



2019 ANNUAL MEETING

OCTOBER 19 - 23

Foreign Influence on US Research: Implications for FCOI and Research Collaborations

Patrick Schlesinger | Assistant Vice Chancellor | Research Administration and Compliance
University of California, Berkeley, CA USA

Susan Wyatt Sedwick | Sr. Consulting Specialist | Attain LLC | Oklahoma City, OK USA

Genesis of the Topic

Congressional Testimony by FBI Director Christopher Wray called China “the broadest, most significant” threat to the nation and said its espionage is active in all 50 states.

Feb. 2018

National Defense Authorization Act FY 2019

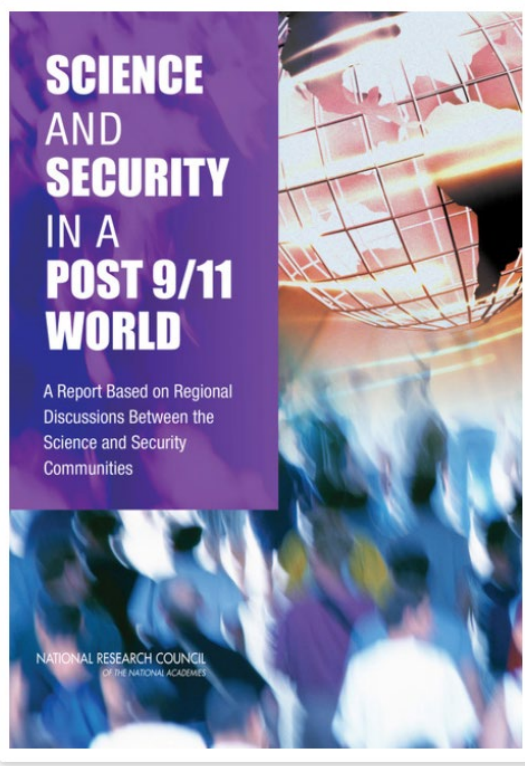
2019

20 Aug. 2018

Francis Collins’ Dear Colleague Letter dated August 20, 2018

- NIH Advisory Committee to the Director (ACD) Working Group on Foreign Influences on Research Integrity
- NIH targeted letters to institutions

National Security Advisory Board On Biosecurity



- 2004 National Academies Publication, *Science and Security in a Post 9/11 World: A Report Based on Regional Discussions Between the Science and Security Communities*
- Dual-Use Research in Life Sciences
- Subsequently
 - Dual Use Research of Concern
 - Gain-of-Function (GOF) Research



August 20, 2018

Dear Colleagues:

For many decades, the National Institutes of Health (NIH) and institutions like yours have participated in productive partnerships that greatly advance biomedical science. Scientists at universities and academic medical centers, supported by NIH, have made seminal biomedical discoveries that have led to dramatic improvements in human health. The scientists whose work NIH is proud to help support come from all over this country and the world, bringing rich, diverse perspectives and backgrounds to the biomedical research enterprise.

The NIH-funded biomedical enterprise depends on a competitive system, which, to be successful, must be fair, transparent, and trustworthy.

Unfortunately, threats to the integrity of U.S. biomedical research exist. NIH is aware that some foreign entities have mounted systematic programs to influence NIH researchers and peer reviewers and to take advantage of the long tradition of trust, fairness, and excellence of NIH-supported research activities. This kind of inappropriate influence is not limited to biomedical research; it has been a significant issue for defense and energy research for some time. Three areas of concern have emerged:

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.

NIH Director Collins' Letter – Aug. 20, 2018

- *Identified three major concerns:*

- 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.*

- *Warned of targeted letters and additional NIH efforts*

NIH Advisory Committee to the Director (ACD) Working Group for Foreign Influences on Research Integrity, Dec. 2018

Communication and Awareness: Opportunities where existing procedures are in place but in need of education, clarification, or increased attentiveness;

Risk Mitigation: Opportunities for change or enhancement of existing tools that safeguard research integrity; and

Monitoring, Actions, and Consequences: Opportunities for ongoing monitoring, verification, trust-building, and remediation.

Evaluate existing policies and forms and make explicit what must be reported as other support

- *Ensure that instructions are communicated to recipient organization support staff and investigators by adding specific instructions e.g. explicitly state in application instructions that applicants should specify foreign support, conflicts of commitment, and gifts*

National
Defense
Authorization
Act FY 2019

SECTION 889. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- The head of an executive agency may not enter into a contract *with an entity* that uses covered telecommunications equipment or services as a substantial or essential component of any system.
 - “Covered telecommunications equipment or services” means telecommunications equipment from Huawei or ZTE and video surveillance and telecommunications equipment from Hytera, Hangzhou Hikvision, or Dahua. Subsidiaries are included.
 - Ban takes effect two years after effective date, or Aug. 13, 2020.
 - Universities should be scanning networks and substituting components.
 - Devices used by individuals?

