

## **Malign Foreign Talent Recruitment Programs**

In accordance with the [CHIPS and Science Act of 2022](#), several federal research funding agencies now prohibit “covered individuals” from participating in federally funded research if they are currently participating in a “malign foreign talent recruitment program.”

A Policy (draft) has been issued by the Vice Provost for Research (VPR) to comply with federal laws and regulations concerning Malign Foreign Talent Recruitment Programs and their potential influence over federally funded research.

Accordingly, UWM has updated section 4.b.iii. in our [Export Controls in Research](#) guidelines: *Covered individuals shall not participate in a malign foreign talent recruitment program meeting any of the criteria in Sec. 10638(4) of the CHIPS and Science Act of 2022. “Covered individuals” and “malign foreign talent recruitment program” shall have the meanings set forth in CHIPS and Science Act of 2022.*

### **Definitions**

#### **Covered Individual**

- a. An individual who 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. Designated as a Key Personnel or Covered Individual by the federal research agency concerned.

#### **Foreign Country of Concern**

As defined in Section 10612 of the CHIPS and Science Act of 2022, foreign countries of concern are currently the People’s Republic of China, The Democratic People’s Republic of Korea, The Russian Federation, and the Islamic Republic of Iran. The U.S. Secretary of State has the power to designate other countries as foreign countries of concern.

#### **Foreign Talent Recruitment Program**

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 an individual, whether directly or indirectly stated in the arrangement, contract, or other documentation at issue.

### **Malign Foreign Talent Recruitment Program**

The federal government's definition of a MFTRP or "malign" program includes three main elements:

1. Sponsored by a "country of concern" as defined by the Secretary of State, and currently includes China, North Korea, the Russian Federation, and Iran; and
2. There is some form compensation or benefit (which does not have to be monetary, including the promise of a future benefit including in-kind contributions or honorary titles); and
3. Includes one of more problematic indicators:
  - Engaging in the unauthorized transfer of intellectual property, materials, data, or other nonpublic information;
  - Recruiting or training other talent recruitment program members, circumventing merit-based processes;
  - Establishing a laboratory or company or accepting a faculty position or other employment in a foreign country in violation of terms and conditions of a Federal research award;
  - Applying for and receiving research funding from the foreign institution's government funding agencies with the foreign institution as the awardee, without disclosure to and approval from UWM;
  - Attributing awards, patents, publications, and projects to the foreign institution, even if conducted under a Federal research award, omitting UWM and/or the Federal funding agency;
  - Duplication of effort under Federal awards or conflicts of commitment with Federal awards;
  - Contracts or agreements with oppressive termination clauses;
  - Contracts or agreements with non-disclosure requirements;

**AND** is sponsored by:

- A foreign country of concern or an entity based in a foreign country of concern,

- An academic institution on the [NDAA 2019 Section 1286\(c\)\(8\)](#) List, p.18-20; or
- A foreign talent recruitment program on the [NDAA 2019 Section 1286\(c\)\(9\)](#) List, p.21.

Consistent with applicable law (42 U.S.C. 19232), a malign foreign talent recruitment program does not include the following international collaboration activities, 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)

- Making scholarly presentations and publishing written materials regarding scientific information not otherwise controlled under current law;
- 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;
- Advising a foreign student enrolled at an institution of higher education or writing a recommendation for such a student, at such student’s request; and
- Other international activities determined appropriate by the Federal research agency head or designee.

## **Researcher Responsibilities**

### **UWM disclosure**

Participation in any Foreign Talent Recruitment Program (FTRP), malign or otherwise, must be reported to UWM under the “Foreign Activities” section as part of the annual [Outside Activity Reporting](#) process (OAR), or within 30 days of any change through the [OAR Update Form](#). If there have been no changes since you last submitted your annual Outside Activity Report (OAR), no further action is required.

### **Federal disclosure**

Participation in any FTRP must be reported as part of federal research proposals in your Biosketch, Current and Pending, or Other Support documents.

Additionally, several federal agencies require that at time of proposal submission and annually for the duration of the award (if funded), “Covered Individuals” must certify being 1) up to date on disclosing any Foreign Talent Recruitment Program relationships through annual OAR or an OAR

Update; 2) not party to a Malign Foreign Talent Recruitment Program; 3) aware of foreign talent recruitment program requirements of the CHIPS and Science Act.

The UWM Office of Sponsored Programs completes compliance checks and facilitates covered individual's 'certification' for federal disclosure requirements prior to proposal submission, as needed.

### **Institutional Responsibilities**

UWM is responsible for maintaining policy and procedures compliant with Sections 10631 and 10632 of the CHIPS Act.

The Office of Research currently facilitates compliance with this federal prohibition and certifies institutional compliance, as needed.

For questions or additional information, please contact the [Jeff Nytes \(jpnytes@uwm.edu\)](mailto:jpnytes@uwm.edu).

### **Resources**

- [Chips and Science Act of 2022](#)
- [Guidelines for Federal Research Agencies Regarding Foreign Talent Recruitment Programs](#)
- [Countering Unwanted Foreign Influence in Department-Funded Research at Institutions of Higher Education](#)
- [OSTP's National Security Presidential Memorandum-33 implementation guidance](#)
- [Recommended Practices for Strengthening the Security and Integrity of America's Science and Technology Research Enterprise, Joint Committee on the Research Environment](#)