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Federal Legislative and Congressional Update COGR Meeting - June 11, 2020

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Outlook

- “Phase Four” COVID-19 Relief Package
 - Research; Students & Ability of Institutions to Serve Students; Liability Safe Harbors; Institutional Loans; Tax Issues; and more
- National Defense Authorization Act
 - Foreign Influence and Science and Security Issues
- FY21 Appropriations
 - Research, Student Aid, and More
- Pandemic Planning and Preparedness
- DREAMERS
- Police and Justice Reform
- National Parks and Land and Water Conservation Funding
- Water Resources Act
- Infrastructure

Federal Relief to Alleviate Research Disruptions Caused by the COVID-19 Pandemic

Research Disruption

- Vast majority of non-COVID-19, on-site research slowed or halted in mid-March due to pandemic health emergency and social distancing requirements
- Graduate student experiments, training, and research delayed; degrees delayed; and job offers limited (or rescinded)
- Missed time windows for experiments – growing seasons, animal and plant life cycle development, site-specific research postponed (e.g. access to international field sites etc.)
- Inability to acquire needed PPE, specimens, and other materials necessary for research
- Domestic and international collaborators unable to travel
- Scientific conferences cancelled – lost collaborations
- Some research restarting in modified labs and conditions

Research Relief Recommendations

- ❖ Federal research agencies should implement uniform guidance and policies that provide flexibility for research institutions during this national health emergency to cover salaries, benefits, and tuition support for graduate students and research personnel engaged in federally sponsored research grants and contracts.
[implemented through 6/17/20 OMB guidance – extension needed]
- ❖ OMB and federal research agencies should be directed to provide temporary regulatory and audit flexibility during the pandemic period and for a year afterwards.

Research Relief Recommendations

- ❖ Supplemental appropriations to federal research agencies for:
 - Grant and contract cost extensions to cover:
 - Research personnel salary support for graduate students, postdocs, principal investigators, and research staff
 - Reacquisition of donated PPE and testing materials – masks, face shields, gloves, reagents, swabs, etc.
 - Ramp-up / restart costs – recalibrating equipment, reconfiguring labs and projects to allow for social distancing, replenishing supplies including new cell cultures, animal costs and care, etc.
 - Personnel and base operation costs at core research facilities
 - Extension and continuation of graduate and postdoctoral fellowships, traineeships, and support

Research Relief Recommendations

- At least \$26 billion in supplemental appropriations to federal research agencies allocated as follows:
 - Department of Defense (DOD) – \$3 billion
 - Department of Energy (DOE) – \$5 billion
 - National Institutes of Health (NIH) – \$10 billion
 - National Science Foundation (NSF) – \$3 billion
 - National Aeronautics and Space Administration (NASA) – \$2 billion
 - U.S. Department of Agriculture (USDA) – \$380 million
 - NOAA, NIST, EPA, the Institute for Education Sciences, other federal agencies with research budgets greater >\$100 million – ~\$2.6 billion

Research Relief Outlook & Advocacy

- AAU-APLU-AAMC-ACE Letters
- “Dear Colleague” Letters to Leadership Supporting \$26B in Relief
 - House – DeGette/Upton Letter, 182 Signers
 - Senate – Markey/Tillis Letter, 33 Signers
- Meetings/Calls/Letters/Emails/Briefings
 - Presidents, Chancellors, Research VPs, Govt. Relations Reps., Board Members,+
- Media and Social Media
- Graduate Students, Postdocs, Faculty

Research Relief Outlook & Advocacy

- House HEROES Act
 - \$4.745B for NIH
 - \$3B designated for research relief
 - \$1.745B to expand COVID-related intramural and extramural research
- Senate Bill – TBD
- Trump Administration
- Timing – Late June/July

Effective Practices to
Address Security Threats and
Undue Foreign Government
Influence on Campus:
AAU & APLU 2020 Survey Update

Why a Survey?

- Inform policymakers of the current practices in place at institutions to address security threats and foreign influence on campus
- Provide a mechanism for institutions to share practices with each other and learn from one another
- Aggregate practices across campus and connect relevant stakeholders to each other
- Demonstrate institutional commitment to securing U.S. research and combatting foreign influence

2018 Survey

- Identified 140+ examples from 40 universities
- Identified 11 areas where institutions are addressing undue foreign government influence threats
- Encouraged institutions to consider three actions:
 1. Conduct an inventory of current campus security-related activities
 2. Communicate with faculty about potential security threats and provide reminders of federal and university disclosure and export controls compliance requirements
 3. Consider implementation of additional campus policies and practices to bolster security and mitigate risk

