

POLICY

Malign Foreign Talent Recruitment Programs & Foreign Talent Recruitment Programs

ISSUED ON 08/08/2024

Scope

This Policy applies to all Covered Individuals performing research on behalf of the University.

Policy

Covered Individuals are prohibited from participating in Malign Foreign Talent Recruitment Programs.

Covered Individuals must disclose to the University participation in a Malign Foreign Talent Recruitment Program (MFTRP) or Foreign Talent Recruitment Program (FTRP) pursuant to the same procedures set forth within and in accordance with the [Faculty Policy on Conflict of Commitment and Interest \(https://www.rochester.edu/orpa/_assets/pdf/compl_COIPolicyFaculty.pdf\)](https://www.rochester.edu/orpa/_assets/pdf/compl_COIPolicyFaculty.pdf) and its related reporting procedures.

Covered Individuals must comply with all applicable federal agency disclosure and certification requirements regarding participation in either MFTRPs or FTRPs, including the requirements that Covered Individuals must (i) certify prior to or at proposal

submission, and annually for the duration of the award, that they are not a party to a MFTRP, and (ii) disclose if such individual is a party to a FTRP contract, agreement, or other arrangement.

Covered Individuals must, to the best of their knowledge, fully and accurately disclose participation in FTRPs to federal agencies in accordance with applicable federal agency requirements. This may include disclosing participation in the Biographical Sketch or in Current and Pending (Other) Support documents.

Note 1: Although this Policy applies to Covered Individuals, all University researchers should understand that participation in a MFTRP or FTRP could jeopardize future federal funding and should therefore be discussed with the University's Research Security Officer (researchsecurity@rochester.edu (<mailto:researchsecurity@rochester.edu>)) in advance.

Note 2: This policy applies only to researcher participation in MFTRPs or FTRPs. The definition of a MFTRP below contains specific exclusions for international collaboration activities, including student advising or conference participation. See Section 5 for full details.

Note 3: University Schools and the Laboratory for Laser Energetics may adopt broader policies regarding these recruitment programs, provided that such policies meet the requirements of this Policy.

Support and Guidance

As noted above and below, federal funding agencies and the University prohibit participation by Covered Individuals in "Malign Foreign Talent Recruitment Programs" and require the proper reporting of participation in "Foreign Talent Recruitment Programs". However, the definitions of such programs are complex – as Section 5 of this document makes clear. Therefore, if you have any questions about whether a program

you are currently participating in, have participated in, or are considering participating in could be considered a Malign Foreign Talent Recruitment Program or Foreign Talent Recruitment Program, please consult the University's Research Security Officer (researchsecurity@rochester.edu (<mailto:researchsecurity@rochester.edu>)). You may also review the University's [guidance \(https://www.rochester.edu/university-research/compliance/research-security/foreign-talent-recruitment-programs/\)](https://www.rochester.edu/university-research/compliance/research-security/foreign-talent-recruitment-programs/) on these programs.

Appendix

Background/Rationale and Definitions

Background/Rationale

The University strongly supports and encourages international research and scientific collaborations. However, in recent years, the U.S. government has expressed concerns over specific activities that it believes undermine the values of the U.S. research and development ecosystem.

The CHIPS and Science Act of 2022 (the "CHIPS and Science Act") includes the following provisions applicable to this Policy:

- Federal research agencies are prohibited from making research and development awards for any proposal in which a Covered Individual is participating in a Malign Foreign Talent Recruitment Program.
- By August 9, 2024, each federal research agency must establish a policy requiring that Covered Individuals certify that they are not part of a Malign Foreign Talent Recruitment Program in the proposal submission and annually thereafter and require that an authorized representative of the University certify that each Covered Individual has been made aware of the requirements and complied with

the requirement to certify.

- Federal research agencies must establish a policy requiring Covered Individuals to disclose if they are party to any Foreign Talent Recruitment Program contract, agreement, or other arrangement.
- Federal research agencies must, to the extent practicable, require recipient institutions to prohibit Covered Individuals participating in Malign Foreign Talent Recruitment Programs from working on projects supported by research and development awards.

The Department of Defense has also established policies regarding Malign Foreign Talent Recruitment Programs, including those set forth in the DoD Component Decision Matrix to Inform Fundamental Research Proposal Mitigation Decisions (<https://media.defense.gov/2023/Jun/29/2003251160/-1/-1/1/COUNTERING-UNWANTED-INFLUENCE-IN-DEPARTMENT-FUNDED-RESEARCH-AT-INSTITUTIONS-OF-HIGHER-EDUCATION.PDF>). Current Department of Defense policy provides that, beginning August 9, 2024, the Department of Defense is prohibited from providing funding to a proposing institution that does not have a policy prohibiting Covered Individuals from participating in a Malign Foreign Talent Recruitment Program. Also beginning August 9, 2024, the Department of Defense is prohibited from providing funding to or making an award of a fundamental research project proposal in which a Covered Individual is participating in a Malign Foreign Talent Recruitment Program.

Definitions

“Covered Individual” means: an individual who (a) contributes in a substantive, meaningful way to the scientific development or execution of a research and development project proposed to be carried out with a research and development award from a Federal research agency; and (b) is designated as a covered individual by the Federal research agency concerned.

