. federal grants, as well as establishing a satellite clinical care program for Victor. Dr. Polk maintains that his work for Victor will not impinge on his responsibilities to Sierra and will only increase medical and humanitarian services within Africa.


Questions

- Does the arrangement proposed by Dr. Polk constitute a COC? A COI? If so, how?
- Could Dr. Polk's proposed consulting activity be modified in a way to make it acceptable to Sierra? If so, how?

COGR Council On Governmental Relations							
Institutional-Related Requirements Under Key Documents Pertaining to Federal Research Funding and Inappropriate Foreign Influence							
Definitions of Key Terms							
Key Questions/Issues	NSM-33	JCORE Recommendations	NDA 2021 Section 223	NSF Documents Re. COI & COC (2020 PAPPG, FAQs, etc.)	NIH GPS & Associated Documents (Notices, FAQs, PHS Regulations on Objectivity in Research)	Key Differences	Comments
Conflict of Interest (COI)	"Situation in which an individual, or the individual's spouse or dependent children, has a financial interest or financial relationship that could directly and significantly affect the design, conduct, reporting, or funding of research."	Same definition used in NSM-33.	No definition.	COI = "When reviewer(s) reasonably determine that a significant financial interest could directly and significantly affect the design, conduct, or reporting of NSF-funded research or educational activities."	Financial COI = "A significant financial interest that could directly and significantly affect the design, conduct or reporting of PHS-funded research."	•Unlike NIH & NSR the JCORE Recommendations and NSM-33: (a) do not have financial threshold requirements; (b) include affect on "funding of research."	
Conflict of Commitment (COC)	"Situation in which an individual accepts or incurs conflicting obligations between or among multiple employers or other entities. Many institutional policies define conflicts of commitment as conflicting commitments of time and effort, including obligations to dedicate time in excess of institutional or funding agency policies or commitments. Other types of conflicting obligations, including obligations to share improperly information with, or to withhold information from, an employer or funding agency, can also threaten research security and integrity, and are an element of a broader concept of conflicts of commitment."	Same definition used in NSM-33.	No definition.	No definition.	No definition		NSM-33 & JCORE Recommendations definition includes contractual non-disclosure provisions that are common in many consulting contracts as an example of a COC.
Current & Pending [Research] Support	See definition of "Other Support."	See definition of "Other Support."	"All resources made available or expected to be made available to an individual in support of the individual's research and development efforts." Includes foreign and domestic sources, sources made available to applicant institution or directly to individual, with or without monetary value, and in-kind contributions requiring a commitment of time and directly supporting individual's R&D efforts (e.g., office/lab space, equipment, supplies, employees, students).	"All resources made available to an individual in support of and/or related to all of his/her research efforts, regardless of whether or not they have monetary value." Includes in-kind contributions with an associated time commitment. Does not include support provided directly to postdocs from an other organization. Does not include consulting activities unless the individual is conducting research as part of the consulting.	See definition of Other Support.	•NDA 2021 and NSF define "current and pending support" v. JCORE, NSM and NIH which define "other support." •NDA 2021 definition is narrower than NSF definition because it is limited to resources "in support of the individual's research and development efforts." For this reason, it also is narrower than JCORE and NSM-33 definitions of "Other Support." •NSF definition has exclusions that are not found in the other definitions such as support provided to postdocs from another organization and consulting that does not involve research. •NSF definition also introduces the concept of time commitment with respect to reporting in-kind contributions. In-kind contribution not intended for use on the NSF project/proposal and with no associated time commitment do not need to be reported.	
Other Support	"Other support, contractual or otherwise, direct and indirect, including current and pending private and public sources of funding or income, both foreign and domestic. For researchers this includes "all resources made available to a researcher in support of and/or related to all of their professional R&D efforts, including resources provided directly to the individual rather than through the research institution, and regardless of whether or not they have monetary value." Includes: foreign and domestic sources, in-kind (lab/office space, equipment, supplies, equipment); gifts with terms/conditions; financial support for lab personnel; students/visiting researchers supported by outside sources.	Same definition used in NSM-33.	See definition of Current & Pending Support.	See definition of Current & Pending Support.	All financial resources, whether federal, non-federal, commercial or institutional, available in direct support of an individual's research endeavors, including but not limited to research grants, cooperative agreements, contracts and/or institutional awards. Includes support provided to applicant entity or to individual investigator from foreign and domestic sources. Includes in-kind support (e.g., lab/office space, supplies, equipment, employees").	•NDA 2021 definition of Current & Pending Research Support is narrower than JCORE and NSM-33 definitions of Other Support. •NDA 2021 definition is limited to resources "in support of the individual's research and development efforts." •JCORE and NSM-33 definition extends to "all resources made available to a researcher in support of and/or related to all of their professional R&D efforts." [Emphasis added]. This may encompass consulting that does involve research.	JCORE and NSM-33 definitions may encompass consulting that does not involve research.
Foreign Government Sponsored Talent Recruitment Program (FGSTP)	"An effort directly or indirectly organized, managed, or funded by a foreign government or institution to recruit S&T professionals or students (regardless of citizenship or national origin, and whether having a full-time or part-time position.)"	"An effort directly or indirectly organized, managed, or funded by a foreign government, including state-owned enterprises, or a foreign institution to recruit science & technology professionals or students (regardless of citizenship or national origin, and whether having a full-time or part-time position.)"	No definition.	No definition.	No definition.	•NSM-33 definition is subtly, but importantly different from JCORE definition. NSM includes a program organized/managed/funded "by a foreign government or institution." •JCORE definition makes clear that the "foreign institution" is "organized, managed or funded by a foreign government."	Given that the term includes "government-sponsored," the JCORE definition makes more sense.

Scope/Applicability

<u>Key Questions/Issues</u>	<u>NSM-33</u>	<u>JCORE Recommendations</u>	<u>NDAA 2021 Section 223</u>	<u>NSF Documents Re. COI & COC (2020 PAPPG, FAQs, etc.)</u>	<u>NIH GPS & Associated Documents (Notices, FAQs, PHS Regulations on Objectivity in Research)</u>	<u>Key Differences</u>
Is federal funding required to trigger applicability to an institution or individual?	Not, necessarily. Disclosure requirements broadly apply to the "U.S. R&D enterprise," which potentially encompasses those who are not federally funded." Agencies are directed to require disclosures from participants in the U.S. R&D enterprise who "significantly influence the design, conduct, reporting, reviewing or funding of federally-funded research" in accordance with the specifications in NSM-33. Although disclosure requirements currently specified in NSM-33, apply to "participants in the Federally funded R&D enterprise, " agencies may require disclosure of additional information and/or disclosure from a broader range of R&D enterprise participants as a matter or course or on request.	Recommendation dependent. The recommendations are directed to "research organizations" without specific reference to funding. Some recommendations reference NSM-33 with regard to standards that apply to recipients of federal F&D funding, but most are written in a way that they could apply to organizations, whether or not they received federal funding. Further, some specifically state that they apply regardless of funding source (e.g., Recommendations 6 & 10).	Yes. Applies to entities that apply for/receive research and development award from a federal agency and to individuals who meet the definition of "covered individual."	Yes. Applies to those applying for/receiving/working on NSF funded projects.	Yes. Applies to those applying for/receiving/working on NIH funded projects.	<ul style="list-style-type: none"> JCORE Recommendations have the largest scope with potential applicability of at least some of the recommendations to non-federally funded research organizations and individuals. NSM-33 has the next largest potential scope, at least with respect to disclosure requirements. At present, these are confined to participants in federally-funded R&D, with potential for agencies to expand to participants in the "U.S. R&D enterprise," which encompasses non-federally funded entities/individuals. The statutory authority for such an expansion, however, is unclear. NDAA 2021 has a much narrower scope, as compared to the JCORE Recommendations and NSM-33. It applies to individuals who apply for/receive federal R&D funding and who "contribute in a substantive, meaningful way" to scientific development/execution of federally-funded R&D project AND are designated as a "covered individual" by the federal funding agency.
Is there a funding threshold to trigger applicability to individual or institution?	<ul style="list-style-type: none"> No, for individual disclosure obligations. Yes, for requirement of establishing research security program. Threshold = \$50 million per year in federal science and engineering funding. 	No.	No. [Note: There is a financial threshold of \$100,000,000 in extramural research expenditures for applicability to federal funding agencies.]	No.	No.	<ul style="list-style-type: none"> A major distinction between NSM-33 & JCORE Recommendations concerns threshold at which an organization should establish a security program: <ul style="list-style-type: none"> NSM- requires this for research institutions receiving >\$50 million/year in federal science/engineering support. JCORE has no financial threshold for estb. of research security program, although recommendations are supposed to be "risk-based."

