

UH Office of Export Controls

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Define “Export Controls”

- The United States export laws and regulations operate to restrict the use of and access to controlled information, goods, and technology for reasons of national security or protection of trade.
- Export-controlled information or materials is any information or material that cannot be released to foreign nationals or representatives of a foreign entity, without first obtaining approval or license from the Department of State for items controlled by International Traffic in Arms Regulations (ITAR) or the Department of Commerce for items controlled by the Export Administration Regulations (EAR).
- Export controlled items must be controlled as sensitive information and marked accordingly



US Export Control Laws & Regulations - Enforcement



ITAR
Registered
International Traffic
in Arms Regulations



Export Administration Regulations (**EAR**)

Department of Commerce – Bureau of Industry and Security (BIS)

International Traffic in Arms Regulations (**ITAR**)

Department of State – Directorate of Defense Trade Controls (DDTC)

Office of Foreign Assets Control (**OFAC**)

The Treasury Department



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Export Controls at the University Level

In general, the export control regulations cover four main types of University activities:

- **Transfers** of controlled information, including technical data, to persons and entities outside the United States;
- **Shipment** of controlled physical items, such as scientific equipment, from the United States to a foreign country;
- **Travel** to certain sanctioned or embargoed countries for purposes of teaching or performing research.
- **Deemed Exports:** verbal, written, electronic, or visual disclosures of controlled scientific and technical information related to export controlled items to foreign nationals in the United States.



Application of U.S. Export Control Laws at UH

Shipping

- Equipment to a foreign country
- Shipping research equipment overseas
- Sending materials via Material Transfer Agreements

Collaborating & Usage

- With foreign colleagues in foreign countries OR in the U.S
- Working with a foreign country subject to US embargos
- Using research equipment on ships
- Signing Confidentiality-Agreements or Non-Disclosure Agreements
- Creating, receiving, or working with encryption software

Foreign Nationals

- Exposure to export-controlled information
- Exposure to research projects and/or labs involving with EC
- Training of Foreign Nationals on EC research protocols or equipment
- J-1 Exchange Visitors, H 1-B Visas



Application of U.S. Export Control Laws at UH

Research

- involving export controlled information
- contracts that require sponsor approval rights over publication, or operate to restrict information
- contracts in which sponsor limits participation of foreign nationals in classified research

Transactions

- Wiring funds to a foreign country (prohibited to embargoed countries)
- Purchasing and/or using software that is exportcontrolled
- Purchasing export-controlled equipment
- Receiving and sending exportcontrolled information by mail, electronically, verbally, etc.



Application of U.S. Export Control Laws at UH

UH OEC:

- Reviews all international agreements for UH System
- Conducts restricted party screenings
- Reviews all NDAs and Confidentiality Agreements with foreign entities
- Reviews all purchases of materials, technology, etc that may include export controlled information or technology and/or a foreign vendor
- Screens all foreign vendors/colleagues/labs
- Applies for licenses or create TCPS when necessary
- Reviews/screens all J1 and H-1B visa applicants and creates a risk assessment on high risk candidates
- Review research which may include export controlled information or restricted information
- Reviews all shipments for foreign countries



Foreign Influence Overview

The current regulatory landscape informing the research enterprise includes serious growing concerns by the US Government concerning inappropriate influence by foreign entities over federally funded research. As a result, academic research institutions have a heightened interest in understanding the affiliations and dealings faculty members may have with foreign governments and entities.

The University of Hawaii encourages international collaboration, and recognizes it is important for investigators to be transparent about their foreign relationships and activities.



Foreign Influence Overview

Federal agencies have issued statements expressing growing concerns over the potential for foreign influence in the following areas:

- 1) diversion of intellectual property to foreign entities;
- 2) sharing of confidential information by peer reviewers with others, including foreign entities;
- 3) failure of researchers to disclose resources from other organizations, including foreign governments.

In August 2018, Francis Collins, director of the NIH, alerted the research community to threats from foreign entities, and the FY19 National Defense Authorization Act included a provision alluding to the restriction of federal funding to institutions doing business with certain Chinese telecommunications companies.



