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# Report on Research Compliance Volume 19, Number 10. September 21, 2022
# NSF, OSTP Begin Implementing 'CHIPS' Act; Institutions Face New Security Requirements

By Theresa Defino

What is a malign foreign government talent recruitment program and why does it matter?

This is a term with which research compliance officials managing federal awards will need to become familiar, thanks to the Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act of 2022. Newly signed by President Biden, the law prohibits federal employees, contractors and awardees—including institutions and investigators—from participating in such programs.[1]

The CHIPS Act, also titled the Supreme Court Security Funding Act of 2022, requires the White House Office of Science and Technology Policy (OSTP) to issue guidance for federal agencies about this prohibition within 90 days of enactment, or sometime this fall.

The law also includes funding boosts for science agencies—but these amounts must be approved through appropriations legislation before they become reality. If that happens, the National Science Foundation (NSF) would receive $81 billion in funding over five years, an increase of $36 billion. Unrelated to funding, it was given the authority to create a seventh directorate, focused on technology, innovation and partnerships.

The Department of Energy (DOE) also came out ahead, with $67.9 billion authorized over five years, a boost of $30.5 billion. Of that total, DOE's Office of Science would receive $50.3 billion over five years, an increase of $36 billion.

NSF is one of the lead agencies working on the guidance, as Rebecca Keiser, NSF's chief of research security strategy and policy, and Jean Feldman, NSF policy head, explained at a recent meeting of the Federal Demonstration Partnership (FDP).[2] Feldman also described changes in NSF's upcoming 2023 Proposal & Award Policies & Procedures Guide (PAPPG), some of which reflect provisions in the act.[3] The PAPPG is expected to go into effect in January.

The word "malign" appears 11 times in the 393-page law, which requires agency actions to "prohibit participation in any foreign talent recruitment program by personnel of Federal research agencies" and more precisely, "participation in a malign foreign talent recruitment program by covered individuals involved with research and development awards from those agencies."

The law calls for OSTP to "define and describe the characteristics of a foreign talent recruitment program." However, it provided a list of attributes of malign programs, which Keiser called more "helpful" than a list of programs because "the list would've continued to change." She added "there still will be the need to provide more clarity to the community. And we understand, and we'll be working on this."

Keiser pointed out that the list "is a list with an 'or,' so not everything has to be part of the requirements to fit the definition of a program."

## What Makes a Program 'Malign'?

As Keiser described, a malign program, position or activity "requires an individual to take on the following:

- "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;
- "Conflict of interest/commitment; or
- "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.

## Risk Assessment Center to Be Created

Another key requirement under Sec. 10331 calls for NSF to create the Research Security and Integrity Information Sharing and Analysis Organization, which Keiser refers to as a "risk assessment center" with three purposes: "provide information to the academic community on risks regarding research security and breaches to research integrity"; "provide tools to the research community on how to assess and address risks, as well as how to identify and promote principled, positive international collaboration"; and "engagement."

Said Keiser: "I see this as a center where we're going to have positive and real exchange and interchange between the academic community and the government enterprise. The requirement is for this to be run by a non-governmental organization, and we're in the process of determining what procurement mechanism we would use and also determining the proposed structure of this organization to make it the most beneficial."

Specific duties spelled out in the law include "serving as a resource at the Foundation for all issues related to security and integrity of the conduct of Foundation-supported research," and "conducting outreach and education activities for recipients on research policies and potential security risks and on policies and activities to protect intellectual property and information about critical technologies relevant to national security, consistent with the controls relevant to the grant or award."

## Annual Report Requires OIG Info

The new office will also provide a detailed annual report to the House Science, Space, and Technology Committee that includes investigative information from NSF's Office of Inspector General (OIG).

The report must include:

- "a description of the activities conducted by the Office, including administrative actions taken;
- "such recommendations as the Director may have for legislative or administrative action relating to improving research security;
- "identification and discussion of the gaps in legal authorities that need to be improved to enhance the security of institutions of higher education performing research
- "supported by the Foundation; and
- "information on Foundation Inspector General cases, as appropriate, relating to undue influence and security threats to research and development activities funded by the Foundation, including theft of property or intellectual property relating to a project funded by the Foundation at an institution of higher education."

## Training Resources to be Developed

To support the new training requirements, the law calls on OSTP, NSF, NIH and the secretaries of Energy and Defense and other "relevant" federal agencies, within 90 days of enactment, to award contracts for the development of "online research security training modules for the research community and participants in the United States research and development enterprise."

"We are in the process of awarding [funds] for research security modules," Keiser said, with the expectation that these will be made "early in the next fiscal year," which began Oct. 1. But this depends on "when we get our appropriation." It may be a year before these are completed and available, she said.

Under the law, the office is to provide:

- "examples of beneficial international collaborations and how such collaborations differ from foreign government interference efforts that threaten research integrity;"
- "best practices for mitigating security risks that threaten research integrity; and
- "additional reference materials, including tools that assist organizations seeking Foundation funding and awardees in information disclosure to the Foundation."

## Vow to Lessen Burden of Gift Disclosure

Another new requirement of interest in the law—which academic associations opposed—is annual reporting to NSF of "foreign financial transactions and gifts," received "indirectly or directly" of $50,000 or more from a foreign source…associated with a foreign country of concern." This disclosure is limited to support from such countries, unlike what some news reports have stated. This provision is found in Sec. 10339B.

Keiser explained that NSF is "coordinating closely with Department of Education on this," because there already is a requirement to report foreign gifts but at a much higher dollar amount—above $250,000—although it is not linked to specific countries.

"We want a well-coordinated approach where the institutions are not overburdened," Keiser said. "We know that's also going to take systems upgrades and improvements to make sure that [required amounts are] easily reportable by institutions to us."

What happens after disclosure may vary. "Upon review of the disclosures under this section, the Director may

request that a recipient institution provide true copies of any contracts, agreements, or documentation of financial transactions associated with disclosures made under this section," and OIG may become involved according to the law.

NSF, acting in coordination with Keiser's office "and in consultation with the recipient institution, may reduce the award funding amount or suspend or terminate the award if the Director determines—(1) such institution fails to comply with the records retention requirement in subsection (b) or fails to provide information requested under this section; or (2) the Chief of Research Security determines the disclosures under this section indicate a threat to research security," the law states.

**1** H.R.4346 - Supreme Court Security Funding Act of 2022, https://bit.ly/3UlQI1F.
**2** Theresa Defino, "NSF to Delay Some 2023 PAPPG Requirements," *Report on Research Compliance* 19, no. 10 (October 2022).
**3** "Science & Security: Connecting the Dots – One Year Later (A Panel Discussion with Federal Partners)," Federal Demonstration Partnership virtual meeting, September 14, 2022, presentations, including videos, to be posted at https://bit.ly/3eM8ta3.