



EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20503

February 14, 2024

MEMORANDUM FOR THE HEADS OF FEDERAL RESEARCH AGENCIES

FROM: ARATI PRABHAKAR
DIRECTOR
OFFICE OF SCIENCE AND TECHNOLOGY POLICY

SUBJECT: Guidelines for Federal Research Agencies Regarding Foreign Talent
Recruitment Programs

These guidelines are issued in accordance with Section 10631(b) of the CHIPS and Science Act of 2022 (“the Act”),¹ which provides that “the Director of the Office of Science and Technology Policy, in coordination with the interagency working group established under section 1746 of the National Defense Authorization Act for Fiscal Year 2020 (42 U.S.C. 6601 note; Public Law 116-92), shall publish and widely distribute a **uniform set of guidelines for Federal research agencies regarding foreign talent recruitment programs**” (emphasis added). Relevant provisions of the Act are codified at 42 U.S.C. 19231 - 19237.

There are two main features of the relevant portions of the Act: it provides that federal research agency personnel are prohibited from participating in foreign talent recruitment programs, and prohibits certain individuals substantively involved with preparing award applications or carrying out awards (“covered individuals”) from participating in malign foreign talent recruitment programs (Sections 10631 and 10638 of the Act). See below for definitions of foreign talent recruitment programs and malign foreign talent recruitment programs.

Section 10631(d) of the Act requires federal research agencies to issue a policy on foreign talent recruitment programs. Section 10632(a) of the Act further requires them to issue a specific policy on malign foreign talent recruitment programs, which must include provisions that, as part of a proposal for a research and development award from the agency:

“(1) each covered individual listed in such proposal certify that each such individual is not a party to a malign foreign talent recruitment program ... and annually [certify] thereafter for the duration of the award; and

¹ Public Law 117-167.

(2) each institution of higher education or other organization applying for such an award certify that each covered individual who is employed by such institution of higher education or other organization has ... complied with the requirement under paragraph (1) [above].”

Guidelines for Federal Personnel

Section 10631 of the Act provides that all personnel of federal research agencies are prohibited from participating in foreign talent recruitment programs. This includes federal employees, contract employees, independent contractors, individuals serving under the Intergovernmental Personnel Act of 1970,² Visiting Scientist, Engineering, and Educator (VSEE) appointments,³ and special government employees other than peer reviewers.⁴ Federal research agencies may develop further policies for contractor owned and operated or government owned and contractor operated institutions as warranted.

Note that the above personnel ordinarily do not include outside visitors or guests temporarily engaged in research at federal or national (contractor-operated) laboratory or user facilities unless they fall under one of the categories described above. Additionally, such personnel ordinarily do not include individuals engaged in strategic technical exchange programs from foreign government agencies or other organizations, similar to those run by the Department of Defense Personnel Exchange Program,⁵ the Engineer and Scientist Exchange Program,⁶ or the Transatlantic Diplomatic Fellows Program,⁷ unless they fall under one of the categories above.⁸

Guidelines for “Covered Individuals” Substantively Involved in Developing or Carrying Out a Project

Section 10631 of the Act prohibits “covered individuals” from participating in a federally funded research and development project if they are currently participating in a “malign foreign talent recruitment program.” Sections 10631 and 10632 of the Act provide for covered individuals to disclose if they are a party to any foreign talent recruitment program, and to certify that they are not a party to a malign foreign talent recruitment program. Section 10633 provides that federal research agencies may request supporting documentation from applicants, and take a range of funding-related actions if warranted. To the extent practicable, recipient institutions are required to prohibit covered individuals participating in malign

² 42 U.S.C. 4701 et seq.

³ National Science Foundation Visiting Scientist, Engineer, and Educator Program <https://new.nsf.gov/careers/rotator-programs/visiting-scientist-engineer-and-educator-vsee-program>

⁴ Participating in any malign foreign talent recruitment program also is prohibited.

⁵ 10 U.S.C. 311.

⁶ Engineer and Scientist Exchange Program: Program Details <https://www.safia.hq.af.mil/Force-Development/Engineer-and-Scientist-Exchange-Program/Program-Details/>

⁷ Transatlantic Fellow Program Deepens Bonds Between United States and Europe <https://www.state.gov/transatlantic-fellow-program-deepens-bonds-between-united-states-and-europe/>

⁸ These guidelines do not address or affect an agency’s physical facility safety and security programs, including for federal or national (contractor-operated) laboratory user facilities. Laboratories and other research institutions often host visitors and guests involved in other types of talent programs and similar activities that are not in conflict with the interests of the United States (e.g., the Marie Skłodowska-Curie Fellowship, Japan’s Research Fellowships for Young Scientists, the Organisation for Economic Co-operation and Development (OECD) Co-operative Research Programme).

foreign talent recruitment programs from working on projects supported by research and development awards.