2020 Survey

- Identified 100+ examples from 22 universities
- Expanded on the 11 areas where institutions are addressing undue foreign government influence threats
- Encourages institutions to consider three actions:
 1. Update and expand disclosure policies
 2. Continue enhancing communications, increasing awareness, fostering collaborations, and expanding training
 3. Increase focus on risk mitigation strategies, processes, and assessment

Awareness Building & Communications

- Distribution of campus-wide communications to faculty, staff, post-doctoral associates, and graduate research assistants – more specificity on mitigating risks and reporting, disclosure, and security control requirements and responsibilities
- Publication of security newsletters and presentations
- Creation of comprehensive and publicly available websites - “one stop” reference points to access relevant university policies and practices, university communications and guidance, and agency information, policies, and requirements. (Also available to Federal Agencies, Congress, and the Media)
- Regular discussion at university leadership and faculty meetings

Coordination

- Formation of campus-wide working groups and task forces - Since the first survey these working groups have become more complex in terms of membership and activity level.
- Coordination of risk assessments - research leaders, compliance officers, and security personnel are developing risk inventories in consultation with local FBI field offices and other national security agencies.
- Formation of international activities, forums, and compliance coordination offices

Training of Faculty and Students

- Modification of Responsible Conduct of Research (RCR) training to inform students and faculty of foreign threats and federal export control, disclosure, and reporting requirements. Some institutions are offering online training modules, for-credit RCR coursework for graduate students, and competency certificate programs for faculty and staff.
- Creation of webpages and training materials for faculty and staff - focused on new federal research agency requirements.
- Increased collaboration with federal security agencies – FBI, Defense Counterintelligence and Security Agency, and Department of Homeland Security.

Regular Interactions with Federal Security & 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 federal law enforcement and security organizations.

Protection of Data & Cybersecurity

- Enhancement of data handling and management – data security review has been incorporated into the Institutional Review Board process at some institutions, allowing for review and identification of where data is stored and who owns it.
- Improved data security measures – improving systems to better detect and respond to cyberattacks and response plans.
- Development and use of coordinated approaches for cyber threat notification.
- Increased training and faculty support - targeted outreach, educational opportunities, and online resources the help security data and ensure compliance with rules and regulations.

Protection of Intellectual Property & 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.

Review of Collaborations, Contracts, & Foreign Gifts

- Development of risk criteria and use of comprehensive processes for review of grants, contracts, and foreign gifts. Institutions have also greatly stepped up their efforts to ensure comprehensive collection and reporting of foreign gifts and contracts due to the new enforcement efforts by the Department of Education under Section 117 of the Higher Education Act.
- Development and use of templates to mitigate risks and protect against foreign threats. Templates are used to guide faculty and staff as they review and consider entering into partnerships and/or agreements with foreign entities.
- Use of restricted or denied party screening techniques and tools

Reviewing, Updating, and Enforcing Conflict of Interest Policies

- Development and use of Conflict of Interest and Conflict of Commitment policies - These policies are being updated to more clearly identify foreign affiliations, relationships, and financial interests which may conflict with the faculty member's responsibilities to their home institution or otherwise raise concerns.
- Development of infrastructure for information collection and tools to support disclosure reporting - These policies are being updated to more clearly identify foreign affiliations, relationships, and financial interests which may conflict with the faculty member's responsibilities to their home institution or otherwise raise concerns.

Foreign Travel Safeguards & Protections

- Development of international travel policies - Some institutions provide security briefings for individuals traveling internationally on university business, teaching, research, or travel abroad and tailored one-on-one briefings as needed for destinations considered high-risk.
- Deployment of faculty foreign travel review and assistance - Institutions have created programs, often through their export control or research compliance offices, for reviewing faculty and administrators' travel for export compliance, software use restrictions, and other safety and security concerns.

International Visitors to Campus

- Development and use of requirements for vetting and securely hosting foreign visitors while on campus – Some institutions now require faculty member to fill out a brief questionnaire and/or form for any foreign visitor planning to visit campus and/or tour a laboratory.
- Implementation of visitation control plans and visiting scholar handbooks - detailed plans to prevent unauthorized access to export controlled data and areas where export-controlled research is performed.
- Development of resource documents on foreign engagements and visitors to campus – The Academic Security and Counter Exploitation Working Group (ASCE), The Council on Government Relations (COGR) and The U15 Group of Canadian Research Universities have all produced papers with suggestions in this area.

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 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.

