

Disclosure of Outside Activities

February 24, 2021

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Presentation Overview

- **How Institutions are Tackling Conflict of Commitment Disclosures: It's not just about foreign influence**
- **The Latest Requirements: NSTC Recommendations and NSPM-33**
- **Implications for Institutions: JCORE, NSPM-33, Section 117 and NDAA 2021**

Current Environment: Ramp-Up in Disclosure Requirements

- NIH & NSF Disclosure Requirement “Clarifications”
 - Dept. of Energy
 - Dept. of Defense
- 2019-2020

NDAA FY 2021 -
Statutory Disclosure Requirements,
Jan. 1, 2021

NSPM-33 –
Presidential Security Memorandum,
Jan. 13, 2021

NSTC Recommendations,
Jan. 13, 2021

[COGR Comparison Chart](#)

Debra Thurley, JD

**Assistant Vice President for Research
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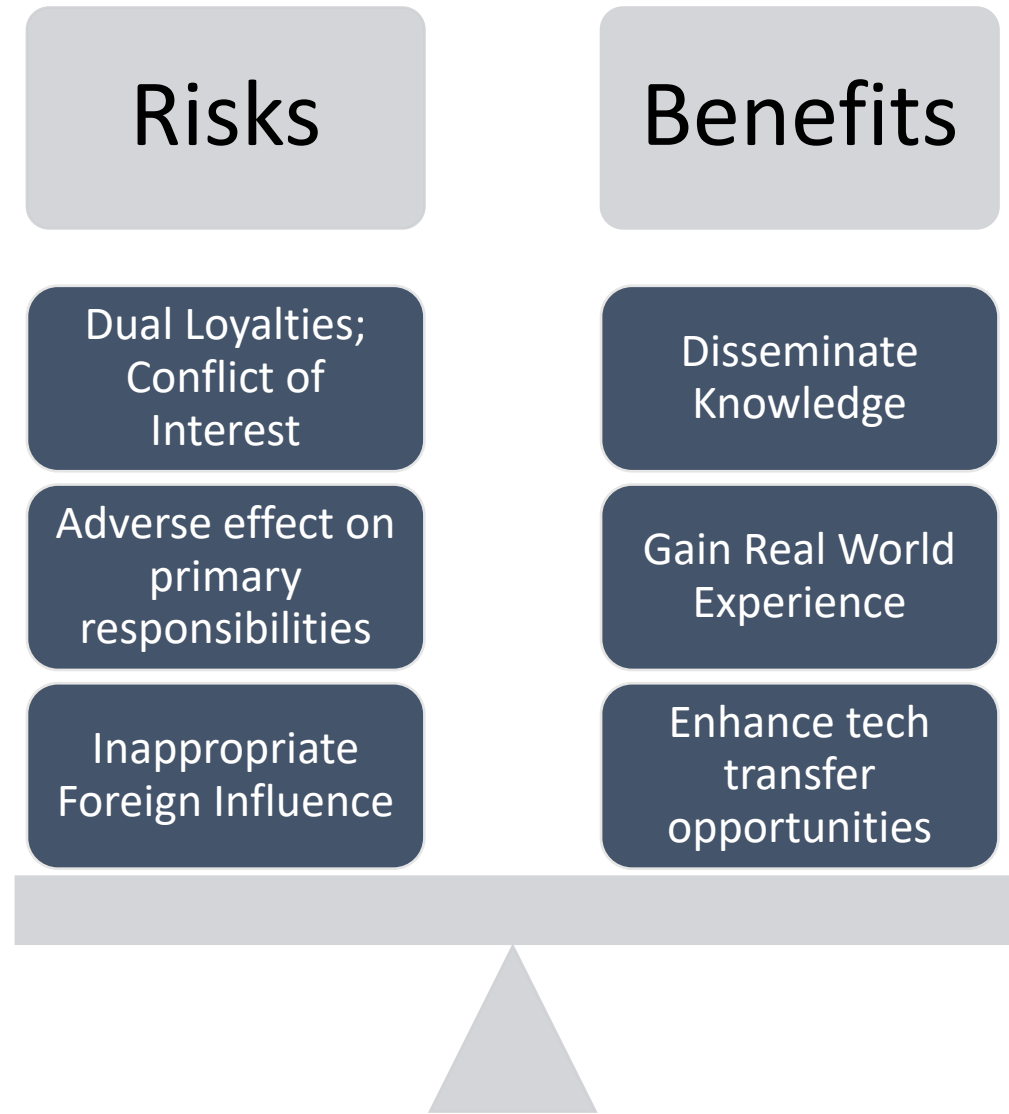


Spotlight on Conflict of Commitment

[COGR COC Principles
Document](#)

Faculty Outside Activities:

Balancing Risks and Benefits



The Need for Guardrails . . .



Provide faculty flexibility to conduct outside activities, but set boundaries and expectations:

- Primary obligation is to Home Institution
- Protect university resources and intellectual from inappropriate use
- Safeguard the reputation of the Home Institution
- Avoid appearance of dual loyalties, undue influence, COC or COI
- Ensure responsibilities to research sponsors are met

Inappropriate Foreign Influence is part of the concern . . .

