

Practical Approaches to New Economic Espionage and Export Control Issues

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“Some of these foreign governments, corporations, and persons are hostile to the United States and may be seeking to project ‘soft power,’ steal sensitive and proprietary research and development data and other intellectual property, and spread propaganda.”

Reed D. Rubinstein
Principal Deputy General Counsel, DoEd

“Our science and engineering enterprise... is put at risk when another government endeavors to benefit from the global research ecosystem without upholding the values of openness, transparency, and reciprocal collaboration. Faced with such a risk, we must respond.”

France Cordova
Director, NSF

“... unacceptable breaches of trust and confidentiality that undermine the integrity of U.S. biomedical research.”

Francis S. Collins
Director, NIH

SPONSOR PRIORITIES

- Protecting the integrity of the peer review process
- Improving accuracy of self-disclosures of other support, financial interests, and relevant affiliations;
- Assuring institutions are effectively monitoring and enforcing disclosure requirements;
- Protecting federally funded IP security while supporting foreign collaborations; and
- Increasing efforts to identify information and establish appropriate standards (i.e., contract clauses)

RECENT INVESTIGATIONS & CHARGES

- Failure to Disclose
 - Fraud
 - Wire fraud, and
 - False statements
- Export control violations
- Failure to register as a foreign agent
- Theft

USG ACTIVITIES

- JCORE recommendations in development
 - Safe and Inclusive Research Environments
 - Rigor and Integrity in Research
 - Research Security
 - Reducing Administrative Burden
- Restrictions on dissemination of a subset of “fundamental research” data
- Specific information security requirements
- Inclusions in Appropriation Acts
 - FY 2019 National Defense Authorization Act, Section 889

USG ACTIVITIES (CONT.)

- Proposed Revisions to Existing Legislation
 - Higher Education Act, Section 117
 - Immigration and Nationality Act (J-visa program)
 - Export Administration Act
- Proposed new legislation on research security
 - New reporting requirements (individual and institutional)
 - New lists of “sensitive technologies”
- New export controls on emerging technologies (EAR)

COGR FRAMEWORK

1. Receipt of Information Regarding International Activities
2. Governance, Decision-Making, and Oversight
3. Policy Basis for Review: What Institutional Policies/Procedures Authorize Solicitation of Information from Investigators and Review?
4. Facts for Analyzing the Engagement
5. Compliance with Internal and External Disclosure Requirements
6. Summary of Key Potential Risks
7. Potential High-Risk Factors that Could Trigger Additional Due Diligence
8. Potential Risk Management Strategies

FACTS FOR ANALYZING THE ENGAGEMENT

1. Identity of non-U.S. entit(ies)
2. **Activity**
3. **Relationship to institutional activities**
4. Intellectual property
5. Controlled technology and information
6. Authorship
6. **Activity at other institutions or entities**
7. Benefits and compensation to your researcher
8. Appointments at your institution
9. **Use of your institution's resources**
10. Imposition of non-U.S. legal obligations
11. Termination

SUMMARY OF KEY POTENTIAL RISKS

1. **Conflict of commitment**
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
5. **Legal risk to the institution (e.g., False Claims Act)**
6. Legal risk to the individual researcher
7. Financial risk (e.g., loss of federal funding)
8. **Reputational risk, loss of prestige**
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.

POTENTIAL HIGH-RISK FACTORS

1. Involvement of “countries of concern.”
2. Characteristics of a foreign government-sponsored talent recruitment program
3. Involvement of a restricted party
4. Engagement involves activity regulated by export or sanction regulations
5. Access to private information
6. Nondisclosure to the research institution
7. Very high compensation
7. Very long duration of engagement, activity, or appointment
8. Expectation of hiring or training of personnel from the foreign entity
9. Dual appointments and “shadow labs”
10. Commitments regarding authorship
11. Research conducted in other countries with data ownership or transfer laws that conflict with U.S. models

WHAT CAN RESEARCH LEADERS DO?

- Participate in the review existing institutional policies and reporting requirements
 - Consider creating a summary resource or matrix of requirements
 - Is there sufficient context to the requirements?
 - Do you need more stringent area-level requirements?
- Reinforce or initiate messaging to faculty and support staff
 - Include the “why”
 - Are resources/experts available?
- Facilitate review by oversight offices (create transparency)
- (Re)Assess international engagement activities
- Build a coalition. Ask for help!

WHAT SHOULD FACULTY DO?

- Understand and follow institutional and sponsor requirements
 - Know where to go for help
- Get to know research partners, sponsors, visitors, volunteers and students
- Set clear expectations for all team members, including visitors and volunteers
- Carefully review any IP provisions in consulting agreements
 - Consult with tech transfer or other offices, if appropriate at your institution
 - Watch for terms that are more in keeping with employment
 - Guard against overreach
- Discuss potential or developing collaborations with research leaders to assure alignment

RESOURCES

- COGR Framework for Review of Individual Global Engagements in Academic Research (1/14/20): <https://www.cogr.edu/framework-review-individual-global-engagements-academic-research>
- AAU, Science and Security Resource Document: <https://www.aau.edu/key-issues/science-and-security-resource-document>
- AAU and APLU, Effective Practices Summary: <https://www.aplu.org/members/councils/governmental-affairs/Effective-Sci-Sec-Practices-What-Campuses-are-Doing.pdf>
- AAMC Foreign data theft: What academic institutions can do to protect themselves: <https://www.aamc.org/news-insights/foreign-data-theft-what-academic-institutions-can-do-protect-themselves>
- JASON Report on Research Security, commissioned by the National Science Foundation: <https://www.whitehouse.gov/wp-content/uploads/2019/07/Update-from-the-NSTC-Joint-Committee-on-Research-Environments-July-2019.pdf>

RESOURCES (CONT.)

- Joint Committee on the Research Environment (JCORE),
 - Update from the National Science and Technology Council, JCORE (7/9/19): <https://www.whitehouse.gov/wp-content/uploads/2019/07/Update-from-the-NSTC-Joint-Committee-on-Research-Environments-July-2019.pdf>
 - Summary of the 2019 White House Summit (11/5/19): <https://www.whitehouse.gov/wp-content/uploads/2019/11/Summary-of-JCORE-Summit-November-2019.pdf>
- NIH Advisory Committee to the Director (ACD), ACD Working Group for Foreign Influences on Research Integrity report (Dec 2018): https://acd.od.nih.gov/documents/presentations/12132018ForeignInfluences_report.pdf

RESOURCES

- University of Virginia, Foreign Influence Resources
 - Website: <https://research.virginia.edu/compliance/research-regulations/foreign-influence-federally-sponsored-research>
 - Summary Guidance Document: <https://research.virginia.edu/sites/vpr/files/2019-12/UVA.ForeignInfluenceDo.Dont.UpdatedDec2019.docx.pdf>
- Penn State: https://www.research.psu.edu/international_affiliations
- University of California, Office of the President: <https://www.ucop.edu/ethics-compliance-audit-services/compliance/research-compliance/foreign-influence.html>