<https://www.congress.gov/bill/115th-congress/house-bill/5515/text#toc-HF98AABB1E47F407A86D0E399DD9C0FDB>



National Defense Authorization Act FY 2019

- **SECTION 1286. INITIATIVE TO SUPPORT PROTECTION OF NATIONAL SECURITY ACADEMIC RESEARCHERS FROM UNDUE INFLUENCE AND OTHER SECURITY THREATS**

- Prioritize selection of institutions of higher education that the Secretary determines demonstrate a record of excellence in industrial security in academia and in research and development.
- The initiative includes development of the following:
 - 1) **Information exchange forum** and information repositories to enable awareness of security threats and influence operations being executed against the United States research, technology, and innovation enterprise.
 - 2) **Training and other support** for academic institutions to promote security and limit undue influence on institutions and personnel, including financial support for execution for such activities.
 - 3) The capacity of government and academic institutions and institutions of higher education **to assess** whether individuals affiliated with Department of Defense programs have participated in or are currently participating in foreign talent programs or expert recruitment programs.
 - 4) Opportunities to **collaborate** with defense researchers and research organizations in secure facilities to promote protection of critical information and strengthen defense against foreign intelligence services.
 - 5) Regulations and procedures that are **consistent with policies that protect open and scientific exchanges in fundamental research.**





RECRUITMENT
PROGRAM OF GLOBAL EXPERTS

“CHINESE TALENT PROGRAM”

Foreign Talents Program

- Example: China's 1000 Talents Program
- Initiated in 2008, the program has recruited over 7000 scholars

Targeted Letters to US Institutions

- Main Concern: Undisclosed Financial Conflicts of Interest, Other Support, Foreign Components, and Conflicts of Commitments
- Specifically identified faculty
- Over 200 institutions targeted



Fallout has begun.

- MD Anderson dismissed several faculty in response to NIH letter.
- Emory University dismissed two faculty in response to NIH letter.
- Investigation into Duke graduate student's alleged theft of "fundamental research".
- University of Kansas professor indicted on four counts of fraud for not disclosing relationships
- DoEd currently investigating foreign gifts to at least five universities



More Faculty Members Lose Their Jobs Over Contacts With China

By Lindsay Ellis and Nell Gluckman | MAY 23, 2019 PREMIUM



Daniel Mayer, Wikimedia Commons

The university investigated two faculty members from the National Institutes of Health who had worked on American research.

Two faculty members are no longer employed by Emory University after an investigation found they did not properly disclose their research relationships with China, Emory officials said on Thursday.

The announcement made the Atlanta university the second major research institution in two months to disclose it had identified faculty members who had not properly disclosed their research information. The Centers for Disease Control and Prevention (CDC) announced it had identified two faculty members who had not properly disclosed their research relationships with China.



“Scientific research depends on the free flow of ideas. Our national interest is best advanced by welcoming people, not by racial stereotyping based on where a person comes from.”

Frank H. Wu, President of the Committee of 100

Implications for Export Controls

Is this a threat to the Fundamental Research Exclusion?

NIH Guidance

- NIH issued directive 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
- FAQs – intended by NIH to be clarifying in nature of existing requirements – August 6, 2019



NIH Guidance Specifics



- Foreign Component: *The existence of any “significant scientific element or segment of a project” outside of the United States.*
- Other Support (NIHGPS, [2.5.1](#)): includes 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 to ensure no scientific, budgetary or commitment overlap. Includes high-value materials that are not freely available
- Funding from a foreign sources for NIH-supported research performed at US university would not constitute a foreign component but would constitute other support.



Pay Attention to the Fine Print

- List all positions and scientific appointments both domestic and foreign held by **senior/key personnel** that are **relevant to an application** 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).
2. Report all resources and other support for all individuals designated in an application as **senior/key personnel** – including for the program director/principal investigator (PD/PI) and for other individuals who contribute to the scientific development or execution of a project in a substantive, measurable way, whether or not they request salaries or compensation. Information must be provided about all current support for ongoing projects, irrespective of whether such support is provided through the applicant organization, through another domestic or foreign organization, or **is provided directly to an individual that supports the senior/key personnel's research efforts**.
 3. Report all current projects and activities that involve **senior/key personnel, even if the support received is only in-kind (e.g. office/laboratory space, equipment, supplies, employees)**. All research resources including, but not limited to, foreign financial support, research or laboratory personnel, lab space, scientific materials, selection to a **foreign "talents"** or similar-type program, or other foreign or domestic support must be reported.
 4. Provide the **total award amount for the entire award period covered (including facilities and administrative costs)**, as well as the number of person-months (or partial person-months) per year to be devoted to the project by the **senior/key personnel** involved.