 Institutional-Related Requirements Under Key Documents Pertaining to Federal Research Funding and Inappropriate Foreign Influence						
Requirements (or Recommendations in the Case of JCORE Recommendations) & Timelines, if any						
Key Questions/Issues	NSM-33	JCORE Recommendations	NDA 2021 Section 223	NSF Documents Re. COI & COC (2020 PAPPG, FAQs, etc.)	NIH GPS & Associated Documents (Notices, FAQs, PHS Regulations on Objectivity in Research)	Key Differences
Disclosures	<ul style="list-style-type: none"> Require disclosure of information related to potential COI and COC from "participants in the federally funded R&D enterprise" based on role. [NOTE: There is an internal inconsistency in terms of applicability. The "Roles and Responsibilities" section references disclosures from "participants in U.S. R&D enterprise who significantly influence the design, conduct, reporting, reviewing or funding of federally-funded research" while the section on specific disclosure requirements requires disclosures from "participants in federally funded R&D enterprise."] <ul style="list-style-type: none"> Must ensure federally-funded research organizations have policies/processes re. COI and COC. Due Date: Research funding agency heads must have disclosure policies by 1/14/22 Timing: Initial (part of proposal/award process, assigned relevant duties as contractor) and updates (annually or more often per change in circumstances) Categories of information to be disclosed: <ul style="list-style-type: none"> Other Support Organizational Affiliations & Employment FGSTP or Other Programs - Current or pending participation in/applications to FGSTP or programs sponsored by foreign governments, instrumentalities, or entities. Institution or funding agency may require copy of contract. Positions, Appointments & Affiliations -- foreign and domestic -- with foreign entities, including titled, un-titled, academic, professional, institutional, with or without remuneration, FT, PT, voluntary, adjunct, visiting or honorary. <ul style="list-style-type: none"> Persons within "Federally Funded R&D Enterprise" Covered by Disclosures: PIs/Sr. & Key Personnel, Program Officers, Researchers at Federal Labs and Facilities (whether or not federally employed) -- Must disclose all of the above categories of information. <ul style="list-style-type: none"> Peer reviewers, Advisory Committee or Panel Members -- Must disclose all of the above except "Other Support." Other Requirements: Agencies must standardize disclosure processes, definitions and forms to extent practicable -- coordinated by OMB, OSTP and Office of Government Ethics. <ul style="list-style-type: none"> Agencies may require broader disclosures or disclosures from a broader range of R&D enterprise participants. 	<ul style="list-style-type: none"> Recommends disclosures that will enable "reliable determinations" of whether/where COI and COC exist (i.e., "all information necessary to identify and assess potential" COC/COI). and development of appropriate risk mgmt. plans. <ul style="list-style-type: none"> Timing: Initial disclosures on hiring/assignment of relevant duties and annual updates (with consideration of more frequent updates to reflect changes.) Categories of Information to be Disclosed: Categories largely mirror NSM-33 categories, and include Other Support, organizational affiliations and employment, current/pending participation in FGSTP programs, and positions/appointments/affiliations that are "relevant to the individual's relationship to the research organization." Persons Required to Disclose: Recommends requiring disclosures from researchers (including postdocs and other staff), grad students, visiting scholars performing research over extended period, contractors. Other Requirements: <ul style="list-style-type: none"> Research organizations should assist employees, affiliates and students with disclosures that are required to comply with federal funding agency requirements. Institutions should require that copies of associated contracts be disclosed on request. 	<ul style="list-style-type: none"> Requires federal research agencies to require as part of application for an R&D award that each "covered individual" disclose information about resources made available, or expected to be made available to the individual "in support of the individual's research and development efforts." Timing: At time of application for award and update at request of agency prior to award and at any time subsequent, as determined by agency. Categories of Information to be Disclosed: Amt., type and source of all Current and Pending Support (see definition above) received by or expected to be received by the Covered Individual. Persons Required to Disclose: Individual who contributes in a "substantive, meaningful way to the scientific development or execution" of a R&D project proposed to be carried out with federal R&D funding AND is designated as a "covered individual" by the federal funding agency. <ul style="list-style-type: none"> Other Requirements: <ul style="list-style-type: none"> Individual must certify that disclosure is current, accurate and complete. Individual must agree to update disclosure on request and as determined by agency. Research institution applying for the federal funding must certify that each "covered individual" employee who is listed on funding application has been made aware of the requirements. Recommends that research organizations maintain repository of disclosure filings whether individuals are supported by federal funding. Research organizations should report COC and COI to funding agencies when appropriate, particularly when they can't be managed. Law enforcement should be notified if nondisclosure suggests illegal activity. 	<ul style="list-style-type: none"> Requires disclosure of Current & Pending Support as defined above and as detailed in NSF FAQ on Current and Pending Support at https://www.nsf.gov/bfa/dias/policy/pappg20_1/faqs_cps20_1.pdf NSF terms and conditions provide process for post-award disclosure of undisclosed current support and in-kind contribution information. (Article 38) 	<ul style="list-style-type: none"> Requires disclosure of Other Support as defined above and as elaborated on in NOT-OD-19-114 and NIH webpage on Protecting U.S. Biomedical Intellectual Innovation. 	<ul style="list-style-type: none"> NDA 2021 has narrowest scope because it applies to fewest people and institutions; JCORE Recommendations have the largest scope because they are potentially applicable to research institutions and their employees regardless of funding, as well as to post-docs and graduate students and visiting scholars. See comparison of differences between definitions of Other Support and Current and Pending Support above. NDA 2021 has additional certifications from institution and individual making disclosure that are not present in the other documents.
Investigation of Violations of Disclosure Requirements, Including Consequences for Violations & Information Sharing	<ul style="list-style-type: none"> Investigation: Federal funding agencies and their Inspector Generals, General Counsel, and law enforcement are to work with university program offices and security officers and private sector to improve mechanisms/capabilities to identify and investigate violations of agency disclosure requirements. Due Date: None. Consequences: Agencies shall ensure appropriate and effective consequences for violation of disclosure requirements and other activities that threaten research security, including termination of contract/grant; removal of individual from contract/grant; suspension/debarment/declaration of ineligibility to participate in certain activities; suspension/debarment from receipt of federal funding; suspension/denial of Title IV funds; civil/criminal penalties. Due Date: None Information Sharing: <ul style="list-style-type: none"> Consistent with privacy laws/legal restrictions: funding agencies will share information from researcher disclosures. funding agencies will share information about individuals who violate disclosure and other policies or "whose activities clearly demonstrate an intent to threaten research security and integrity" with federal law enforcement, DHS, & Dept. of State. agency heads may provide notice to other federal funding institutions in cases "where significant concerns have arisen, but a final determination has not yet been made." funding agencies will include grant terms/conditions that allow for information sharing. 	<ul style="list-style-type: none"> Investigation: Research organizations should develop mechanisms to identify incomplete/inaccurate disclosures or policy violations, including documenting and reporting violations to authorities, including law enforcement where appropriate. Employment Agreements: Research organizations should include provisions in employment agreements that promote research security/integrity, including: <ul style="list-style-type: none"> Expectations regarding conducting/reporting activities outside of the employment period (e.g., summers for faculty with 9-month appointments) Expectations re. security training/policy adherence; Permit organizations to take effective action against violators. Consequences: Ensure appropriate penalties for violations of laws, agency standards, ethical standards and organizational policies, including the replacement on grant/contract, termination of grant funding, probation, revocation of tenure, termination, expulsion, civil & criminal penalties. Information Sharing: To extent consistent with law, research organizations should share information about violators with funding agencies and otherwise as required by law. 	<ul style="list-style-type: none"> Consequences for Violations: Federal funding agency may reject applications for R&D awards for violation of law or agency terms/conditions including disclosure requirements. <ul style="list-style-type: none"> If covered individual "knowingly fails" to disclose required information federal agency may: <ul style="list-style-type: none"> Reject application Suspend/terminate R&D award to individual or entity Temporarily or permanently discontinue any or all funding from agency for individual/entity Temporarily or permanently suspend/debar individual/entity; refer matter to appropriate IG for investigation; Take other action as authorized by law. Place individual/entity in federal awardee performance and integrity information system for noncompliance to alter other agencies; <ul style="list-style-type: none"> Take other action as authorized by law. Restrictions on Actions Against Entities: Action may only be taken against entities if: <ul style="list-style-type: none"> entity did not make employed covered individual aware of disclosure and certification requirements; and entity knew covered individual failed to disclose required information and did not take steps to remedy nondisclosure before application was submitted; or head of research agency determines entity is owner/controlled/substantially influenced by covered individual and individual knowingly failed to disclose required information. <p>Process: Federal funding agency must provide notice to individual/entity prior to enforcement action and provide opportunity and process to contest proposed action.</p>	Policy violations handled per agency processes.	Policies violations handled per agency processes.	The potential consequences set forth in NSM-33 and the JCORE Recommendations for non-disclosure are much broader than those contained in NDA 2021. Further, NDA 2021 contains very specific parameters for holding an entity responsible non-disclosures by a covered individual.
Participation in FGSTP	<ul style="list-style-type: none"> Federal funding agencies shall establish (or clarify existing) policies that prohibit federal personnel who are also participants in U.S. R&D enterprise from participating in FGSTP. Agency heads may implement policies to extend this prohibition to some/all agency contractor personnel. Due Date: 1/14/22 	Research institutions should assist researchers who are considering participation in FGSTP by helping them with review of contracts and understanding their commitments and implications of those commitments.	No specific requirements.	See definition of Current and Pending Support	See definition of Other Support	Appears that there will be an federal-agency wide ban on participation in FGSTP. May potentially apply to researchers who have part-time appointments with federal agencies.
Training	<ul style="list-style-type: none"> Director of National Intelligence with agencies heads will develop information and intelligence products related to research security that can be provided to research institutions and others. Materials will include counterintelligence awareness training. Due Date: None Federal agencies will develop initial and annual refresher training for federal agency personnel conducting R&D activities or participating in process of allocating federal R&D funding re. research security. Due Date: None Research institutions research security programs should include export control training as an element. Due Date: 1/14/22 	<ul style="list-style-type: none"> Research organizations should offer Research Ethics & Compliance (RECR) training to all researchers, including new students, visiting scholars, employees and affiliates regardless of funding. Research organizations should ensure that all organization members are aware of circumstances and behaviors that pose research security risks, including: <ul style="list-style-type: none"> specific common provisions of FGSTP contracts obligations to conduct R&D activities for other entities without knowledge/permission of home institution foreign travel related to R&D activities, particularly when paid for by foreign entities, without justification regarding benefits extended travel that is inconsistent with organizational obligations collaborations with researcher on consolidated screening list gifts with terms/conditions. 	<ul style="list-style-type: none"> NDA 2021 requires entities to make covered individuals aware of their disclosure and certification requirements. 	N/A	N/A	<ul style="list-style-type: none"> NDA 2021 has very defined training requirements for entities. NSM-33 training requirements focus on federal agencies. JCORE Recommendations have very broad training requirements for research organizations.
Evaluation of Research Partnerships	N/A	<ul style="list-style-type: none"> Research organizations should establish a centralized review and approval process for evaluating formal research partnerships/contracts with outside entities for research security/integrity risks. Consider affiliations/ownership; value of IP; planned research activities; information sharing and publication rights; personnel exchanges; export control considerations; funding; contract terms. 	N/A	N/A	N/A	N/A

FOREIGN INFLUENCE IN RESEARCH: SHAPING EFFECTIVE INTERNAL PRACTICES AND RESPONDING TO EXTERNAL INQUIRIES AND INVESTIGATIONS

June 18 - 26, 2020

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I. The University of Florida Policy on Conflicts of Commitment and Conflicts of Interest

Information related to conflicts of interest and conflicts of commitment. It contains the University of Florida's policy on Conflicts of Commitment and Conflicts of Interest, a list of reportable and non-reportable activities and levels of review for a variety of disclosed activities.

II. Disclosing International Relationships and Activities to UF and Federal Agencies

Communications to researchers and the university community. The attachment contains a communication from the University of Florida about required disclosures of various international relationships and activities to the university and federal agencies. It also includes guidance from various federal agencies on which activities may require disclosure and the timing of those disclosures. In addition, there is information about the way the university reviews and ranks different categories of risk with regard to disclosed activities.

III. Actions Taken by Universities to Address Growing Concerns about Security Threats and Undue Foreign Influence on Campus

Documents from partner organizations providing a high level overview of university actions and a framework to analyze foreign engagements. One document is the AAU and APLU overview of university actions to manage concerns about security threats and undue foreign influence in university campuses. The other is the COGR Framework for Review of Individual Global Engagements in Academic Research.

IV. Foreign Influence—Summary of Actions

This is a detailed document from MIT that contains recommended actions for a university regarding foreign influence and is grouped by different subject areas.

V. DOJ Enforcement Actions

The document contains information about the DOJ's China Initiative and associated enforcement actions from 2019 through May 2020.

I. The University of Florida

Policy on Conflicts of Commitment and Conflicts of Interest

1. Policy Statement and Purpose

The University of Florida encourages its Employees to engage in activities supporting their professional growth, creating new knowledge and ideas, and furthering the University's mission of excellence in education, research, and service. University Employees' primary professional obligation, however, is to act in the best interest of the University and to maintain the highest ethical and professional standards. A University Employee's Outside Activities or interests must not conflict, or appear to conflict, with their professional obligations to the University of Florida. Accordingly, this Policy establishes standards and requirements to protect the University's financial wellbeing, reputation, and legal obligations and provides a system for identifying, reporting, and managing real or apparent conflicts.

2. Applicability

All University Employees as defined below. To the extent this Policy conflicts with other University policies or procedures, this Policy shall control.

3. Definitions

Conflict of Commitment: occurs when a University Employee engages in an Outside Activity, either paid or unpaid, that could interfere with their professional obligations to the University.

Conflict of Interest: occurs when a University Employee's financial, professional, commercial or personal interests or activities outside of the University affects, or appears to affect, their professional judgement or obligations to the University.

Employee: University Faculty or Staff as defined herein.

Entity: any business, company, or other organization, whether public or private, including without limitation any partnership, corporation, limited liability corporation, unincorporated association, or other institution or organization, whether for-profit or not-for-profit.

Faculty: all positions identified as Academic Personnel in the University of Florida Regulation 7.003 Academic Personnel Employment Plan.

Financial Interest: Any monetary or equity interest held by or inuring to an Employee or their Immediate Family Member which would create an actual or apparent Conflict of Interest.

Immediate Family Member: an Employee's spouse, domestic partner, child or stepchild, parent, parent-in-law, sibling, and anyone sharing the employee's household (other than a tenant or employee).

Outside Activity: any paid or unpaid activity undertaken by an Employee outside of the University which could create an actual or apparent Conflict of Commitment or Conflict of Interest. Outside Activities may include consulting, participating in civic or charitable organizations, working as a technical or professional advisor or practitioner, or holding a part-time job with another employer.

Reportable Outside Activity: any Outside Activity that is required to be disclosed to the University through the UFOLIO system.

Staff: any regular, non-exempt or exempt employee in research, academic, or administrative positions, including Technical, Executive, Administrative and Managerial Support (TEAMS) staff; University Support Personnel System (USPS) staff; and Other Support Personnel (OSP) as defined in University of Florida Regulation 1.100.

4. Conflicts

A. Guiding Principles

Employees of the University of Florida must adhere to the highest ethical and professional standards. Good judgment is essential, and no set of rules can adequately address the myriad of potential conflicts. If Employees have questions concerning a potential conflict of commitment or conflict of interest, they must first discuss these concerns with their supervisor¹. Real or apparent conflicts must be managed or disclosed as set forth in section 5 below.

B. Conflicts of Commitment

University Employees must commit their primary professional and intellectual energy towards supporting the University's mission of excellence in education, research and service. A Conflict of Commitment occurs when an Employee's professional time or energy is devoted to Outside Activities adversely affecting their capacity to satisfy their obligations to the University of Florida.

Conflicts of Commitment usually involve time allocation. For instance, when an Employee attempts to balance their University responsibilities with Outside Activities such as consulting or volunteering, they may be left with inadequate time to fulfil their University responsibilities adequately.

Employees wishing to engage in an Outside Activity that may present a Conflict of Commitment—however insignificant it may seem to the Employee—must disclose the Outside Activity to their supervisor and receive approval for before engaging in the

¹ Certain Outside Activities and Financial Interests must always be disclosed as set forth in section 5 of this Policy. When in doubt, supervisors must advise an Employee to disclose a potential conflict.

outside activity. Irrespective of disclosures, it is the responsibility of University supervisors (in the case of Faculty, their department chairs and deans) to identify and manage any Conflicts of Commitment undertaken by their direct reports.

If the University determines an Outside Activity will result in a Conflict of Commitment, the University may, in its sole discretion, prohibit the individual from engaging in the activity; require the individual take personal time off or a leave of absence to participate in the activity; or implement other measures the University deems reasonably necessary.

C. Conflict of Interest

Employees must avoid situations which interfere with—or reasonably appear to interfere with—their professional obligations to the University. Such situations might create an appearance of impropriety and, therefore, must be disclosed.

As discussed below, Employees will use the UFOLIO system to disclose Outside Activities in which they wish to engage. When the University determines a Conflict of Interest may exist with an Employee, the University may, in its sole discretion, prohibit the individual from engaging in the activity presenting a potential conflict; take actions to limit the individual's activity; or implement other measures the University deems reasonably necessary to eliminate the potential conflict.

