University Senate Research Committee Meeting
(online)
18 November 2022
1:00 PM

In attendance: K Wood, B Yates, S Sant, P Morel, Z Xia, F Luyster, A DiPalma, Rodzwicz, D Reed, R Rutenbar, E Oyler, M Holland, B Shieu, A Mendoza, D Salcida, A Puniani, A Sethi, S Wells

Approval of Minutes: The minutes from the *October 21* meeting were approved without changes.

Research Update from SVC Rob Rutenbar

Presented an update on Chips and Science Act. The landscape of federal regulatory stuff regarding research security continues to move rapidly and is still TBD. The Association of Public and Land Grant Universities (APLU) recently met with key speakers Pat Gallagher and Rebecca Kaiser (Chief Research Security officer for the National Science Foundation) and the Act was discussed. Requirements for critical research or stakeholder colleagues supported by federal funding will roll out in early 2023. Reported lots of interesting stuff happening at the federal level that will impact how Pitt advises its faculty on managing their research.

P Morel: Are we involved in negotiating or at least influencing some of these rules? R Rutenbar: Yes, all of the chancellors talk to each other in the APLU and all of the provosts talk to each other, all of the VPs of Research talk to each other. The Executive Committee of the Council on Research (consisting of approximately a dozen elected people nationally, R Rutenbar included), will have fairly regular meetings with the APLU leadership, who are always talking with folks in Washington and with leadership on the ground. The legislative stuff is kind of done at this point and we're asking: "How does the language of the legislation get operationalized?" What are the details?

Overview/Update from Allen DiPalma, Office of Trade Compliance, Research Protections

Slide presentation: Security, Visitors, and Controlled Unclassified Information

Revised Academic Visitor Guidance

Following on R Rutenbar's update, the OTC is still waiting on specific guidance before anything can be implemented. There are major recent laws and other federal guidance that Pitt is following closely so we know exactly what to expect. Section 223 of the National Defense Authorization Act (passed 2021) now requires the federal agencies within their application process to require all key personnel, and language covering personnel, to submit information about "other support." This is not new to the application process but now is driven by legislation. This was followed by the national security presidential memo 233, which is a complimentary document with recommended Research Security practices that are specifically aimed at higher education and universities.

Regarding our visitor process, specifically, and how it complies with the recommendations. In 2022 the NPSM 33 memo was followed up with implementation guidance specifically addressed to federal agencies, with marching orders to put things that appear in NPSM33 in place. The

actual memo is now part of that. Other federal register notices will be coming out, most recently *Other Support* and biosketches, giving the community a chance to comment.

The next one we we're waiting for is a big one, namely research security program guidelines which institutions receiving more than $50 fifty million over the past two fiscal years will need to follow. The implementing guidance lists 4 main sections to the requirements: disclosure requirements, export control, training, and foreign travel security. We also need to look out for cybersecurity measures. A Federal Register notice coming out end of this year will more specifically define each of those sections. OMB delayed its release so it could look at how it overlaps with some of the research security provisions in the Chips and Science Act of 2022. There are multiple research security provisions in there, and multiple overlap areas and specifically disclosure requirements, training requirements that we're unsure about in terms of how they will be defined by the agencies and applied to us. Pitt is waiting on further guidance from the agencies.
There's more information on all of this on the International Engagement website, which appears on the Senior Vice Chancellor of Research Office website.

JCORE recommended practices (there are 20) for strengthening the security integrity of the research enterprise. Recommendation Nr. 20 speaks to institutions having defined procedures and processes in place to host foreign visitors.

Pitt's visitor program has been around in its current form since 2014-15. The Senate Faculty Research Committee actually assisted OTC in looking at the visitor participation agreement language, which, was previously fairly onerous – a 5-6 page document with very strict rules around the Intellectual property (IP) identification language. That language was boiled down to 1.5-2 pages and more friendly terms. This was considered a good time to create a one-stop shop for everything that was related to hosting a visitor long-term on campus. A lot of data was accumulated between 2014 and 2021 and OTC spoke to a lot of people in the community about what worked well and what did not. The intersection of accumulated data with the more global issue of foreign government interference became a major consideration for the academic community starting 2018. Various laws and other guidance have been passed that require schools have a comprehensive foreign visiting scholar program, which Pitt has. Pitt's current program meets all the standards that are listed in the JCORE research security recommendations and has been extensively used by other schools and the government as a benchmarking tool. Pitt has made improvements to the process. Visitors are categorized in 3 major ways based on their length of stay at Pitt and involvement in research or clinical activities.

