

<b>System-wide Policy:</b>	
<b>RE0003 - Participation in Foreign Talent Recruitment Programs</b>	
<b>Version: 1</b>	<b>Effective Date: 08/08/2024</b>

## PARTICIPATION IN FOREIGN TALENT RECRUITMENT PROGRAMS

### SECTION 1. Policy Statement

Pursuant to federal legislation and regulation, all Covered Individuals at the University of Tennessee, including all campuses and institutes (the “University”), participating in or proposing to participate in federally sponsored research must disclose if they are participants in any Foreign Talent Recruitment Program. Covered Individuals are prohibited from participating in the subset of Foreign Talent Recruitment Programs that are considered by the government to be Malign Foreign Talent Recruitment Programs. Covered Individuals must participate in training, disclose participation in Foreign Talent Recruitment Programs, and provide initial and annual certifications of non-participation in a Malign Foreign Talent Recruitment Program in connection with federal research awards.

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### SECTION 2. Reason for the Policy

The United States Government (“USG”) has implemented multiple initiatives to strengthen protections of USG-supported research and development against foreign government interference and exploitation. The USG has identified risks of interference and exploitation by certain foreign governments which the USG perceives could result in such foreign governments increasing their economic and military competitiveness at the expense of the United States, its allies, and its partners.

In connection with its mission to strengthen protections of USG-supported research, the USG has identified characteristics of certain Foreign Talent Recruitment Programs that it considers “malign” and has mandated that Covered Individuals substantively engaged in the preparation or conduct of federally funded research awards be prohibited from participating in Malign Foreign Talent Recruitment Programs. This policy is issued to meet the requirements of The Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act of 2022 (the “CHIPS Act”), the National Security Presidential Memorandum-33 (“NSMP-33”), and guidance issued by the Office of Science and Technology Policy (“OSTP Guidance”), requiring Covered Individuals to follow certain guidelines regarding participation in Foreign Talent Recruitment Programs and prohibiting Covered Individuals from participating in Malign Foreign Talent Recruitment Programs.

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### SECTION 3. Scope and Application

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The CHIPS Act prohibits Covered Individuals substantively involved with applying for and carrying out federal research awards from participating in Malign Foreign Talent Recruitment Programs. Participation in other Foreign Talent Recruitment Programs is not necessarily prohibited but must be disclosed as an outside activity in accordance with GE-0002 (Conflict of Interest & Commitment) to the University and federal sponsors. See Section 5 (Definitions) of this Policy for relevant definitions.

Although Covered Individuals are prohibited from participating in Malign Foreign Talent Recruitment Programs and are required to disclose participation in Foreign Talent Recruitment Programs, certain International Collaboration Activities are not subject to disclosure or prohibition. To the extent a Covered Individual has any questions concerning their obligations under this Policy or whether an activity fits within any definition provided under this Policy, the Covered Individual should contact the appropriate Responsible Official identified in Section 6 below.

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## SECTION 4. Procedures

- (1) Each Covered Individual listed in a proposal for a research and development award from a federal agency shall certify at the time of the proposal submission that they are not a party to a Malign Foreign Talent Recruitment Program and shall certify their non-participation annually thereafter for the duration of the award. The certification shall be provided in accordance with the requirements and forms required by the agency funding the research award.
- (2) Each Covered Individual must disclose participation in any Foreign Talent Recruitment Program to the University as an outside interest in accordance with GE-0002 (Conflict of Interest & Commitment) within 30 days of the participation using the University's standard disclosure form.
- (3) Each Covered Individual must disclose participation in any Foreign Talent Recruitment Program to federal agencies through current and pending, and other support documentation at the time of the proposal submission.
- (4) The University (including all campuses and institutes) shall certify to the funding agency at the time of proposal that each Covered Individual who is employed by the University has complied with the requirement under paragraph (1) above.
- (5) The University shall provide, and attest to, training on the risks of Malign Foreign Talent Recruitment Programs to Covered Individuals employed at the University as required. Each campus and institute shall develop procedures to deliver training in accordance with this Policy.

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## SECTION 5. Definitions

**Covered Individual:** A “covered individual” is any 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 key personnel or covered individual by the Federal research agency concerned.

