

Foreign Influence and Sponsored Projects

June 24, 2020
RAC Forum



What's happened since the April 2019 RAC Forum?

Things have heated up!



Remember Charles Lieber – Chair, Dept. of Chemistry, Harvard University?

- Arrested Jan. 28, 2020
- Allegations
 - False statements about involvement in Thousand Talents Program
 - False statements about Wuhan University of Tech
 - Lied to DOD investigators



Lieber Allegations (cont.)

- Strategic Scientist at WUT and contractual participant in Thousand Talents Plan – 2012-2017
 - Up to \$50K per month salary
 - \$158K annual living and personal expenses
- Did not disclose foreign collaboration, foreign sources of research support, and financial conflicts of interest
- Academic Cooperative Agreement between Harvard and Wuhan UT
 - Did not consult Harvard but signed on Harvard's behalf
 - Later falsely told Harvard that WUT was using Harvard's name without his knowledge or consent

Lieber Allegations (cont.)

- DOD investigators interview Lieber about active grants and disclosure
 - Lieber said: never asked to participate in Thousand Talents program
 - Had signed contract in 2012
- Two days after DOD interview:
 - *“I lost a lot of sleep worrying about all of these things last night and want to start taking steps to correct sooner than later. I will be careful about what I discuss with Harvard University, and none of this will be shared with government investigators at this time.”*
- Caused Harvard to file false statements to NIH about Lieber

Update: June 2020

- Former Harvard Chemistry department chair Charles M. Lieber has pleaded not guilty to charges that he lied to federal investigators about research funding he received from China.
- If found guilty, Lieber could receive a sentence of up to five years in prison, three years of supervised release, and a fine of \$250,000.

More PIs in the News

June 2020: 54 NIH researchers lose their jobs as ongoing investigation reveals 93% failed to disclose links To Chinese Communist Party. Key findings:

- Failure to disclose substantial foreign resources
 - Foreign employment arrangements
 - Foreign grant support: overlap, duplication, over-commitment
 - In many cases, American institutions unaware
- Failure to disclose significant foreign FCOI, patents
- Peer review violations

Congressional Response

- June 2020: Bipartisan Senate Bill introduced [Safeguarding American Innovation Act](#):
 - Failure to disclose "any outside compensation" on federal grant applications is a crime and punishable by up to five years in prison.
 - Requires universities to provide the State Department with information about the sensitive technologies that a foreign researcher will have access to.
 - Department of Education to fine universities that repeatedly fail to disclose foreign gifts of \$50K or more.

Sponsor Response

- Federal funding agencies have issued additional clarifications to the guidance already published related to foreign influence.
- NIH has initiated a number of investigations of PIs that appear to have failed to comply with these requirements.

Sponsor Concerns

Failure to disclose substantial foreign resources:

- Foreign employment arrangements
- Foreign grant support that creates problems with overlap, or over-commitment
- Non-disclosure of substantial foreign research support
- Benefits of free labor (visiting scholar/student funded by a foreign source)
- Talents awards
- Foreign grants – Hidden transfers of information, know-how, data, person-time

University Response

- Strengthening internal compliance requirements related to the reporting outside activities.
- Providing PI training relative to foreign influences, conflict of interest, and export control.
- Ensuring all information sponsors require about foreign involvement is provided at the proposal, JIT, award, and/or post award stages.

How can RAs Help?



Helpful Hints

- **Help PIs understand that Federal agencies are interested in PI behavior not ethnicity.**
- **Refer PIs to the most current sponsor guidance on what is required.**
- **Discourage PIs from relying on what has worked in the past.**

Guidelines for PIs



Rule Suggestion #1

- Make sure to disclose outside professional activities to the University as required under Section 025 of the Academic Personnel Manual (APM).
- New “OATS” system coming in August, 2020
- Reports for prior academic year are due no later than September 30 of each year.

