

With increasing frequency, Federal agencies such as the National Institutes of Health (NIH) and the National Science Foundation (NSF) are expressing concerns and inquiring about international engagements at research universities. In response to these and other developments, President Napolitano issued recommendations for addressing foreign influences on research integrity in a February 7, 2019 letter to the Chancellors and Director Witherell. Among these recommendations is adoption of a process to ensure that federal agency inquiries are appropriately and consistently tracked, escalated, reviewed, and sometimes investigated across the UC system. Investigative and review protocols should be standardized across the system and responses to such inquiries prepared in consultation with OGC and ECAS. Furthermore, the Escalation Protocol is intended to provide a level of campus-wide, and centralized, visibility in order to connect separate but potentially related inquiries.

Please note, the FAQs below serve to clarify the Escalation Protocol, as well as to strike the word “suspicion” from Triggering Event #2 on page 2 of the March 28th letter. This June 18, 2019 version of the Escalation Protocol Letter thus supersedes the March 28, 2019 version. See Appendix 1.

Text from the March 28th Escalation Protocol Letter

A “triggering event” shall include the following:

1. Any communication from a federal agency regarding federally funded research grants, contracts or awards in which the federal agency expresses concern about a foreign entity’s involvement in the research; or
2. Any campus’ knowledge ██████████ of any violation of any federal agency policy or federal law regarding federally funded research grants, contracts or awards in which the campus has a concern regarding a foreign entity’s involvement in the research.

A “triggering event” must involve a concern regarding a foreign entity’s involvement. Thus, for example, a “triggering event” shall not include a communication or violation related to federally funded research that (a) involves only domestic entities or individuals, or (b) involves a foreign entity, but there has been no concern expressed by the agency or campus about the foreign entity’s involvement.

A “communication” shall include, but not be limited, to: (a) any subpoena, civil investigative demand or other document request directed at the UC or any UC faculty or staff; (b) any request for interviews with any UC faculty or staff; (c) any “cease and desist” letter from an agency; and (d) any agency request for a review of such issues and further information on compliance/non-compliance and corrective actions.

Such foreign entities include but are not limited to foreign governmental entities, foreign universities, foreign private entities or any joint ventures, affiliations or combinations between such entities, any domestic subsidiaries, or affiliates of foreign entities, any faculty, student, employee, or contractor of a foreign entity, or any agent acting on behalf of a foreign entity.

FAQs

1. Do ALL communications from federal agencies that express concern about a foreign entity's involvement in federally funded research constitute "triggering events" under Paragraph #1 of the section of the Escalation Protocol excerpted above?

NO. Only communications that meet ALL of the following criteria are considered reportable "triggering events" under Paragraph #1 above:

- a) the communication is in writing (e.g., an email or a letter); and
- b) the communication *requests a written response, and*
- c) the communication is from either:
 - (1) an official in the agency leadership such as a director, deputy director, or assistant director, or
 - (2) an investigative agent or attorney such as a special agent from a federal agency's Office of Inspector General (OIG).

and

- d) the communication expresses concern about a foreign entity's involvement in research funded by a federal grant, contract, or other award.

Thus, communications (regardless of format) from non-leadership or non-investigative agency staff such as Program Officers or Grants Management Officials would not be considered "triggering events" under Paragraph #1 above. They would not be required to be entered into the Navex system as described in the escalation protocol set out in the March 28th Escalation Protocol letter.

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2. What is the definition of "knowledge"? Knowledge shall mean an allegation of a violation of a federal policy or law is sufficiently serious, credible, and specific so that potential reliable evidence may be identified.

To be a reportable "triggering event" under Paragraph #2 above, "knowledge" must meet all of the following criteria:

- a) it concerns an allegation of a violation of federal policy or law regarding federally funded research grants, contracts, or other awards, where the alleged violation is

regarding a foreign entity's involvement in the research, a concern about a researcher's affiliations with, or receipt of support from a foreign entity.

b) that the allegation is sufficiently serious, credible and specific so that potential reliable evidence may be identified.

"Knowledge" shall not include rumor, gossip or other unreliable evidence.

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3. How would a campus acquire knowledge of a violation under triggering event #2? The second type of triggering event could arise through voluntary after-the-fact disclosure by a PI or key personnel, during the course of another University process, routine due diligence, unrelated investigation, inquiry, or internal audit.

Examples of issues found through voluntary disclosures, routine due diligence, during the course of another University process, unrelated investigation, or inquiry that may give rise to "knowledge" reportable as a "triggering event" under Item #2 above include:

- a. Voluntary PI or key personnel after-the-fact disclosures to, for example, the LDO. Such actions should be encouraged by campuses as a way to signal to the individual, campus community, and to federal personnel and agencies UC's commitment to responsible reporting. The intent in tracking a voluntary disclosure is for UC to have an awareness of a disclosure that may trigger additional federal funding agency inquiries.
- b. In a Progress Report, or internal UC reporting
- c. Routine Due Diligence: A review of a previously approved APM 025 or APM 671 Category 1 activity, such as the conduct of research or teaching at a foreign institution, or acceptance of a position at a foreign institution that requests prior approval, that uncovers a failure to disclose other support to a federal funding agency
- d. A whistleblower complaint or a concern entered into the whistleblower hotline, or media inquiry or publication request
- e. A retrospective review conducted under PHS Conflict of Interest policy when the financial conflict of interest involves a foreign entity
- f. An issue that was brought to the attention of appropriate campus administrators as a result of an Internal Audit.

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4. What are the responsibilities of the LDO in relation to any "triggering event"?