Category 1. Short term (less than 14 days) visitors don't require any visitor agreements if visitors won't be using any equipment in our laboratories or participating in clinical activities. It is recommended that a restrictive party screening be performed on them to ensure they're not connected with any entity that might be on a US restricted party list. Faculty and other hosts are allowed to bring these visitors onto campus for a talk and/or show them around without really any other requirements.
Category 2. Longer term (>14 days) on campus visitors will be subject to the full gamut of the visitor participation agreement. They will go through a process which contains embedded security measures.
Category 3. Visits that involve any type of laboratory involvement or clinical activities regardless of length require a visitor participation agreement and other addendums for the activities the visitors will be performing.

The Pitt program extends to <u>external</u> individuals, such as graduate students or other people who wish to be hosted on Pitt campus for an academic or research purpose. People excluded from these requirements include undergraduates, Pitt staff, enrolled students, persons coming onto campus under other agreements i.e., to service a piece of equipment. There is a master visitor agreement with CMU that enables Pitt individuals to go over to CMU and vice versa. To make things better for the Pitt community, the website has been revamped to comply with ADA and other necessary Pitt requirements, serving as a one-stop shop for requirements coming from OTC, PittWorks, Penn Central, etc.

There is a new section on Research Security, requiring restricted party screenings, for instance, export control reviews for STEM visits, embargoed country checks, oversight responsibilities concerning insider threats. When someone is at Pitt as an academic visitor, we want to be sure that the host is aware of the activities the visitor will go through, and the access provided is consistent with all terms and conditions of the federal award they have.

Cyber security and data management related to academic visitors requires appropriate management of their access to prepublication data, which is a topic of scrutiny from the federal agencies. To control the process (correct addendums used and sufficient info supplied) the decision was made for OTC to be charged with readying and completing forms, analyzing the letter of invitation, and then sending it out to the prospective visitor, with the faculty member and administrators in charge copied. Agreement endorsements. Have been centralized. Some process updates were also made, i.e., to the electronic system. The language of the visitor agreement that was approved back in 2014, especially regarding IP, in the collaborative work between OTC and the Senate Research Committee has not changed. These changes were rolled out in April 2022.

<u>D Salcido:</u> What is the turn-around times for these authorizations? <u>DiPalma:</u> Usually 1-2 days. On a routine basis, 300-350 per year authorizations were being done pre-pandemic, which dropped to a little over a hundred during the pandemic because everything was locked down. The statistics are closely followed and OTC is expecting to do anywhere between 350-400 this year.

<u>P Morel</u>: Have any visitor agreements been denied because of the visitor's country of origin? <u>DiPalma:</u> Typically, OTC works with the host to develop a management plan or provide additional guidance. Where a visitor is coming in for work/training under a sensitive section (ie., nuclear), the discussion would probably be elevated to Rob Rutenbar for a decision based on risk analysis. No visitor agreements have been denied so far.
<u>Z Xia:</u> Does this apply to persons coming from other countries to work at Pitt as postdoctoral fellows or scholars? <u>DiPalma:</u> If a visitor is coming from a highly embargoed country or they or their sponsor appears on a restricted party list, it is discussed with Rob Rutenbar. Then an acknowledgment form is put in place so the faculty host has additional information and parameters for hosting the visit and doesn't unintentionally break the law or conflict with export control regulations. There is training that the host and visitor also need to go through so that everyone understands what is required for the visit. For persons brought on as employees, such as postdocs from other countries, there are other policies and rules that apply, including visas. OTC is not involved in that. Persons not coming in as paid employees but as academic visitors, then Pitt looks to the Department of State to perform the security screening. Pitt allows these academic visitors to come in and perform, based upon the scope that has been approved by the Department of State. If they are coming from a highly sanctioned country, then either an acknowledgment form or a transmission control protocol (TCP) will be put in place depending on the activities that have been approved for that visitor.

P Morel: Does the visitor title apply to postdocs who are coming on scholarships paid from their own government or foundations inside their country? Z Xia: …or coming on European scholarships? DiPalma: They are looked at individually to see if Pitt can make the visit happen. Sometimes legal assistance is brought in to figure it out.