Foreign Influence Overview

- Universities as a “soft target”
- Countries focused on upgrading industrial economy and dominating new technology
- Chinese Talent Programs: A vital part of Chinese industry.
 - Talent programs recruit experts to fill technical jobs that drive innovation and growth in China’s economy. Talent recruitment programs provide opportunities for experts to work in industry and academic organizations supporting key areas deemed critical to China’s development. The talent programs recruit experts globally from businesses, industry, and universities with multiple incentives .



Foreign Influence Overview

- The large number of foreign students, researchers, scientists, and professionals in the United States, combined with current technological capabilities, allows foreign governments to contact and recruit individuals with the hopes to acquire advanced technology without research costs.
- Recruiting these individuals allows adversaries to:
 - Gain access to research and expertise for cutting edge technology
 - Benefit from years of scientific research conducted in the United States supported by US Government grants and private funding
 - Severely impact the US economy.



Foreign Influence and Grant Fraud

"NIH has identified more than 200 instances of troubling foreign influence on extramural research, including withholding information about funding sources and conflicts of interests and violating the confidentiality of peer review. These all represent forms of theft."

- NIH Deputy Director Michael Laurer

July 2019 - Song Guo Zheng an OSU immunologist charged by US DOJ with grant fraud - 4.1 million in grants from NIH to develop China's expertise in areas of rheumatology and immunology.

- Arrested carrying two laptops, three cellular telephones, several USB drives, several silver bars, expired Chinese passports for his family, deeds for property in China and other items.
- Member of a Chinese Talent Plan and deliberately failed to disclose relationship with Chinese universities and receipt of funds from Chinese government in order to obtain millions of dollars in US grant money



UH Export Compliance Resources

http://www.hawaii.edu/research/export_controls/

https://www.hawaii.edu/research/foreign_influence/

Training for individuals and departments available upon request.

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Conflict of Interest Reporting Requirements

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What UH Researchers Need to Know

- **Disclosures to the University (internal)**
 - Conflict of Interest disclosure
 - Intellectual Property and Inventions disclosure
- **Disclosures to Sponsors (external)**
 - Current & Pending Support
 - Foreign talent programs
 - Foreign components



Disclosures to the University

UH Conflict of Interest Policies

- **UH Executive Policy 12.214:** Conflicts of Interest and Commitment
- **UH Administrative Policy 12.304:** Procedures for Disclosing and Addressing Conflicts of Interest Related with Extramurally Funded Activities
- **A5.504:** Procedures for disclosing and addressing conflicts of interest and commitment



Disclosures to the University

Key Definitions from UH COI policies:

Investigator - Principal Investigator (PI), Project Director (PD) or any other senior/key person responsible for the design, conduct, or reporting of research

Immediate Family – Investigator's spouse, domestic partner or dependent children

Institutional Responsibilities – Investigator's professional responsibilities on behalf of UH, e.g., research, teaching, training, professional practice and memberships or service

Conflict of Interest (COI) – financial or other professional/personal interest which may influence or appear to influence an Investigator's objectivity or judgement in fulfilling his or her institutional responsibilities

Significant Financial Interest (SFI) - anything of monetary value to an Investigator or Investigator's immediate family member, that reasonably relates to an Investigator's institutional responsibilities



Disclosures to the University

- **Significant Financial Interests (SFI)** include but are not limited to:
 - Remuneration (outside income) over \$5000 from any outside entity;
 - Equity interest (e.g. stocks) in a public entity over \$5000;
 - Equity interest of any value in a private entity;
 - Aggregated interests, both income and equity, over \$5000 entity
 - Royalties or income from intellectual property (e.g. patents, copyrights, and trademarks) from an outside entity
 - Sponsored Travel: reimbursement or sponsorship for travel by an outside entity (applies only to PHS-funded investigators)

*"Entities"
includes
foreign
organizations*



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Disclosures to the University

What must investigators disclose to UH?

