

How Federal Enforcement of Foreign Influence Cases
Has Changed the Landscape of Research:
Our New Reality

NU-RES RETREAT
June 9, 2022

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International Enrollment 2020-2021

- **Northeastern University: 19,485**
- **New York University: 19,389**
- **Columbia University: 19,099**
- **University of Southern California: 17,509**
- **University of Illinois: 14,171**

Regulatory Background

Regulatory Context

Part of the complexity surrounding foreign influence, is that the regulatory context for enforcement action and Federal agency guidance is not based on any one specific Federal regulation, but rather a myriad of existing laws, regulations and guidance documents ranging from financial conflict of interest disclosure, conflicts of commitment, information security management, data governance, and export controls.

Laws and Regulations

- Federal Information Security Management Act (FISMA) of 2002, 44 U.S.C. Chapter 35
- Defense Federal Acquisition Regulations (DFARS), 48 C.F.R. Chapter 2
- Public Health Service Conflicts of Interest, 42 C.F.R. Part 50—Subpart F
- Export Administration Regulations (EAR), 15 C.F.R. §§ 730-774
- Office of Foreign Assets Control (OFAC), 31 C.F.R. Part 500
- International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120-130
- Higher Education Act, 20 U.S.C. Chapter 28

Federal Guidance

- National Institute for Standards and Technology (NIST) Special Publication 800-171
- Funding Agency Requirements

Enforcement Activity

- Department of Justice Criminal Indictments and Civil Enforcement
- Congressional Inquiries into Foreign Gifts and Contracts

Enforcement and Regulatory Background

Federal Focus on Foreign Influence

2018

NIH issued a series of reports, memorandums, letters, and other communications to the broader U.S. research community, as well as a targeted series of inquiries at specific institutions, regarding foreign influence in research.

2019

A U.S. Senate Committee produced a report titled *Threats to the U.S. Research Enterprise: China's Talent Recruitment Plans* which outlined weak controls for the protection against foreign threats to U.S. research IP assets.

2020

DHHS has worked with DOJ, DHS, and the FBI to discover over 100 instances of troubling conduct at research institutions to date and issued a series of related inquiries ending in enforcement actions. The FBI currently has ~1K active cases on this issue.

Sponsor-Led Inquiries

Sources: Nature, US National Science Foundation Reveals First Details on Foreign Influence Investigations (July 7, 2020)

NSF Memo to FBI dated August 18, 2021 (Keiser)

NIH Memo dated July 30, 2021 (Lauer) [NIH-Foreign-Interference-Findings-2016-2018.pdf](#)

NSF

- 30 actions taken (23 researchers from 21 institutions)
- Suspended 24 awards / terminated 16 awards
- Suspended 9 researchers & 4 entities
- Debarred 4 researchers & 2 entities
- Barred 5 researchers from serving as reviewers

NIH

- 214 compliance reviews at 94 institutions (90% involve affiliations at Chinese institutions)
- Referred by self-disclosures, law enforcement, NIH staff / anonymous tips
- 147 researchers failed to disclose foreign grant support; 119 failed to disclose participation in foreign talent programs
- 79 researchers terminated by institution, resigned or retired early
- 39 researchers removed from grants

Enforcement and Regulatory Background



VAN ANDEL RESEARCH INSTITUTE 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



MOFFIT CANCER CENTER December 2019

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



HARVARD UNIVERSITY January 2020

- The chair of university's chemistry department lied about contacts with a Chinese state-run initiative that seeks 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



CLEVELAND CLINIC May 2020

- Professor of molecular genetics at Cleveland Clinic and Case Western University 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 Dean at a University in Wuhan, China and hid his participation in China's Thousand Talent's Program

Enforcement and Regulatory Background



University of California, Davis July 2020

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



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.



Safeguarding American Innovation Act July 2020

- The bill establishes a Federal Research Security Council, increases criminal penalties for PIs who fail to disclose foreign conflicts, and expands institutional reporting requirements for foreign gifts and contracts.



Congressional Inquiries into Foreign Gifts August 2020

- Congress sent letters to U.S. universities regarding gift agreements, indicating foreign governments were attempting to leverage these funds into nefarious, unstated benefits or quid-pro-quo arrangements with U.S. universities.

