

What is a “Malign Foreign Talent Recruitment Program”?

The CHIPS and Science Act of 2022 contains a multi-part definition of “Malign Foreign Talent Recruitment Program.” Yale policies incorporate this statutory definition. The questions below are designed to help you evaluate whether a particular program, position, or activity qualifies as a “Malign Foreign Talent Recruitment Program” under the statutory definition.

Question 1: Does the program, position, or activity include compensation or the promise of future compensation?

Note: Compensation is defined broadly and includes cash, in-kind compensation, research funding, complimentary foreign travel, career advancement opportunities, honorific titles, items of more than de minimis value, or other types of remuneration or consideration.

The compensation need not be defined explicitly in the arrangement, contract, or other document at issue; an oral promise or a definite expectation that compensation will be provided in connection with the program, position or activity is sufficient.

If the answer to Question 1 is “yes,” go to question 2. If the answer to Question 1 is “no,” the program, position, or activity is not a “malign foreign talent recruitment program.”

Question 2: Is the source of the compensation either (1) a foreign country at any level (national, provincial, or local) or the country’s designee, or (2) an entity based in, funded by, or affiliated with a foreign country?

Note: The compensation need not come directly from the foreign country or entity.

If the answer to Question 2 is “yes,” go to question 3. If the answer to Question 2 is “no,” the program, position, or activity is not a “malign foreign talent recruitment program.”

Question 3: Is the foreign country that caused you to answer “yes” to Question 2 a “foreign country of concern,” which federal law currently defines to include China, Iran, North Korea, and Russia?

Note: The answer to this question should be “yes” if the compensation at issue is directly or indirectly provided by a foreign country of concern *or* by an entity based in or affiliated with a foreign country of concern.

If the answer to Question 3 is “yes,” skip to Question 5. If the answer to Question 3 is “no,” proceed to question 4.

Question 4: Does the program, position, or activity involve an academic institution or foreign talent recruitment program on the Department of Defense’s “List of Institutions of the People’s Republic of China, Russian Federation, and other Countries with Specified Characteristics” or its list of “Foreign Talent Programs that Pose a Threat to National Security Interests of the United States”?

The current versions of the lists referenced in Question 4 are available in the [FY23 Lists Published in Response to Section 1286 of the National Defense Authorization Act for Fiscal Year 2019 \(Public Law 115-232\), as amended.](#)

If the answer to Question 4 is “yes,” proceed to Question 5. If the answers to both Question 3 and Question 4 are “no,” the program, position, or activity is not a “malign foreign talent recruitment program.”

Question 5: Does the program, position, or activity involve one or more of the following hallmarks of a foreign talent recruitment program enumerated in federal law?

- (1) 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;
- (2) being required to recruit trainees or researchers to enroll in such program, position, or activity;
- (3) 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;
- (4) being unable to terminate the foreign talent recruitment program contract or agreement except in extraordinary circumstances;
- (5) 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;
- (6) 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;
- (7) being required to omit acknowledgment of Yale or a Federal research agency sponsoring the research and development award, contrary to Yale policies or standard terms and conditions of a Federal research and development award;
- (8) being required to not disclose to a Federal research agency or Yale the participation of such individual in such program, position, or activity; or
- (9) having a conflict of interest or conflict of commitment contrary to the standard terms and conditions of a Federal research and development award.

If the answer to Question 5 is “yes,” and you also answered “yes” to Questions 1 and 2, and either of Question 3 or Question 4, the program, position, or activity is a “malign foreign talent recruitment program.”

If the answer to Question 5 is “no” and you answered “no” to Question 3 and Question 4, the program, position, or activity is not a “malign foreign talent recruitment program.”

If the answer to Question 5 is “no,” but you answered “yes” to Questions 1 and 2, and “yes” to either Question 3 or Question 4, please seek further guidance from research.security@yale.edu if either of the following conditions is true:

- (1) The program, position, or activity is explicitly described as a “talent program” or includes the word “talent” in the name; or
- (2) The program, position, or activity involves a talent program listed in the [Department of Defense’s list of “Foreign Talent Programs that Pose a Threat to National Security Interests of the United States”](#) (Table 2, page 9).