

Policy 2212
Malign Foreign Talent Recruitment Program

Date of Current Revision: August 2024

Responsible Officer: Vice President for Research, Economic Development and Innovation

1. PURPOSE

This policy outlines the maintenance of the integrity of research conducted at or under the auspices of James Madison University (JMU). This policy is designed to ensure compliance with the federal laws related to federally funded research. Further, JMU supports and encourages international collaboration, and at the same time seeks to mitigate the negative effect of undue foreign influence on the research and development enterprise.

2. AUTHORITY

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University (JMU). See Code of Virginia § 23.1-1600; § 23.1-1301. The board has delegated the authority to manage the university to the president.

STATE OR FEDERAL STATUTE AND/OR REGULATION

CHIPS and Science Act of 2022, Pub. L. No. 117-167, 136 Stat. 1366 (2022).

John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636 (2018).

3. DEFINITIONS

Covered Individual

An 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 covered individual by the concerned federal research agency.

Foreign Affiliation

A funded or unfunded academic, professional, or institutional appointment or position with a foreign government or government-owned entity, whether full-time, part-time, or voluntary (including adjunct, visiting, or honorary). This includes appointments or positions deemed adjunct, visiting, or honorary with research institutions.

Foreign Country of Concern

A country named in the CHIPS and Science Act's definition of "foreign country of concern," see [42 U.S.C. § 19237](#), or any other country determined to be a country of concern by the U.S. Department of State.

Foreign Entity of Concern

As defined in Section 10638 (c) of the CHIPS and Science Act, foreign entity of concern includes any entity identified on the International Trade Administration's [Consolidated Screening List](#).

Foreign Talent Recruitment Program

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.

Foreign talent recruitment programs that pose a threat to national security

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](#)).

Malign Foreign Talent Recruitment Program

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- 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. 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; 1 Public Law 115–232); or
- 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; 1 Public Law 115–232).

4. APPLICABILITY

This policy applies to covered individuals engaging in federally funded research that is administered through or conducted under the auspices of their affiliation/association with James Madison University.

5. POLICY

James Madison University prohibits covered individuals listed in a federally funded research award or in a proposal for federal funding, whether directly or through a subaward, from participating in a malign foreign talent recruitment program.

JMU continues to support and encourage openness in research and international collaborations that do not jeopardize research integrity or compliance with sponsor requirements.

6. PROCEDURES

- 6.1 All consulting and outside activities, including foreign affiliations as defined by this policy, must be disclosed to JMU in accordance with financial conflict of interest and conflict of commitment expectations. If any external sponsor's standards are more stringent than this policy or JMU's Policy [1106](#) or Policy [2203](#), the sponsor's requirements will take precedence.
- 6.2 Disclosures do not exempt covered individuals from their obligation to disclose activities and other support to federal funding agencies as part of their proposals.
- 6.3 It is the responsibility of covered individuals to ensure consistency between disclosures made to JMU and those made to federal funding agencies. JMU's research administration will provide guidance to covered individuals on what needs to be reported to federal funding agencies based on agency requirements.
- 6.4 Covered individuals participating in a malign foreign talent recruitment program must either terminate their involvement with that program or cease participation in any federally sponsored programs.

7. RESPONSIBILITIES

It is the responsibility of covered individuals to disclose any participation in a foreign Talent Recruitment Program to James Madison University.

All departments, offices and employees that generate, receive, or maintain public records under the terms of this policy are also responsible for compliance with Policy [1109](#) – Records Management.

8. SANCTIONS

Sanctions will be commensurate with the severity and/or frequency of the offense and may include termination of employment or expulsion from the university. JMU will remove covered individuals who JMU learns are participating in a Malign Foreign Talent Recruitment Program after commencing work on federally funded research from federally funded research in accordance with the procedures of the relevant sponsor.

9. EXCLUSIONS

In accordance with Section 10632(d) of the CHIPS Act, a Foreign Talent Recruitment Program excludes certain international collaboration activities, provided that these activities are not funded, organized, or managed by an academic institution or a foreign talent recruitment program listed under paragraphs (8) and (9) of Section 1286(c) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, such as the following:

- Delivering academic talks and publishing scientific content that is not restricted by current regulations.
- Attending global conferences or participating in international exchanges, research initiatives, or programs that promote the free and mutual sharing of scientific knowledge, with the goal of enhancing global scientific comprehension, and that are not subject to current legal controls.

- Providing guidance or writing a recommendation letter for a foreign student attending a higher education institution, upon the student's request.
- Engaging in other international activities determined appropriate by the federal research agency head or designee.

10. INTERPRETATION

The authority to interpret this policy rests with the Vice President of Research, Economic Development and Innovation.

Previous version: N/A

Approved by the president: