Steps and Considerations for an Effective Foreign Visitor Review Process in an Academic Environment

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DISCLAIMER

A. Introduction

United States colleges and universities have long been known as a destination for visiting scientists, scholars, researchers and employees from foreign academic institutions, industry, and governmental bodies. The formal and informal free exchange of knowledge and information that these visits entail has led to countless technological breakthroughs and scientific discoveries. The maintenance of an open environment for the free exchange of ideas is critical to academia, but it is nonetheless important for U.S. academic institutions to comply with U.S. laws and regulations in hosting foreign visitors, particularly those who participate in research.

When inviting a foreign national to a university campus to participate in research activities, it is important for a college or university to have a process for ensuring prospective foreign visitors are legally able to engage in the proposed research activities. This paper describes common elements of a foreign visitor review process and introduces some "Effective Practices" that institutions were willing to share at an Academic Security Conference hosted by the Texas A&M University System in February 2019. Please note that not all Effective Practice examples are suitable for every academic environment due to differing campus policies, research portfolios, and institutional risk profiles. Each institution will need to determine which practices described in this document are appropriate for their environment. Nothing in this document should be seen as superseding foreign visitor review requirements proscribed in the National Industrial Security Program Operating Manual (NISPOM) for those schools cleared to conduct classified research.

B. The Value of Having a Foreign Visitor Review Process

In recent months, multiple higher education advocacy groups have recommended that universities adopt specific policies or guidelines aimed at enhancing the security measures used in the protection of research data and intellectual property, especially results stemming from federal funding. A thoughtful foreign visitor review process is one such measure universities can use to properly mitigate risk and provide protections for unpublished research data. Moreover, U.S. enforcement agencies have long recommended that having a defined process mitigates the opportunity for the compromise of research data and other intellectual property. Finally, a defined foreign visitor review process can be an important element in an institution's Export Management Control Program (EMCP).

C. Baseline Process Considerations

For purposes of this guidance, "Foreign Visitors" are foreign national scientists, graduate students, or other researchers in the U.S. on visas who are not employees or enrolled students of the hosting university. A typical example of a foreign visitor would be a scientist or technician from a foreign based company, governmental entity, or university, who comes to the U.S. to directly observe or participate in research for a period ranging from a few days to a year.

When creating a foreign scholar review process, the questions and issues listed below should be considered.

1. **Who will own the review process and be responsible for implementing and monitoring it?**
   Centralized ownership and monitoring offer a greater degree of consistency vs. a decentralized process that could introduce variances in interpretation and application. Initial decentralized college or department level reviews can assist in recognizing red flags in the review process, as

long as final ownership and decision making is done centrally. Having top-down support, e.g., from the Office of the Chancellor, Research, or the Provost, is important in order to encourage broad acceptance.

2. **Should the review process be formalized through an institutional policy or a guidance document?** Creating a formal university policy can take months, and in some cases years, and any major changes to a policy may follow the same potentially lengthy process. Guidelines are less formal and take much less time to create, and can be modified more quickly, but they may lack the imprimatur that comes with formal policymaking. Whichever method is used, the final policy or guidance should be made publicly available, socialized with key stakeholders, and piloted with a potential high-impact unit to help streamline and improve processes prior to full implementation.

3. **Which offices should be involved as the process is created, and after the process is implemented?** A broad array of internal stakeholders should be represented during both process creation and post-implementation. These stakeholders should be integrated into the process according to the relevancy of their roles to foreign visitors. Examples of these offices include: visa/international services office, sponsored project office, university counsel, export controls, information technology, faculty affairs, and security office. Some effective practices include:

   - Assigning responsibilities to a single office to represent security interests;
   - Developing consistent visa/immigration guidelines for all foreign visitors;
   - Ensuring that export control and research (security) offices are involved;
   - Engaging faculty interests and concerns on the front-end of the process; and
   - Working with IT Chief Information Security Officer (CISO) to determine, then provide network access at the level needed.

4. **Who will provide monetary, human resource, and IT support for the process?** Typically, the owners of the process will supply most, if not all, of the necessary resources and support. For a centralized process, a senior leader such as a Vice Chancellor or Vice Provost will decide and allocate suitable resources. In a decentralized system where responsibilities are diffused across the university, localized school and departmental leaders are tasked with identifying and allocating appropriate resources.

5. **Where will the final policy or guidance be located?** Whether the foreign visitor process is centralized or decentralized, the final policy or guidance should be clearly visible on a central website that can be linked or accessed by other university websites. If possible, the central website should be created as a one-stop location that contains or links to all necessary guidance including definitions, frequently asked questions, agreement templates, training materials, and contact information.