D. Intellectual Property

The University's mission includes fostering invention and the development of new patentable and non-patentable ideas, technologies, methodologies, copyrights and other creations of the human mind. The University attempts to license many of these innovations to commercial entities so the fruits of this innovation may reach the marketplace for the public good and provide resources for further innovation. The University, therefore, must be protected from both real and perceived disclosure of intellectual property with entities in which University inventors have personal or financial interests or are adverse to the University's interest. More information, including applicable definitions, the University's ownership rights to inventions and works can be found in the University's Intellectual Property Policy located here:

<http://generalcounsel.ufl.edu/media/generalcounselufledu/documents/Intellectual-Property-Policy.pdf>

5. Disclosure Requirements

A. When to Disclose

1. Conflict of Interest:

Regardless of whether an Outside Activity occurs during a University assignment or appointment, Employees must disclose certain Outside Activities and Financial Interests through the UFOLIO system (and receive approval through the UFOLIO

System prior to commencing such activities or pursuing such interests), which may lead to a Conflict of Interest under the following circumstances:

2. Upon initial hiring or engagement with the University;
3. Prior to acquiring a new Financial Interest;
4. Prior to engaging in, or committing to engage in, an Outside Activity;
5. Prior to accepting a position or role which could reasonably be perceived as creating a Conflict of Interest;
6. Prior to entering a relationship, including a familial relationship, which could reasonably be perceived as creating a Conflict of Interest; and
7. At least annually, even if attesting to no change from previous disclosures.

Employees failing to receive approval through the UFOLIO system prior to commencing an Outside Activity as required herein may be subject to administrative or disciplinary action as set forth in section 7 below. The absence of express disapproval of an outside activity does not constitute approval by the University.

Regarding the annual reporting obligation in section 5(A)7 above, Employees must annually disclose their Financial Interests and Outside Activities existing at that time or which existed in the previous calendar year. The University will make efforts to provide courtesy notice to Employees at least 30 days prior to their annual disclosure date. However, the failure to provide such notice or the failure of an Employee to receive such notice does not relieve an Employee of the obligation to make a timely annual disclosure.

2. Conflict of Commitment:

Employees must disclose to their supervisor any Outside Activity that may create a Conflict of Commitment, either alone or together with other Outside Activities, before engaging in the Outside Activity. Irrespective of whether an Outside Activity is disclosed, however, it is the responsibility of all supervisors to identify any Conflicts of Commitment undertaken by their direct reports and manage it appropriately. If a supervisor is unsure whether a given activity poses a Conflict of Commitment or how to manage it, the supervisor should consult with the dean or vice president to whom they report.

B. What to Disclose

The following potential Conflicts of Interest and Outside Activities must be disclosed as provided below:

1. Management or Material Interest: You, your spouse, dependent children, or relatives have a management position (e.g., officer,

director, partner, proprietor), or a material (more than 5% ownership interest in the entity) financial interest in an entity that enters into any agreements or contracts with UF (e.g., service agreements, leases, sales agreements).

2. Publicly-Traded Entity Payments/Ownership: You, your spouse, or dependent children receive payments or have an ownership interest of \$5,000 or more (including shares, partnership stake, or derivative interests such as stock options) in a publicly-traded entity where the ownership interest reasonably appears to be related to your institutional responsibilities. [Note: This does not include if the ownership interest is managed by a third party such as a mutual or retirement fund.]
3. Privately-Held Entity Ownership: You, your spouse, or dependent children have any ownership interest in a privately held entity where the ownership interest reasonably appears to be related to your institutional responsibilities.
4. Public Office/Candidate: You are a candidate for public office or you hold public office.
5. Outside Teaching Appointments: You have or you are seeking approval to hold a teaching appointment with any entity other than UF.
6. Outside Research: You conduct or you are seeking approval to conduct any research at, or receive any research funding from or through, any entity other than UF. [Note: Research conducted at outside entities as part of a UF sponsored project or research funding received by UF does not need to be disclosed.]
7. Classroom Works: You require or you are seeking approval to require students to purchase works used in your classroom you or your spouse created, authored or co-authored (e.g., textbook(s), computer software, electronic or digital media) and for which you or your spouse will receive, or anticipate receiving payment, loan, subscription, advance, deposit of money, service, or anything of value.
8. Royalties/Licensing/Copyright Income: You receive royalties, licensing fees and/or copyright income in excess of \$5000 annually from an entity other than UF.
9. Expert Witness/Legal Consulting: You serve, or you are seeking approval to serve as an expert witness and/or engage in consulting in

a legal matter like a lawsuit or a potential lawsuit.

10. Professional Services Related to UF Expertise: You provide or you are seeking approval to provide paid or unpaid professional services to an outside entity and the professional services relate to your UF expertise.
11. Leadership Roles: You have a senior management, administrative, or leadership role, whether paid or unpaid, with an outside entity related to your UF expertise where you make executive business and/or financial decisions on behalf of the outside entity.

C. How to Disclose

1. Conflict of Interest. Outside Activities and Financial Interests required to be disclosed under this Policy can be found at, and shall be made through, the University's online reporting system, UFOLIO. UFOLIO, including FAQ and other information, can be accessed here: <https://compliance.ufl.edu/ufolio/>
2. Conflict of Commitment. Disclosure of a potential Conflict of Commitment shall be made to the University Employee's supervisor in the manner specified by the respective Employee's department. In the absence of a specified manner for approval of a Conflict of Commitment, the Employee must at least obtain approval from the Employee's supervisor in writing and in a form that demonstrates the supervisor was informed of the full extent of the Outside Activity and commitment prior to approval. Outside Activities presenting a potential Conflict of Commitment must be disclosed and approved before the Employee undertakes the activity.

D. Failure to Disclose

1. Failure to disclose a Reportable Outside Activity by a respective deadline shall result in a written notification from the University, with copies to the Employee's supervisor, department chair and dean, directing the Employee to complete their disclosure within 10 business days.
2. Failure to disclose more than 10 business days following the receipt of a delinquency notification shall result in a written reprimand from the University, with copies to the Employee's supervisor, department chair and dean, as applicable, indicating the Employee must complete their disclosure within 10 business days.
3. If an Employee fails to disclose more than 10 business days following receipt of a written reprimand, the University may take administrative or disciplinary action against the Employee up to and including termination of employment.

4. Failure to make truthful and complete disclosure of all Reportable Outside Activities or Conflicts of Commitment may subject the Employee to administrative or disciplinary action as set forth in section 7 below.

6. Review and Adjudication

For activities and interests disclosed through UFOLIO, the Assistant Vice President for Conflicts of Interest and, depending upon the type of activity or interest, other applicable designated University officials, will determine whether a disclosed activity, interest or circumstance presents a Conflict of Interest. In addition to an Employee's obligation to report a potential Conflict of Commitment to the Employee's supervisor, University supervisors shall be responsible for identifying any Conflict of Commitment of their direct reports and managing the conflict appropriately.

7. Policy Violations

The University may take administrative or disciplinary action concerning violations of this Policy up to and including termination of employment.

EXAMPLES OF REPORTABLE AND NON-REPORTABLE ACTIVITIES AND INTERESTS

UFOLIO Examples List

This document provides examples of the type of activities and interests that require disclosure in UFOLIO, and examples of situations that do not require disclosure. This list is not all-inclusive. Please ask your department chair or supervisor for guidance if you are still unsure about your disclosure responsibilities. v 3.1; 3/23/2020



DISCLOSE IN UFOLIO!

Outside Activities and Financial Interests that must be disclosed in UFOLIO:

An activity you do for an outside entity that is not part of your assigned UF duties but is related to your UF expertise, or a financial interest in an entity that could create a conflict of interest.

- **Employment & Professional Services:** Compensated or uncompensated outside employment, consulting, or other professional services related to your UF expertise (e.g., a physician consulting for a pharmaceutical company, serving on advisory boards, etc.).
- **Leadership Roles:** Compensated or uncompensated business leadership roles related to your UF expertise (e.g., engineer serving on Board of Directors of National Society of Professional Engineers).
- **Business with UF:** Management positions or financial interests in outside entities that enter into contracts/agreements with UF (sales, services, leases, etc.), or that benefit from your UF affiliation.
- **Research:** Conducting any research that is not coordinated through UF.
- **Research Sponsors & IP Licensees:** Any outside activity, financial interest, or management position in an outside entity that sponsors your UF work or licenses intellectual property/technology from UF.
- **Expert Witness & Legal Consulting:** Serving as an expert witness or legal consultant in an administrative, legislative, or judicial proceeding.
- **Teaching/Research/Service Appointments:** Teaching, research, or other service appointments at other institutions, including serving as a visiting instructor, scientist, temporary appointment, etc.
- **Writing/Editing:** Writing or editing a publication related to your UF expertise, unless this activity is considered by your chair/dean to be part of your UF assignment, e.g., certain activities conducted in the College of the Arts and/or for M.F.A. programs.

- **IP Income:** Receiving from an outside entity any royalties, licensing fees, or other income from patents, copyrights, or other intellectual property related to your UF knowledge, skills, or expertise.
- **Works Assigned to Students:** Receiving income from works (e.g. textbooks) that you assign to students in your UF course/program.
- **Public Office:** Running for public office or holding elected office (e.g. City Council, State Senate, etc.).

EXAMPLES OF REPORTABLE AND NON-REPORTABLE ACTIVITIES AND INTERESTS



DO NOT DISCLOSE IN UFOLIO!

Activities and Financial Interests that should **NOT** be disclosed in UFOLIO:

An activity you do outside of work that is unrelated to your UF expertise, or a financial interest in an outside entity that does not create a conflict of interest. In addition, 'inside activities' you engage in as part of your UF responsibilities must not be disclosed in UFOLIO. In instances where these activities might represent potential time commitment conflicts or adversely impact your UF responsibilities, you should proactively discuss them with your supervisor. However, these activities should not be disclosed in UFOLIO.

- Volunteering:** Volunteer or community service activities (e.g., coaching youth sports programs; volunteering at church; participating in community clubs/service organizations).
- Employment:** Employment outside of normal UF working hours (or while taking vacation leave) which is unrelated to your UF knowledge, skills or expertise (e.g., working part-time for a local company; working as a cashier; selling crafts at a community event).
- Retirement Accounts & Investments:** Retirement accounts, stocks, mutual funds, and other financial securities that do not create a financial interest that must be reported.
- Real Estate:** Managing rental properties or other real estate interests.
- Jury Duty:** Reporting for jury duty.
- Military Service:** Service in the United States Armed Forces.

Inside Activities: Wearing Your UF Hat: Any activity you do as part of your UF responsibilities should not be disclosed in UFOLIO. Such activities should be documented through a Faculty Assignment Report, Effort Report, or a Travel Authorization Request (TA). Reporting requirements set by sponsors must also be met.



- Speaking, Conferences, & Seminars:** Participating in scientific or educational conferences or other events while representing UF (e.g., serving as educational speaker, conference organizer, etc.).
- UF Research:** Research activities coordinated through UF contracts or grants, including related travel.
- Government Sponsors:** Reviewing proposals for a federal or state government sponsor or a domestic non-profit organization.
- Writing/Editing:** Writing or editing activities considered part of your UF role by your

Chair/Dean.

- Professional Membership:** Membership in an academic or professional society (however, serving on the Board or carrying a fiduciary role requires disclosure).
- Awards:** Receiving honors, academic awards, or an honorary degree from a non-profit entity.
- Sabbatical:** Sabbatical or leave for professional development (approved through separate process).
- IFAS Extension:** Providing IFAS Extension services.
- Federal Programs:** Serving as a program manager for a federal agency or working on an assignment through the Intergovernment Personnel Act or a related federal program.
- Fulbright:** Participating in the Fulbright (Scholar) Public Policy Fellowship program.
- Thesis/Dissertation:** Serving as an external member of a thesis or dissertation committee.



UFOLIO Review Level Examples Conflicts of Interest Program

Version 1.0 | April 22, 2020



The Conflicts of Interest Program reviews disclosures submitted through UFOLIO by considering various risk factors and applying a heightened level of scrutiny for disclosure types that commonly present higher risk. This document illustrates how the COI Program generally applies different levels of scrutiny to different types of disclosures. The COI Program focuses on key issues and considerations related to various laws, policies, and guidelines governing the conduct of UF employees, and each disclosure presents unique circumstances. Even disclosures that generally warrant low level scrutiny may ultimately be disapproved if circumstances otherwise warrant disapproval (e.g., unacceptable use of UF resources, excessive time commitment, etc.). Further, there may be specific college or department level guidelines that place additional restrictions on the outside activities and interests of employees. This document is intended for illustrative purposes only and is not an exhaustive list of disclosure types.

For all disclosure types, the COI Program considers risk factors such as the following:

- Discloser’s authority level at UF.
- Discloser’s authority level at the outside entity.
- Compensation amount or financial interest involved.
- Level of time commitment involved.
- Whether UF resources or students will be involved.
- Whether entity does business with UF.
- Whether the entity or activity will compete with UF programs or services.
- Whether the activity may adversely impact UF’s interests.
- Whether the activity relates to outside research that should be coordinated through UF.
- Whether the entity sponsors discloser’s UF research.
- Whether the entity may license UF technology invented by the discloser.
- Whether the activity may result in the discloser creating intellectual property.
- Whether the activity/interest may impair the discloser’s ability to faithfully fulfill UF responsibilities.

Low Scrutiny:

These types of activities are generally approved, absent unusual circumstances.

1. **Writing/Editing/Speaking:** Writing or editing a publication or engaging in professional speaking activities related to UF expertise. These activities may often be considered part of one’s UF assignment

(‘inside’ activities), and in such cases should not be reported in UFOLIO.

