

February 14, 2024

MEMORANDUM FOR THE HEADS OF FEDERAL RESEARCH AGENCIES

FROM: ARATI PRABHAKAR
DIRECTOR
OFFICE OF SCIENCE AND TECHNOLOGY POLICY

SUBJECT: Guidelines for Federal Research Agencies Regarding Foreign Talent
Recruitment Programs

These guidelines are issued in accordance with Section 10631(b) of the CHIPS and Science Act of 2022 (“the Act”),¹ which provides that “the Director of the Office of Science and Technology Policy, in coordination with the interagency working group established under section 1746 of the National Defense Authorization Act for Fiscal Year 2020 (42 U.S.C. 6601 note; Public Law 116-92), shall publish and widely distribute a **uniform set of guidelines for Federal research agencies regarding foreign talent recruitment programs**” (emphasis added). Relevant provisions of the Act are codified at 42 U.S.C. 19231 - 19237.

There are two main features of the relevant portions of the Act: it provides that federal research agency personnel are prohibited from participating in foreign talent recruitment programs, and prohibits certain

(2) each institution of higher education or other organization applying for such an award certify that each covered individual who is employed by such institution of higher education or other organization has ... complied with the requirement under paragraph (1) [above].”

Guidelines for Federal Personnel

Section 10631 of the Act provides that all personnel of federal research agencies are prohibited from participating in foreign talent recruitment programs. This includes federal employees, contract employees, independent contractors, individuals serving under the Intergovernmental Personnel Act of 1970,² Visiting Scientist, Engineering, and Educator (VSEE) appointments,³ and special government employees other than peer reviewers.⁴ Federal research agencies may develop further policies for contractor owned and operated or government owned and contractor operated institutions as warranted.

Note that the above personnel ordinarily do not include outside visitors or guests temporarily engaged in research at federal or national (contractor-operated) laboratory or user facilities unless they fall under one of the categories described above. Additionally, such personnel ordinarily do not include individuals engaged in strategic technical exc.6 (x)1dsuicludeedm4.7 (d)10.9 (e-2.6r)-3.9 (i)im4.7 (d-2.64 (t)6.3 (orn)10.9-1.7 (l)gnc)

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.⁹

Consistent with Section 10632(d) of the Act, a foreign talent recruitment program does **not** include the following international collaboration activities, so long as the activity is not funded, organized, or managed 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 (10 U.S.C. 4001 note; Public Law 115-232):

1. Making scholarly presentations and publishing written materials regarding scientific information

- (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).”