

## NCURA On Campus Profile

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*Please give us a brief overview of your professional career and how you arrived at Hogan Lovells in your current role?*

As a lawyer with Hogan Lovells in Washington DC, I provide legal counsel to recipients of government grants and contracts, including small and large businesses, colleges, universities, and nonprofit organizations. I was drawn to Hogan Lovells because of its reputation as a leader in the federal grants and contracts area, and its broad resources as a global law firm. As an attorney, I represent organizations engaged in research/development and other sponsored activity, both in the United States and overseas. Over the past several years, my day-to-day activity has involved substantial work on international initiatives undertaken by research institutions. Prior to joining Hogan Lovells, I spent a short time working on Capitol Hill, and at the U.S. Department of Justice. I attended law school at Georgetown University Law Center, and received my undergraduate degree from the University of Notre Dame.

*What are your current responsibilities, and what are the most rewarding aspects of your position?*

I am responsible for advising colleges and universities on a range of federal grants and contracts compliance and regulatory issues. I work on matters involving audits, investigations, and disputes with the federal government regarding costs and administration of contracts, grants, and cooperative agreements, and I regularly advise on cost allowability and cost accounting; compliance with federal procurement laws and OMB Circulars; flowdown obligations; rights to intellectual property; and federal information security requirements.

I am also responsible for advising research institutions on cross-border research, development, and consulting collaborations; performance of government grants and contracts overseas; foreign academic/research programs and campuses; joint and dual degree initiatives; international research funding arrangements; and similar programs.

The most rewarding aspect of my work is providing comprehensive solutions to the increasingly complex problems that arise in grants and contracts with the federal government, and particularly in those projects that include work abroad.

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*In your opinion, what are the 'emerging' issues to reckon with in international research administration over the next 5-10 years?*

As the global university evolves, one thing is clear: international initiatives take no conventional shape. The diversity and variety of transnational initiatives give rise to numerous and complex legal issues. Long experience notwithstanding, research institutions sometimes stumble, often on the same U.S. and foreign legal issues that corporate conglomerates find challenging. But research institutions are distinct, having interests and fiduciaries unlike any other organization, and demanding solutions that account for the institution's unique mission. Several legal issues are now "emerging" in international research administration, and I highlight one here:

In years past, many research institutions (and companies) had a practice of operating projects overseas by "flying under the radar" abroad. This approach took hold for a variety of reasons. But flying under the radar is not a viable strategy in modern time. Foreign governments, and particularly developing countries, have become more sophisticated; they are no longer receptive to U.S. organizations entering, setting up shop, and carrying on any level of work (even nonprofit research) without some degree of permission (e.g., a registration to conduct activity in the host country). Research administrators increasingly are sensitized to this, and to the legal, practical, business, reputational, and other implications of omitting to obtain a proper legal presence in a host country.

Registration abroad presents numerous legal issues, including the question of organizational structure, incorporating a wholly-owned "special purpose entity" to operate overseas, exposure to foreign judicial systems and tax obligations, and audit/reporting/disclosure requirements abroad, among other items. It also raises costing and other questions about whether, and to what extent, federal grants and contracts may be operated overseas through an institution's separate wholly-owned entity.

*From your perspective, what are the three most significant risks a University faces when embarking on global research?*

A highly experienced colleague, when asked to identify mistakes that research institutions make in overseas research, once remarked as follows:

1. Deferring to the judgment of university representatives on the ground in the foreign country.
2. Not deferring to their judgment.
3. Not being able to tell whether you are making mistake #1 or mistake #2.

Gauging reliability of your personnel abroad, and obtaining reliable information, is an ongoing challenge. Research administrators now work closely with university counsel to manage risk and assess applicable foreign laws. Indeed, many institutions have learned the hard lesson of ignoring the foreign legal landscape or obtaining insufficient or unreliable information.

*Can you give us a couple of specific examples of difficult situations you have encountered in your job and how you succeeded in managing them?*

Respecting the attorney-client privilege, I offer these high level observations:

Recipients of federal grants and cooperative agreements consistently struggle with sponsored projects performed abroad, and federal grantor agencies have begun scrutinizing these projects with

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greater frequency. Institutions have poured significant resources into federal research compliance programs at home, but compliance obligations are no less important when the project occurs overseas.

Difficult cost allowability questions often arise on overseas projects. Take for example foreign value added taxes (VAT), which is as common and routine as sales tax in the United States, but which can be as high 35% of the value of goods or services purchased or imported into the host country. Some federal sponsors do not consider foreign VAT payments to be reimbursable under their awards. This forces grantees to pursue time consuming and uncertain applications for foreign VAT exemption. Similarly, currency exchange losses are unallowable costs to federal awards, but these losses can add up, and some institutions have had to request permission to modify projects in order to account for steep currency losses. Federally funded subawards to foreign organizations present some of the thorniest issues. Not only are VAT and currency exchange sometimes points of contention, but the assortment of federal flowdown obligations are incomprehensible to foreign entities. A grantee's obligation to engage in "subrecipient monitoring" suggests the need for a carefully drafted subagreement (as opposed to a run-of-the-mill template), designed to protect the prime grantee to the maximum extent feasible.

*What role has NCURA played in fostering your awareness of challenges in international research administration?*

NCURA plays an instrumental role in helping all of us proceed with due regard for fundamental legal challenges as they apply to the global university. NCURA provides the forum to communicate observations, raise questions, and share best practices in international programming. Collectively, the depth and breadth of experience and resources available through NCURA is outstanding.

*What is the best piece of advice you might offer an administrator interested in preparing her/himself to handle the administration of international projects on her/his campus?*

At a time when many university budgets are under pressure, the demand for international programming has not abated. Transnational compacts are on the rise, and research administrators increasingly are called upon to divert attention from domestic matters to assess the international landscape. We must recognize that nourishing and expanding international programming is a delicate endeavor. This is not meant to imply, however, that such programming should be approached with a "cold bucket of water". Rather, globalization is imperative in the modern higher education environment. Though the legal issues are many and outcomes are not perfect, alertness to the weighty matters entailed must be a permanent endeavor.