2. **Expert Witness/Legal Consulting:** Serving as an expert witness or legal consultant for a case that is not likely to adversely impact UF’s interests. Cases involving healthcare require additional review by the Self Insurance Program (SIP) Office.
-

Moderate Scrutiny:

These types of activities are commonly approved if circumstances warranting higher level scrutiny are not present. However, these activities often warrant ancillary review, and approval may be contingent upon mitigation or other conditions (e.g., contractual changes, monitoring plans, etc.).

1. **Employment & Professional Services:** Outside employment, consulting, or other professional services related to UF expertise that does not otherwise include circumstances listed in the high scrutiny level (for example, a College of Medicine physician will be consulting for a pharmaceutical company, serving on an advisory board, etc.).
 2. **Leadership Roles:** Business leadership roles where the discloser is not involved at UF in decisions regarding business between the entity and UF, if any (for example, discloser from the College of Law will be serving on the Board of Directors for the National Society of Law Professors).
 3. **Teaching Appointment:** Holding a teaching appointment at an outside entity where the time commitment or other responsibilities to the outside entity would not impair discloser from faithfully fulfilling all UF responsibilities.
-

High Scrutiny:

These types of activities are generally the highest risk and subject to the highest level of scrutiny. These activities may be disapproved if the circumstances are such that the potential conflict cannot sufficiently be mitigated.

1. **Business with UF:** Financial interest in or a leadership, employment, or contractual relationship with an outside entity that does business with UF, or that benefits from discloser’s UF affiliation, where the relationship does not fit into a statutory exception (for example, discloser has ownership in a construction company that is contracting with UF to provide construction services to UF).
2. **Intellectual Property (IP):** Creating anything in one’s UF field/expertise that is likely to result in a patent that should belong to UF pursuant to UF’s IP

Policy (for example, discloser from the College of Engineering will be engaged by an outside company to assist the company in creating a new engineering device).

3. **Research:** Outside research activities that should be coordinated through UF as part of one's UF role (for example, discloser from the College of Education will be consulting for another institution or company to conduct research activity that is within the scope of the College of Education and the discloser's expertise).
4. **Research Sponsors & IP Licensees:** Any outside activity, financial interest, or management position in an outside entity that sponsors discloser's UF work or licenses intellectual property/technology from UF (for example, discloser will be doing any consulting for Company A, while Company A also sponsor's discloser's UF research; or discloser will be consulting for Company B, and Company B licenses technology from UF which discloser invented).
5. **Competition:** Any activity/interest that would directly compete with programs/services offered by UF (for example, discloser will provide outside healthcare services that will directly compete with the College of Medicine's healthcare programs).
6. **International:** High risk international issues as determined by UF Research Integrity (for example, discloser will be traveling to consult or work for a foreign institution that is on a restricted entity list of the U.S. federal government).

Additional Resources: Please visit the Conflicts of Interest Program website for additional resources related to the UFOLIO system, conflicts of interest, and requirements applicable to UF employees: www.coi.ufl.edu.

II. Disclosing International Relationships and Activities to UF and Federal Agencies

The University of Florida values and encourages international research, collaboration, and scholarship. It is through our scholarly relationships—both domestic and international—that our faculty, staff, and students continue to generate innovations and discoveries that leave lasting impacts across the globe. The University is equally committed to adhering to regulatory requirements and being a good steward of state and federal agencies' resources in executing UF's mission.

Within U.S. federal agencies and university communities, there is growing concern regarding certain agreements and activities between university faculty members and various foreign universities and institutions, the existence of which may have a negative impact on federal agencies' funding decisions for individual researchers. Of particular concern are the cases where researchers are not disclosing these relationships and activities to their university or to U.S. federal agencies that support their work.

The recent message from the funding agencies is clear: *investigators and their universities must completely disclose all foreign activities to their federal funding sponsors.*

In an effort to support UF researchers and enable them to successfully navigate international relationships and activities, we are sharing guidance on University and federal agency requirements regarding foreign engagements by university faculty.

What are Federal Agencies Saying?

In 2018, the federal funding agencies began expressing serious concerns that foreign entities were exerting inappropriate influence on U.S. research. The bulk of the concern centers around a lack of disclosure by faculty regarding foreign activities and interests. The funding agencies are adamant that investigators and their universities must completely disclose all foreign activities. The most recent guidance from various federal agencies is below.

NIH Communications

- [NIH Notice Regarding Policies on Other Support and FCOI – July 2019](#)
- [NIH FAQ Regarding Other Support, Foreign Component, and FCOI – July 2019](#)

NSF Communications

- [NSF Letter Regarding Research Protection and Foreign Influence – July 2019](#)
- [NSF JASON Report, December 2019](#)
- [NSP PAPPG effective June 1, 2020](#)

DOE Communications

- [DOE Directive Regarding Foreign Talent Recruitment Programs – June 2019](#)

DOD Communications

- [DOD Memo Regarding Research Protection – March 2019](#)
- [DOD Undersecretary Addresses Academic Community on Science & Security](#)

OSTP Communications

- [OSTP Letter to Community on JCORE – September 2019](#)

While federal agencies are continuing to update their guidance on this topic, it is clear that rules require complete disclosure of research activities that involve a foreign entity. Failure to disclose will create significant issues for the investigator and UF. The University will continue to post updates and clarifications as we receive them from our sponsors. We encourage UF researchers to review federal, sponsor and UF policies and procedures, and to thoroughly disclose all domestic and international research-related relationships and activities to federal sponsors in proposals and progress reports, as well as to UF as an outside activity.

What International Relationships and Activities Must be Disclosed?

Outside activities must be reported to UF. It is a UF requirement for *all UF employees* that *any* outside activity related to their University expertise, whether domestic or foreign, be disclosed and approved via the UF outside activity disclosure process for any activity coinciding with the term of their UF appointment.

Please note, however, that federal sponsors require broader disclosure. Outside and inside activities must be reported to federal sponsors. *All federally sponsored investigators and key personnel* must report any activity that supports their research endeavors, regardless of: (1) whether it is an activity conducted within the scope of their UF job (i.e., an “inside activity”) or conducted in their private capacity (i.e., an “outside activity”); and (2) whether it takes place within or outside the term of their UF appointment.

Foreign Talent Recruitment Programs

As part of the national discussion of inappropriate foreign influence on U.S. research, many federal agencies, including NIH and NSF, have cited foreign talent recruitment programs as posing a particular threat to the U.S. research community. Participation in foreign talent recruitment programs often involves academic or research affiliations with foreign institutions, financial or other in-kind support for a U.S. researcher's program, and commitments of time and resources from the U.S. researcher.

As such, both UF and federal sponsors require disclosure of participation in foreign talent recruitment programs. Additionally, activities similar to those described above but not labeled as a foreign talent recruitment program must be disclosed (e.g., affiliations or appointments at another institution, whether or not remuneration is received, and whether full-time, part-time, or voluntary—including adjunct, visiting, or honorary).

Within the context of foreign engagements, the examples below illustrate activities one would disclose to UF and federal sponsors if performed in a private capacity. If performed within the scope of one's UF job, these activities would need to be reported to federal sponsors only.

Example Activities

- Academic, research, or administrative appointments at a foreign institution, even if the appointment is uncompensated. This includes appointments that are full-time, part-time, honorary, adjunct, or voluntary.
- Any agreement with a foreign university for which the UF faculty member directs non-UF students, postdocs, or other personnel affiliated with that university.
- Any foreign affiliation that is included in any publication by the UF faculty member.
- Any contractual agreement with a foreign institution, company, or government agency.
- Any non-UF agreement in which foreign funds or other resources are provided to the faculty for activities either at UF or at a foreign institution.
- Any agreement or relationship that assigns intellectual property (IP) rights to the foreign institution.
- Any agreement or relationship with a foreign entity in which the UF faculty member receives payments for salary, stipends, or living expenses.
- Any consulting agreements with a foreign entity.
- Holding a position such as founder, partner, employee, or board member at a company, non-profit, governmental agency, or other foreign entity.
- Receiving living/lodging funds or reimbursements.

- Having significant ownership interest in a foreign company related to your UF role/responsibility.
- Financial interests in a foreign entity that does business with or competes with UF.
- Receiving travel funds or reimbursements from a foreign entity.
- Receiving an honorarium from a foreign entity.

The above list provides guidance about foreign relationships and activities that must be disclosed. For a complete list of all relationships and activities, foreign or domestic, that need to be disclosed to UF, please see [UF Regulation 1.011 – Disclosure and Regulation of Outside Activities and Financial Interests](#).

How to Disclose Foreign Activities to UF

UF faculty must complete the “Disclosure of Outside Activities and Financial Interests” form and submit it to their Chair or Supervisor. Additional information on UF’s disclosure of outside activities process is within UF’s [“Guidelines, Policies, and Procedures on Conflict of Interest and Outside Activities, Including Financial Interests.”](#)

In the fall of 2019, the University began a staged roll-out of the UF Online Interest Organizer (UFOLIO), a web-based disclosure platform that will streamline, modernize and standardize the way faculty and staff report their activities and financial interests. UFOLIO will replace the existing paper forms, saving faculty and staff time by providing a simpler and more intuitive format for reporting and review.

Disclosing Foreign Activities to NIH

For NIH, the disclosure of foreign activities should be made as Other Support, Foreign Component, and/or within the Biosketch.

Disclosing Foreign Activities to NIH as Other Support

Definition of [Other Support](#) – NIH requires senior/key personnel to disclose *all* resources made available to them in support of or related to *all* of their research endeavors, regardless of whether or not they have monetary value and regardless of the performance site of the research. Even if the researcher performs the activity outside of the researcher’s UF appointment period (e.g., a nine-month faculty member conducts the activity during the summer months) or at a location other than UF, the researcher must disclose the activity to federal sponsors if it supports or relates to his/her research endeavors.

Examples of other support include, but are not limited to, the following when

they are in support of an investigator's research endeavors:

- Domestic and foreign grants and contracts, whether provided through UF, another institution, or to the researcher directly;
- Financial support for laboratory personnel (e.g., students, postdocs, or scholars working in a researcher's lab at UF and who are supported by a foreign entity either through salary, stipend, or receipt of living or travel expenses);
- Provision of lab space at another institution, foreign or domestic;
- Provision of scientific materials that are not freely available for use at UF or another institution where the faculty is working (e.g., biologics, chemical, model systems, technology, equipment, etc.);
- Travel expenses directly paid or reimbursed by an outside entity;
- Living expenses directly paid or reimbursed by an outside entity; and
- Other funding (e.g., salary, stipend, honoraria, etc.) paid to a UF researcher by an outside entity.

NIH requires [Other Support](#) to be submitted as part of the [Just-in-Time procedures](#). All other support indicated above must be included in that process. Researchers are responsible for promptly notifying NIH of any substantive changes to previously submitted Just-in-Time information up to the time of award.

After the initial NIH award, researchers must disclose other support in the annual research performance progress report (RPPR). Additionally, for post-award disclosures of other support, recipients must address any substantive changes by submitting a prior approval request to NIH in accordance with the NIHGPS section on "[Administrative Requirements—Changes in Project and Budget—NIH Standard Terms of Award](#)."

- [NIH Notice Regarding Policies on Other Support and FCOI – July 2019](#)
- [NIH FAQ Regarding Other Support, Foreign Component, and FCOI – July 2019](#)

Disclosing Foreign Activities to NIH as Foreign Component

NIH defines "[foreign component](#)" as the performance of any significant scientific element or segment of a project outside of the U.S., either by the recipient or by a researcher employed by a foreign entity, *whether or not grant funds are expended*. There is a 2-part test for determining whether an activity meets the definition of foreign component: (1) whether a portion of the project will be conducted outside of the U.S. and (2) whether that portion of the project is significant. Some examples of activities that may be considered a significant element of the project include, but are not limited to:

- Collaborations with investigators at a foreign site anticipated to result in co-authorship;

- Use of facilities or instrumentation at a foreign site; or
- Receipt of financial support or resources from a foreign entity.

In some cases, it may be difficult to tell whether a certain activity is a foreign component, other support, or neither. In general, if an activity does not meet the definition of foreign component because all research is being conducted within the U.S., but there is a non-U.S. resource that supports the researcher or his/her research endeavors, it must be disclosed as [other support](#). NIH has provided some examples within its [FAQs document](#). Additionally, the UF Division of Sponsored Programs (DSP) contact identified below can assist in the proper classification of foreign components and other support.

At the time of application submission, if there is an anticipated foreign component, researchers must check yes to [question 6 on the “R&R Other Project Information” form](#) “Does this project involve activities outside of the United States or partnerships with international collaborators?” and include a “Foreign Justification” attachment in [Field 12 “Other Attachments.”](#) The Foreign Justification should describe the special resources or characteristics of the research project (e.g., human subjects, animals, disease, equipment, and techniques), including the reasons why the facilities or other aspects of the proposed project are more appropriate than a domestic setting.

If researchers want to add a foreign component to an ongoing NIH award, UF must receive prior approval *before* adding the foreign component. To seek prior approval, researchers must follow the process identified in [NIHGPS Section 8.1.2](#). An Award Modification should be initiated in UFIRST to submit the request to DSP for review prior to submission to the NIH.