6. **Who will conduct campus-wide training for the process, and how often will it be conducted?** Training should be offered in different mediums and made available to those identified as stakeholders in the process. Stakeholders may include faculty, administrative staff, and central office staff who have a direct role in the foreign visitor process. Training materials may be tailored to the audience and aimed specifically at individual roles or created to be more ubiquitous for general audiences. The university should also determine whether training will be mandatory or voluntary, and track completion for audit purposes. Specific training for invited

foreign visitors should be based on approved activities and consistent with mandatory training for university employees. Some effective practices include:

- Conducting periodic training for departments who host foreign visitors and sponsors;
- Assigning faculty sponsorship and educate sponsors on duties, risks and reporting methods;
- Educating foreign visitors on export control and information security policy as appropriate; and
- Training foreign visitors in health, safety, and security matters.

D. Foreign Visitor Definition and Risk Categorization

As a first step, it is important to establish a working definition of "Foreign Visitor" to distinguish it from general public visits which are commonplace at all universities. The following is a suggested definition: "'Foreign Visitors' are individuals supported by other academic institutions, non-profit organizations, or companies who receive an official invitation from a University host school or department that will allow them to be a guest on campus for a specified amount of time and for a specific purpose." It is also a good practice to list groups of people that should be excluded from the working definition such as sports teams, academic tours for prospective students, and attendees at open conferences.

Within a foreign visitor review process, a method should exist to categorize risk levels by both visit and visitor. For instance, foreign visitors who are invited to campus for one day to give a lecture or participate on an expert panel normally introduce less risk than a foreign visitor who is invited to campus for a longer stay or to participate in laboratory-based research. Having review parameters commensurate with risk categories provides the host with similar processes that can be applied to all foreign visitors regardless of sex, religion, nationality, or citizenship. As an example, a foreign visitor process containing three visitor categories is introduced in the following paragraph and used throughout the remainder of this guidance. Foreign visitor categories can be added or subtracted based on institutional preference.

- Foreign Visitor Category 1: short-term visits lasting 14 days or less that do not involve clinical or laboratory activities (these visits generally only involve discussions of public domain information);
- Foreign Visitor Category 2: long-term visits lasting 14 days or more and do not involve clinical or laboratory activities (visits involving the creation or exchange of university owned research data or other Intellectual Property would also be covered under this category);
- Foreign Visitor Category 3: visits of any length involving clinical or laboratory activities. (these visits may also include the creation or exchange of university owned research data or other Intellectual Property within the clinical or laboratory activities).

Visits classified as Category 1 would pose the least amount of risk to the host institution. However, simple review protocols on the visitors, their primary employer, and financial sponsor may still be warranted and can include a restricted party screening (RPS) and verification of immigration status. RPS entails review of individuals, associated employers and financial sponsors to ensure compliance with export regulations and debarments at a federal level. RPS practices vary per institution and are based on multiple factors such as risk tolerance, business practices, and available resources. A documented RPS process is highly recommended as the first step in any foreign visitor review process. Immigration

status verification reviews can also provide value by comparing the proposed visitor activities with those that are permissible under the visitor's specific visa type.

A separate, but important subcategory under this section would cover international delegations. One school defines international delegations as any group requesting approval to visit a university as an official representative of a foreign academic, private, or governmental institution. A delegation may consist of a group of students, staff members, faculty members, government representatives, association members or high-ranking individuals with the capacity to officially represent another institution or group. Having clearly defined internal protocols covering evaluation and internal decision-making, ownership of request, preparation for the visit, resources necessary for the visit, and management and security during the visit are all elements for consideration for international delegations.

Visits classified as Category 2 and 3 pose greater business and security risks to the host institution and should be managed through an appropriately documented process involving, at a minimum, use of a separate visitor agreement. The visitor agreement should contain legal terms that require the visitor to follow U.S. laws and university policies covering intellectual property, indemnification, ownership of data, and training requirements. RPS should also be considered for the foreign visitor and his or her sponsoring institution(s). Verification of immigration status, including a comparison of proposed activities with those that are permissible under the visitor's specific visa type, is also advised. The aforementioned items – visitor agreements, RPS, and immigration status verifications – collectively comprise a process that further reduces potential risk.

