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Perspectives:

To pay or not to pay?: Legal and ethical issues in international students' participation in research

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Research methods are typically drafted carefully to ensure that the research question on hand can be answered. Sample selection is influenced by issues of feasibility. For example, in the case of researchers interested in cross-cultural research, the cost of traveling abroad and the practical matters involved in data collection in another country may make cross-cultural research impossible to conduct. Research with samples of recently immigrated persons in the ethnic, national, and/or cultural group of interest might present a viable and defensible alternative to examine cross-cultural differences in the constructs of interest. Recently, however, the authors learned that there are major feasibility issues in conducting research using traditional methodologies with a sample of international college students. The primary purpose of this paper is to present one particular challenge, namely payment for participation, and the issues associated with engaging in this practice. Interpretations from university officials are presented, and risks and benefits of these different interpretations of the law are discussed. The paper ends with a call for policy clarification and a series of ethical points for consideration in either developing a new policy or making changes to existing policies.

Payment of international students

International students have a number of responsibilities and restrictions based on the visa that permits them to study in the US. These regulations are outlined in the Code for Federal Regulations (8 CRF). Most international students have an F1 visa, which requires the students to (a) be enrolled in an academic program, (b) have sufficient funding to be self-supported during the program, and (c) have a permanent residence abroad that the student is intending to return to after completion of the program requirements. In addition to these requirements, 8 CFR 214/2(f)(9)(i) states that international students with an F1 visa may not be employed for more than 20 hours per week while school is in session. The definition, however, of what constitutes employment is vague, and herein lays the challenge: *does payment for participation in research activities constitute "employment"?*

The answer is not clear. The federal code has been interpreted in different ways by different staff and directors of Offices for International Student Scholars[1] (OISS) across the nation. In an informal poll of peer institutions[2], we uncovered a great deal of inconsistency in how OISSs interpret and implement these laws. Six out of twelve institutions were contacted and asked about the university policy regarding paying international students for research participation. The reports we received showed that offices either (a) completely disallowed participation in paid research (n = 2), (b) allowed participation in paid research (n = 2), and (c) allowed participation depending on the type of research and/or remuneration (n = 2). Each is discussed below.

Disallowing participation. Some OISSs believe that research participation that is remunerated in any way (e.g., cash, gift card, or an item, such as a book or backpack) constitutes employment and thus is not allowable. Their argument is based on 274(a)(1)(c) which defines an employer as a person that "engages the services or labor of an employee to be performed in the United States for wages or other remuneration." Therefore, if an international student receives compensation for participating in a research, this participation can be considered as a service or labor.

Unconditional allowance. Some officers reported no concerns about international students' remunerated participation in research. One officer was actually surprised by the question. She did not understand why an international student should receive a different treatment in research participation compared to the local students.

Conditional allowance. At least one officer reported that they approached each request for recruitment of international students into paid research on a case-by-case basis, considering the type of project, the amount of remuneration, and the tasks required of the students. Short duration projects, with modest or minimal remuneration, that were clearly promoting the mission of the university (therefore considered an educational activity for the international student) were allowed.

Evaluating the context of the research seems appropriate if an OISS is designating participation as "employment" versus "independent contracting." The law 274(a)(1)(f) states that "the term employee means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined in paragraph (j)." If participation in research is considered to be more akin to independent contracting, then international students could participate in remunerated research. Nevertheless, independent contracting is not as simple: an employer hiring an independent contractor is required to fill out several documents.

As these informal contacts with staff of OISSs show, the interpretation and implementation of the 8 CFR 214/2(f)(9)(i) is not consistent across universities. Below are what we understand to be the risks and benefits of each of the recommendations from OISSs.

Risks and benefits to OISSs approaches.

"Research as employment" interpretation. A conservative interpretation of the law would leave researchers with very limited ability to recruit international students. Potential solutions include: recruiting only students who are working less that 20 hours per week or not working at all, or recruiting international student participants on a volunteer-only basis. Additionally, researchers can collect data during times where students can work more than 20 hours (e.g., academic breaks). These options have practical implications (e.g., long time to achieving the necessary sample size), data implications (e.g., generalizability issues), and ethical implications (e.g., differential payment to national versus immigrant students for engaging in the same activities). More extremely, researchers may choose not to conduct research activities with international students, thus limiting the college experiences of them.

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[1] The names of these offices vary across campuses (e.g., International Student Office, Office for International Services, International Students and Scholars Office). For the sake of simplicity we are using one name.

[2] Peer institutions are identified by the university and approved by the Board of Regents. They provide a reference for the university to compare performance with similar institutions. Similarities across institutions reflect status (e.g., land grant), types of programs offered, and student body size, among many other variables. There are 10 peer institutions identified for USU and the list is available at: http://aaa.usu.edu/p&a/InstResearch.htm.

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The benefits of this approach are to avoid any potential perception of misconduct regarding international students and federal regulations for holders of F1 visas. Universities would avoid fines, researchers would avoid whatever consequences they could potentially face, and students would be protected from any potential problems with immigration enforcement.