NSF PAPPG (Page II-23)

- Changes to requirements for Current and Pending
- Requires reporting all sources of support “whether salary support is requested.”
- Is this a change in NSF policy?





Higher Education Act – Section 117

- Requires reporting of gifts and contracts from foreign sources that alone or in the aggregate exceed \$250,000 in a 12-month period
- Notice of information Collection issued Sept. 6, 2019
- Funding from US subsidiaries of foreign corporations is included
- Copies of contracts and gift letters are to be submitted – chilling effect?
- ED estimates that reporting burden will be 10 hours per institution



DoE Guidance

- DOE Order (DOE O 486.1) Prohibition on participation in FGTRP
- Foreign-state-sponsored attempt to acquire U.S. scientific-funded research or technology through foreign government-run or funded recruitment programs that target scientists, engineers, academics, researchers, and entrepreneurs of all nationalities working or educated in the United States.
- DoE will amend all existing contracts to include the prohibition and the Contractor Requirements Document
- Prohibits participation and may require removal of any employee who participates in a FGTRP or cease participation



Amendments to DoE Awards

- Advise the PI
- Collect information
- Flag the project
- Dealing with Situations
- Reporting to DoE
- Onus for ongoing monitoring is on the PI

Source: <https://virtuousgirls.wordpress.com/2013/02/28/fear-vs-power-and-love/>

Real Life Concerns

- Next steps: Developing a checklist
- Ramifications
- Financial Support
- Lag Time
- Cost Transfers
- Handling Violations



Clip Art Source:

https://www.google.com/search?rlz=1C1CHBF_enUS787US787&sxsrf=ACYBGNRZK4sSUuYC0Gb9MromuCY28Xxx_A:1568647184094&q=photo+of+conquering+fear&tbm=isch&source=univ&sa=X&ved=2ahUKEwjx972R0tXkAhUl54KHa2xDZcQ7Al6BAgGECQ&biw=1500&bih=809#imgrc=UD035Ui3y5LI_M:

Institutional Response

- **Failure to Disclose**
- **Was there a transfer of technology?**
- **Cut off access**
- **Academic sanctions**
- **What was transferred aka exported without a license?**
- **Was it controlled for that country?**
- **Report the “Suspected” Violation**
- **Determine Reporting Requirements**
 - **Award Requirements**
 - **Cyber Incident Reporting Requirements**



International Engagement Policy Task Force



International Agreements and Reporting
– Vetting partners and donors,
agreement matrix, escalation policy

International Students, Visitors, and
Travelers – increased screening,
centralized approval, traveler support

Communications – Faculty town halls,
departmental briefings, principles of
international engagement



Office of Science and Technology Policy

- Joint Committee on Research Environment (JCORE)
 - Coordinating outreach and engagement
 - Establishing and coordinating disclosure requirements
 - Developing best practices for academic research institutions
 - Developing methods for identification, assessment, and management of risk

Recommended Actions for Research Organizations

- Recommendations from the ACD Working Group on Foreign Influences
 - *Evaluate existing policies and forms and make explicit what must be reported as “other support” considering this is in flux and depends on the agency;*
 - *Risk Mitigation: Opportunities for change or enhancement of existing tools that safeguard and monitor research integrity;*
 - *Monitoring, Actions, and Consequences: Opportunities for ongoing monitoring, verification, trust-building, and remediation; and*
 - *Communication and Awareness: Opportunities where existing procedures are in place but in need of education, clarification, or increased attentiveness;*

Examples of University Responses

- COGR will be sharing more information
<https://www.cogr.edu/sites/default/files/Resources%20for%20reserchers%20on%20foreign%20influence%2008232019.pdf>
- AAAMC <https://news.aamc.org/research/article/combating-undue-foreign-influence-us-research/>
- Texas A&M University <https://vpr.tamu.edu/manage-research/guidance-foreign-influence-in-research>
- University of Washington <https://www.washington.edu/research/announcements/foreign-influence-on-federally-sponsored-research-guidance/>
- MIT Review Process for “Elevated Risk” International Proposals
https://orgchart.mit.edu/node/27/letters_to_community/new-review-process-elevated-risk-intern
- University of California System <https://www.ucop.edu/ethics-compliance-audit-services/compliance/research-compliance/foreign-influence.html>

Questions

- Patrick Schlesinger
e: pschlesinger@berkeley.edu
- Susan Wyatt Sedwick
e: ssedwick@attain.com