

Anatomy of a Foreign Influence Investigation

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Agenda

- Foreign Influence Landscape
- Investigation Profiles & Outcomes
- Managing a Foreign Influence Investigation Today
 - Investigative Steps
 - Institutional Considerations
 - Practical Considerations & Tips

Foreign Influence Landscape

Background

- August 2018 – Key letter from NIH’s Dr. Francis Collins to the research community, focus on:
 - Diversion of NIH-supported IP
 - Confidentiality breaches of the peer review process
 - Nondisclosure of ties to institutions ex-U.S.
- Subsequent to the Collins letter, agencies rolled out new or clarifying guidance

Background

- Nov 2018 – DoJ launched the “China Initiative” under then-U.S. Attorney General Jeff Sessions
 - The stated goals included identifying trade secret theft, and developing an enforcement strategy re: “non-traditional collectors (e.g. researchers in labs, universities, and the defense industrial base) that are being coopted into transferring technology contrary to U.S. interests”
- Department of Education initiated a series of high profile Section 117 investigations focused on identifying underreported foreign source gifts

Investigation Profiles & Outcomes

- NSF research security site reflects 31 award suspensions, 20 award grant terminations, 9 researcher and 4 entity suspensions (federal government-wide), and the debarment of four researchers and two entities from receiving future NSF funding
- NIH has reported that the Office of Extramural Research has initiated roughly 230 cases, more than 500 investigated; multiple referrals to OIG

Investigation Profiles & Outcomes

Table 1: Characteristics of foreign interference cases reported to the NIH Office of Extramural Research (OER) according to the original source of concerns. Values shown are for cases in which NIH Staff have contacted the Institution. Values shown are Number (%). Percentages do not necessarily add up to 100 due to missing or withheld values. PRC = People's Republic of China.

Characteristic		Internal	Self Disclosure	DOJ or FBI
Total N (%)		110 (48.0)	68 (29.7)	51 (22.3)
Year Institution Contacted	2018 or 2019	94 (85.5)	21 (30.9)	43 (84.3)
	2020 or 2021	16 (14.5)	47 (69.1)	8 (15.7)
Gender	Male	90 (81.8)	59 (86.8)	37 (72.5)
	Female	17 (15.5)	7 (10.3)	10 (19.6)
Race	Asian	89 (80.9)	44 (64.7)	39 (76.5)
	White	16 (14.5)	18 (26.5)	3 (5.9)
Country of Concern	PRC	102 (92.7)	54 (84.4)	51 (100.0)

Investigation Profiles & Outcomes

Table 2: Outcomes of NIH foreign interference cases. Values shown are for cases in which NIH Staff have contacted the Institution. FCOI = financial conflict of interest. Values shown are Number (%).

Outcome	Number
Total N (%)	229 (100.0)
Undisclosed Affiliation	194 (85.5)
Undisclosed Grant Support	158 (69.6)
Undisclosed Talents Award	124 (54.6)
Undisclosed Equity, Patent, or FCOI	35 (15.3)
Any Serious Violation	191 (83.4)
No Violation	14 (6.1)
Termination or Resignation	93 (40.6)
Institutional Exclusion from Grants	49 (21.6)
Removed from Grants	142 (62.0)
Removed from Peer Review	187 (81.7)
Status of Compliance Review Open	175 (76.4)

Investigation Profiles & Outcomes

Table 3: Outcomes of NIH foreign interference cases according to the original source of concerns. Values shown are for cases in which NIH Staff have contacted the Institution. FCOI = financial conflict of interest. Values shown are Number (%).

Outcome	Internal	Self Disclosure	DOJ or FBI
Total N (%)	110 (48.0)	68 (29.7)	51 (22.3)
Undisclosed Affiliation	91 (82.7)	55 (83.3)	48 (94.1)
Undisclosed Grant Support	81 (73.6)	37 (56.1)	40 (78.4)
Undisclosed Talents Award	44 (40.0)	33 (50.0)	47 (92.2)
Undisclosed Equity, Patent, or FCOI	14 (12.7)	16 (23.5)	5 (9.8)
Any Serious Violation	90 (81.8)	53 (77.9)	48 (94.1)
Termination or Resignation	34 (30.9)	36 (52.9)	23 (45.1)
Institutional Removal from Grants	33 (30.0)	9 (13.6)	7 (13.7)
Removed from Grants	67 (60.9)	45 (66.2)	30 (58.8)
Removed from Peer Review	84 (76.4)	59 (86.8)	44 (86.3)
Status of Compliance Review Open	79 (71.8)	65 (95.6)	31 (60.8)

Where Do We Stand Today?

- Regulatory environment stabilizing???
 - NSPM-33 released in Jan, calls for greater standardization over disclosure requirements; generally (but not entirely) consistent with existing NIH/NSF requirements
- Becoming increasingly difficult for institutions to argue “we didn’t know”
- China Initiative formally ended in Feb 2022
 - But DoJ will continue to pursue certain types of cases, e.g., nat’l security

Managing a Foreign Influence Investigation

- Investigations take many forms
 - Internal/evaluating potential voluntary disclosure
 - Response to sponsor inquiry
 - Law enforcement or civil DoJ/OIG involvement

Managing a Foreign Influence Investigation

- Basic blocking and tackling
 - Who internally needs to know and when?
 - Who's leading the investigation?
 - Do we want/need external assistance, availability of internal resources, costs?
 - Document preservation, collection, and review

Managing a Foreign Influence Investigation

- Status of the researcher during the investigation
 - Place them on leave or not?
 - Individual counsel?
 - Costs, indemnification, optics
 - Impact on students and post-docs
 - Performance of existing grants

Managing a Foreign Influence Investigation

- Institutional considerations
 - Faculty/student relations
 - External public relations
 - Contractual agreements with the faculty member, e.g., promised financial support, start-up money, etc.
 - Faculty discipline
 - Working with individual counsel
- Assessing institutional risk
 - What did the institution know and who knew it?
 - Policies, procedures, and business processes
 - Training
 - Other elements of research security

Managing a Foreign Influence Investigation

- Managing the regulators
 - Civil, criminal, or administrative
 - Relationship building and/or leveraging existing relationships
 - Level and nature of cooperation
 - Achieving closure

Managing a Foreign Influence Investigation

- Practical considerations & tips
 - Email searches
 - Publication reviews
 - Consider internal policy violations
 - Conflict of commitment
 - FCOI
 - Effort reporting
 - Post-investigation review to identify opportunities for improvement

Questions?