E. Foreign Visitor Review Process: Steps to Consider

An effective visiting scholar review process typically includes five main steps. Individual checklists for each step are included in Appendix A as examples which might be used to assist internal stakeholders and managers to identify applicable tasks and measure completion. The information listed in each checklist may not be suitable for all universities and should not take the place of a university-wide foreign visitor guideline or policy.

Step 1- Determine the Risk Level Category Appropriate for the Proposed Visit: As described above in Section D, use of pre-defined visitor categories allows internal managers and stakeholders to follow a pre-determined and validated set of review requirements. Each category contains review instructions commensurate with business and other risks associated with the visit. Once a visitor category is chosen and a set of review procedures is applied, certain types of information will be needed to properly evaluate the qualifications of the foreign visitor.

Step 2- Review Information about the Foreign Visitor and the Reason(s) for the Visit: A review of information about the foreign visitor and purpose(s) for the proposed visit might include examination of such things as a current CV or biographical sketch, copies of passport and visa documentation, and a description of all proposed on-campus activities. In cases where the prospective foreign visitor is unknown except for a written solicitation, interviews are a tool that can confirm intent and qualifications of the visitor and can be easily done through phone or videoconference. A list of questions that one university created with the assistance of its local U.S. Federal Bureau of Investigation (FBI) office is available in Appendix B. These interviews can also test the visitor's English language proficiency which, in many cases, needs to meet or exceed certain standards before some schools will

consider extending an invitation. Interviews can also serve to confirm the foreign visitor's written qualifications in cases where the foreign visitor has requested that the host institution sponsor their visa application.

In cases where a high degree of risk is involved, the evaluation process can include a tiered progression of reviews ending with a senior leader or empowered group making a final decision and communicating that decision. In cases involving nuanced or conflicting information, an enhanced review process involving law enforcement may be appropriate once evaluated and authorized by senior management and/or legal counsel. For visits involving controlled equipment, research, or other sensitive activities, a technology control plan or other security management efforts may be necessary. Close coordination with the export controls office during the review and security planning process is strongly recommended.

Step 3- Prepare an Official University Invitation and any Applicable Visitor Agreements: Once the initial review of all available information is completed, and a decision is made to host, the approved specifics of the visit should be memorialized through a formal invitation package.

For long-term visits, or visits that will include higher risk, a formal, written visitor agreement (contract) should be considered and made part of the invitation package. For examples of such agreements, please see the below footnote.[1] Please be aware that any such agreement should be tailored to the requirements of each specific institution and in consultation with legal counsel. All documents should be returned to the university host or other assigned office for recordkeeping purposes. The process should not continue until the host receives back a signed invitation letter and visitor agreement (if applicable).

Step 4: Manage Visitor Onboarding and Oversight While on Campus: Having clear protocols for visitor onboarding and oversight are important for both parties. It is also important for the host to understand the supervisory responsibilities that go along with managing a visitor. In particular, diligence is needed in order to spot unusual behaviors that may be a sign of intentional misconduct, including acts of espionage or theft. Appendix C includes some unusual behaviors that should warrant further examination.

Whenever one of more of these behaviors is observed, a protocol should be in place that allows the host to obtain assistance from the export controls office or other central office that is assigned to provide support in such matters. In unusual cases, inviting local law enforcement to participate may be an option after consultation with and authorization of senior management and legal counsel. The FBI has produced the following document which may be useful to universities as they consider appropriate policies covering foreign visitors and managing visits: 'China: The Risk to Academia'.[2]

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[1] Visitor Agreement Examples:
- University of Minnesota: https://policy.umn.edu/sites/policy.umn.edu/files/contracts/ogc-sc218.docx
- University of Pittsburgh: https://visitor.pitt.edu/agreements-and-forms/

[2] This document is located at: https://rso.tamus.edu/wp-content/uploads/2019/08/fbi-risks-to-academia.pdf.

Step 5: Complete the Visitor Departure and Close-out: At the conclusion of a visit, a departure checklist is a tool that can be used by both parties to amicably end the visit. In cases where the foreign visitor has been collaborative, helpful, and engaged, the university host faculty member may want to continue the professional relationship. This is a good opportunity for the university to define for both the foreign visitor and the university host faculty member the options for appropriately continuing this professional academic relationship.