- [NIH Notice Regarding Policies on Other Support and FCOI – July 2019](#)
- [NIH FAQ Regarding Other Support, Foreign Component, and FCOI – July 2019](#)

Disclosing Foreign Activities to NSF, DOE, DOD, and Most Other Federal Agencies

For NSF, DOE, DOD, and other non-NIH agencies, the disclosure of foreign activities should be done within Current and Pending and/or the Biosketch.

Disclosing Foreign Activities as Current and Pending Support

For many agencies, the term “current and pending support” refers to the types of “other support” described above for NIH. NSF has developed an electronic format for disclosure of current and pending support information effective June 1, 2020. The NSF [Proposal and Award Policies and Procedures Guide \(PAPPG\)](#) clarifies the reporting requirements for current and pending support. Current and pending support includes all resources made available to an individual in support of and/or related to all of his/her research efforts,

regardless of whether or not they have monetary value. Current and pending support also includes in-kind contributions (such as office/laboratory space, equipment, supplies, employees, students. See also the NSF [FAQs](#) related to reporting Current and Pending support. For other agencies, including DOE and DOD, investigators should list that foreign activity with the “current and pending support” construct.

Disclosing Foreign Affiliations in Biosketch

Researchers should include all affiliations—foreign and domestic— whether or not remuneration is received; whether full-time, part-time, or voluntary— including adjunct, visiting, or honorary – on their Biosketch. This includes any titled academic, professional, or institutional position. For NSF, these affiliations must be listed under the Appointments section. Additionally, some affiliations or participation in foreign talent recruitment programs may also meet the definition of other support. If so, researchers should disclose the activity as described in the “current and pending” section above as well.

Prior to accepting any affiliation with another institution that requires a commitment of time or resources, and irrespective of whether the affiliation is compensated or not, UF faculty need to disclose the activity to their department leadership and receive approval. This includes participation in foreign talent recruitment programs or other affiliations/appointments at another institution. Disclosure to UF requires that UF faculty complete the “Disclosure of Outside Activities and Financial Interests” form and submit it to their Chair or Supervisor. Additional information on UF’s disclosure of outside activities process is within UF’s [“Guidelines, Policies, and Procedures on Conflict of Interest and Outside Activities, Including Financial Interests.”](#)

- [NSF Letter Regarding Research Protection and Foreign Influence – July 2019](#)

How UF is Addressing the Concerns

Continuing Existing Activities	Implementing New Activities
Export Controls Compliance	Increased awareness across campus
Foreign visitor reviews in high-risk areas	Cooperated with federal authorities and participate in working groups at the national level
Classified and Controlled Unclassified Information (CUI) security protections	Created a website to share information concerning the foreign influence threat and disclosure requirements
Risk reviews for foreign-sponsored and located research projects	Developed and implemented a new electronic disclosure system for the disclosure of outside interests
VISA requirements management for foreign students and employees	Developed an international risk assessment process that provides screening of activities with foreign institutions, as well as assessment of conflicts of interest or commitment



Event: Ancillary Review from UFOLIO for Foreign Employment Contract

Risk Category	Low (1)	Medium (2)	High (3)	Unacceptably High (4)	Comments
Country			X		China
Activity			X		Foreign Government Talent Recruitment Program Formal Affiliation with Foreign University Req'd
IP Value			X		Contract requires waiving IP
PI (Federal Funding, Research Agenda, etc.)		X			Large federal portfolio including NSF
Export Control (TCP)			X		Faculty projects include two TCPs Numerous TCPs within the department
Field of Expertise			X		Computer Engineering, focus on AI
Personnel (UF traveling to; Visitors to UF)			X		UF Faculty – minimum 3 month in China req'd Foreign university faculty and students visit UF
Dollar Value			X		UF Faculty to receive \$50,000/ year for 3 years
Military Entity or Government Affiliation	X				No known military affiliation of university
Restricted Party or Association	X				Not a restricted entity

Risk Totals	2	2	21	0	
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Total Risk:	25			Determination:	Denied
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High
per Advisory Group Review

National Association of College and University Attorneys

Mitigation: None available

Actions Taken by Universities to Address Growing Concerns about Security Threats and Undue Foreign Influence on Campus

Updated - April 22, 2019

AAU and APLU are identifying and sharing practices that universities are employing to ensure the security of research, protect against intellectual property theft and academic espionage, and prevent actions or activities by foreign governments and/or other entities that seek to exert undue foreign influence or which infringe on core academic values (e.g. free speech, scientific integrity, etc.).

The associations recently conducted a [survey](#) asking campus representatives to provide examples of effective policies, practices, tools, and resources they are using and which other campuses may benefit from learning about as our universities collectively work to address ongoing and emerging foreign security threats. The following is a sample of some of the activities being pursued by universities, both existing activities in response to federal requirements and emerging activities in response to recent security concerns, in over 140 examples submitted by 39 institutions. We encourage all universities to review these examples and to consider implementing many of these practices on their own campuses as deemed appropriate to protect against security threats and undue foreign influence. Additional support collecting and summarizing these examples was provided by the American Council on Education (ACE) and the Council on Governmental Relations (COGR).

AWARENESS BUILDING AND COMMUNICATIONS

- ***Distribution of campus-wide letters on safety and security to increase faculty awareness and remind the campus community of existing reporting requirements.*** Institutions have distributed letters to their faculty to increase awareness of systematic programs of foreign influence and how such programs pose risks to core scientific and academic values and threaten research integrity. These letters often include information reminding faculty of their existing reporting and disclosure requirements under federal and institutional policies.
- ***Publication of security newsletters and presentations.*** Institutions have published and distributed security newsletters covering topics including foreign threats to intellectual property and international travel preparation. Campus-based facility security and export control officers also have reported providing additional security briefings to university leadership and working to facilitate such briefings with their regional FBI offices given heightened concerns about foreign

threats.

COORDINATION

- ***Formation of high-level working groups and task forces.*** Institutions have formed cross-campus working groups and task forces consisting of senior administrators and faculty to discuss, develop, and implement strategies to better coordinate and address concerns regarding security threats and undue foreign influence.
- ***Formation of international activities and compliance coordination offices.*** Institutions have organized new offices or shared workflow processes to better coordinate, oversee, and continually review their activities involving international partnerships, foreign engagements, and compliance requirements. These offices oversee functions ranging from export controls, to review of foreign visitors, to issues associated with international students and scholars. Some of these offices also provide strategic planning, advice, and assistance to administrators, faculty, and staff on international operations, security, and other high-risk activities.
- ***Modification of Responsible Conduct of Research (RCR) training to inform students and faculty of foreign threats and federal export control, disclosure, and reporting requirements.*** Institutions have incorporated modules on export-controlled research, protection of intellectual property, preservation of scientific integrity, ethical behavior in conducting federally-funded research, agency reporting and disclosure requirements, and processes for reporting suspicious behavior into RCR training for students and faculty. These efforts often include providing information on technical areas of specific interest to untoward actors and are being conducted in the context of broader university initiatives to educate and raise awareness among faculty and students concerning current foreign threats and how to take protective measures in response.

REVIEW OF FOREIGN GIFTS, GRANTS, CONTRACTS, AND COLLABORATIONS

- ***Development and use of comprehensive processes for review of foreign gifts, grants, and contracts.*** Institutions have established extensive routing and screening systems for agreements and awards involving foreign support. This involves scanning agreements for foreign engagement, export controls, grant terms and conditions, and the potential receipt or generation of sensitive data and routing documents as needed for in-depth review of international sponsorship requirements, export control risks, and information security controls.

- ***Development and use of templates to mitigate risks and protect against foreign threats.*** Institutions have developed templates to guide faculty and staff as they review and consider entering into partnerships and/or agreements with foreign entities. These templates often include prompts with the intent of mitigating potential risks, protecting core academic values such as free speech, and ensuring compliance with export control laws and other federal requirements.
- ***Use of restricted or denied party screening techniques and tools.*** Institutions are expanding their techniques for screening foreign sponsors and collaborators, including visitors, visiting scholars, and employees on non-immigrant visas, to ensure compliance with federal export control requirements and restricted entities lists. Many institutions are using software solutions such as [Visual Compliance](#), which searches numerous continually-updated restricted parties lists, to screen for restricted or denied parties. If an individual or entity is present on a restricted, denied, debarred, designated, or blocked party list, they may be prohibited from doing business with or providing services to the institution or may receive restricted access to specific facilities or information.

REVIEW OF FACULTY FOREIGN FINANCIAL INTERESTS AND AFFILIATIONS

- ***Development and use of Conflict of Interest and Conflict of Commitment policies.*** Institutions are using existing Conflict of Interest (COI) reporting requirements to identify faculty who have foreign financial interests, including affiliations with foreign institutions of higher education. Institutions have expanded their existing COI policies by developing complimentary Conflict of Commitment policies. These policies seek to identify foreign affiliations, relationships, and financial interests which may conflict with the faculty member’s responsibilities to their home institution or otherwise raise concerns. Institutions also have enhanced their screening of COI disclosures for international activity.
- ***Enhancement of data handling and management.*** Institutions have updated training, tools, policies, and governance for handling data and developed comprehensive approaches for storing, protecting, and ensuring the appropriate use of different types of data. In particular, institutions have identified appropriate protections for sensitive data in grants and contracts to ensure compliance with [NIST SP 800-171 Rev. 1](#), “Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations.”
- ***Improved data security measures.*** Institutions have taken measures to

improve data security and internal breach prevention and incident response processes. This includes bolstering network perimeter security and conducting enhanced monitoring of network traffic. Institutions are using encryption, multi-factor authentication, and virus scanning to protect data and are developing new processes for monitoring systems and networks for intrusions and reporting suspected data breaches.

- ***Development and use of coordinated approaches for cyber threat notification.*** Institutions have joined the [Research and Education Networking Information Sharing and Analysis Center](#) (REN-ISAC), which monitors the threat landscape and seeks to enhance operational security and mitigate risk at higher education institutions. REN-ISAC works with trusted third parties to notify its 627 members of infected hosts and suspicious network traffic. Institutions also have joined the [Omni Security Operations Center](#) (OmniSOC), an initiative aimed at reducing cybersecurity threats and serving as a cybersecurity operations center that can be shared among multiple institutions. OmniSOC analyzes data for potential threats and notifies members when incidents require further action.

PROTECTION OF INTELLECTUAL PROPERTY AND USE OF TECHNOLOGY CONTROL PLANS

- ***Development and use of faculty disclosure requirements for intellectual property protection.*** Institutions routinely require disclosure of intellectual property with commercialization potential by faculty, with the intent of ensuring that such IP is secured by quickly applying for the appropriate patent protection. Institutions also protect and restrict access to specific information on university invention disclosures, patent applications, and license agreements.
- ***Use of Technology Control Plans (TCPs) and non-disclosure agreements.*** Institutions regularly establish TCPs and other risk mitigation initiatives to ensure the security of research and protection of intellectual property and to maintain compliance with federal regulations, laws, and contract directives. In instances where proprietary research is being conducted, institutions regularly make use of non-disclosure agreements.

REGULAR INTERACTIONS WITH FEDERAL SECURITY AND INTELLIGENCE AGENCIES

- ***Establishment of a clear POC and strong relationship with regional federal security officials.*** Institutions have developed much stronger relationships and are regularly interacting with local and regional officials from the FBI, ICE, Defense Security Service (DSS), and other organizations. This includes participation by senior university

administrators in classified briefings. Institutions have established a primary campus point of contact for these agencies, with whom they may interact when they have identified issues or threats to campus or if they have concerns about the activities of specific faculty and/or students. Institutions described utilizing the FBI as a resource for consultation regarding the screening of foreign visitors and collaborators and as a source of security updates.

- ***Deployment of faculty foreign travel review and assistance.*** Institutions have created programs, often through their export control or research compliance offices, for reviewing travel by faculty and administrators for export compliance, software use restrictions, and other safety and security concerns. This includes cleaning laptops, iPads, smartphones, and other electronic devices to make sure they are protected from cyber theft before, during, and after travel in specific countries. Institutions with these programs will often provide blank, secure loaner laptops to researchers traveling abroad and encourage faculty not to cross international borders with devices containing research data. Some institutions also provide security briefings for individuals traveling internationally on university business and tailored one-on-one briefings as needed for destinations considered high-risk.

INTERNATIONAL VISITORS TO CAMPUS

- ***Development and use of requirements for vetting and securely hosting foreign visitors while on campus.*** Institutions have developed policies requiring faculty to alert university officials, often through their export control, research compliance, or international affairs offices, when they plan to have foreign visitors come to visit campus and/or tour their laboratories. The hosting faculty member may be required to fill out a brief questionnaire and/or form for each visitor. Some institutions use software solutions such as [Visual Compliance](#), which searches numerous continually-updated restricted parties lists, to screen for restricted or denied parties. Other institutions have implemented measures for securely hosting and escorting foreign visitors and avoiding unauthorized information gathering.

EXPORT CONTROL COMPLIANCE

- ***Use and strengthening of policies and programs to ensure full compliance with federal export control requirements.*** Institutions have in place clear and comprehensive policies regarding whether and how they will undertake export-controlled research activities. This includes applying for export control licenses when required and creating Technology Control Plans (TCPs) to protect technology from

unauthorized access when export-controlled technologies are involved and/or classified work is being conducted.