Conflict of Commitment



- Category I –
 - Prior University approval required
 - Counts toward the day limit
 - Examples:
 - Teaching or research at another university
 - Assuming a managerial position at a company
 - Acting as a salaried employee outside the University

Conflict of Commitment



- Category II –
- Prior approval not required
- Counts toward the day limit
 - Examples:
 - Consulting
 - Providing a workshop for industry
 - Additional compensated University teaching activities

Conflict of Commitment




- Category III –
- Prior approval not required
- Does not count toward the day limit
 - Examples:
 - Serving as an editor of a journal
 - Presenting a keynote address
 - See summary:
https://bmap.berkeley.edu/sites/default/files/025-summary_apm.pdf

Rule Suggestion #2

- **Make sure that all the Federal and State mandated financial conflict of interest (COI) disclosures required by the sponsor have been provided.**

Conflict of Interest



- RAC COI Website
 - <https://researchcoi.berkeley.edu/>
- Overview of COI Requirements by Sponsor: 
 - <https://researchcoi.berkeley.edu/comparison.html>
 - Reporting Triggers
 - Who must report
 - What to disclose
 - When to disclose
 - Forms to use

Rule Suggestion #3

- **Obtain guidance on when information, technologies, and commodities can be transmitted overseas to anyone, including U.S. citizens, or to a foreign national on U.S. soil.**

Export Controls

- Disclose significant foreign financial Conflict of Interest:
 - Equity in foreign companies
 - Foreign patents that leverage US tax-payer funded work
- Comply with U.S. Export Control laws and regulations relative to:
 - The transfer of technology and data to foreign countries and/or foreign nationals in the U.S and
 - Interactions with individuals or entities on the sanctions Office of Foreign Assets Control (OFAC) sanctions list.

Export Controls

- Basic compliance strategy – operate within the fundamental research exclusion (FRE)
 - No publication restrictions
 - No citizenship restrictions
- Shipment of tangible items may still require a license
- Treasury sanctions and embargoes may apply to travel
- Consult with the campus Export Control Officer with any questions
 - <https://vcresearch.berkeley.edu/export-controls>

Huawei/Futurewei and ZTE

- Concerns from FBI and Congress in 2012
- NDAA restrictions
- Updated DOJ Indictment
 - Financial fraud
 - Theft of trade secrets
- Jan 30, 2019 and February 14, 2020 VCR letters on moratorium



Rule Suggestion #4

- **Disclose all current and pending support and affiliations as required by the federal sponsor.**
 - Proposal Stage
 - JIT
 - Award
 - Post award (e.g. RPPR)



NIH Grant Application Requirements – Other Support

- Definition: All resources made available to a researcher in support of and/or related to all of their research endeavors, regardless of whether or not the resources have monetary value.

NIH Grant Application Requirements – Other Support

“Resources” include:

- Resources and/or financial support from Berkeley.
- Resources and/or financial support from all foreign and domestic entities.
- Examples: financial support for laboratory personnel and provision of high-value materials that are not freely available (e.g., biologics, chemical, model systems, technology, etc.).

NIH Grant Application Requirements – Other Support

- Disclosers required for all senior key personnel devoting measurable effort to the project.
- Provided to NIH at the JIT stage.
- Must notify NIH of any substantive changes to these disclosures up to the time of award and any changes in in the active other support of senior/key personnel when submitting RPPRs.

NIH Grant Application Requirements – Other Support

- Other support does not include training awards, prizes, or gifts.
- Other Support also is not specifically requested for Program Directors, training faculty, and other individuals involved in the oversight of training grants
- It is also not requested for individuals categorized as Other Significant Contributors.

NIH Grant Application Requirements – Foreign Component

- NIH and other PHS agencies also require PIs to disclose any “foreign components” at the proposal stage.
- A foreign component exists if any significant scientific element or segment of the project will take place 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.
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NIH Grant Application Requirements – Foreign Component

- Examples of “Significant” Activities:
 - Collaborations with investigators at a foreign site resulting in co-authorship
 - Use of facilities or instrumentation at a foreign site
 - Receipt of financial support or resources from a foreign entity
 - Extensive travel for data collection, surveying, sampling, and similar activities (would meet definition)
 - Note: Foreign travel for consultation is not considered a foreign component

NIH Grant Application Requirements – Biosketch

- NIH Statement:
 - “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).*”
- Report defined affiliations or appointments – especially those likely to be cited in publications, particularly regarding research funded by and NIH award