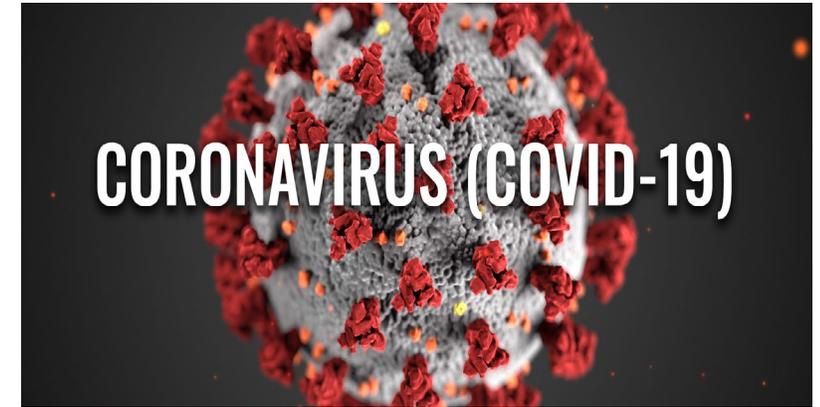
Science and Security: Political Context, Legislation & Agency Activity

FBI chief says Chinese operatives have infiltrated scores of 'naive' U.S. universities



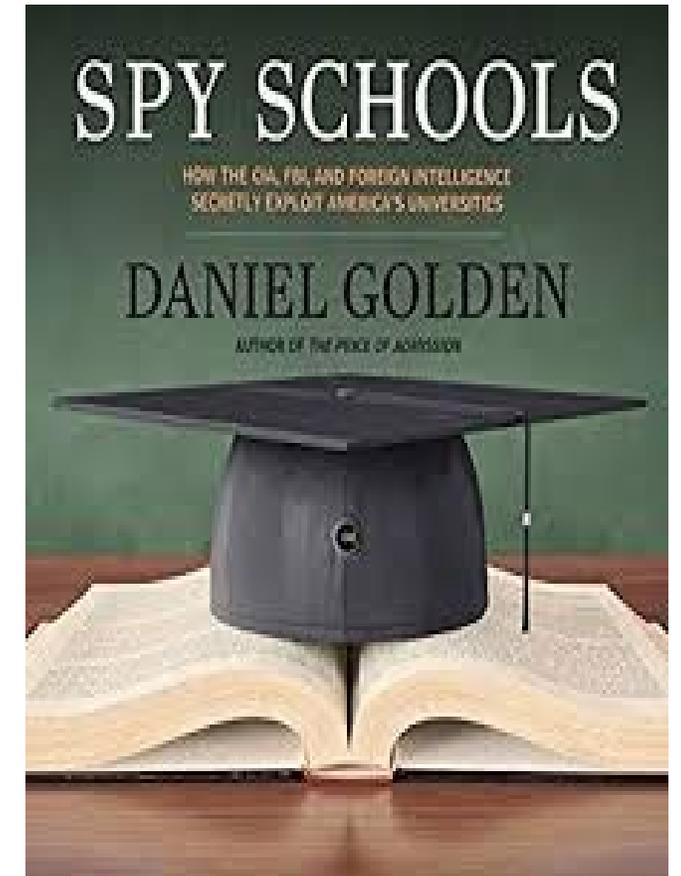
Associated Press

Published: 9:03am, 14 Feb. 2018



Federal & Congressional Pressure to Re-Examine Research Protections

- Intelligence agencies sound the alarm
 - Numerous reports raise concerns (e.g. Hoover, Hudson, Wilson, etc.)
 - Agencies send out letters and are clarifying old and developing new policies
 - Congressional pressure to address security concerns builds; but Congress lacks understanding of the controls already in place
 - China now being blamed for the Pandemic
- **Result:** Several ill-informed and potentially damaging proposals to U.S. science (and immigration policy) have and will continue to be introduced in Congress and touted by the Administration



Congressional Hearings, Roundtables & Task Forces

- *April 2018* – [“Scholars or Spies: Foreign Plots to Targeting America’s Research & Development,”](#) House Science Subcommittee on Oversight and Subcommittee on Research and Technology
- *June 2018* - [“Student Visa Integrity: Protecting Educational Opportunity and National Security,”](#) Senate Judiciary Subcommittee on Border Security and Immigration
- *Sept 2018* - [House Science Committee Roundtable with higher education leadership, federal science agencies, FBI](#)
- *Feb 2019* - [“China’s Impact on the U.S. Education System,”](#) Senate Homeland Security Permanent Subcommittee on Investigations
 - *Two reports issued subsequently focusing on Confucius Institutes and Foreign Talent Programs*
- *May 2019* - [House Armed Services Roundtable with higher education leadership](#)
- *June 2019* - [“Foreign Threats to Taxpayer – Funded Research: Oversight Opportunities and Policy Solutions,”](#) Senate Finance Committee
- *May 2020* – [House Republican China Task Force Announced](#)