Civil Enforcement Actions – VARI

Dec. 19, 2019, the DOJ announced a \$5.5 million dollar FCA settlement with a NIH awardee for alleged failures involving grant reporting

Between Jan. 1, 2012, and Aug. 31, 2019, two researchers at Van Andel Research Institute (VARI) received funding from China's "Thousand Talent" program

Institutions that make "proactive, timely, and voluntary self-disclosures to the Department about misconduct will receive credit during the resolution of a False Claims Act"

Significant shift in government approach to issues of undisclosed foreign ties of researchers

U.S. Attorneys » Western District of Michigan » News

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FOR IMMEDIATE RELEASE

Thursday, December 19, 2019

Department Of Justice Reaches \$5.5 Million Settlement With Van Andel Research Institute To Resolve Allegations Of Undisclosed Chinese Grants To Two Researchers

WASHINGTON — The Department of Justice announced today that Van Andel Research Institute (VARI) has agreed to pay \$5,500,000.00 to resolve allegations that it violated 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 grants that funded two VARI researchers. The settlement further resolves allegations that in a Dec. 21, 2018 letter, VARI made certain factual representations to NIH with deliberate ignorance or reckless disregard for the truth regarding the Chinese grants.

Andrew Birge, U.S. Attorney for the Western District of Michigan, said, "Our local institutions, like VARI, serve a vital role in raising West Michigan's profile as a national player in cutting-edge biomedical research, but institutions everywhere must deal honestly and transparently when applying for U.S. government funding and respond appropriately when compliance issues arise. It's unfair to other grant applicants and to the NIH for any institution to withhold requested information about whether the research that an institution wants the NIH to support may be getting funding from outside sources, specifically including foreign governments. False Claims Act penalties are harsh by design. I sincerely hope the word gets out on the importance of full disclosure with the government."

"It is imperative that recipients of NIH grant funds properly report all sources of research support, financial interests and affiliations of individual researchers to ensure the proper and effective use of taxpayer dollars," said Lamont Pugh III, Special Agent in Charge of HHS-OIG's Chicago Region. "HHS-OIG will continue to investigate allegations of failures to properly report information to ensure the integrity of Departmental programs."

Obtaining research funding from NIH is a highly competitive process, with only a small portion of

Foreign Component – NIH Definition

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**. Activities that would meet this definition include, but are not limited to, (1) the involvement of human subjects or animals, (2) extensive foreign travel by recipient project staff for the purpose of data collection, surveying, sampling, and similar activities, or (3) any activity of the recipient that may have an impact on U.S. foreign policy through involvement in the affairs or environment of a foreign country. Examples of other grant-related activities that may be significant are:

- **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.**

Foreign travel for consultation is not considered a foreign component.

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Trial reveals federal agents falsely accused a UT professor born in China of spying



Jamie Satterfield

Knoxville News Sentinel

Published 10:00 p.m. ET June 13, 2021

View Comments



Armed with a Chinese press release translated on the fly via Google, federal agents falsely accused an internationally-renown welding technology expert at the University of Tennessee at Knoxville of being a spy and brought him to professional ruin.

FBI Agent Kujtim Sadiku admitted last week in an ongoing trial in Knoxville that federal agents:

You have limited articles remaining.



professor Dr. Anming Hu of being a

BUSINESS

University offers to rehire prof acquitted of ties to China

Associated Press | OCTOBER 16, 2021 — 7:40PM

KNOXVILLE, Tenn. — The University of Tennessee at Knoxville has offered to reinstate a professor who was acquitted of federal charges that had accused him of hiding his relationship with a Chinese university while receiving NASA research grants, a letter obtained by the Knoxville News Sentinel says.

The newspaper reports that in the Oct. 14 letter, Provost and Senior Vice Chancellor John Zomchick offered a tenured engineering professor job to Anming Hu, along with some back pay, and payment for an immigration attorney. Hu also was offered \$200,000 over three years to reestablish his research program, and an explanation of the university's support for his work visa as a naturalized Canadian citizen, according to the report.

Hu was arrested in February 2020, charged with wire fraud and making false statements. The judge declared a mistrial after the jury deadlocked in June. Prosecutors had filed a notice that they intended to retry the case, but the judge acquitted Hu last month.

The arrest was part of a broader Justice Department crackdown under then-President Donald Trump's administration against university researchers

Judge grants prosecutors' request to dismiss charges against MIT professor accused of concealing ties with China

By [Shelley Murphy](#) Globe Staff, Updated January 20, 2022, 6:33 p.m.