Investigators must disclose any **Significant Financial Interest (SFI)** held in the last 12 months that reasonably appears to be related to their institutional responsibilities:

- prior to, or at the time of, proposal submission;
- within 30 days of acquiring SFI; and
- at least annually

What is a Conflict of Interest?

An SFI or other professional/personal interest which may influence or **appear to influence** an Investigator's objectivity or judgement in fulfilling his or her institutional responsibilities



Disclosures to the University

Disclosure Examples

- Income, reimbursement, or sponsorship of travel by a foreign (non-U.S.) government agency, foreign institution of higher education or foreign research entity
- Board positions, offices, appointments, or memberships held in any outside entity, whether compensated or not;
- Industry collaborations, both officially and unofficially, with foreign or domestic entities
- Employment, assistantships or exchanges (e.g. Post-docs, visiting scholars) of any international citizens involved in your UH research or extramurally-funded activities
- Any of your private outside interests that could relate to your Institutional responsibilities (e.g. start-ups, or spin-offs)
- Compensation for outside (non-UH) consulting, service, other related work
- Equity or ownership in entities that could reasonably appear as related to UH work
- Employment of UH staff/students in an entity for which an SFI exists



Disclosures to the University

Internal COI Disclosure to UH is not required for:

- Income, reimbursement, or sponsorship of travel by a government agency, **U.S.** institution of higher education or academic teaching hospital, medical center, or research institute affiliated with a **U.S.** higher education institution
- Salary, royalties, or intellectual property right payments from UH
- Income from investment vehicles, e.g., mutual funds and retirement accounts (no direct control over investment decisions)
- Remuneration unrelated to UH institutional responsibilities



Disclosures to the University

Annual COI Disclosure

- UH and RCUH employees due **April 15** - “paper” disclosure from AP A5.504 attachment A page 22 - 29
- Extramurally-funded Investigators and key personnel submit disclosure online via new myGRANT rCOI module (rolling expiration every 12 months)

Ongoing Submission

- New employees
- Changes to annual disclosure
- Proposal/Award – updates in myGRANT



Disclosures to the University

COI Training Requirement

*PHS-funded Investigators must also complete COI training available through CITI at <https://www.citiprogram.org/?pageID=668>:

- At least every four years; *and,*
- Immediately, *if* :
 - UH revises its policy
 - Investigator is new to UH
 - UH finds an Investigator is not in compliance with COI policy or management plan.

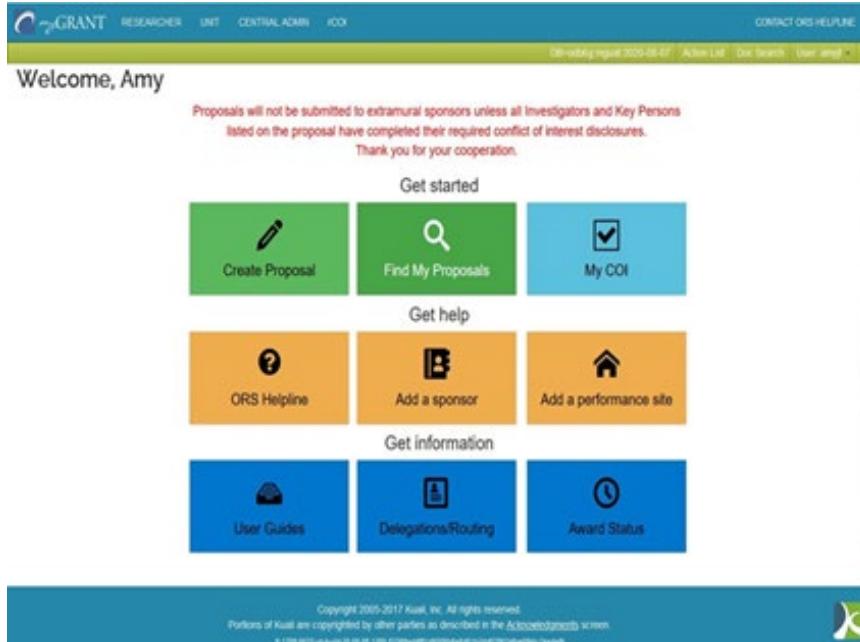
*What is PHS?

