

Malign Foreign Talent Recruitment Program

A foreign talent recruitment program is a program organized, managed, or funded by a foreign government to recruit science and technology professionals or students in certain targeted fields. These programs may offer grants and research fellowships to encourage researchers to relocate to the foreign country as a means of growing the pool of talent in the respective field.

Federal law prohibits FDU faculty who have a substantive role in federally funded research and development projects from participating in certain types of foreign talent recruitment programs. These “Malign Foreign Talent Recruitment Programs” (or “MFTRPs”) encourage or require unethical or criminal behavior or contain requirements that may conflict with the terms of federal research grants or awards.

Various federal agencies, including the National Science Foundation and the National Institutes of Health, require FDU and individuals with certain identified leadership roles on grants, agreements, and awards to certify that the individuals are not participating in an MFTRP.

A malign foreign talent recruitment program is defined as having 3 components:

It’s sponsored by one of the following:

- A foreign country of concern (defined as the People's Republic of China including Hong Kong and Macau, 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); or
- An entity based in a foreign country of concern; or
- An institution or program on certain prohibited lists (detailed below);

AND

It offers faculty or staff with compensation – broadly defined to include money, research funding, promised future compensation, complimentary travel, honorific titles, career advancement opportunities, or any other thing of value,

AND, the compensation is in exchange for:

- Unauthorized transfer of intellectual property, materials, data or other nonpublic information;
- Recruitment of trainees or researchers to enroll in such program, position or activity;

- Establishing a laboratory or entity in a foreign country in violation of terms and conditions of a federal research award;
- Accepting a faculty position, or undertaking any other employment or appointment in violation of the standard terms and conditions of a federal research award;
- Being unable to terminate the activity except in extraordinary circumstances;
- Being limited in capacity to carry out a federal research award;
- Requirement to engage in work that overlaps or duplicates a federal research award;
- Requirement to obtain research funding from the foreign government's entities;
- Requirement to omit acknowledgement of the U.S. home institution and/or the federal funding agency;
- Requirement to not disclose participation in the program, position, or activity; or
- Having a conflict of interest or commitment contrary to a federal research award.

If you are approached about participating in a talent recruitment program that might constitute a Malign Foreign Talent Recruitment Program, please contact the Associate Provost for Research, Dr.Carolynn Julien, c.julien@fdu.edu, so that you can collaboratively analyze your and the University's obligations.

Note also that various federal agencies require researchers to disclose if they are parties to a foreign talent recruitment program that do not meet the definition of being "malign." Disclosure requirements under all grants, agreements, and awards should be carefully reviewed to ensure compliance.

More detailed information follows:

Under the federal law entitled the *Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act of 2022*, 42 U.S.C. § 19232 (2022), a Malign Foreign Talent Recruitment Program has three elements:

Element One: Compensation

1. This can include monetary, in-kind compensation, research funding, promised future compensation, complimentary travel, honorific titles, career advancement opportunities, things of value, and any other type of compensation, remuneration, or consideration provided by a foreign country at any level (national, provincial, or local) or their designee; plus

Element Two: Compensation is provided in exchange for:

- (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 product;
- (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) 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.

Element 3: Engagement with:

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;

A “foreign country of concern” means the **People’s Republic of China, the Democratic People’s Republic of Korea (North Korea), the Russian Federation, Iran,** or any other country determined to be a country of concern by the Secretary of State;

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

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).

These academic institutions and foreign recruitment programs are identified at https://basicresearch.defense.gov/Portals/61/Documents/Academic%20Research%20Security%20Page/FY24%20Section%201286%20List%20for%20public%20release_V2.pdf?ver=KqtK4tL1wLDoUwe2yxWHSw%3D%3D

For any questions regarding these requirements, please contact please contact the Associate Provost for Research, Dr.Carolynn Julien, c.julien@fdu.edu.