

PUBLICATION

Thousand Talents Program Exposes New Legal Risks for Universities

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University professors' involvement in the Peoples' Republic of China's Thousand Talents Plan (the Talents Plan) has been in the news quite a bit recently. In recent months, the Department of Justice (DOJ) has made multiple announcements about the prosecution of university researchers for failing to properly disclose their involvement in the Talents Plan:

- On July 9, 2020, DOJ announced a professor and researcher at The Ohio State University had been charged with grant fraud "for not disclosing that he was engaged in a sophisticated scheme to use approximately \$4.1 million in grants from the National Institutes of Health (NIH) to develop China's expertise in the areas of rheumatology and immunology."
- On June 9, 2020, DOJ announced the indictment of the former chair of Harvard's Chemistry and Biology Department.
- On May 11, 2020, DOJ announced the guilty plea of a former Emory University professor.
- On March 10, 2020, a tenured professor in the West Virginia University's physics program pled guilty to fraud.

The Talents Plan is a Peoples' Republic of China sponsored program designed to recruit "overseas" high-level scientific and highly specialized talent to promote China's scientific development, economic prosperity, and national security. Though there are more than 200 such programs in China alone, the Talents Plan is the most prominent. The Talents Plan's official website says that the aim of the Talents Plan is "to gather the global wisdom and create the China great exploit." Universities in the United States are home to some of the world's most talented scientists, engineers, software developers, etc. This makes the U.S. academic community a major target for such "exploitation" by the Talents Plan.

The United States' research and development (R&D) enterprise is the biggest and best in the world. In 2017, the United States conducted \$548 billion in R&D. Of that \$548 billion, universities performed 13%, or \$71.2 billion. The percentage of basic research performed at universities is even greater, with 48% of basic research in the United States being conducted at universities in 2017. When it comes to federally funded research, universities conduct an even higher percentage of the R&D. For example, universities conducted approximately 60% of federally funded basic research in 2017.

With the amount of taxpayer money involved, national security concerns, and economic implications, it is clear that the federal government is interested in ensuring that (1) R&D investments funded by the federal government are protected from exploitation and (2) the federal funds are obtained and used in accordance with applicable requirements. When the funds are obtained as the result of false statements or the monies are not spent in compliance with federal requirements, taxpayers expect the government to protect their interests. On July 7, 2020, Federal Bureau of Investigation Director Christopher Wray highlighted the FBI's focus on the threat the Thousand Talents Plan poses to U.S. universities and the academic community when he affirmed the Bureau's dedication to protecting U.S. interests.

Though DOJ has targeted private research [institutes](#), none of the recent DOJ announcements regarding professors' involvement in the Talents Plan have implicated U.S. universities. In fact, in many cases, the university disclosed the situation and/or cooperated fully in the investigation. However, it is not unforeseeable

that DOJ could pursue universities for potential criminal or civil liability for violations associated with obtaining and/or performing federal research grants, like those (1) recently settled by the [University of Virginia](#) or (2) involving the private research institutions and the Talents Plan. In its report on China's talent recruitment programs, the Senate Permanent Subcommittee on Investigations stated, "U.S. universities . . . must take responsibility in addressing this threat. If U.S. universities can vet employees for scientific rigor or allegations of plagiarism, they can also vet for financial conflicts of interests and foreign source funding."

University Compliance Programs

In the current environment, it is more important than ever for universities to implement effective compliance programs. Last month, [DOJ updated its *Evaluation of Corporate Compliance Programs* guidance.](#)

Is the university's compliance program well designed?

Considering the government's interest in universities receiving federal R&D funds, as highlighted by DOJ's recent pursuit of issues relating to the Talents Plan, and the [updated compliance program guidance](#), universities should perform a thorough assessment of their compliance programs. After a comprehensive review, the compliance program should be revised to address the updated DOJ compliance guidance. In addition, any update should respond to current risks. It is highly unlikely that DOJ would find a program to be well designed if the university did not regularly update its controls to reflect current risks and governmental guidance regarding compliance programs.

The factors considered in assessing the program's design include:

- Are risks effectively identified, assessed, and addressed?
- Are resources properly apportioned to respond to identified risks?
- Are the policies, procedures, and controls (such as a code of conduct) readily available to faculty and staff?
- Is there adequate training and communication regarding compliance requirements?
- Are there confidential reporting mechanisms and methods to conduct investigations?

Is the university's compliance program adequately resourced and empowered?

The DOJ compliance guide requires that the program be adequately resourced and empowered. This is the area where the DOJ compliance guide has changed the most, and universities should focus their assessment on these recent changes. One of the primary considerations here is the role and participation of university leadership. The university presidents, vice presidents, chancellors, deans, and department heads need to set the tone by articulating the importance of compliance, ethics, and accountability.

One of the changes to this evaluation criterion is additional emphasis on compliance personnel having "access to relevant sources of data." Generally, this would be considered access to internal data; however, access to external data may also be required to address risks like the Talents Plan. Determining what data to access and when to consider it should be tied to the university's risk assessment.¹

The DOJ compliance guide stresses the importance of maintaining consistent enforcement of clear disciplinary procedures throughout the organization. In the situation of tenured faculty, discipline is an area where universities face unique challenges. These challenges are beyond the scope of this alert but should be considered by the university as part of its risk assessment, compliance program update, and disciplinary policies. To avoid liability, behaviors that could result in government scrutiny or intervention need to be properly disincentivized.

Does the university's compliance program work?

The existence of misconduct does not mean that a university's compliance program is not effective. DOJ will consider factors such as "whether and how the misconduct was detected, what investigation resources were in place to investigate suspected misconduct, and the nature and thoroughness of the [university's] remedial efforts." Universities should continually assess their compliance with requirements and institute appropriate reviews or investigations when potential problems are discovered. When problems are discovered, they must be remediated and changes to controls need to be implemented to avoid recurrence.

Conclusion

Universities are "in the crosshairs" of foreign-nation states and face unprecedented risks. This alert highlights only a few. The full list is long and includes matters such as export controls, Title IX, ADA compliance with regard to remote learning accessibility, active shooter, natural disasters, and financial conflicts of interest.

A university's failure to implement an effective compliance program could result in serious damage to academic reputation, diminished financial position, assessment of civil penalties (including False Claim Act penalties and treble damages), and possibly criminal punishment.

If you have questions, please contact the authors or any member of Baker Donelson's [Government Enforcement and Investigations Team](#).

¹ For example, the DOJ investigation into the allegations of grant fraud involving a researcher at The Ohio State University began with a simple cross-reference of open sources, which indicated the researcher was employed at a Chinese teaching hospital and was an "Expert of Thousand Talents Program," "a leading talent of the Hundred Talents Program," and one of six leaders in the Pearl River Talent Program. Criminal Complaint, at ¶ 14, *USA v. Zheng*, No. 2:20-mj-00375, (S.D. Ohio May 23, 2020).