"Research as Contracting" interpretation. Another interpretation of the law might result in the payment to international students for research participation through a "consultant" mechanism. If an international student participates in compensated research that is deemed to be in violation of 8 CFR 214/2(f)(9)(i), that student faces the loss of their visa and consequent deportation or having to make the choice to remain in the country illegally. In the case of deportation or voluntary return to the country of origin, the student is unlikely to able to complete their degree program. In the case of remaining in the country illegally, the employer may receive a fine for each undocumented student. Depending on the interpretation of the law, the fines may befall the university and/or the researchers. In the case of identifiable persons, these consequences include imprisonment (sec. 274(a)(1)(a)).

The benefits are that students participate in a valuable and common college experience. Additionally, important research questions can be answered in a cost-effective, feasible manner. In some instances, research specific to international students may lead to direct benefit to these students.

Recommendations from the case-by-case camp. Two OISS staff reported that the issue of payment for participation in research was a complex issue, and offered some potential solutions:

- Use an I-9 form, an employment eligibility verification form. This form contains the name of the student's employer, and the researcher could verify the number of hours a student is working. Participants who do not work 20 hours per week could be eligible to participate in research. It is important to note, however, that international students cannot average hours across weeks.
- Contact a lawyer. OISS could evaluate each case and make decision as to whether the research participants will or not be allowed to receive compensation in consultation with a lawyer with expertise in laws pertinent to international students.
- Conduct research during school "breaks". International students are allowed to work 40 hours per week during summer. Researchers may conduct the study during breaks, such as Spring Break, Thanksgiving break, and between fall and spring semesters. In order to qualify for this, however, international students must be enrolled for the following academic semester.

Conclusions and Points for Consideration. There are no known laws or regulations that inform university policies and procedures surrounding remunerated participation in university-sponsored research. Consequently, universities have various approaches to allowing international students' participation in research. In addition to the inconvenience that this might cause a researcher with a planned and IRB-approved study (or a grant approved, as was the case with the principal author), remuneration to research participants brings up a number of issues that need to be considered in clarifying relevant policies. These are:

1. *Risk inherent in ambiguity*. In addition to the risks already discussed, a major risk inherent in ambiguous laws is the potentially nature of interpretations based on political and/or social climate, or even personnel opinions. An international student enrolled at one institution could be told that she is able to participate in remunerated research and be unaware on the laws interpreted differently by different staff (e.g., when there is a change in OISS director).
2. *Justice:* According to the Belmont Report (NIH, 1979), "equals ought to be treated equally." The report states "Almost all commentators allow that distinctions based on experience, age, deprivation, competence, merit and position do sometimes constitute criteria justifying differential treatment for certain purposes. It is necessary, then, to explain in what respects people should be treated equally. There are several widely accepted formulations of ways to distribute burdens and benefits. These formulations are (1) to each person an equal share, (2) to each person according to individual need, (3) to each person according to individual effort, (4) to each person according to societal contribution, and (5) to each person according to merit." From this perspective, justice is called into question when in comparative research, American citizens are paid for participating in research and international students are not paid for the same exact activities.
3. *Alienation*: If one of the goals of universities' admissions of international students is to cultivate and improve relationships for educational exchanges with other countries, it would be important then to consider the wellbeing of international students. How might an international student feel if he cannot receive compensation for participating in research activities that are part of the daily activities in a university setting? Research activities benefit the researcher, the university, and the particular group to which findings will be generalized. Moreover, in an academic context, participating in research is also seen as educational practice to the participant.
4. *Practical matters*: Finally, OISSs serve as gatekeepers for accessing samples of international student participants on college campuses. However, their role is not essential to the conduct of research. What happens in the case when international students participate in a research project incidentally (i.e., a research study that does not specifically seek to enroll international students)? Is the researcher responsible for screening out international students? Would the researcher and/or student be judged to be in violation of the law? What happens when staff from an OISS sees flyers recruiting international students and paying in exchange for their time and participation? Do they have the duty to report the research? Who would they report to?

It is reasonable to set limits to participation in research. Indeed, the Belmont Report outlines two other principles – respect for persons and beneficence—alongside justice. In the case of international students, participation in medical research with high levels of remuneration could put students at risk for coercion to participate because their sources of income are limited. These are the kinds of risks that would be detected by an Institutional Review Board and flagged on a research protocol. We would recommend a clear policy that allows participation in remunerated research and that outlines potential sources of risk to international students.

In summary, researchers, OISS, IRB and international students need more clarification concerning the feasibility of paying international students for their participation in research. There is a need for an open dialog with the INS to evaluate how to better proceed in this specific situation, so researchers and institutions can avoid problems and concerns with unclear laws.

References

National Institutes of Health. (1979). *Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research*. Retrieved February, 2007, from http://ohsr.od.nih.gov/guidelines/belmont.html.

United States Federal Government. (January, 2007). *Code for Federal Regulations*. Retrieved February, 2007 from http://www.uscis.gov/propub/ProPubVAP.jsp?dockey=7ff6c6895fc16b7c7a9154ec1a793007