



# KEEPING CALM AND CARRYING ON

## Developing Effective Institutional Approaches to “Foreign Influence”

By Elizabeth H. Adams, Jules Blyth, and Keri Godin

**R**esearch universities in the U.S. are by their very nature international. Decades of deepening global engagement by our institutions have resulted in vibrant, diverse campuses that promote innovation and social good, domestically and internationally. It is thus challenging to respond to a growing number of “foreign influence”-related guidance from federal agencies. There is no question that we are now in a new era. But how did we get here?

In these times of heightened division between political parties, there is at least one topic on which there is bipartisan agreement: certain foreign actors are exploiting the openness of U.S. research universities. In early 2018, Federal Bureau of Investigation (FBI) director Christopher Wray testified to the Senate Select Committee on Intelligence, specifically calling out academic research institutions’ “naivete” on the matter (Redden, 2018). This testimony set the stage for major federal sponsors to take action. Since then, the National Institutes of Health (NIH) has led federal agency response in this arena, and the National Science Foundation (NSF), Department of Energy (DOE), Department of Defense (DOD), and the Education Department (ED) have followed suit with their own “foreign influence”-related actions and guidance.

### Initial Concerns Raised from an Unlikely Source: NIH

In August 2018, NIH Director Francis Collins issued a *Statement on Protecting the Integrity of U.S. Biomedical Research*, elaborating on the risk defined by Wray. These risks highlighted to the U.S. research community by the Collins letter included violation of peer reviewer requirements through sharing of confidential information with foreign parties, the diversion of intellectual property generated under NIH programs to foreign entities, and researchers’ failures to adequately disclose all sources of support for research, including contributions by foreign governments—which, if reported, may have impacted NIH’s funding decisions (Collins, 2018).

A few months later, in a December 2018 *Nature* article, Director Collins confirmed that the NIH was actively “investigating more than ten institutions that have failed to comply with disclosure rules” (Reardon, 2018). In July 2019, NIH then abruptly issued “Reminders of NIH Policies on Other Support and on Policies related to Financial Conflicts of Interest and Foreign Components” (Office of the Director, 2019). The notice, which was effective immediately, “clarified” NIH’s reporting and disclosure obligations to applicants and recipients, highlighting the critical need for transparency in Other Support documents as well as clear understanding of the agency’s definition of a “Foreign Component.” The agency later attenuated some of the new and very broad informational reporting requirements in Other Support originally set forth in the notice. The university community is now aware of approximately 200 letters from NIH asking institutions to provide information about investigators it suspects to have unreported links to foreign governments (Mervis, 2019).

### Enduring Values

In the current climate, there appears to nonetheless remain within the federal government a fundamental respect for and commitment to the values of American universities and academic research centers: diversity, transparency, openness, and global impact. For example, the October 2019 letter to the academic community penned by Under Secretary of Defense for Research and Engineering, Dr. Michael Griffin, states the “[DOD] recognizes the contribution of research integrity principles, such as the free exchange of ideas, transparency, and collaboration across research communities... [and] principles of integrity, openness, reciprocity, merit-based competition, and transparency...” (Griffin, 2019). Many research institutions use these very terms in their mission statements, and have codified in policies an expectation of international collaboration and free sharing of ideas and information (*e.g.*, openness in research policies, non-discrimination policies). Academic research

institutions strive to maintain and foster educational and research environments that are blind to country of origin, typically implementing restrictions only in those instances where required by export control regulations or otherwise mandated by federal law. Foreign engagement in research activities remains a deeply desired outcome for academic research institutions in the U.S.

### **Reframing the Conversation and Maintaining Evenhandedness**

In implementing foreign influence-related changes on their campuses, the American university community is adopting alternative terms such as “undue foreign influence” and “inappropriate foreign engagements.” These kinds of terms acknowledge the legitimate concerns in this arena, while differentiating those concerns from an enduring commitment to openness and international engagement. Beyond reframing the conversation, institutions are grappling with balancing these competing interests in a measured, strategic, risk-based fashion, recognizing both the need to devise short-term risk-management strategies and a need to play the long game. In this current climate, institutional leadership and administration may feel enormous pressure to “act” and quickly implement new policies and procedures for prohibiting or monitoring certain foreign engagements; however, we caution against a knee-jerk response and recommend a holistic approach, aimed at inventorying current processes, disclosure / reporting systems, leveraging established modes of outreach and education, bringing the right group of diverse experts to the table, and increased communication including with the researchers themselves.

### **Federal Enforcement Actions**

While we currently live in a period of ambiguity and uncertainty, it is important and helpful to stay apprised of the federal enforcement actions in this arena. The Department of Justice (DOJ) has filed multiple indictments in calendar year 2019 related to alleged failures by individual academics to report foreign conflicts of commitment and financial conflicts of interest. In July 2019, two former researchers at Ohio’s Nationwide Children’s Hospital were charged with allegedly stealing the hospital’s trade secrets and confidential information, subsequently leveraging the theft to form two companies and file patents in China. Just a month later, an indictment was filed against a University of Kansas Professor. According to the indictment, Associate Professor Feng Tao was an active researcher with two DOE contracts and four NSF awards, while simultaneously working as a full-time employee at Fuzhou University as a Changjiang scholar, a Chinese talent recruitment program. Tao allegedly failed to disclose this outside employment through institutional conflict of interest/conflict of commitment reporting and approval channels at the University of Kansas. In each of these cases, the investigators could face up to 20 years in prison. Notably, these indictments did not involve the researchers’ institutions; nonetheless, as the recipients of federal grants and contracts, institutions must put into place controls that reasonably ensure compliance with sponsor requirements and award terms and conditions.