- ***Employing university staff with specific export control compliance expertise.*** Most AAU and APLU institutions have one or more staff members with specific responsibility for ensuring compliance with export controls. Many of these individuals belong to the [Association of University Export Control Compliance Officers \(AUECO\)](#), a national association aimed at exchanging information and sharing knowledge and effective university policies and procedures to advance university compliance with U.S. export, import, and trade sanctions laws and regulations. Institutions conducting classified research also have specially trained Facility Security Officers (FSOs), who oversee security specific to this research.

Framework for Review of Individual Global Engagements in Academic Research

VERSION 1.0

This Framework is provided as a tool to the COGR Membership with the understanding that the Council on Governmental Relations is not providing legal, regulatory, or policy advice. Nothing in this Framework shall be deemed to supplant any federal or state law, regulation, or institutional policy.

Acknowledgments

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In the News – Why This Matters

THE WALL STREET JOURNAL.

U.S. Reaches Settlement on Undisclosed Chinese Funding of Scientists

[The Van Andel Research Institute, Michigan](#)

The Washington Post

Accused of fraud, Kansas researcher denies working for a Chinese university as he fights federal charge

[University of Kansas](#)

TIME

Emory University Fires 2 Neuroscientists Accused of Hiding Chinese Ties

TheScientist
EXPLORING LIFE, INSPIRING INNOVATION

UCSD Eye Doctor Resigns After Investigation into Ties with China

[University of California at San Diego](#)

Medscape

Major Cancer Center's CEO, Staff Resign over Chinese Payments

[Moffitt Cancer Center, Florida](#)



Exclusive: Major U.S. cancer center ousts 'Asian' researchers after NIH flags their foreign ties

[MD Anderson Cancer Center, Texas](#)

Bloomberg

U.S. Charges Chinese Professor Accused of Theft to Help Huawei

[University of Texas at Arlington](#)

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Introduction

Global engagement is critical to scientific progress and to solving many of the societal challenges that are borderless. To address these global challenges and to develop new technology, discover new treatments, and deepen our understanding of the world, researchers must collaborate and disseminate knowledge across borders. But these engagements may also present individual and institutional risks. These risks have been highlighted by, among others, members of Congress from both parties, the FBI, the National Institutes of Health, the National Science Foundation, and the Department of Energy. They are also described in detail in the JASON report on [Fundamental Research Security](#) and the [Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans](#) report by the Senate Subcommittee on Permanent Investigations.

The purpose of this Framework for Review of Global Engagements in Academic Research (“Framework”) is to provide an underlying structure to support an institution’s analysis of such engagements, assess potential risks, and develop strategies for mitigation. Because each institution has different policies, approaches, levels of foreign involvement, and risk tolerance, this Framework does not present a prescriptive approach. It is intended to be a tool to help institutions identify and resolve potential issues relating to global engagements.

The Framework is organized into eight sections, as follows:

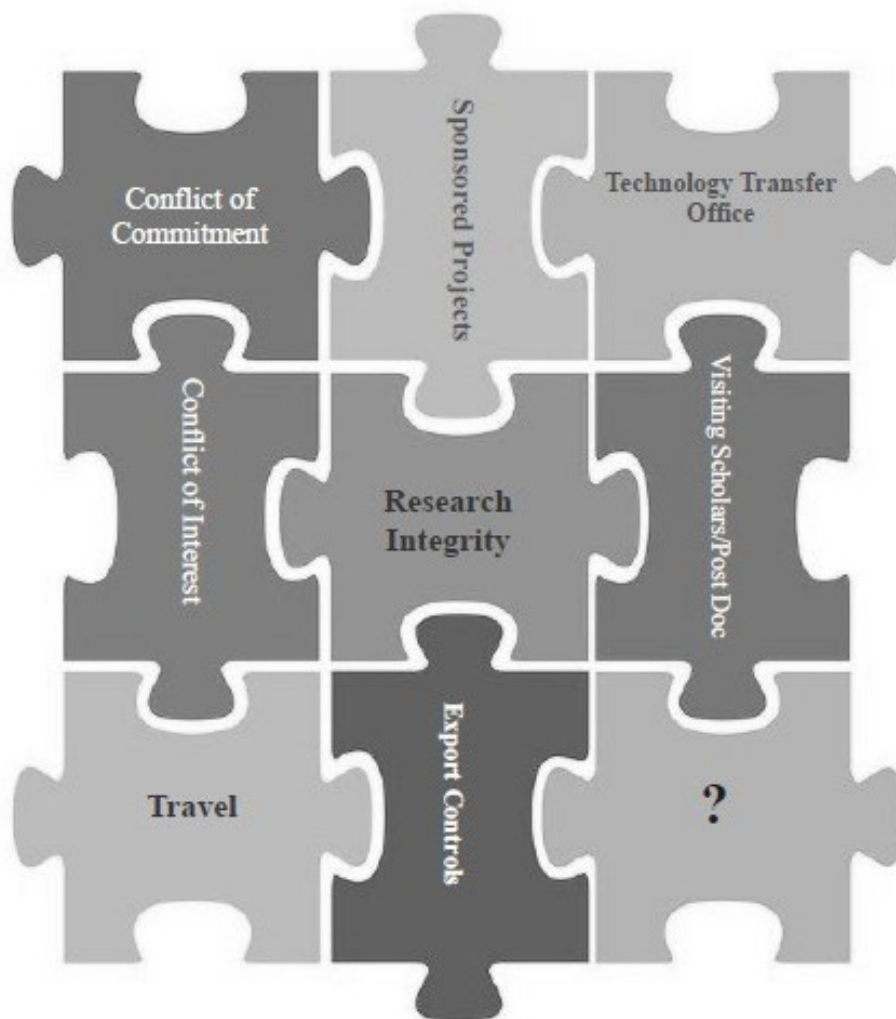
- A. Receipt of Information Regarding International Activities
- B. Governance, Decision-Making, and Oversight
- C. Policy Basis for Review: What Institutional Policies/Procedures Authorize Solicitation of Information from Investigators and Review?
- D. Facts for Analyzing the Engagement
- E. Compliance with Internal and External Disclosure Requirements
- F. Summary of Key Potential Risks
- G. Potential High-Risk Factors that Could Trigger Additional Due Diligence
- H. Potential Risk Management Strategies

Each section includes a series of prompts that may or may not apply to any particular case. Institutions should feel free to add, subtract, and annotate these prompts.

At the end of the Framework, we include five case studies of global engagements in academic research, and some initial questions to consider for each. The purpose of these examples is to illustrate some of the activities and issues that may occur in connection with global engagements in academic research and show how the Framework might apply to a particular case. The examples are in no way exhaustive.

The Framework is intended to help institutions continue to support global research while protecting the researcher, institution, funders, and other stakeholders from the potential risks certain engagements may pose. The goal is to enable the unique and powerful scientific progress that relies on global collaboration with common-sense risk assessment and mitigation, and without creating a perception of “profiling” or having a chilling effect on global research or national competitiveness.

This is Version 1 of the Framework. Although developed in response to concerns about “foreign influence” in the U.S. research enterprise, many aspects of this Framework are also applicable to domestic engagements. COGR will update the Framework as additional management strategies and federal guidance emerges, including from the process that the Office of Science and Technology Policy’s Joint Committee on Research Environment is leading together with federal agencies.



Foreign Engagement Review Framework for Academic Research

A. Receipt of Information Regarding International Activities

Institutions receive information regarding researcher activities through a variety of channels, including grant and contract proposals, researchers' disclosures of conflicts of interest and commitment, travel disclosures, internal reviews of publications, requests to host visitors, appointments of trainees, and other means. This Framework will aid institutions in the analysis of the disclosed information to assess and mitigate the risk of inappropriate foreign influence through informed decision making and risk management.

Institutions may wish to consider ways to coordinate or streamline the disclosure of information to “connect the dots,” reduce administrative burden and increase inter-institutional collaboration in reviewing and approving international activities. Such coordination also helps streamline institutional responses to federal requirements for disclosure.

Potential sources of information regarding international activities may include but are not limited to:

1. Applications for funding, (e.g., current and pending research support, appointments at other organizations, and bio sketch information)
2. Institutional disclosure forms, (e.g., annual financial conflict of interest reports, project-specific disclosures, outside professional activity reports)
3. Technology transfer office, or other administrative offices that process agreements regarding the sharing or transfer of research resources (e.g., license, material transfer agreement, data use agreement, memorandum of understanding for an unfunded collaboration)
4. International students and scholar's office, dean's office, or provost's office that may process requests to sponsor visa applications or process appointments for visitors; other administrative and central offices that may have relevant information (e.g., development, office of general counsel, travel office, IT, global support, procurement services, etc.).
5. Anonymous tip lines and other external sources of information

B. Governance, Decision-Making, and Oversight

Institutions may establish a variety of approaches for decision-making, management, and monitoring of international research engagements. Points to consider include:

1. How are issues identified within the institution, and who is responsible for the initial intake when questions arise?
2. Has the institution identified and communicated to the community a central point of contact to answer questions and receive concerns?
3. Who in the institution is responsible for defining the scope of the review, gathering relevant information and assessing risk? Who is responsible for decision-making, approval of activities, and monitoring individual cases to ensure that institutional decisions are carried out? Consider centralized and decentralized approaches.
4. Who will “own” any new policies and procedures, and where will these materials be located?
5. How should matters that cross several administrative offices be handled? Who should coordinate the review?
6. Are there training needs? Who will be responsible for developing and delivering such training, and who (if anyone) will be required to complete it?
7. What resources are required to implement new approaches in this area (e.g., human, financial, information technology, space)? Who will provide such support?

C. Policy Basis for Review: What Institutional Policies/Procedures Authorize Solicitation of Information from Investigators and Review?

There may be many policies that are relevant to reviewing an outside engagement, including international engagements. It may be helpful to compile an inventory of the primary policies related to international activities, including the office and individuals responsible for the related procedures; the information collected at the institution; and the purpose of the data collected (e.g., background or informational, subject to review and approval, etc.).

The following policies are among those that may be involved in evaluating international engagements:

1. Conflict of interest policies
2. Conflict of commitment policies, including faculty outside professional activity reporting and appointment(s) at any other institution
3. Export control policies and procedures

4. Admissions and selection processes for undergraduate and graduate students
5. Hiring processes for post docs and research scientists
6. Visiting researcher policies
7. Authorship policies or practices, at the institutional, journal or editorial association level
8. Intellectual property policies, including policies on material transfer or data use agreements
9. Data security and access control policies and procedures
10. Sponsor policies for reporting resources and activities
11. Travel policies
12. Gift acceptance policies and procedures

D. Facts for Analyzing the Engagement

The questions in this section are intended to help guide the reviewer in establishing the critical points concerning any engagement, and therefore, to identify potential risks, mitigation, and internal or regulatory notification or approval requirements.

Note that although institutions may not review a researcher's outside activity contracts routinely because they are not institutional agreements, these contracts may provide essential information regarding the researcher's obligations in a foreign engagement. Accordingly, to understand the facts of an engagement, reviewers may find it useful to review the contract, website, correspondence or other written material that spells out the nature of the international engagement, and any obligations¹. This is particularly the case with respect to any outside activity where the individual is expected to perform research, including, for example, participation in a talent program, or any other activity that involves the conduct of research at another entity or institution. Institutions should use an unbiased, third-party translator for any foreign language documents. JASON finds that failing to disclose any aspect of a foreign engagement, whether an international scholar coming to the United States or a U.S. researcher conducting funded research in a foreign country, compromises the integrity of the U.S. research enterprise.²

As stated in the Introduction, the following questions are not intended as a "checklist" but rather as "prompts" to help understand the nature of the engagement.

¹ *Web searches may assist research institutions in identifying relationships with other entities. See <https://www.bloomberg.com/news/articles/2019-08-21/u-s-industrial-researcher-charged-with-hiding-his-job-in-china>*

² *JASON report JSR-19-21 Fundamental Research Security, p. 32*

1. Identity of non-U.S. entit(ies)
 - a. What is the name, address, and point of contact for the non-U.S. entity or entities involved in the engagement?
 - b. Who are the individuals involved with the engagement? Are all individuals known?
 - c. Where will the activity take place (e.g., all locations)?
 - d. How is the entity or engagement being funded (e.g., foreign governmental funding, foreign private non-U.S. funding, U.S. funding, etc.)?
2. Activity
 - a. What is the nature of the activity? Does it involve research? Teaching? Mentoring?
 - b. Has your researcher been listed on a proposal for a project to be carried out by or at the other entity? If so, obtain copies.
 - c. What are the expected duration and time commitments?
 - d. Is the activity part of an on-going research collaboration?
3. Relationship to institutional activities
 - a. How is the international engagement related to the individual's current (home) institutional activities (e.g., research, teaching, mentoring)?
 - b. Is there any potential overlap between the international engagement and the individual's current institutional activities?
 - c. Will the international engagement create competition with the home institution (e.g., for the researcher's time or research resources)?
4. Intellectual property
 - a. Will data or materials be exchanged or shipped to a non-U.S. institution?
 - b. Is intellectual property likely to be developed?
 - c. Who will own any resulting intellectual property?
5. Controlled technology and information
 - a. Is the activity subject to export controls?
 - b. Does the activity involve a restricted entity or other entity identified as posing a possible elevated risk?
6. Authorship
 - a. Is joint authorship expected of papers, data sets, software, or other works?
 - b. Who will control the dissemination of the resulting fundamental research, data and products?
 - c. What affiliations will be listed for the faculty member?
 - d. Will institutional or sponsored funding help support the publication? Many sponsors require acknowledgment of grant support.