PHS is Public Health Service which includes the National Institutes of Health (NIH), the Agency for Healthcare Research and Quality (AHRQ), the Centers for Disease Control and Prevention (CDC), the Health Resources and Services Administration (HRSA) and the Substance Abuse and Mental Health Services Administration (SAMHSA)



Disclosures to the University

The new rCOI system launched on September 21, 2020.



There are two ways to access rCOI:

- Click on the **My COI** box from the myGRANT homepage
or
- Follow the link below

<http://mygrant.ors.Hawaii.edu/rCOI>

A User Guide for using the new rCOI system can be found at
<http://www.ors.hawaii.edu/index.php/coi-information>



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Disclosures to the University

Intellectual Property and Inventions

- Promptly report all inventions to the Office of Innovation and Commercialization (OIC)
 - Submit online through *myInvention* portal at
<https://www.hawaii.edu/research/disclosed-an-invention/>
- OIC will meet with you to discuss the invention and make a preliminary determination of licensing feasibility, novelty, potential applications, and possible markets



Disclosures to Sponsors

Current and Pending (Other Support)

- Update and maintain your current and pending support documentation
- Include ALL sources of support, including
 - Foreign and domestic
 - Scholarships or fellowships
- Follow specific sponsor instructions
- When in doubt, report



NIH Requirements

NIH NOT-OD-19-114 (July 10, 2019) Reminders of NIH Policies on Other Support and on Policies related to Financial Conflicts of Interest and Foreign Components

- Current and Pending (Other Support)
- Foreign Components
- Financial Conflicts of Interest



NIH Requirements

Current and Pending (Other Support)

All resources made available to a researcher in support of and/or related to **all** of their research endeavors, regardless of whether or not they have monetary value and regardless of whether they are based at the institution the researcher identifies for the current grant.

Examples of Other Support

- Salary or other support for a research project(s)
- Honorary, visiting or adjunct appointment at a foreign university
- Non-monetary resources or in-kind support, such as lab space, personnel (like a visiting post-doc), equipment or supplies (can include support from a foreign talent or similar program)



NIH Requirements

Current and Pending

When to report:

- Proposal submission
- At Just-In-Time before award is made
- When key personnel are added
- When there are changes in support from original Other Support submission
- Annual research performance progress report

Who must report:

- PI on behalf of all senior and key personnel



NIH Requirements

Foreign Component

- Significant scientific element or segment of a project conducted outside the U.S.
 - Whether or not NIH funds are expended
 - Addition of foreign component must receive PRIOR approval by NIH



NIH Requirements

Financial Conflict of Interest (FCOI)

42 CFR Part 50, Subpart F, Objectivity in Research

- Requires the Institution (UH) to have a disclosure policy that researchers must comply with
- Includes disclosure of financial interests related to a foreign entity
- UH must provide FCOI reports to NIH



NSF Requirements

- Dear Colleague Letter issued July 2019
- Proposed clarification of the proposal disclosure requirements and reporting requirements for both Current and Pending Support and Professional Appointments
- October 2020 – Use NSF-approved format for biographical sketches (including disclosure of all domestic and **foreign** appointments and Current and Pending Support information)



NASA Requirements

- Since 2011 NASA has had restrictions on using NASA funds to enter into agreements “to participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned company, at the prime recipient level or at any subrecipient level, whether the bilateral involvement is funded or performed under a no-exchange of funds arrangement”



Department of Energy requirements

June 2019 DOE Directive

- Participation in foreign talent programs is prohibited for its employees and contractors
 - Defined as “*any foreign-state-sponsored attempt to acquire US scientific-funded research or technology through foreign government-run or funded recruitment programs that target scientists, engineers, academics, researchers, and entrepreneurs of all nationalities working or educated in the United States.*



Additional Resources

[https://www.hawaii.edu/research/foreign -influence/](https://www.hawaii.edu/research/foreign-influence/)

Training for individuals and departments available upon request.

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