**Foreign Country of Concern:** A “foreign country of concern” is as defined in Section 10638(2) of the CHIPS Act and currently includes the People’s Republic of China, the Democratic People’s Republic of Korea, the Russian Federation, the Islamic Republic of Iran. Under the CHIPS Act, the Secretary of State may designate other countries as such.

**Foreign Talent Recruitment Program:** 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.

**International Collaboration Activities:** Pursuant to Section 10632(d) of the CHIPS Act and OSTP Guidance, the following “International Collaboration Activities” do not constitute participation in a Foreign Talent Recruitment Program **so long as** the activity is not funded, organized, or managed by an academic institution or a foreign talent recruitment program on the NDAA Section 1286(c)(8) and (9) Lists:

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:

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- 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.

**Malign Foreign Talent Recruitment Program:** A “malign foreign talent recruitment program” is as defined in Section 10638 of the CHIPS Act and included on page 5 of the OSTP Guidance. While the statutory definition is controlling, the definition is simplified here as any Foreign Talent Recruitment Program which meets the criteria of BOTH (A) **and** (B) below:

- (A) the program provides compensation (in any form) directly or indirectly by a foreign country or an entity based in, funded by or affiliated with a foreign county to the targeted individual in exchange for one of the following:
  - (i) engaging in the unauthorized transfer of intellectual property, materials, data products, or other nonpublic information;
  - (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

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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) the program that is sponsored by—

(i) a Foreign Country of Concern or an entity based in a Foreign Country of Concern;

(ii) an academic institution on the NDAAs Section 1286(c)(8) List; or

(iii) a foreign talent recruitment program on the NDAAs Section 1286(c)(9) List.

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## SECTION 6. Responsible Official & Additional Contacts

University of Tennessee System

Subject Matter	Office Name	Telephone Number	Email/Web Address
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Policy Clarification and Interpretation	Bernard Savarese	865-974-3843	bsavares@tennessee.edu
Policy Training	Bernard Savarese		

University of Tennessee Knoxville

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Deborah Crawford	865-974-8701	dcrawf19@utk.edu
Policy Training	Jane Burns	865-974-3526	janeburns@utk.edu

University of Tennessee Chattanooga

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Reinhold Mann	423-425-5508	Reinhold-mann@utc.edu
Policy Training	Cheryl Murphy	423-425-4443	ori@utc.edu

University of Tennessee Martin

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Alisha Melton	731-881-7105	amelton6@utm.edu
Policy Training	Alisha Melton		

University of Tennessee Health Science Center

Subject Matter	Office Name	Telephone Number	Email/Web Address
Policy Clarification and Interpretation	Wesley Byerly	901-448-7125	wbyerly1@uthsc.edu
Policy Training	Wesley Byerly		

University of Tennessee Southern

\*Contact System Official identified above.

## SECTION 7. Penalties/Disciplinary Action for Non-Compliance

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Noncompliance with or violations of this Policy may result in internal disciplinary actions pursuant to University By-Laws, general rules of conduct for University employees, HR-0525 (Disciplinary Action), the University Student Conduct Code, governing faculty handbook guidance, and any other relevant University policies. Additionally, violations of this Policy could result in external disciplinary action, penalties, or sanctions by sponsors of federal research or related federal agencies.

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## SECTION 8. Policy History

Interim Version 1: 08/09/2024

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## SECTION 9. Related Policies/Guidance Documents

GE-0002 (Conflict of Interest & Commitment) (2022)

<https://policy.tennessee.edu/policy/ge0002-conflicts-of-interest-commitment/>

CHIPS & Science Act of 2022, 42 U.S. Code § 19232; Public Law 116-167 (2022) (See Sections 10631, 10632, and 10638)

<https://www.congress.gov/bill/117th-congress/house-bill/4346/text>

NSPM-33 United States Government-Supported Research and Development National Security Policy (2021)

<https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-united-states-government-supported-research-development-national-security-policy/>

OSTP Foreign Talent Recruitment Program Guidelines (2024)

<https://www.whitehouse.gov/wp-content/uploads/2024/02/OSTP-Foreign-Talent-Recruitment-Program-Guidelines.pdf>

Section 1286 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019

<https://basicresearch.defense.gov/Portals/61/Documents/Research%20Security/1286%20List.pdf?ver=nEagiu7uAK3DCdfMt9yZGg%3d%3d>