- e. Are there any expectations for authorship that would violate U.S. authorship norms and policies (e.g., agreements to name individuals as authors, payments for authorship, or promoting an affiliation with another institution)?
7. Activity at other institutions or entities
- a. Does the engagement require a specified time commitment at another institution, and if so, what is the commitment?
 - b. Is there a formal academic appointment or affiliation?
 - c. Does the activity involve mentoring/supporting another institution's students at that institution; will the researcher apply for or participate in sponsored projects at the other institution?
 - d. Will the foreign entity provide resources for research (e.g., salary, space, equipment, data, proprietary materials, etc.), and if so, what are the forms of support?
 - e. Are there any additional obligations, contractual or otherwise?
 - f. Is there an expectation for the collaboration to continue after your researcher returns to the home institution such that a component of institutional research will be conducted at the foreign institution?
8. Benefits and compensation to your researcher
- a. Will your researcher be compensated for this engagement? If so, what are the forms of compensation (e.g., salary, access to a lab, other resources)?
 - b. Will your researcher receive any other benefits (e.g., sponsored travel or other remuneration?)
9. Appointments at your institution
- a. Does the engagement require your institution to host or mentor individuals from the foreign entity at the home institution? If so, what positions or appointments are involved (e.g., students, post docs, visiting scientists)?
 - b. How will those individuals be selected (e.g., will the researcher have control over who comes to the home institution, or will the other entity select the personnel)?
 - c. Is the individual affiliated with any military or high-risk entities abroad?
 - d. What is the duration of each appointment?
 - e. What activities will visitor(s) be engaged in at the home institution?
 - f. How will visitor(s) be funded?
 - g. Will visitor(s) sign your institution's visitor agreement, if required?
 - h. Do the visitors' institutions require any reporting back on their activities at your institution?
 - i. What training/orientation on institutional policies will be provided, if any?

10. Use of your institution's resources
 - a. Will access to space, equipment, data, proprietary materials, or other institutional resources be provided in support of the activity?
 - b. Will there be a payment to your institution for the visitors' use of institutional resources?
 - c. Will your institution's name or brand be used in any way?
11. Imposition of non-U.S. legal obligations
 - a. Is there an agreement that imposes foreign legal obligations on the researcher?
 - b. Are those obligations in conflict with U.S. law, institutional policy, or generally accepted research values or principles? Does the non-U.S. entity uphold these research values and principles (e.g., academic freedom)?³
12. Termination
 - a. How does the researcher end the engagement?

E. Compliance with Internal and External Disclosure Requirements

Researchers must comply with both internal and external disclosure obligations that may apply to foreign engagements. Institutions themselves may also have disclosure or reporting obligations to funding agencies and others. This section identifies potential mandatory disclosure requirements for international engagements, both internal and external. Which, if any, is applicable will depend on the case. Noncompliance with disclosure requirements may require an institutional response contingent on the facts of the case (e.g., whether the failure to disclose was intentional or not) and institutional policy.

1. Internal disclosures
 - a. Have conflict of interest and conflict of commitment disclosures been filed describing the activity?
 - b. Are there project-specific disclosures regarding the engagement that may have been filed as part of a human subjects' research protocol or sponsored project proposal?
2. External disclosures
 - a. Has the researcher disclosed the engagement to research sponsors in a funding application (e.g., current and pending/other support disclosures, biosketch, routing and approval forms, or other "just in time" approvals)? Has it been disclosed in a progress report?
 - b. For NIH-funded research, does the engagement meet the definition of a "foreign component?" If so, has prior approval been requested from NIH?

³See *Washington Post* article [In Xi Jinping's China, a top university can no longer promise freedom of thought](#)

- c. Are any updates or prior approvals needed before the next progress report or routine communication with the sponsor?
- d. How has or should the researcher disclose the engagement in publications, including sponsorship, funding sources, affiliations, and conflict of interest statements?

F. Summary of Key Potential Risks

1. Conflict of commitment – violation of a duty of loyalty to the home institution; insufficient personal bandwidth to fulfill the obligations to the home institution; overcommitment with respect to obligations to funding agencies; competition with the home institution for funding, personnel, etc.
2. Conflict of interest and risk to the objectivity of research
3. Nondisclosure to funding agencies of information relevant to funding decisions
4. Loss (not just transfer) of intellectual property/know-how – another institution receives inappropriate preferential access to publications, intellectual property or data. For example, China’s intellectual property and data laws may limit access to research data collected in China⁴
5. Legal risk to the institution (e.g., False Claims Act)
6. Legal risk to the individual researcher, including foreign legal risk if a contract requires compliance with foreign law or norms that conflict with U.S. or state laws, or the policies of the home institution
7. Financial risk (e.g., loss of federal funding)
8. Reputational risk, loss of prestige – noncompliance or failure to respond to concerns may lead to negative publicity; another institution receives improper attribution in publications or patents given the home institution’s financial investment and prior years of work; researcher’s career could be negatively impacted in severe cases
9. Sanctions violation (where a restricted entity is involved)
10. Loss of researcher’s academic independence; undue influence on academic judgment; erosion of merit review and competition for placements etc.

G. Potential High-Risk Factors that Could Trigger Additional Due Diligence

Determination of high-risk factors that may trigger further due diligence is complex and dependent on many factors. The following is a general set of criteria that could help in identifying potential high-risk factors.

⁴ In 2018, the Chinese government decreed that all scientific data generated in China must be submitted to government-sanctioned data centers before appearing in publications. See <https://www.sciencemag.org/news/2018/04/china-asserts-firm-grip-research-data>. http://www.gov.cn/zhengce/content/2019-06/10/content_5398829.htm]

1. Involvement of “countries of concern” identified by the U.S. Department of Energy (e.g., China, Russia, Iran, and North Korea)⁵ and federal agencies as posing national security and economic competition concerns
2. The engagement has the characteristics of a foreign government-sponsored talent recruitment program (e.g., an appointment at another organization, training of students at another organization, the appointment of students or visiting researchers at the home institution, the opportunity for the researcher to apply for grants and perform research at the other institution)⁶
3. Involvement of a restricted party – entities on various Federal agency lists present heightened risks of disclosure or transfer that could violate U.S. law
4. Engagement involves activity regulated by the U.S. Department of State ([International Traffic in Arms Regulations](#)), U.S. Department of Commerce ([Export Administration Regulations](#)), U.S. Department of Energy regarding nuclear security ([10 C.F.R. § 810](#)), or U.S. Treasury ([Office of Foreign Assets Control](#)) – legal and regulatory risks are higher when these regulations are involved
5. Access to private information – access to protected health information, financial information, or other sensitive or private information presents a heightened risk to the individual, public, and to the institution
6. Nondisclosure to the research institution – a researcher’s failure to disclose information that should have been disclosed to their home institution (e.g., as part of COI or outside disclosure policies) could be honest error or could be deliberate concealment of agreements between the researcher and another entity in violation of institution and sponsor policies
7. Very high compensation from the international institution – raises questions about the sponsor’s expectations in return for the payment, including time commitment; use of the researcher’s name; use of the U.S. institution’s name; technology or know-how transfer; bribery risk; illegal kickbacks; or referral fees
8. Very long duration of engagement/activity/appointment – could point to substantial commitments and expected outcomes; real or perceived conflicts if the individual is being paid to perform the same responsibilities for another institution
9. Expectation of hiring or training of personnel from the foreign entity – potential loss of intellectual property; potential deemed export concerns; will the standard institutional practices apply to the selection of students and visitors or will individuals

⁵ Department of Energy “Countries of Concern”
https://www.energy.gov/sites/prod/files/2017/02/f34/Part%20VII%2C%20SECTION%20J%20-%20List%20of%20Documents%2C%20Exhibits%2Cand%20Other%20Attachments%20%20Attachment%20G_0.pdf

⁶ The Homeland Security and Government Affairs Permanent Subcommittee on Investigations issued a report, “Securing the U.S. Research Enterprise from China’s Talent Recruitment Plan,” which included sample contracts with foreign entities in Appendix A. [https://www.hsgac.senate.gov/imo/media/doc/2019-11-18 PSI Staff Report](https://www.hsgac.senate.gov/imo/media/doc/2019-11-18%20PSI%20Staff%20Report) -

- be selected solely by the researcher; what merit-based criteria will be used in the selection of personnel?
10. Dual appointments and “shadow labs” (separate laboratories in a foreign country over which a researcher has oversight or in which they have access to laboratory resources)- raise concerns about how to distinguish between outside activities and home institution activities; if the boundary is not clear, there may be disputes about ownership of intellectual property and other research results; potential diversion of investments the home institution has made in the researcher and their lab/department for the benefit of the other institution; opportunity to have dual funding for a research program/project, compromising assertions to U.S. funding agencies that work is not otherwise supported
 11. Commitments regarding authorship – promises of authorship or naming of affiliations by contract and not based on actual contributions to the publications that may violate academic norms and mislead readers regarding authors and their contributions
 12. Research conducted in other countries with data ownership or transfer laws that conflict with U.S. models – such laws could result in publication restrictions, the inability to access data collected or diversion of know-how. For example, Russia has a new law obligating scientists to report to the Russian government (e.g., encounters with other scientists⁷); other countries may have similar requirements

H. Potential Risk Management Strategies

Consider whether the issues identified above could be appropriately managed through one or more of the following:

1. Require disclosure, review, and approval of any agreement conferring an academic appointment at an institution other than the home institution (e.g., unpaid or honorary appointments)
2. Public disclosure of the details of the relationship in grant applications, publications, and presentations to the public
3. Disclosures to sponsors, as required
4. Training regarding affiliations and publication; oversight if necessary, to ensure affiliations are appropriate
5. High-level approval (e.g., from the department chair, dean or provost) for appointments in the researcher’s lab to ensure objectivity and fair competition

⁷ *In February 2019, the Russian Ministry of Science and Education issued guidelines on how Russian scientists should collaborate with foreign colleagues. These guidelines include reporting obligations with respect to meetings,*

getting approval from a supervisor to meet with a foreign partner outside of working hours, submitting reports on encounters with foreign scientists, etc. See a detailed overview in the New York Times article [here](#).

6. Reduction or gradual elimination of the engagement that causes a conflict (e.g., winding down the foreign relationship or transition away from a federally sponsored activity)
 7. Severance of the relationship or activity that is the source of the conflict
 8. Modification of the outside activity or the institutional research plan to ensure clear separation of institutional activities, including a written scope of work that is agreed to in writing by both parties
 9. Expedited dissemination of research results (e.g., through websites or preprints) to ensure that the other institution does not receive preferential access to information
 10. Inter-institutional agreements that manage intellectual property, data sharing, publication and other exchanges as needed
 11. Technology management plans, export or OFAC licenses or other export control risk mitigation strategies to manage the export of controlled or sensitive technology
 12. In severe cases, limitations on a researcher's ability to apply for sponsored funding, especially federal funding
 13. Development of data security and management plan for the protection of pre-publication data
 14. Involvement of risk management, research compliance, or internal audit function to discover facts or develop and assess mitigation
-

Foreign Engagement Review Framework for Academic Research

Case Studies – Application of the Framework

1. *Giving a Talk at a Foreign Institution*

Professor R has contacted you about an academic talk he’s been invited to give next month to a Russian research group that he has worked with on and off over the last several years. The talk will include a discussion of Professor R’s open-source facial recognition/AI software that has gotten a lot of attention in the press lately. Professor R contacted you to ask if he needs institutional approval to accept the invitation from the potential new client (host). Professor R could easily add the conference presentation onto a trip he’s already planned to eastern Europe, so it will only be a 1-2-day side-trip from that engagement.

Issues to consider:

- Is the talk part of a research collaboration or other engagement with the host institution?
- Is the host institution in Crimea, which is subject to comprehensive sanctions? Is the host institution on any restricted party list? What additional precautions are needed to manage any other risks due to the country/entity (e.g., providing additional briefings to researchers/labs)?
- Will compensation be provided, and, if so, in what form (e.g., speakers’ fees, travel reimbursement, etc.)?
- Is all the content from the presentation in the public domain? Will unpublished materials be shared at the meeting or during private discussions during the visit (e.g., sharing pre-publication materials, proprietary information, or technology that may be restricted or through export control regulations)?
- Is the outside activity within the bounds of the institution’s conflict of interest/conflict of commitment policies? Which offices and policies apply to this case?
- Are there institutional policies or practices for protecting computers, data, or other resources when traveling abroad that should be followed in this case?
- Are there reputational risks associated with the activity that the institution may have identified as requiring additional reviews (e.g., by a special committee)?

Disclosing the activity to external parties:

- Is there any connection between this activity and sponsored awards that would need to be reported to the sponsor?
- Does this activity rise to the level of reporting to federal sponsors (e.g., through current and pending support or annual report)? If Professor R has NIH support, is he aware that prior approval for any new collaborations outside the U.S. are needed under the NIH requirements for Foreign Components?

2. *Visiting Trainee in U.S. Labs*

Professor G has been approached by a Chinese researcher who previously worked at your institution, though not directly with Professor G. Professor G has funding from both NIH and two pharma companies. The Chinese researcher, Dr. X, now works for a Chinese pharma company and has requested to spend a year in Professor G's lab. Dr. X is going to come with his own funding and project but will also lend a hand on Dr. G's other projects, as needed. What do you need to know about the visitor?