In practical terms, the vast majority of University faculty/investigators (PI, co-PI, Senior Scientist, etc.) who are conducting research efforts under a federal award are considered “covered individuals” under this definition. Moreover, characteristics such as an individual’s national origin or citizenship have no bearing on whether the individual will be considered a “Covered Individual” for purposes of this Policy.

Source: The CHIPS and Science Act

“Foreign Talent Recruitment Program”* means: Effort organized, managed, or funded by a foreign government, or a foreign government instrumentality or entity, to recruit science and technology professionals or students (regardless of citizenship or national origin, or whether having a full-time or part-time position). Some foreign talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to relocate physically to the foreign state for the above purpose. Some programs allow for or encourage continued employment at United States research facilities or receipt of Federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to United States entities. Compensation could take many forms including cash, research funding, complimentary

foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

Source: [NSPM-33 Implementation Guidance \(https://www.nsf.gov/bfa/dias/policy/researchprotection/nspm33definitions.pdf#page=2\)](https://www.nsf.gov/bfa/dias/policy/researchprotection/nspm33definitions.pdf#page=2)

*This Policy utilizes the simplified term “Foreign Talent Recruitment Program” rather than “Foreign government-sponsored talent recruitment program” utilized in the NSPM-33 Implementation Guidance.

“Malign Foreign Talent Recruitment Program” means:

- A. Any program, position, or activity that includes compensation in the form of cash, in-kind compensation, including research funding, promised future compensation, complimentary foreign travel, things of non de minimis value, honorific titles, career advancement opportunities, or other types of remuneration or consideration directly provided by a foreign country at any level (national, provincial, or local) or their designee, or an entity based in, funded by, or affiliated with a foreign country, whether or not directly sponsored by the foreign country, to the targeted individual, whether directly or indirectly stated in the arrangement, contract, or other documentation at issue, in exchange for the individual—
 - (i) engaging in the unauthorized transfer of intellectual property, materials, data products, or other nonpublic information owned by a United States entity or developed with a Federal research and development award to the government of a foreign country, or an entity based in, funded by, or affiliated with a foreign country regardless of whether that government or entity provided support for the development of the intellectual property, materials, or data products;

- (ii) being required to recruit trainees or researchers to enroll in such program, position, or activity;
- (iii) establishing a laboratory or company, accepting a faculty position, or undertaking any other employment or appointment in a foreign country or with an entity based in, funded by, or affiliated with a foreign country if such activities are in violation of the standard terms and conditions of a Federal research and development award;
- (iv) being unable to terminate the foreign talent recruitment program contract or agreement except in extraordinary circumstances;
- (v) through funding or effort related to the foreign talent recruitment program, being limited in the capacity to carry out a research and development award or required to engage in work that would result in substantial overlap or duplication with a Federal research and development award;
- (vi) being required to apply for and successfully receive funding from the sponsoring foreign government's funding agencies with the sponsoring foreign organization as the recipient;
- (vii) being required to omit acknowledgment of the recipient institution with which the individual is affiliated, or the Federal research agency sponsoring the research and development award, contrary to the institutional policies or standard terms and conditions of the Federal research and development award;
- (viii) being required to not disclose to the Federal research agency or

employing institution the participation of such individual in such program, position, or activity; or

- (ix) having a conflict of interest or conflict of commitment contrary to the standard terms and conditions of the Federal research and development award; and
- B. a program that is sponsored by—
 - (i) a foreign country of concern or an entity based in a foreign country of concern*, whether or not directly sponsored by the foreign country of concern;
 - (ii) an academic institution on the list developed under section 1286(c)(8) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 2358 note; Public Law 115-232);** or
 - (iii) a foreign talent recruitment program on the list developed under section 1286(c)(9) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 2358 note; Public Law 115-232).**

*The term “foreign country of concern” means the People’s Republic of China, the Democratic People’s Republic of Korea, the Russian Federation, the Islamic Republic of Iran, or any other country determined to be a country of concern by the Secretary of State. (Source: Section 10637 of the CHIPS Act)

** For the lists referenced in section (ii) and (iii) above, see this [Department of Defense \(https://basicresearch.defense.gov/Portals/61/Documents/Academic%20Research%20Security%20Page/FY24%20Section%201286%20List%20for%20public%20release_V2.pdf?ver=KqtK4tL1wLDoUwe2yxWHSw%3d%3d\)](https://basicresearch.defense.gov/Portals/61/Documents/Academic%20Research%20Security%20Page/FY24%20Section%201286%20List%20for%20public%20release_V2.pdf?ver=KqtK4tL1wLDoUwe2yxWHSw%3d%3d) resource.

The following are not considered Malign Foreign Talent Recruitment Programs unless such activities are funded, organized, or managed by an academic institution or a foreign talent recruitment program on the lists developed under paragraphs (8) and (9) of section 1286(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 4001 note; Public Law 115–232):

- (i) making scholarly presentations and publishing written materials regarding scientific information not otherwise controlled under current law;
- (ii) participation in international conferences or other international exchanges, research projects or programs that involve open and reciprocal exchange of scientific information, and which are aimed at advancing international scientific understanding and not otherwise controlled under current law;
- (iii) advising a foreign student enrolled at an institution of higher education or writing a recommendation for such a student, at such student's request.

Source: [NSPM-33 Implementation Guidance \(https://www.nsf.gov/bfa/dias/policy/researchprotection/nspm33definitions.pdf#page=2\)](https://www.nsf.gov/bfa/dias/policy/researchprotection/nspm33definitions.pdf#page=2)

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