- Foreign Talents Program Contract provisions that raise COC Concerns
 - Extensive time commitments and/or commitments that seem to go beyond what is the stated time commitment
 - Teaching & recruitment provisions
 - Copyright and IP provisions
- Need for transparency and disclosure of research funding sources
- Protection of IP and intellectual capital

.. but COC policies also must cover:

- Who's covered? Just tenured faculty? Others?
- Will all activities be reviewed? Will some be exempt?
- Level(s) of review & criteria for approval
 - Appeals
- Intersection with other process (e.g., COI) and systems
- Management strategies
- Sanctions for failure to disclose

As well as
address,
common
“conundrums”

- 9-month faculty appointments
- Sabbaticals
- Intersection with “effort” certification
- Review of consulting agreement
- How to measure expended time



Policy Development Hurdles

- Aligning controls with risk – not all activities warrant the same level of controls
- Will there really be agency consistency?
 - Consistency in requirements
 - Consistency in timelines!
- Training
 - You may only get one chance



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NSPM-33 and NSTC Recommendations

Stephanie Gold, Partner

COGR Meeting February 23, 2021



Topics

- Strengthen Disclosure Requirements and Processes
- Section 117 Statements
- SEVIS-Related Proposals

Strengthen Disclosure Requirements and Processes

- Risk-Based Approach
 - Protective measure commensurate with identified risks
 - Integrated approach that avoids undue administrative burden
 - Target specific behaviors and uphold foundational values

Strengthen Disclosure Requirements and Processes

- Secretary of Education shall continue to support the balance between academic freedom and national security by promoting financial transparency in the relationship between institutions of higher education (IHEs) and foreign sources through enforcement of section 117 of the Higher Education Act. ED shall continue to ensure that it provides, and updates as necessary, clear public guidance to IHEs on compliance with section 117 requirements, and shall continue to ensure that disclosed information is made publicly available in a format that is readily accessible and usable.
- Such reporting is important for transparency, accountability, and organizational integrity, and also aids senior leaders in appropriately identifying and managing organizational conflicts of interest.

Strengthen Disclosure Requirements and Processes

- Agencies may consider a range of consequences including “suspension or denial of Title IV Funds”.
- November 13, 2020 Notice of Interpretation
 - Institutions Are Required Under Their Program Participation Agreements (PPA) to Report Section 117 Data. ED’s position is that Section 117 compliance is a condition of Title IV participation.
 - ED has Authority to Administratively Subpoena Information from Parties When Investigating Possible Violations of Section 117. Therefore, “in addition to obtaining records and employee interviews . . . in furtherance of any investigation about the sufficiency of an institution’s Section 117 reporting, . . . ‘the Secretary is authorized to require by subpoena the production of information, documents, reports, answers, records, accounts, papers, and other documentary evidence pertaining to participation in any program under [Title IV of the HEA].’ Consistent with applicable law, the Secretary is also authorized to share such evidence with other agencies of the U.S. Government for law enforcement and other lawful purposes.”

Vetting Foreign Students and Researchers

- Institutions currently must report the following information to SEVIS for each F-1 student no later than 30 days after the program start date, and must maintain records that such changes were reported:
 - Full-time enrollment verification for each semester within 30 days after program start date;
 - Change of U.S. residential address
 - Change in degree level
 - Change in the major, field of study, or expected date of completion
 - Replacement of lost or damaged Form I-20
 - Adding an F-2 (dependent) to the student's immigration record
 - Program End Dates/Extensions
 - Early Program Completion

Vetting Foreign Students and Researchers

- Institutions currently must report the following information to SEVIS for each F-1 student no later than 30 days after the program start date, and must maintain records that such changes were reported:
 - Off-Campus employment
 - Authorized and unauthorized drops below the federal regulations mandated full course
 - Authorized Curricular Practical Training (CPT)
 - Transfer to or out a college
 - Resumption of full course of study
 - Leaves of absence, suspensions, or withdrawals from school
 - Optional Practical Training (OPT)
 - Terminations of or discontinuation of Optional Practical Training (OPT)
 - Status terminations based on degree completion, change of status (*e.g.*, F-1 to permanent resident), failure to maintain status etc.
 - Reinstatement after any violations of student immigration status

Vetting Foreign Students and Researchers

- Institutions are also required to update SEVIS within 21 days after the following events:
 - Student's violation of the immigration status such as unauthorized employment, or unauthorized reduced course load;
 - Information on academic standing or disciplinary actions by the school;
 - Unauthorized withdraws from the school or failure to complete the program;
 - Change in either the student's or dependent's legal name; and
 - Student's or dependent's change of address.

Vetting Foreign Students and Researchers

- The Secretary of State shall continue to apply a risk-based process to vet visa applicants seeking to study or conduct research activities in the U.S.
 - Employment and employment history
 - Sources of financial support
 - Education history, including academic institutes, degrees, and research advisors
 - Current and prior R&D affiliations and projects
 - Current and pending participation in foreign government-sponsored recruitment programs
 - Program of student and/or research
 - Facility/facilities and locations of expected work

Vetting Foreign Students and Researchers

- The Secretary of Homeland Security shall assess within three month any regulatory and technical update necessary to require institutions to:
 - Report the same information in the Student and Exchange Visitor Institution System (SEVIS) for foreign students and researchers
 - Provide annual updates in SEVIS and more frequently where appropriate
- Students and research organizations that fail to report any required information to DHS in a timely manner may face adverse consequences including but not limited to decertification, revocation of funding, or loss of immigration status. (NSTC Recommendation 7)



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