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## **FAQs Concerning MFTRP Policy**

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**Question 1.** Who is a “Covered Individual” under the policy and where does this definition come from?

The policy’s definition of “Covered Individual” mirrors the definition of “Covered Individual” in Section 10638 of the CHIPS and Science Act of 2022, which states that a “Covered Individual” is an individual who:

- (a) Contributes in a substantive and 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.

As subsection (b) states, federal agencies may determine who the covered individuals are on specific projects. No lists exist from federal agencies since it may vary from project to project.

**Question 2.** How do I know whether a particular activity is a Malign Foreign Talent Recruitment Program under the policy?

In order to qualify as a MFTRP, an activity must involve all three factors enumerated in the policy:

**FACTOR 1:** You must receive **compensation** as defined in the statute.

**“Compensation” is defined broadly under federal law.** It means “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.”

**FACTOR 2:** In addition, the activity must involve one of the following **nine components** listed in the federal definition:

- (1) **Unauthorized IP transfer:** 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) **Mandatory recruitment:** being required to recruit trainees or researchers to enroll in such program, position, or activity;
- (3) **Violating Federal award terms and conditions:** 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) **Limited right to terminate:** being unable to terminate the foreign talent recruitment program contract or agreement except in extraordinary circumstances;
- (5) **Scientific overlap/Overcommitment:** 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) **Mandatory foreign funding applications:** 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) **Omitting acknowledgments:** being required to omit acknowledgment of Yale or a Federal research agency sponsoring the award, contrary to Yale policies or standard terms and conditions of a Federal research and development award;
- (8) **Non-disclosure:** 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) **COI/Conflict of Commitment:** having a conflict of interest or conflict of commitment contrary to the standard terms and conditions of a Federal research and development award.

**FACTOR 3:** The activity must **either** be a program that is sponsored by a **Foreign Country of Concern (FCOC)** or an **entity** based in a Foreign Country of Concern, or a **program or entity** on one of two lists maintained by the Department of Defense. ([NDAA 1286](#))

A **Foreign Country of Concern** is currently defined in the CHIPS and Science Act of 2022 as China, Iran, North Korea and Russia.

The two lists maintained by the Department of Defense are available here: [FY23 Lists Published in Response to Section 1286 of the National Defense Authorization Act for Fiscal Year 2019 \(Public Law 115-232\), as amended](#)

Yale has developed [step-by-step guidance](#) to assist you in evaluating whether an activity meets the definition of a MFTRP. If you have questions, please contact the [Research Integrity and Security Office](#).

**Question 3.** Is writing a recommendation letter for a postdoc, student or trainee considered participation in a MFTRP?

If the faculty member is not receiving “compensation” from a Foreign Country of Concerns or an entity based therein in exchange for writing the letter, it would not be considered participation in a MFTRP.

**Question 4.** Does a postdoc’s or student’s *submission* of an application for a program that may be a MFTRP constitute participation in a MFTRP, prior to any offer being extended?

Yale is seeking agency guidance to address this question. However, our current understanding is that this would not constitute participation in a MFTRP because, before any offer has been extended and before the individual has agreed to participate, there is no receipt or expectation of compensation.

**Question 5.** Does hiring a trainee or researcher who is associated with a program sponsored by an academic institution sanctioned by the National Defense Authorization Act for Fiscal Year 2023 constitute participation in a MFTRP?

This is unlikely to qualify as a MFTRP. Merely hiring or inviting an individual would not involve any of the nine components of the MFTRP definition. If the hired or invited individual will continue to be associated with the entity while they are at Yale, Faculty should be aware that externally funded scholars/researchers/students in their labs that are supporting their research may be required to be disclosed in Current/Pending/Other Support documentation to Federal Funding agencies. While some agencies do not consider this in their Risk Assessments, other agencies, such as the DOD (including DARPA and Army), do consider these relationships and may request mitigation plans.

**Question 6.** Is giving a talk, either in person or via zoom, at an academic institution in a “foreign country of concern,” considered as participation in a MFTRP?

As described, this does not include one of the nine components of a MFTRP, and therefore it would not be considered participation in a MFTRP. However, please ensure that information in your presentation does not include 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, specified in A(i) and prohibited by your agreements with US federal agencies and Yale IP policy. As a general matter, presenting information that has already been published will not involve the unauthorized transfer of intellectual property, materials, data products, or other nonpublic information.

**Question 7.** Is inviting a seminar speaker who has participated in a MFTRP considered as participation in MFTRP for the faculty member?

- As described, this does not include one of the nine components of a MFTRP, and therefore it would not be considered participation in a MFTRP. If the faculty member is asked to sign any agreements in connection with making the invitation, the agreements should be reviewed closely to ensure that they do not include any terms that resemble one of the nine components of a MFTRP.

**Question 8.** If a faculty member is collaborating with another faculty member whose actions may be classified as participating in MFTRP, could the faculty member be considered a participant in a MFTRP?

- As described, this scenario does not appear to include one of the nine components of a MFTRP, and therefore would not be considered participation in a MFTRP.
- It is important to understand how your collaborators are funded. If you are collaborating with an individual who is funded by an entity in a FCOC and the program, position or activity includes one or more characteristics of a MFTRP, you should seek guidance from RISO.
- In addition, several existing US laws place constraints on activities involving China, Iran, North Korea, and Russia, with the specific restrictions depending on the country, entity, and technologies at issue, among other factors. The RISO Office can assist you with any questions you may have about activities in these and other countries that may be subject to US restrictions.

**Question 9.** Would reviewing a manuscript for a journal that is based in or has a branch in a “foreign country of concern” constitute participation in a MFTRP? What if the reviewer is expected to “recruit” others to edit or review for the journal?

- As described, this scenario does not appear to include one of the nine components of a MFTRP, and therefore would not be considered participation in a MFTRP. With all external activities, you should take care to understand the role and

responsibilities and should review critically any obligations that seem overly burdensome or unusual for the role.

**Question 10.** Would a typical honorarium that one normally receives for giving a seminar, or free/discounted meeting registration, or reimbursement of travel/lodging be “compensation” under the definition?

- These kinds of payments would amount to “compensation” within the meaning of the policy. However, if the compensation does not require you to perform one of the nine components listed in the statute, and if the source of the compensation is not a FCOC or an entity based in a FCOC, the activity is not a MFTRP.

**Question 11.** Are there any program-specific criteria or exceptions, such as exceptions for medical students from FCOCs?

- No. The policy applies to all “Covered Individuals” who are subject to the policy.

**Question 12.** Can a Yale faculty, staff, or trainee become a part-time member, a part-time consultant, or a part-time co-founder of a company in a foreign country of concern?

- As long as the activity does not include one of the nine components listed in the statute it is not a MFTRP.
- Further, the position must comply with the [Yale Faculty Handbook | Office of the Provost for external activities](#).