Two Different Reactions

Univ. Tennessee – Knoxville (Dr. Anming Hu)

- Sponsor: NASA (contractual term limits collaborations with Chinese companies)
- 20 hrs./year teaching @ Beijing Univ. – earned \$3K annually
- Transparent with UT administration
- Accused of wire fraud / making false statements
- UT handed over employment records to FBI without warrant
- Suspended PI without pay / work visa revoked (Canadian citizen)
- PI responsible for legal fees
- Re-hired after media coverage of acquittal

M.I.T. (Dr. Gang Chen)

- Sponsor: DOE (2017 grant)
- Director of Center for Mech. Eng. Research & Education at MIT & SUSTech; reviewer for Chinese research sponsor
- Transparent with this international affiliations
- Charged with wire and tax fraud
- 160 MIT faculty signed letter of support for Dr. Chen, refuting allegations
- MIT continued to pay Chen's salary and provided legal representation





JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, July 1, 2009

Retired University Professor Sentenced to Four Years in Prison for Arms Export Violations Involving Citizen of China

John Reece Roth, 72, of Knoxville, Tenn., was sentenced to 48 months in prison for violating the Arms Export Control Act by conspiring to illegally export, and actually exporting, technical information relating to a U.S. Air Force (USAF) research and development contract.

The sentencing took place in U.S. District Court in Knoxville before Judge Thomas Varlan, Jr. A former University of Tennessee professor, Roth will serve a term of two years supervised release after completing his prison term.

The illegal exports by Dr. Roth of technical information, known as "technical data," related to his illegal disclosure and transport of restricted military information associated with the USAF contract to develop specialized plasma technology for use on an advanced form of an unmanned aerial vehicle (UAV), also known as a drone.

The illegal exports of military technical information involved specific information about advanced plasma technology that had been designed and was being tested for use on the wings of drones operating as weapons or surveillance systems. The Arms Export Control Act prohibits the export of defense-related materials, including the technical data, to a foreign national or a foreign nation.

After a trial in September 2008, Dr. Roth was convicted of conspiring with Atmospheric Glow Technology, Inc., a Knoxville technology company, of unlawfully exporting in 2005 and 2006 fifteen different "defense articles" to a citizen of the People's Republic of China in violation of the Arms Export Control Act. This law prohibits the export of defense-related materials, including the technical data, to a foreign national or a foreign nation. These defense articles related to different specific military technical data that had been restricted and was associated with the USAF project to develop plasma technology for use on weapons system drones.

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Reactions from Academic Institutions

Amid heightened scrutiny, research institutions across the country are still committed to foreign collaboration and place a high value on it.

The logo for the University of Kansas (KU) is displayed within a white circle. It consists of the letters 'KU' in a blue, serif font.

KU

"We ... reaffirm our commitment to the collaborative environment that serves as a cornerstone in the pursuit of scientific knowledge. As reinforced in a recent op-ed column from the presidents of the Association of American Universities and the Association of Public and Land-grant Universities, international scholars — including those from China — are critical to our success, and they play a vital role in our educational and research enterprises." (August 2019)

The logo for the Massachusetts Institute of Technology (MIT) is displayed within a white circle. It features the letters 'MIT' in a red, stylized font.

MIT

An open letter distributed across the MIT community condemned students, faculty and others being scrutinized "because of their Chinese ethnicity alone" when, as he put it, "nothing could be further from – or more corrosive to – our community's collaborative strength and open-hearted ideals." (July 2019)

The logo for Yale University is displayed within a white circle. It features a large, blue, stylized letter 'Y' with a smaller 'ale' in a similar font to its right.

Y

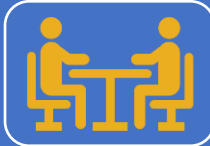
"I affirm Yale's steadfast commitment to our international students and scholars; they are vital to the university community...By bringing the most talented and promising students and scholars to campus, we foster new discoveries and advance our mission of improving the world today and for future generations." (May 2019)

Internal Controls to Mitigate Risks Associated with Foreign Influence

Institutional Challenge

Institutional Challenge

Foreign influence management requires coordination across institutional business units to effectively manage the challenges and risks.



Research
Administration



Compliance



Legal



Information
Security



Academic
Leadership



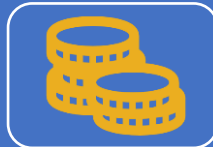
Employee Travel



Faculty



Government
Relations



Accounting

GOVERNANCE AND LEGAL

Effective Date:

September 1, 2021

Supersedes: N/A

Related Policies:

Policy on Conflict of Interest and Commitment; Policy on Financial Conflicts of Interest in Research; Export Controls Policy; Policy on Visiting Researchers; Faculty Handbook; Policy on Intellectual Property; Policy on Openness in Research; Policy on

Policy on External International Engagements

I. Purpose and Scope

Northeastern University is committed to supporting its faculty's external activities and collaborations in keeping with its core mission as a global, academic research institution that is dedicated to applying use-inspired research to areas of critical global need. The university is equally committed to sound stewardship of the private and governmental resources supporting its research and other endeavors, and to conducting its activities in keeping with the highest standards of excellence, transparency, and adherence to regulatory requirements.

