

Science and Security Regulatory Updates

In recent months, federal agencies have issued letters, guidance, and policy statements clarifying and adding additional research security measures within their standards and grant application processes. K-State supports academic freedom and is committed to maintaining an open and transparent research environment that welcomes the participation of researchers from around the world. It is equally important that we support the research enterprise by complying with regulatory requirements. The University Research Compliance Office will continue to follow these developments and update you on changes in federal regulations and policies as they happen.

NIH Disclosure Requirements

On July 10, 2019, the NIH published a notice reminding the extramural community about the need to report foreign activities through documentation of other support, foreign components, and financial conflict of interest to prevent scientific, budgetary, or commitment overlap.

NIH applicants must:

1. 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).
2. Report all resources and other support for all individuals designated in an application as senior/key personnel – including for the program director/principal investigator and for other individuals who contribute to the scientific development or execution of a project in a substantive, measurable way, whether or not they request salaries or compensation. Information must be provided about all current support for ongoing projects, irrespective of whether such support is provided through the applicant organization, through another domestic or foreign organization, or is provided directly to an individual that supports the senior/key personnel's research efforts.
3. Report all current projects and activities that involve senior/key personnel, even if the support received is only in-kind (e.g. office/laboratory space, equipment, supplies, employees). All research resources including, but not limited to, foreign financial support, research or laboratory personnel, lab space, scientific materials, selection to a foreign "talents" or similar-type program, or other foreign or domestic support must be reported.
4. Provide the total award amount for the entire award period covered (including facilities and administrative costs), as well as the number of person-months (or partial person-months) per year to be devoted to the project by the senior/key personnel involved.

All pending support at the time of application submission and prior to award must be reported using "Just-in-Time Procedures" by providing all information indicated above. Applicants are responsible for promptly notifying NIH of any substantive changes to previously submitted Just-in-Time information up to the time of award, including "Other Support" changes that must be assessed for budgetary or scientific overlap. Further, if other support, as described as above, is obtained after the initial NIH award period, from any source either through the institution or directly to senior/key personnel, the details must be disclosed in the annual research performance progress report. Post-award, recipients must address any substantive changes by submitting a prior approval request to NIH.

Foreign Components

NIH requires recipients to determine whether activities it supports include a foreign component, defined as: The existence of any “significant scientific element or segment of a project” outside of the United States, in other words:

1. Performance of work by a researcher or recipient in a foreign location, whether or not NIH grant funds are expended and/or
2. Performance of work by a researcher in a foreign location employed or paid for by a foreign organization, whether or not NIH grant funds are expended.

If a recipient determines that a portion of the project will be conducted outside of the U.S., the recipient then will need to determine if the activities are considered significant. If both criteria are met, then there is a foreign component. The addition of a foreign component to an ongoing NIH grant continues to require NIH prior approval. If an activity does not meet the definition of foreign component because all research is being conducted within the United States, but there is a non-U.S. resource that supports the research of an investigator and/or researcher, it must be reported as other support.

NSF Disclosure Requirements

Since 1978, NSF has required senior project personnel on proposals to disclose all sources of support, both foreign and domestic. A renewed effort is now underway to ensure that existing requirements to disclose current and pending support information are known, understood, and followed. For example, in May, NIH published in the Federal Register a proposed clarification of their proposal disclosure requirements (open for public comment through July 29). The draft NSF Proposal and Award Policies and Procedures Guide includes clarifications regarding reporting requirements for both current and pending support and professional appointments.

On July 11, 2019, NSF published a Dear Colleagues letter discussing new procedures and processes. NSF is proposing the use of an electronic format for submission of biographical sketches, including disclosure of all foreign appointments. As currently envisioned, this will become effective in January 2020. NSF is also working to develop an electronic format for disclosure of current and pending support information.

NIH has commissioned the independent scientific advisory group JASON to conduct a study to assess risks and recommend possible practices for NSF and its awardee organizations to achieve the best balance between openness and security of science. They will complete their report by the end of the calendar year.

Finally, in the Dear Colleagues letter, NSF announced that they are issuing a policy making it clear that NSF personnel and IPAs detailed to NSF cannot participate in foreign government talent recruitment programs.

Department of Energy (DOE)

The DOE issued a memo in December 2018 announcing agency plans to restrict “international scientific research collaborations that may pose potential risk to U.S. national interests.” The memo laid out plans to create a Science and Technology (S&T) Risk Matrix that will inform future decisions about international collaborations with select “sensitive” countries. The agency issued a

second memo in January 2019 prohibiting DOE personnel from participating in foreign talent recruitment programs.

In June 2019, the Department issued an order to codify this prohibition and also require the Director of the Office of Intelligence and Counterintelligence to develop and maintain a list of foreign government talent recruitment programs.

Department of Defense (DoD)

In March, DoD issued a memo on “Actions for the Protection of Intellectual Property, Controlled Information, Key Personnel and Critical Technologies.” The DoD now requires all funding proposals to list all current projects the investigator is working on, in addition to any future support the individual has applied to receive regardless of the source.

Department of Education

In February, the Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations released a report criticizing China’s impact on the U.S. education system. In particular, the report highlighted Committee concerns about Chinese government-supported Confucius Institutes. The report was critical of the Department of Education’s enforcement of Sec. 117 of the Higher Education Act, which requires institutions to report any foreign sponsored gifts or contracts over \$250,000.

In June, the Department of Education issued investigation letters to Texas A&M University and Georgetown University focused on Sec. 117 reporting. The Department followed up with additional investigation letters sent to Rutgers University and Cornell University in July.

The Department of Education has never published official Federal Register rules instructing institutions on compliance with this requirement. APLU and other higher education associations have repeatedly written to the Department of Education seeking clarity on the reporting requirements surrounding Section 117. Unfortunately, the Department’s responses to the letters have not added significant clarity.

K-State Reporting

If any K-State employee will receive a salary, anything of value, or economic benefit, including sponsored travel from any foreign entity, including governments and universities, in return for services rendered or to be rendered, including fees received from private consulting or other international business activities, they must complete the Financial Interests Received From any Foreign Entity form prior to engaging in that activity.

Please remember to fill out the Financial Conflict of Interest review form available at:

<https://www.k-state.edu/comply/documents/form-int-consulting-and-international-financial-interests.pdf>