

## MALIGN FOREIGN TALENT RECRUITMENT PROGRAM - DEFINITION SUMMARY

**Source:** PUBLIC LAW 117–167—AUG. 9, 2022, [CHIPS ACT OF 2022](#)

### What is a malign talent program?

- Unauthorized transfer of intellectual property or other nonpublic information;
- Recruit trainees or researchers to enroll in such program;
- Establishing a laboratory/employment/appointment in a foreign country in violation of terms and conditions of a Federal research award;
- Inability to terminate;
- Overcapacity/overlap/duplication;
- Mandatory to obtain research funding from the foreign government's entities;
- Omitting acknowledgement of U.S. home institution/funding agency;
- Not disclosing program participation; OR
- Conflict of interest/commitment; AND

Sponsored by a country of concern\*

\*The law notes that China, the Russia Federation, North Korea, and Iran are entities of concern. The State Department or federal agencies may designate other countries or entities of concern.

**Primary Source:** <https://www.congress.gov/117/plaws/publ167/PLAW-117publ167.pdf>

**Secondary Source:** <https://www.jdsupra.com/legalnews/nsf-ostp-begin-implementing-chips-act-5256694/>

## MALIGN FOREIGN TALENT RECRUITMENT PROGRAM - DEFINITION (FULL LANGUAGE)

Source: PUBLIC LAW 117–167—AUG. 9, 2022, [CHIPS ACT OF 2022](#)

### What is a malign talent program?

(4) MALIGN FOREIGN TALENT RECRUITMENT PROGRAM.—The term “malign foreign talent recruitment program” means— (A) 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—

(i) 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;

(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 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) 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) (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 (10 U.S.C. 2358 note; Public Law 115-232); or
- (iii) (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. 2358 note; Public Law 115-232)

<https://www.congress.gov/117/plaws/publ167/PLAW-117publ167.pdf>