This policy recognizes the potential for conflicts of interest or commitment, as well as national security and compliance concerns attendant to some international engagements, particularly in light of the inherent vulnerabilities of an open

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Name

First

Last

Email

Name of individual(s) and/or entity with whom you plan to do business

NSPM-33 Implementation Guidance

- **NIH & NSF:** NIH and the National Science Foundation (NSF) implemented broad disclosure requirements in advance of the Implementation Guidance's publication. NIH and NSF have worked closely to harmonize their requirements, but there are still some key differences. For example, NIH requires awardees to submit to NIH translated copies of any contracts, grants, or other agreements specific to senior/key personnel's appointments/employment with a foreign institution for any activity reported as "Other Support," while NSF requires copies of such documents only upon specific request.

NIH, [Other Support webpage](#), (last updated Mar. 12, 2021).

[NSF-Approved Formats for Current and Pending Support](#) webpage (accessed May 8, 2022).

DOD

Department of Defense (DOD): In March 2019, the Department of Defense published a memorandum requiring that all notices of funding opportunities for research and research-related educational activities require that key personnel disclose all current projects and any future projects for which they have applied, including title/objectives; percentage of time per year to be spent on the project; total amount of support individual is receiving/will receive in connection with the project; name and address of entity(ies) supporting the project; and period of performance.

DOD, [Memorandum re. Actions for the Protection of Intellectual Property, Controlled Information, Key Personnel and Critical Technologies](#) (Mar. 20, 2019).

DOE

Department of Energy (DOE): DOE sets forth biographical and current and pending support requirements in its funding opportunity announcement (FOA) terms and conditions. DOE's requirements are similar to NSF's and permit reporting in the format required by NSF. Unlike NIH and NSF, which require disclosure of, but do not prohibit participation in foreign government-sponsored talent programs, DOE not only requires its employees and contractors' employees to disclose participation in such programs, but also prohibits those employees from participating in a talent program sponsored by a "Foreign Country of Risk," as determined by specific units of the U.S. government.

See, e.g., DOE, [*Foundational Agrivoltaic Research for Megawatt Scale Funding Opportunity Announcement \(FOA\), Number DE-FOA-0002697*](#) (May 5, 2022).

DOE, Order 486.1A, [*Foreign Government Sponsored or Affiliated Activities*](#) (Sept. 4, 2020).

Defense Advanced Research Projects Agency

(DARPA): Like other agencies, DARPA requires broad biographical and research support disclosures. In recently published FAQs, it referenced the Implementation Guidance's requirements for the disclosure of current and pending support and clarification regarding the reporting of consulting, but it goes farther by detailing how it will evaluate the information that is disclosed. Specifically, DARPA categorizes certain factors as Very High, High, and Low or Moderate risk and requires a risk mitigation plan and documentation of agency risk acceptance for proposals rated as Very High Risk.

DARPA, [Countering Foreign Influence Program \(CFIP\) Frequently Asked Questions \(FAQ\) Incorporating Change 1](#) (May 12, 2022).

See, DARPA, [Memorandum re. DARPA Countering Foreign Influence Program \(CFIP\)](#) (Sept. 17, 2021); [DARPA Risk-Based Measures to assess Potential Undue Foreign Influence Conflicts of Interest or Conflicts of Commitments – Factors for Assessing Senior/Key Personnel Disclosures](#) (Dec. 1, 2021).

Predictions

- ❖ Revert back to applying criminal charges for allegations involving espionage/theft of intellectual or proprietary information
- ❖ Emphasis will be placed on compliance with NSPM-33 / CMMC
- ❖ Increased civil enforcement if/when certifications are included by funding agencies for compliance with NSPM-33.

Hypothetical Fact Pattern

No Egress

High Tek University is an R1 academic institution specializing in computational and artificial intelligence research. Its portfolio consists mostly of DoD sponsors and private industry sponsors. Recently, the local fire department performed an inspection in one of its older buildings in what used to be a high school cafeteria that was converted into a BL2 bioinformatics lab. The inspection resulted in a citation when the fire department found an exit completely blocked by what appeared to be old computing devices that were stacked high against the emergency exit door. This was the 2nd citation for the same issue from the prior year so the fine was significantly higher.