Retroactive Disclosures - NIH

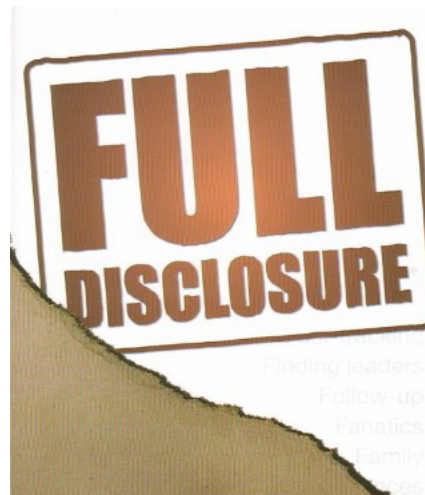


- Other Support
 - Don't have a form at this time
 - Check FAQs for clarification
 - May revise terms in the Grants Policy Statement
- Reporting
 - Must promptly notify NIH if previously submitted other support at JIT is substantively changed prior to award.
 - Undisclosed support related to active awards should be described in the Research Performance Progress Report (RPPR)

NSF – Proposal and Award Policies and Procedures Guide



- Current and pending support information must be separately provided for each individual designated as senior personnel on the proposal.



NSF – Proposal and Award Policies and Procedures Guide



- Current and pending support information must be provided for:
 - The project being proposed to NSF,
 - Ongoing projects, and
 - Any proposals currently under consideration from whatever source, irrespective of whether such support is provided through the proposing organization or is provided directly to the individual.

NSF – Proposal and Award Policies and Procedures Guide



- In-kind support:
 - With a time commitment should appear in Current and Pending Support
 - Without a time commitment intended for use on the project/proposal should appear in the Facilities, Equipment and Other Resources section.
 - Not intended for use on the project/proposal and with no associated time commitment does not need to be reported.

NSF – Proposal and Award Policies and Procedures Guide



- “True” Gifts
 - Not reported if gift is given “without expectation of anything in return.”
 - Item or service given with the expectation of an associated time commitment is an in-kind contribution and must be reported to NSF
- Thousand talents program participation should be disclosed at the time of proposal in the Current and Pending Support section.

Retroactive Disclosures - NSF



- New Procedure for dealing with after-the-fact notifications. Coming Soon!
- Until then:
 - For post-award disclosure of current and pending support and in-kind contributions submit required elements through “Other Request” in Notification and Request Module in Research.gov



Department of Defense

- DoD Notices of Funding Opportunities (NFOs) pertaining to research and research-related educational activities require proposers to submit current and pending support for all key personnel in the Senior Key Person Profile whether or not the individuals' efforts under the project are to be funded by the DoD:
- Note: This requirement applies only to DOD instruments supporting research and research-related educational activities. For all other types of grants, the capture of the above information is optional.



Department of Defense

- Current and Pending Support Memorandum - March 20, 2019- requires the following:
 - Current and future projects regardless of source
 - Title and objectives of other projects
 - Percentage of year for other projects
 - Total amount of support received if proposals are awarded
 - Name and address of agencies or other parties supporting the other projects
 - Period of performance of other projects

Department of Energy



- Campus researchers funded under DOE contracts for R&D work performed or partially performed on or at a DOE or National Nuclear Security Administration (NNSA) site or facility are subject to Order 486.1.
- This order was issued in June of 2019 and prohibits DOE contractors from participating in foreign government talent recruitment programs (FGTRP) and countries designated by DOE as countries of risk.

Department of Energy



Procedure for Order 486.1 in LBNL agreements:

- SPO sends an email to the PI with a link to a [FGTRP Certification Form](#) (on the SPO website).
- The PI and each member of the PI's project team must complete this form.
- It is the PI's responsibility to submit all completed forms to Berkeley's COI Coordinator (amhellman@berkeley.edu)
- The COI Coordinator then will submit this information to DOE/LBNL within the required time frame.

Department of Energy



- Procedure for Order 486.1 in LBNL agreements
 - Campus researchers with joint appointees disclose such relationships through LBNL's outside activities program.
 - IUTs: Not all IUTs have FGTRP reporting requirements. Based on the current version of DOE Order 486.1, only IUTs for research, where any work will be performed at an LBNL facility, require FGTRP reporting.

Any Questions?



Farewell to Pat Schlesinger



Remember...