K Wood: Is there more paperwork required for visitor of foreign origin than those of domestic origin, and what has been the ratio of foreign to domestic visitors at Pitt? DiPalma: There is no difference between hosting a domestic or foreign visitor in terms of paperwork required by the visitor process. Other requirements, such as the visa and sponsorship, may come into play, but are separate from the visitor process.

Rodzwicz: Will training in the visitor process be provided for new staff in support roles? DiPalma: Taped training is on the website, a visitor liaison (Chuck Lyon), specific training for individuals, for departments, schools; planning for visitors (aligned with the office of international services (ie., for visas),

Controlled Unclassified Information (CUI) Program Development

The government is making a requirement for all federal agencies under the executive branch (initiated by an executive order under the Obama administration 2009-2010) to agree on one specific central marking process for some information or technology within that agency. Congress and federal agencies are sensitive about protecting the critical and emerging technology coming out, given the current environment. More than contractual restrictions are needed, hence, there will be a Controlled Unclassified Information (CUI) program delineate requirements for NSF and other agencies. However, this may pose problems for schools that are fundamentally research-oriented because those institutions have policies that require information to be publicly accessible. CUI terms and conditions are typically accompanied by publication restrictions, which is contrary to multiple Pitt policies. Pitt is currently considering how to implement the CUI program. CUI information is defined as that which the federal government requires be appropriately safeguarded and controlled for dissemination. The federal sponsor will determine what is sensitive technology and requires CUI as a term of the contract or award. It will only apply to activities and information systems when specifically mandated by a federal agency in a contract grant, award or other agreement. Funding or contracts with CUI terms and conditions will have to go through an "exceptions process" that runs through the Office of Sponsored Programs (OSP). Faculty will likely be encouraged to consider funding alternatives because of the additional oversight and other responsibilities required by CUI from the faculty member and the University.

P Morel: Seems to conflict with NIH and other federal requirements that everything be in the public domain. DiPalma: It will require labeling/marking of every generated document and communication with the CUI category (email, mail, packages, electronics, reports, papers, etc.) will have to be appropriately safeguarded and clear guidelines will be required for accessing, sharing and even destroying such items. The CUI rule requires universities to store electronic information in a non-federal system of record and cyber security safeguards will need to comply with National Institute of Standards and Technology special procedure. OTC will provide training that goes over all the aspects of the actual contract and the specific categories and subcategories of control classified information that are in play or will be generated; it will be very specific to the terms and conditions of the project. Guidance for the community is currently be developed by OTC in partnership with the OSP and Pitt IT department to be compliant with NIST SP 800-171. The website information is currently being created.

D Salcido: Will prior approval be needed before applying for research funding with CUI requirements? DiPalma: We try to gain further clarification from the agency as to whether CUI could be negotiated out. If not, then it becomes an "exceptions process" situation, which then goes to R Rutenbar for consideration. The CUI requirement has so far only been seen in DOD contracts. We're going to see some of those in some RFAs. The amount of work entailed could possibly deter submissions for these types of awards. Once terms and conditions of an agreement are known, the negotiation process will start and may need to be followed by an internal discussion. Training and support for faculty in applying for these will be provided. San Diego and Penn State are ahead of us on this and can be resourced on how to do this stuff. This will be similar to non-disclosure agreements (NDA) that industry requires when we do research with them, protecting proprietary information. The products of these types of agreements may be unpublishable.

R Rutenbar: This is kind of the government putting this proprietary label on a broader set of stuff, and it's the research security landscape, not something you stake a PhD student's thesis work on. We expect more stuff will get the CUI label and Pitt needs to have the infrastructure in place to help faculty negotiate. This is routine business. Pitt is trying to prepare for CUI clauses and is mostly waiting for the government to do some rule making so there's regulatory clarity on what parts of this are going to be very precisely prescribed. The Feds will want to know how we are complying. This is different from the Bayh-Dole Act, which says that if you have intellectual property funded by federal grants, you have an obligation to take title to the IP and to try to advance it toward some translational purpose.

P Morel: Expressed concern that information generated under these types of agreements would end up in a black hole instead of going into making a product. D Salcido: Questioned whether these agreements could be used to do secret or classified work. R. Rutenbar: This should not be confused with "secret or classified"; "proprietary" is the more accurate way to think about it.

New items of discussion: none

The meeting was adjourned at 2:30 pm.

The next Research Committee meeting: December 16 (unless some issues arise in the meantime)

Minutes submitted by: K Wood and M Scott