The citation for the blocked emergency exit was provided to the Facility Director who then approached the Department Chair to discuss the issue. Since the same issue was never resolved a year ago, the Facility Director informed the Chair that Security would now take responsibility for clearing the exit, and that the fine would be paid with Department funds.

Question

7. Which committees and institutional offices should be notified of the fire code violation? (select all that apply)

- A. Institutional Biosafety Committee
- B. Institutional Review Board
- C. Institutional Animal Care and Use Committee
- D. Office of General Counsel
- E. Lab Safety Committee
- F. Office of Sponsored Programs
- G. SVP of Research

No Egress (cont.)

The Facilities Director notified the Biosafety Officer who then notified the Chairs of the IBC and the Laboratory Safety Committee. At the subsequent meeting of the IBC, the IBC recognizing that this was a repeat citation, temporarily suspended the IBC protocol of the PI and the Laboratory Safety Committee recommended to the VP of Research that the Bioinformatics Lab should be closed until further notice. The Office of Sponsored Programs was notified so it could take appropriate action to suspend the PI's research accounts associated with the IBC protocol.

Question

8. So far, the actions of High Tek University can be described as:

- A. Reasonable and appropriate
- B. Not enough
- C. Overreaction

No Egress (cont.)

High Tek's Security transfers the computing equipment to the IT department. Per institutional policy, all computing devices must be cleaned before being recycled. When IT tried to wipe the hard drive, they noticed multiple files with documents marked either "Confidential", "Classified" or "For Official Use Only." Instinctively, IT ceases what it's doing and notifies OGC. In all IT finds 5 gigabytes of documents and data purportedly originating with the Office of Naval Research with these designations stamped.

Question

9. At this point, OGC should...

- A. Interview members of the Bioinformatics Lab
- B. Contact ONR to determine which projects were involved
- C. Contact procurement to determine who purchased each of the computing devices involved
- D. Work with the Office of Sponsored Programs to review all of the federal sponsors supporting the Bioinformatics Lab

No Egress (cont.)

Apparently, the investigation revealed that the computing devices were purchased in bulk by the PI, second hand through eBay. The PI had purchased them in anticipation for a large international project involving a collaboration with a Chinese sponsor. However, that project never came to light when the sponsor pulled out, in part, due to the recent federal enforcement related to undue foreign influence. This pending international collaboration was unknown to anyone else within High Tek University.



Question

At this point, the university should:

- A. Examine the PI's external commitments to determine whether they overlap with current and pending federally sponsored research
- B. Close the investigation and re-activate the PI's protocols
- C. Remove the PI's access to a procurement card
- D. All of the above
- E. None of the above

Resolution

High Tek contacted eBay and was able to trace the devices to a seller. High Tek informed the FBI and the FBI was able to track the devices to an individual who happened to be employed at another university. It's investigation revealed that the Finance Director of the other university had been selling unused university-owned devices for personal gain. A criminal indictment soon followed.

Inspired by:

United States Department of Justice

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FOR IMMEDIATE RELEASE Friday, September 3, 2021

Yale Med School Employee Charged with Stealing and Selling Millions of Dollars in Computer Hardware

Leonard C. Boyle, Acting United States Attorney for the District of Connecticut, and David Sundberg, Special Agent in Charge of the New Haven Division of the Federal Bureau of Investigation, today announced that JAMIE PETRONE-CODRINGTON, 41, of Naugatuck, has been charged by federal criminal complaint with fraud and money laundering offenses related to her alleged theft of millions of dollars in computer hardware from the Yale University School of Medicine where she was employed.

Petrone-Codrington surrendered to law enforcement today and appeared before U.S. Magistrate Judge Robert M. Spector in New Haven. She was released on a \$1 million bond.

As alleged in the complaint, beginning in approximately 2008, Petrone-Codrington was employed by the Yale University School of Medicine ("Yale Med"), Department of Emergency Medicine, and most recently served as the Director of Finance and Administration for the Department of Emergency Medicine. As part of her job responsibilities, Petrone-Codrington had authority to make and authorize certain purchases for departmental needs as long as the purchase amount stayed below \$10,000. Beginning at least as early as 2013, Petrone-Codrington engaged in a scheme whereby she ordered, or caused others working for her, to order millions of dollars of computer hardware from Yale vendors using Yale Med funds and arranged to ship the stolen hardware to an out-of-state business in exchange for money.

It is further alleged that Petrone-Codrington falsely represented on Yale internal forms and in electronic





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Thank you for attending!

Jeff Seo

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