### **Practical Steps Forward**

The developments and uncertainties described herein can seem daunting. It may be helpful to view the current environment as an opportunity to both reassert our institutional values as well as enhance our policies and procedures to address unethical and illegal activities. Below are some practical steps and questions to consider as you develop an institutional approach.

### **Who are the key stakeholders to invite to the table?**

We recommend leveraging existing subject matter experts from export control compliance, information security, sponsored projects, procurement,

conflict of interest, advancement / development, technology transfer, international students/scholars office, and government relations. Under the auspices of a senior leader, consider bringing these individuals together in a working group and subsequently establishing subgroups to tackle the different areas of institutional response.

### **Are there existing resources that my institution can leverage?**

- The Association of American Universities (AAU) and the Association of Public and Land-grant Universities (APLU) issued a guidance memo in April 2019, [Responding to Undue Foreign Influence and Security Concerns on Campus](#), and an [accompanying document](#) summarizing actions taken by universities to address security concerns and undue foreign influence (The Association of American Universities & The Association of Public and Land-grant Universities, 2019). Consider reviewing the NIH’s “Foreign Influences on Research Integrity: 117th Meeting of the Advisory Committee to the Director” slide deck from December 13, 2018 (National Institutes of Health, 2018), which includes recommendations that “Recipient Organizations Should Consider.”
- The FBI has released a number of documents (FBI 2019, 2011) that specifically describe concerns and threats to academia. They provide valuable background information to help universities identify what areas may be targeted and offer strategies to address these threats.
- Various federal agencies have released notices containing reminders, including FAQs, regarding existing policies. The NIH, for example, released NOT-OD-19-114 (National Institutes of Health, 2019) in July 2019, clarifying requirements around Other Support and policies related to Financial Conflict of Interest and Foreign Component. Consider signing up for relevant sponsor listservs to stay current on evolving requirements and clarifications on existing policies.
- On the issue of Foreign Government Talent Recruitment Programs, the Department of Energy (DOE) provides a useful definition of “Foreign Government Talent Recruitment Program” as part of its [DOE directive 486.1 \(Department of Energy, 2019\)](#), issued in July 2019. Thus far, this is the only definition offered by a federal agency. Together with the [FBI’s leaflet \(FBI, 2015\)](#) on Foreign Talent Programs, it offers a good start for anyone trying to maneuver this specific topic.

### **Where to start?**

As your cross-institutional group of stakeholders convenes its first meeting, it may be a challenge to decide where to start. We recommend the following four areas as starting points:

1. Develop a “Risk Heat Map” of your campus. Identify what units on your campus bring in the most sponsored funding as well as the most foreign funding. What units have the most NIH-defined “foreign components”? Where might critical and/or emerging technologies be developed? What groups are the most IP active on campus? Are you able to leverage any enterprise risk management effort on your campus that may have already addressed to some degree “foreign influence” concerns? Creating such a risk map of your campus will help you match precious resources to risks when deciding where to focus and expand your effort and resources.
2. Review your existing data collection platforms and how they fit together. What reporting and disclosure (and perhaps validation) processes are already in place at your institution? Most institutions already have well-established conflict of interest and commitment reporting processes in place, but are they clear and explicit enough, relative to recent federal guidance? What about the faculty reporting system or effort reporting system on your campus? How accurate are your current and pending reports? How is gift funding tracked at

your institution? How does your institution identify and reconcile discrepant data in these different platforms? Would it make sense to interface systems, or create new business intelligence reports in your data warehouse?

3. Review how your institution on-boards visitors. This usually involves the office(s) or individuals on campus making the visitor appointments. Do you have existing policies and practices relating to visitors? How do you invite or learn about visitors coming to your institution? Do the visitors go through a central review/screening, approval, or onboarding process? What is your institutional appetite for and approach to sponsoring or hosting visitors from restricted entities or those on the unverified list? What about individuals from embargoed countries?
4. Develop broad and targeted outreach and education programs. Given the seriousness and sensitivity of concerns associated with “foreign influence,” the presidents and senior research officers of many institutions have sent out campus-wide communications seeking to guide and reassure. It will also be advisable to design a targeted outreach and education program that offers a mix of in-person forums, such as faculty meetings or regular campus meetings of research administrators; online resources, such as a website devoted to “foreign influence” and international engagements; email communication to specific groups of people; and educational programs that are incorporated into existing formal training offerings, such as Responsible Conduct of Research training, research administrator trainings, and export control compliance trainings.

### Your approach is uniquely yours

Ultimately, one institution’s approach to “foreign influence” will not be quite another’s—nor should it be. Every university has a different scope and scale and a different risk profile and appetite for risk. Addressing any gaps that your institution identifies in the area of “foreign influence” should be carefully considered in terms of technology, processes and people, including any focused or augmented training programs. Remember that you have many colleagues at your institution (and beyond your institution) who can help and who want to help. Last, it is important to stay apprised of resources and the range of best practices in this arena through organizations like NCURA. We look forward to staying in touch. ■

## PRACTICAL STEPS

- Consider convening a cross institutional group of stakeholders under the auspices of a senior leader at your institution.
- Use existing external resources (e.g., AAU/APLU, federal agencies, ASCE) to help guide the development of new policies and procedures.
- Engage enterprise risk management to assess your institution’s risk tolerance
- Review existing data collection portals – are there ways to leverage existing reporting and disclosure processes (i.e., conflict of interest & commitment reporting, faculty reporting systems)
- Review visitor processes; develop clear procedures around inviting and hosting visitors on campus.
- Develop a “risk map” of your campus based on where potential valuable IP and critical technologies are being developed.
- Design a targeted outreach and education program to raise awareness.

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