Issues to consider:

- What is the source of funding for the visitor?
- Is Dr. X's company on any restricted party list? If so, what additional precautions are needed to manage risks due to the country/entity (e.g., licenses, additional security measures, briefings to researchers/labs personnel)?
- Which activities in Professor G's lab are of interest to Dr. X?
- What is Dr. X's proposed scope of work? How does it relate to the projects underway in Professor G's lab?
- Will Professor G's intellectual property be used, shared with, or licensed to the Chinese pharma company? Will Dr. X be sharing materials, compounds, or data from Dr. G's lab with his pharma company? Will Dr. X bring proprietary or controlled materials into Professor G's lab? What agreements are needed to manage these exchanges?
- Will Dr. X have access to any proprietary or controlled information? To any specialized facilities on campus?
- Are joint publications with Dr. X anticipated?
- Which offices at your institution need to be informed of this relationship? Who needs to approve the appointment, a visa, use of intellectual property, use of facilities, etc.?
- Are there institutional policies on visitors, and if so, is this request for Dr. X's visit within the bounds of those visitor policies (e.g., the term of the appointment, extensions periods, access to institutional systems/data, who need to approve the request, etc.)?

- What visas or other government approvals are required?
- What training/orientation should be provided for the visitor and the lab regarding your institution's policies? Regarding the role of the visitor in the laboratory?

Disclosing the activity to external parties:

- Has Professor G disclosed Dr. X's activity to NIH as "Other Support" in any applications or progress reports? If not, should updates be filed?

3. *Research Collaborations with an International Entity*

Professor C has a research collaborator in Australia, with whom she regularly exchanges semi-conductor chips and research data. All of their collaborative research is considered fundamental, and there are often joint publications. Professor C has approached you with a request to sign a new data use agreement (DUA) for a data set that originated in China, now being licensed by a Chinese company in Shanghai, which she plans to use on her NSF award. The Australian collaborator will also license the same data set. The Chinese data provider requires that they be listed as a co-author on any publication as a requirement for using the data.

Issues to consider:

- What licenses, control plans, or other management strategies are needed to enable the exchange of semi-conductor chips and data with the Australian collaborator? Have the appropriate agreements been executed between the parties (e.g., MTA and DUA)?
- Are there any export control issues related to the data or the project?
- Is the data provider on any restricted party lists?
- What additional precautions are needed to manage any additional risks due to the country/entity (e.g., providing additional briefings to researchers/labs)?
- Which offices at your institution need to be informed of this relationship? Who needs to approve the DUA? Are other reviews or approvals needed?
- If any of the above is deemed "high risk," do others in the institution need to review the data use agreement with the Chinese provider?
- Does the authorship requirement conflict with any institutional policies or norms?

Disclosing the activity to external parties:

- Has Professor C disclosed this activity to NSF in grant applications? In the annual report for the current NSF award? If not, are any updates needed?
- Are other external disclosures are required?

4. *Consulting – Appointments at a Non-U.S. company*

Professor C, from Case Study #3 above, has been contacted by the Shanghai company asking if she would be interested in helping the company out with a consulting project in China over summer. The consulting would be done outside of Professor C's 9-month appointment, and since she only has one NSF grant, it wouldn't be too difficult to get away for two months over the summer. Professor C was born in China but raised in Kansas and is a naturalized U.S. citizen. Still, she knows a lot of people in China, and she and her husband could do some touring over that period, as well.

Issues to consider:

- Is there a contract for the international engagement, and what are the terms and obligations?
- Are the terms of the consulting activity (time commitment and compensation) within the bounds of the institution's conflict of interest/conflict of commitment policies?
- Which offices at your institution need to be informed of this relationship? If prior approval is required, who approves?
- Is the company on any restricted party list? What additional precautions are needed to manage any additional risks due to the country/entity (e.g., providing additional briefings to researchers/labs)?
- How does the consulting activity relate to Professor C's institutional activities? Is there any overlap with any sponsored programs?
- Will anyone from Professor C's home institution be involved in the activity? Any use of the home institution's facilities?
- Are there any export control implications for this work? Does Professor C expect to export any technology to China or import any technology from China? What management is needed?
- Will Professor C's intellectual property be used while in China? Will IP licenses need to be secured?
- Are joint patents or joint publications expected? If so, is this in line with the institution's authorship policies and practices?
- Would you evaluate this appointment differently if the appointment was with a Canadian company? What would the risks be in that case?

- Will Professor C need to disclose this activity to NSF in grant applications? In the annual report for the current NSF award?

- Are other external disclosures are required?

5. *Consulting – Appointments at a Non-U.S. Research Institution*

Professor Y is a superstar in his field. He has several sponsored awards from NSF and DOE, and he is the deputy director of a sizable industry-funded center at your institution. Last month, he contacted you after an info session that you gave in the school, asking to discuss a specific situation with you. It turns out that Professor Y signed an agreement with a new university in India two years ago. The agreement calls for personal payments to Professor Y, a new laboratory and students at the Indian institution, and depending on progress, a gift back to Professor Y's lab at your institution. Professor Y's agreement to join the new university on a part-time basis was a requirement by the local government before it would provide significant new funding to build the new university, which will include several new teaching and research programs over the next five years. Professor Y is very committed to the new Indian university and wants to continue with them, if possible. He signed a 5-year deal, so he has three more years until the end of his commitment.

Issues to consider:

- Because this is a complex case, gather complete information as outlined in the Framework, including requesting a copy of the contract and all other correspondence about the compensation and obligations of the engagement with Professor Y.
- Which offices at your institution need to be informed of this relationship to assess the impact at this stage? Confirm whether this engagement has been disclosed in Other Support or Prof. Y's biosketch.
- Consider under what circumstances the institution would allow this activity to continue. Could management strategies adequately address the conflicts that have already arisen or may arise from this additional appointment?
- Review publications since the date of the contract for attribution of the supporting institution.
- Since Professor Y holds federally funded awards, other offices (e.g., the office of the general counsel) should be consulted to discuss how best to proceed.

- If this engagement has not been disclosed, federal sponsors will likely need to be contacted with the details and the potential impact on federally funded awards.
- Consider who else needs to be contacted once all of the facts have been obtained and the institution has completed its analysis.

Conclusion

Global engagement is critical to the success of the U.S. research enterprise. The purpose of this Framework is to support global activities and help institutions assess the potential “foreign influence” risks such activities may involve. Assessing these activities requires time and resources. COGR hopes that this Framework provides some structure for this important task and welcomes feedback and suggestions for improvement.

Contact Michelle Christy (MChristy@cogr.edu) with any questions about this document. Please note that COGR may not provide legal advice or comment on individual cases.

Foreign Influence – Survey of Recommended Action Items¹

#	Description	Source	Notes
Governance			
1-1	Establish a university-wide committee to keep central offices informed and coordinate efforts	BU	
1-2	Maintain relationship with regional federal security officials, including establishment of clear point of contact	BU; AAU	
Education and Outreach			
2-1	Update websites and distribute periodic communications to educate on issues of foreign influence	R&G; BU; JASON; NIH; AAU	
2-2	Conduct in-person “town halls” and other outreach to interested faculty and staff on issues of foreign influence	R&G; BU; JASON; NIH; AAU	
2-3	Expand research ethics training to include conflict of interest and conflict of commitment, and affiliation and publication protocols	JASON; R&G; BU; NIH; AAU COGR	

¹ Prepared by Matthew J. Fucci, Counsel, Office of the General Counsel, Massachusetts Institute of Technology

#	Description	Source	Notes
2-4	Increase training and awareness specifically for new faculty who are foreign nationals	NIH	
Grant Administration, Conflict of Interest and Disclosure Process			
3-1	Update policies and reporting tools to address foreign influence through increased clarity, harmonization of systems, and systematic controls	R&G; BU; COGR; NIH; AAU	
3-2	Consider risk-based internal reviews based on researcher or international transaction characteristics to validate disclosures	R&G; NIH	
3-3	Investigate and discipline conflict of interest and conflict of commitment disclosure issues similar to research misconduct	JASON; COGR; NIH; AAU	
3-4	Require disclosure, review, and approval of any agreement conferring an academic appointment at an institution other than the home institution (e.g., unpaid or honorary appointments)	COGR	
International Engagements and Personnel Vetting			
4-1	Carefully consider foreign engagements before they are initiated by assessing risks and benefits	JASON; R&G; COGR	

#	Description	Source	Notes
4-2	Increase inter-institutional collaboration in reviewing and approving international activities	COGR	
4-3	Conduct restricted party screening across all campus relationships	BU; AAU	
4-4	Consider vetting potential foreign employees (including prospective faculty members) through unclassified searches and review of professional relationships	NIH	
4-5	Consider processes for vetting and orienting visiting scholars and students	R&G; COGR; NIH; AAU	
4-6	Require high-level approval (e.g., from the department chair, dean or provost) for any lab appointments to ensure objectivity and fair competition	COGR	
Data and Security			
5-1	Consider processes for securing data, including assessing the physical, technical, and administrative controls frameworks employed to host visiting scholars and students for the risk of data misappropriation and exfiltration	R&G; COGR; NIH; AAU	

#	Description	Source	Notes
5-2	Discuss how to safely host laboratory and VIP visits	NIH	
5-3	Provide “safety briefings” and loaner electronic equipment for international high-risk travel	NIH; AAU	
5-4	Conduct debriefings following international travel	NIH; AAU	
5-5	Ask investigators to document in writing their conversations and decisions about what each departing student and scientist will take with them when they leave a laboratory	NIH	
Other			
6-1	Continue compliance with Section 117 reporting obligations	R&G	
6-2	Continue compliance with export control and sanctions laws and regulations	R&G	

Sources:

NIH Advisory Committee to the Director, *ACD Working Group for Foreign Influences on Research Integrity*, December 2018 (“NIH”)

AAU/APLU, *Actions Taken by Universities to Address Growing Concerns about Security Threats and Undue Foreign Influence on Campus*, April 22, 2019 (“AAU”)

JASON, *Fundamental Research Security*, December 2019 (“JASON”)

Boston University, *Report of the ad hoc Committee on Research Security and Conflict of Commitment*, January 2020 (“BU”)

Council on Governmental Relations, *Framework for Review of Individual Global Engagements in Academic Research*, January 14, 2020 (“COGR”)

Ropes & Gray, *Webinar: Global Engagement and “Foreign Influence” in Research – Practical Guidance for a Changing Landscape*, February 18, 2020 and related FAQs (“R&G”)

RECENT DOJ ENFORCEMENT ACTIONS – China Initiative

DATE	INDIVIDUAL	AFFILIATION	PRESS RELEASE
08/21/2019	Feng Tao	University of Kansas	https://www.justice.gov/opa/pr/university-kansas-researcher-indicted-fraud-failing-disclose-conflict-interest-chinese
12/19/2019	Undisclosed Researchers	Van Andel Research Institute	https://www.justice.gov/usao-wdmi/pr/2019_1219_VARI
01/28/2020	Charles Lieber	Harvard University	https://www.justice.gov/opa/pr/harvard-university-professor-and-two-chinese-nationals-charged-three-separate-china-related
01/28/2020	Yanqing Ye	Boston University	https://www.justice.gov/opa/pr/harvard-university-professor-and-two-chinese-nationals-charged-three-separate-china-related
01/28/2020	Zaosong Zheng	Beth Israel Deaconess Medical Center	https://www.justice.gov/opa/pr/harvard-university-professor-and-two-chinese-nationals-charged-three-separate-china-related

DATE	INDIVIDUAL	AFFILIATION	PRESS RELEASE
03/10/2020	James Patrick Lewis	West Virginia University	https://www.justice.gov/opa/pr/former-west-virginia-university-professor-pleads-guilty-fraud-enabled-him-participate-people
02/27/2020	Anming Hu	University of Tennessee	https://www.justice.gov/opa/pr/researcher-university-arrested-wire-fraud-and-making-false-statements-about-affiliation
05/11/2020	Xiao-Jiang Li	Emory University	https://www.justice.gov/opa/pr/former-emory-university-professor-and-chinese-thousand-talents-participant-convicted-and
05/11/2020	Simon Saw-Teong Ang	University of Arkansas	https://www.justice.gov/opa/pr/university-arkansas-professor-arrested-wire-fraud
05/14/2020	Quin Wang	Cleveland Clinic, Lerner College of Medicine	https://www.justice.gov/opa/pr/former-cleveland-clinic-employee-and-chinese-thousand-talents-participant-arrested-wire-fraud

Key Resources: Foreign Influences on Research Integrity

NIH, [Statement on Protecting the Integrity of U.S. Biomedical Research](#), August 23, 2018

NIH Advisory Committee to the Director, [ACD Working Group for Foreign Influences on Research Integrity](#), December 2018

AAU/APLU, *Actions Taken by Universities to Address Growing Concerns about Security Threats and Undue Foreign Influence on Campus*, April 22, 2019 (attached)

NSF, JASON, [Fundamental Research Security](#), December 2019

Boston University, [Report of the ad hoc Committee on Research Security and Conflict of Commitment](#), January 2020

Council on Governmental Relations, *Framework for Review of Individual Global Engagements in Academic Research*, January 14, 2020 (attached)