

# Research Integrity & Undue Foreign Influence

## Why Foreign Influence Matters

As tensions between the U.S. and various foreign governments increase, accusations of academic espionage by foreign-supported researchers at U.S.-based research institutions are on the rise. The NIH, NSF, DOE, and other agencies are increasingly warning institutions of researchers who have not disclosed foreign associations in compliance with grant funding regulations and other laws. The government continues to initiate enforcement actions and we expect this to increase in frequency and scope during the coming months.

As a result, research and academic institutions in the U.S. need to be ever more vigilant to mitigate brand risk, the loss of federal funds, intellectual property assets and exposure to enforcement actions.

## Statutes Used In Matters To Date

The U.S. Government has used a variety of statutes as the basis to bring charges against individuals and institutions for improper foreign influence in government-funded research. For example:

| Statute  | Potential Penalties*   | Recent Case  |
|--|--|--|
| 18 U.S.C. § 1001, False Statements   | Fined or imprisoned not more than 5 years, or both.  | Multiple individuals in recent cases have been charged with making false statements to the U.S. Government regarding their relationship to foreign institutions and organizations. |
| 18 U.S.C. § 1343, Wire Fraud   | Fined or imprisoned not more than 20 years, or both.   | Professor at U.S. research institution charged with unlawfully receiving federal grant money at the same time he was employed by a foreign research institution.                   |
| 18 U.S.C. § 666, Theft or Bribery Concerning Programs Receiving Federal Funds                | Fines or imprisoned not more than 10 years, or both.   | Professor at U.S. research institution charged with unlawfully receiving federal grant money at the same time he was employed by a foreign research institution.                   |
| 18 U.S.C. § 1546, Visa Fraud   | Fined or imprisoned not more than 25 years, or both.   | Multiple individuals in recent cases have been charged with making false statements or failing to disclose a material fact in their visa applications.                             |
| 18 U.S.C. § 951, Acting as an Agent of a Foreign Government                                  | Fined or imprisoned not more than 10 years, or both.   | Researcher charged with failing to disclose her position in a foreign military on her visa application.  |
| 18 U.S.C. § 554, Smuggling Goods from the United States                                      | Fined or imprisoned not more than 10 years, or both.   | Medical student charged with stealing and attempting to smuggle vials of biological materials out of the country in his suitcase.  |
| Section 117 of the Higher Education Act; and 20 U.S.C. § 1011f, Disclosures of Foreign Gifts | Institution is required to pay to the U.S. government the full costs to the U.S. of obtaining compliance, including all associated costs of investigation and enforcement. | The Department of Education has launched investigations into foreign funding at major research universities.   |

*\*Actual penalties can vary based on the specific offense and whether it implicates other sections of the U.S. criminal code.*

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## Additional Statutes That Have Been Cited By The Authorities

The U.S. Government has indicated that additional statutes may be used as the basis to bring charges against individuals and institutions for improper foreign influence in government-funded research, including:

| Statute   | Potential Penalties*   |
|---|--|
| 31 U.S.C. § 3729, False Claims Act                      | Civil penalty between \$5,500 and \$11,000 for each false claim, plus three times the amount of damages which the Government sustains because of the act of that person/institution. Note that full cooperation with the Government investigation may result in reduced damages. |
| 18 U.S.C. § 1341, Mail Fraud                            | Fined or imprisoned not more than 20 years, or both.   |
| 18 U.S.C. § 545, Smuggling goods into the United States | Fined or imprisoned not more than 20 years, or both.   |
| 49 U.S.C. Chapter 449 - Air Transportation Security     | Civil penalty of \$10,000 for each violation.  |
| 49 U.S.C. § 46312, Transporting hazardous material      | Fined or imprisoned not more than 5 years, or both.  |

*\*Actual penalties can vary based on the specific offense and whether it implicates other sections of the U.S. criminal code.*