Appendix A:
Suggested Checklists for a Foreign Visitor Review Process

Step 1 – Determine the Risk Level Category for the Proposed Foreign Visitor
☐ Foreign Visitor Category 1 ☐ Foreign Visitor Category 2 ☐ Foreign Visitor Category 3

Step 2 – Review Foreign Visitor Information and Reason for the Visit
Information that may be needed to evaluate the visit and foreign visitor, which will vary by visitor category: ☐ A CV or biographical sketch ☐ Information obtained through a public search of available sources ☐ Official school transcripts ☐ Copy of passport and/or visa ☐ Information to verify approved field of study listed on visa ☐ All known citizenships ☐ Funding sources supporting the visit ☐ Past or current military affiliations ☐ RPS results for visitor, visitor's sponsor, and visitor's financial sponsor ☐ All proposed on-campus activities ☐ Export control review for activities in STEM fields ☐ Information obtained from an interview with the foreign visitor (see Appendix B for a list of potential interview questions) ☐ Expected access to restricted access facilities, IT networks, and electronic data

Step 3 – Prepare an Official University Invitation and Any Applicable Foreign Visitor Agreements
A formal invitation package should include an invitation letter and other foreign visitor agreement as applicable. An invitation letter may include the following: ☐ Duration and dates of visit ☐ Responsibility for travel and daily living costs related to the visit ☐ Description of specific approved academic or research work scopes ☐ Person and school/department who/that will be responsible for hosting ☐ Specific activities the foreign visitor will not be permitted to perform ☐ Instructions for the foreign visitor and sponsor to sign the invitation letter and any applicable foreign visitor agreements indicating acceptance of the terms of the visit

Step 4 – Manage Foreign Visitor Onboarding and Oversight While on Campus

Some elements of an effective onboarding and monitoring process may include:

- ☐ A checklist or other standard onboarding instructions for university hosts, and made available to the foreign visitor
- ☐ An in-person meeting with the foreign visitor that includes the host, visa/international services office representatives, export control representatives, and other offices as necessary
- ☐ A university-issued ID card for the foreign visitor for access to common areas such as libraries, fitness facilities, and computer laboratories. ID cards can also be used to more effectively manage foreign visitor activities on campus, especially those involving restricted access areas.
- ☐ A university-issued email account for the foreign visitor as well as a computer account that provides broad access to the main IT system
- ☐ Clearly articulated physical and data security standards expected during the visit and reinforced by the host especially when university data and Intellectual Property (IP) are made available to the foreign visitor
- ☐ Risk-based, dynamic or recurring restricted party screenings of the foreign visitor and their sponsor(s) during the entire visit

Step 5 – Complete the Foreign Visitor Departure and Close-Out

Some elements of an effective departure and close-out process may include the following:

- ☐ An exit interview involving the foreign visitor, host, and other appropriate university staff
- ☐ Return of the foreign visitor ID card, including deactivation of key card only access to labs and buildings
- ☐ Deactivation of computer access including sponsored university email account
- ☐ Review of university and foreign visitor visa responsibilities
- ☐ Return of any university owned equipment (laptops), and data
- ☐ Instructions to university Host covering acceptable future interactions with the foreign visitor in case continued information exchanges are contemplated

Appendix B:
Suggested Interview Questions for Foreign Visitors

1. Why did you choose the University of "X"?
2. Why do you want to pursue this type of research or training here at University "X"?
3. Why did you choose Professor X or Dr. Y?
4. How did you find this faculty member (e.g. conferences, meeting, collaborators, literatures, Internet, etc.)?
5. Who is paying for you to come here and sustain you during your requested visit? What are your obligations back to them upon completion of your visit?
6. What type of professional affiliations do you maintain in your country, which are directly relevant to your proposed visit?
7. Are you currently or have you anytime in the past been a member of a foreign talent program?
8. What are your plans upon completion of your visit? Do you plan to go back to your home country? Do you wish to stay here in the United States? What will you do with the knowledge you will gain?
9. Are you or your family in any way affiliated with your home country's government or its military? If so, do they have any influence in the research or training you wish to obtain (e.g. are they paying, sending you to study a specific field)? (Certain fields should raise red flags - energy, nuclear, biological, aerospace etc.)
10. Has anyone ever approached you to perform tasks that are not related to your area of education or research?
11. Does your home country have any influence in the type of research you are performing/conducting?

Appendix C:
Foreign Visitor Warning Signs

1. Insists on working in private
2. Volunteers to help on classified or sensitive work
3. Has unexplained or prolonged absences
4. Misuses computer or information systems
5. Conceals or is elusive about foreign contacts
6. Lacks concern for or violates security protocols
7. Attempts to gain access to labs or information outside of approved scope
8. Unnecessarily photographs or copies things
9. Shows unusual interest in things outside of approved environment