

**NUMBER:** 1109

**TITLE:** Prohibition on Participation in Malign Foreign Talent Recruitment Programs

**APPROVED:** June 14, 2024

**SCHEDULED REVIEW DATE:** June 2029

### **Purpose**

The purpose of this policy is to outline Old Dominion University's approach to identifying, reporting, evaluating, managing, and resolving actual and potential research conflicts of interests and commitment to ensure the integrity of the University's scholarship, research, sponsored programs, evaluation, and administration is not threatened.

### **Definitions**

1. **Covered Individual:** 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.
2. **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 as determined by the Secretary of State.
3. **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, 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.

Note: Consistent with Section 10632(d) of the CHIPS and Science Act, a FTRP program does not include the following international collaboration activities, so long as the activity is not funded, organized, or management 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](#):

- a. Making scholarly presentations and publishing written materials regarding scientific information not otherwise controlled under current law;
- b. 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 which are aimed at advancing international scientific understanding and not otherwise controlled under current law;
- c. 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
- d. Engaging in the following international activities:
  - i. 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 organization, 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.
  - ii. 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).
  - iii. 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.
  - iv. Receiving awards for research and development that serve to enhance the prestige of the federal research agency (e.g., the Nobel Prize).
  - v. Other international activities determined appropriate by the federal research agency head or designee.

4. **Malign Foreign Talent Recruitment Program:** As defined by the White House Office of Science and Technology Policy's National Security Presidential Memorandum-33 Implementation Guidance:

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:

- a. Unauthorized Intellectual Capital Transfer: Engaging in authorized 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 or entity provided 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;
- b. Recruitment: Being required to recruit trainees or researchers to enroll in such program, position or activity;
- c. Establishing Lab, Company or Taking Employment: 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;
- d. Conflict of Commitment: Being unable to terminate the foreign talent recruitment program contract or agreement except in extraordinary circumstances;
- e. Scientific/Funding Duplication: 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;
- f. Foreign Funding: 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;
- g. Prohibition on Acknowledgement: Being required to omit acknowledgement 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;
- h. Disclosure Prohibitions: 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
- i. Conflict of Interest/Conflict of Commitment: Having a conflict of interest or conflict of commitment contrary to the standard terms and conditions of the federal research and development award; and
- j. 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](#); 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](#).

## **Policy Statement**

The [Creating Helpful Incentives to Produce Semiconductors \(CHIPS\) and Science Act of 2022](#) (the “Chips Science Act”) requires federal research funding agencies (i.e., National Science Foundation (NSF), the National Institutes of Health (NIH), the Department of Energy (DOE)) to establish

policies that require “covered individuals” to disclose all participation in foreign talent recruitment programs (FTRPs) and to certify at proposal, and annually for the duration of the award, that they are not a party to a malign foreign talent recruitment program (MFTRP), and that Old Dominion University certify that such individuals have been made aware of the requirement.

In addition, the Department of Defense (DoD) released [Countering Unwanted Foreign Influence in Department-funded Research at Institutions of Higher Education](#), that includes a Policy for Risk-Based Security Reviews of Fundamental Research and associated Decision Matrix. Under this new DoD policy and effective August 9, 2024, the DoD will deny funding if the proposing institution does not have a policy prohibiting participation in a MFTRP.

The [National Science Foundation \(NSF\) draft revised Proposal and Award Policies and Procedures Guide \(PAPPG\)](#) includes the definition of Malign Foreign Talent Recruitment Programs and explicitly prohibits participation of senior personnel in MFTRPs. All senior personal will be required to certify prior to proposal submission that they are not party to an MFTRP. In addition, the Authorized Organization Representative (i.e., the person who submits your proposals) will need to certify that all senior personnel associated with the proposal have been made aware of and have complied with their responsibility under that section to certify that they are not party to a malign foreign recruitment program.

In June 2019, the DOE issued the [DOE Order 486.1](#) that prohibits DOE employees, contractors, and certain subcontractors from currently or in the future participating in foreign talent recruitment programs of countries determined sensitive to DOE. To comply with federal regulations regarding the eligibility of federal research funding, Old Dominion University will:

1. Prohibit participation in malign foreign talent recruitment programs.
2. Require that Key Personnel or Covered Individuals comply with all sponsor policies and certification regarding MFTRP as they are developed and implemented and that disclosures are true, complete, and accurate to the best of the covered individual’s knowledge.
3. Require a Covered Individual to comply with federal research agency policies to:
  - a. Certify at proposal, and annually for the duration of the award, that they are not a party to a MFTRP, and
  - b. Disclose all participation in FTRP contracts, agreements, or other arrangements.
  - c. Certifications will not apply to awards made prior to August 9, 2022.
  - d. Old Dominion University must certify that Covered Individuals have been made aware of the requirements set forth in this policy.

## **Procedures**

Members of the Old Dominion University Board of Visitors, as appointed by the Governor, shall abide by the federal requirements regarding foreign influence. A board member shall not participate in a malign foreign talent recruitment program. Each board member has an obligation to disclose all foreign program affiliations when appointed and annually thereafter on or before February 1.

Disclosures are required from all faculty, and any ODU personnel:

1. who contribute in a substantive, meaningful way to the scientific development or execution of a research and development program proposed to be carried out with a research and development award from a federal research agency, and
2. any faculty who are designated as a Key Personnel or Covered Individual by the federal research agency concerned.

#### Foreign Talent Recruitment Programs

1. Participation in FRTP must be fully disclosed on annual Conflict of Interest and Conflict of Commitment form in accordance with [University Policy 5201, Individual Research Conflict of Interest and Commitment](#).
2. Researchers engaged in federally funded research are required to disclose current or pending participation in, or applications to, an FTRP to the federal research agency in accordance with that agency's requirements. Requirements may include disclosure of the FTRP in the Biographical Sketch or Curriculum Vitae (CV) and/or in other/current and pending support documents.
3. Federal research agencies may require implementation of mitigation strategies related to the FTRP before awarding a proposal to the University (e.g., Department of Defense Policy for Risk-Based Security Reviews of Fundamental Research). Mitigation strategies could include, but are not limited to, training, increased frequency of required reporting, and/or replacement of personnel on the project.

#### Malign Foreign Talent Recruitment Programs

1. Participation in MFTRP must be fully disclosed on annual Conflict of Interest and Conflict of Commitment forms in accordance with [University Policy 5201, Individual Research Conflict of Interest and Commitment](#).
2. Federal research agencies may require certification that each covered individual is not a party to an MFTRP in the proposal submission, and annually thereafter for the duration of the award.
3. Old Dominion University shall certify that covered individuals have been made aware of the requirement.

Prior to the University certification of the disclosures on any federal awards, Old Dominion University Research Security and Export Controls will perform open-source "due diligence" checks to verify the information provided in the conflict of interest disclosure.