The LDO is responsible for overall coordination, oversight of the investigation and coordination with campus subject matter experts during the investigation and in preparation of the response. The LDO is also responsible for reporting triggering events into Navex. The LDO's oversight is necessary considering the LDO's expertise in non-research misconduct investigations, familiarity with investigative tools and techniques, consistency in approach across the system as with other investigations, and experience in dealing with enforcement units of agencies.

5. Scope of the matters included under this Escalation Protocol

The scope of the Protocol includes concerns related to research grants or gifts, contracts or other awards, alleged violations regarding a foreign entity's involvement in the research, a concern about a researcher's affiliations with, or receipt of support from a foreign entity (as discussed above).

The scope of the Escalation Protocol **does not** include Research Misconduct investigations, which are handled by the campus designated Research Integrity Officer. A federal-wide definition of Research Misconduct is included in the policy issued by the Office of Science and Technology Policy (OSTP) and was adopted by all federal agencies including NIH and NSF. It defines Research Misconduct as:

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

- (a) Fabrication is making up data or results and recording or reporting them.
- (b) Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
- (c) Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- (d) Research misconduct does not include honest error or differences of opinion.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
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Alexander Bustamante
SENIOR VICE PRESIDENT
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March 28, 2019

**CHANCELLORS
LABORATORY DIRECTOR WITHERELL**

RE: Escalation Protocols for Research Related Matters

Dear Colleagues:

In a February 7, 2019 letter to you, President Janet Napolitano stated that federal agencies such as the National Institutes of Health (NIH) were increasingly inquiring about and scrutinizing international engagements at research universities. One of the top-line recommendations endorsed by President Napolitano was the adoption of a mechanism to ensure that federal agency inquiries are appropriately tracked, escalated and investigated.

In the last several months, a number of campuses have received federal inquiries involving foreign entities' involvement in research from NIH. These inquiries often request the campuses to investigate allegations of non-compliance related to federal grants, contracts or awards, such as non-disclosure of foreign entity financial or non-financial support in grant applications. In addition, over the last year, federal agencies have publicly discussed and may inquire in the future about numerous other topics regarding the involvement of foreign entities in research matters that may or may not involve non-compliance, such as:

1. Diversion of intellectual property from federally funded research to foreign entities;
2. Recruitment or sponsorship of students of foreign entities to work in research partnerships with campuses;
3. Compliance with reporting requirements in connection with receipt of certain gifts and contracts from foreign sources (which may include foreign university or other foreign entity support for research);
4. Use of federal grant funds in connection with research partnerships between universities and foreign entities; or

5. Physical and cybersecurity threats that may be posed by foreign entities gaining unauthorized access to protected or sensitive information in research computing systems or research laboratories at the University of California (UC).

As President Napolitano noted in her February 7, 2019 letter, there should be a mechanism to ensure that these matters are appropriately tracked, escalated and investigated. To that end, and to promote consistency in how these matters are handled, the Office of Ethics, Compliance and Audit Services (ECAS), in conjunction with the Office of General Counsel (OGC), is creating a systemwide investigative protocol for these matters. Because it is anticipated that federal agencies may expand their focus to include additional matters related to foreign entities' involvement in research, the scope of matters to which this protocol is to be applied has been broadly described, as noted below.

All UC locations should adhere to the following escalation and investigative procedures to ensure that the appropriate stakeholders are engaged on response efforts in a timely manner.

Triggering Events:

A "triggering event" shall include the following:

1. Any communication from a federal agency regarding federally funded research grants, contracts or awards in which the federal agency expresses concern about a foreign entity's involvement in the research; or
2. Any campus' knowledge ██████████ of any violation of any federal agency policy or federal law regarding federally funded research grants, contracts or awards in which the campus has a concern regarding a foreign entity's involvement in the research.

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A "communication" shall include, but not be limited, to: (a) any subpoena, civil investigative demand or other document request directed at the UC or any UC faculty or staff; (b) any request for interviews with any UC faculty or staff; (c) any "cease and desist" letter from an agency; and (d) any agency request for a review of such issues and further information on compliance/non-compliance and corrective actions.

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Escalation Procedures:

Once a “triggering event,” as described above, occurs, the university employee who receives the communication must immediately (within 24 hours) notify the Locally Designated Official (LDO). Campuses must establish a protocol for reporting a “triggering event” to the LDO and provide necessary awareness training of this requirement.

The LDO will immediately enter the known details of the communication into the federal inquiry/investigation tier of the whistleblower reporting system (NAVEX). Such details shall be only viewable or accessible to the leadership or staff on the reporting campus who have a reason to know. Such details shall not be viewable or accessible to a campus that is not the reporting campus.

NAVEX will generate notifications to the Office of General Counsel and the Office of Ethics, Compliance, and Audit Services and those offices will assist the campus in appropriately handling the inquiry.

Investigation Procedures:

The LDO will typically be responsible for overall oversight of the investigation into any allegations of misconduct resulting from the “triggering event.” There may be situations, however, when ECAS and OGC determine that overall oversight of the investigation is more appropriately handled by others.

The campus Office of Research and other relevant campus departments will assist and be consulted as appropriate in investigating the allegations.

OGC and ECAS will assist in appropriately handling the inquiry and assist in reviewing any potential communications to a federal agency.

Questions:

Please direct any questions or concerns to my attention.

Respectfully,



Alexander A. Bustamante
Senior Vice President
Chief Compliance and Audit Officer

cc: President Napolitano
Provost and Executive Vice President Brown
Academic Senate Chair May
Executive Vice President and Chief of Staff Nava
Executive Vice President and Chief Financial Officer Brostrom
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