Section 10638 of the Act defines “covered individual” as “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.” Agencies may also define other individuals as covered persons as appropriate and consistent with their mission.

Past Participation in a Foreign Talent Recruitment Program or Malign Foreign Talent Recruitment Program

The prohibitions in Sections 10631 and 10632 of the Act apply to current and/or ongoing participation in a foreign talent recruitment program or malign foreign talent recruitment program. Agencies may, however, apply mitigation and management measures to address past participation consistent with the Act and these guidelines. Section 10634 of the Act includes provisions for training.

International Collaboration

These guidelines provide below a definition of “foreign talent recruitment program” that excludes certain international collaboration activities. This exclusion allows federal research agency personnel to engage in these activities. These activities primarily involve open and reciprocal exchange of scientific information aimed at advancing international scientific understanding.

Similarly, Section 10632 of the Act requires that agency policies on malign foreign talent recruitment programs “shall not prohibit” the international collaboration activities that are specified in that statute.

Non-Discrimination

Consistent with Section 10637 of the Act, Title VI of the Civil Rights Act of 1964, the goals of Executive Orders 13985 and 14091, and applicable agency non-discrimination policy regarding federally conducted programs and activities, federal research agencies should ensure that policies and activities developed and implemented pursuant to the Act are carried out in a manner that does not target, stigmatize, or discriminate against individuals on the basis of race, color, ethnicity, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age (40 or older), disability, and genetic information (including family medical history). To ensure consistency with the principle of non-discrimination, agencies will consult with Offices of Civil Rights, or their equivalents, in addition to bodies charged with the implementation of Executive Orders 13985 and 14091, when considering methodologies for monitoring and evaluation in this area.

Definitions

Definition of Foreign Talent Recruitment Program

Section 10631 of the Act requires that the Office of Science and Technology Policy (OSTP), in consultation with the Subcommittee on Research Security of the National Science and Technology Council (NSTC), establish a definition for a foreign talent recruitment program. As such the following definition is provided:

A **foreign talent recruitment program** is 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.⁹

Consistent with Section 10632(d) of the Act, a foreign talent recruitment program does **not** include the following international collaboration activities, so long as the activity is not 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):

1. Making scholarly presentations and publishing written materials regarding scientific information not otherwise controlled under current law;
2. Participating 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;
3. 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
4. Engaging in the following international activities:
 - a. Activities that are partly sponsored or otherwise supported by the United States such as serving as a government appointee to the board of a joint scientific fund (e.g., the U.S.-Israel Binational Industrial Research and Development Foundation); providing advice to or otherwise participating in international technical organizations, multilateral scientific organizations, and standards setting bodies (e.g., the International Telecommunications Union, Intergovernmental Panel on Climate Change, etc.); participating in a Fulbright Commission program funded in whole or in part by a host country government; or other routine international scientific exchanges and interactions such as providing invited lectures or participating in international peer review panels.
 - b. Involvement in national or international academies or professional societies that produce publications in the open scientific literature that are not in conflict with the interests of the federal research agency (e.g., membership in the Pontifical Academy of Sciences or The Royal Society).
 - c. Taking a sabbatical, serving as a visiting scholar, or engaging in continuing education activities such as receiving a doctorate or professional certification at an institution of higher education (e.g., the University of Oxford, McGill University) that are not in conflict with the interests of the federal research agency.
 - d. Receiving awards for research and development which serve to enhance the prestige of the federal research agency (e.g., the Nobel Prize).
 - e. Other international activities determined appropriate by the federal research agency head or designee.

⁹ See also, more generally, *National Institute of Standards and Technology: Strengthening Disclosure Requirements and Assessing Training Could Improve Research Security*, GAO-24-106074 (Dec 14, 2023), p. 10 (“A foreign talent recruitment program is an effort organized, managed, or funded by a foreign government, or a foreign government 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)).”

Definition of Malign Foreign Talent Recruitment Program

(As defined by Section 10638(4) of the Act)

“A **malign foreign talent recruitment program** is:

- (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;¹⁰
 - (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. 4001 note; Public Law 115-232); or

¹⁰ See definitions in the Act, Section 10637.

- (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. 4001 note; Public Law 115-232).”