Simple Summary of Legislative Proposals & Federal Actions

- Increased institutional reporting of funding received from foreign gifts and contracts (HEA Section 117)
- Restrictions on participation in foreign talent programs & language concerning Confucius Institutes
- Creation of new categories of “critical technologies” or “sensitive research” which limit access to foreign students & scholars to labs/research areas
- Increased visa delays and some intl. students recently denied readmission into the U.S. (e.g. recent Proclamation on Chinese students)
- Focus on clarifying and enforcing agency disclosure requirements
- Better interagency coordination and forums for dialogue between federal agencies and the university/scientific community

Recent Legislative Activity/Proposals

“Protecting America’s Research Advantage Act” Sen. Portman (R-OH)/Sen. Carper (D-DE)

- Establishes a Federal Research Security Council at OMB, essentially moving current OSTP/NSTC coordinating functions required under SASTA to the OMB.
- Requires the U.S. State Dept., in consultation with OSTP, DHS, DOD, DOE, and Commerce, to identify determining factors for which J-1 visas could be denied to certain classes of aliens.
- Includes language that would allow the State Department to deny J-1 visas to individuals if it was determined that they were intending to “acquire export-controlled goods, technologies, or sensitive information **(notwithstanding any exclusions for items not normally subject to export controls)**”
- Requires institutions to identify instances when exchange visitors may have access to export controlled related goods, technologies or sensitive information and to provide a plan to the Dept. of State to protect against unauthorized access to such information by including that provided through “research activities, lectures and coursework.”
- Lowers HEA Sect. 117 reporting threshold from 250k to 50k and to report “payments to employees.”

Senate Judiciary Bill, Sen. Grassley (R-IA)

- Bill would require Identity History Summary Check (IHSC) and a Background Investigation (BI) to be completed by the OPM before a PI can be awarded a federal research grant.
- Similar language to Portman-Carper language relating to immigration restrictions on aliens intending to enter the U.S. to steal intellectual property.

National Defense Authorization Act (House and Senate Markups and Floor Action)

- Expecting several problematic (and some positive) amendments to be offered.



Education Dept. Section 117, Foreign Gift Reporting

Reporting is submitted to ED by an institution's Financial Aid office in January and July each year. Section 117 "guidance" provided by Dear Colleague Letters from 1995 and 2004.

- **January 2019** – Letter sent by six higher ed associations to ED requesting clarification of HEA Section 117 on foreign gift reporting requirements:
 - **Questions for Dept. of Educ:** Does \$250k reporting threshold apply to the aggregate total of gifts or individual gift totals? How is an "institution" defined for 117 purposes? Are foreign countries or specific entities to be reported? How do institutions amend or correct previous reports?
- **April 2019** – Higher ed meets with ED; no update provided on timeline of guidance
- **June/July 2019**
 - Additional letters sent by higher ed associations to ED in June and July asking ED to respond to January letter. ED's response letters do not provide clarification but instead note they will continue to enforce Section 117.
 - ED sends investigation letters to 4 schools; more launched in Sept. 2019 & Feb. 2020 and in within the past month.
- **Sept. 2019** – Dept. of Education issues Information Collection Request (Assns. Comment)
- **Dec. 2019** – ED issues an emergency Information Collection Request (ICR) to OMB in the FR
- **Feb. 2020** – OMB rejects Emergency ICR; ED issues new non-emergency ICR and OMB approves
- **May 2020** – House Republican's launch additional investigation; send letter to Sect. DeVos



OSTP Coordination of Federal Agency Policies

- H.R. 3038 - SASTA Legislation (Included in FY 2020 NDAA)
 - Creates NSTC Working Group & NASEM Roundtable on Sci, Tech & Security
 - Supported by over 100 organizations and institutions
- Joint Committee on Research Environments (JCORE)
 - *Announced by OSTP on May 7*
- Subcommittee on Research Security
 - Two OSTP staff & 3 staff Co-chairs
- 25 federal agencies; have been meetings regularly
 - Coordination of Federal communications/outreach efforts
 - Providing guidance and best practices for research institutions
 - *Standardizing conflict of interest and commitment disclosure requirements and enforcement*
- *Recommendations Coming Soon!*



Next Steps

- The AAU/APLU joint Science and Security Working Group (SSWG) will be working with COGR to conduct a more focused survey on development, use and enforcement of faculty outside funding disclosure and Conflict of Interest and Conflict of Commitment policies.
- GAO is also working on a study in this area and are currently conducting campus interviews.
- SSWG subgroups will also be working on talking points, proactive legislative proposal and other resources.
- APLU/AAU/COGR are in regular contact with FBI liaisons, OSTP, and other agencies to provide regular updates for our memberships.

More Information/Resources

- <https://www.aplu.org/projects-and-initiatives/research-science-and-technology/science-and-security/>
- <https://www.aau.edu/key-issues/science-security>

Q & A

Next Session: At 1:45 p.m. EDT
Foreign Influence on Research: Handling Cross-Cutting Issues

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Thank You