

(3) Briefings to Congress

Not later than 1 year after December 23, 2022, the Director of the National Institute of Standards and Technology shall offer a briefing to the relevant congressional committees on the progress and current findings from the project under this subsection.

(4) Public report

Not later than 12 months after the completion of the project under this subsection, the Director of the National Institute of Standards and Technology shall make public a report on the results and findings from the project.

(Pub. L. 117–263, div. E, title LIX, § 5913, Dec. 23, 2022, 136 Stat. 3443.)

Editorial Notes

REFERENCES IN TEXT

Executive Order 14067, referred to in subsec. (b)(1)(B)(ii)(I), (3), is Ex. Ord. No. 14067, Mar. 9, 2022, 87 F.R. 14143, which is set out as a note preceding section 5101 of Title 31, Money and Finance.

CODIFICATION

Section was enacted as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Research and Development, Competition, and Innovation Act which in part comprises this chapter.

PART C—RESEARCH SECURITY

§ 19231. Requirements for foreign talent recruitment programs**(a) Purpose**

The purpose of this part is to direct actions to prohibit participation in any foreign talent recruitment program by personnel of Federal research agencies and to prohibit participation in a malign foreign talent recruitment program by covered individuals involved with research and development awards from those agencies.

(b) Guidance

Not later than 180 days after August 9, 2022, the Director of the Office of Science and Technology Policy, in coordination with the inter-agency 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. Such policy guidelines shall—

(1) prohibit all personnel of each Federal research agency, including Federal employees, contract employees, independent contractors, individuals serving under the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4701 et seq¹), Visiting Scientist, Engineering, and Educator appointments, and special government employees other than peer reviewers, from participating in a foreign talent recruitment program;

(2) as part of the requirements under section 6605 of this title, require covered individuals

to disclose if such individuals are a party to a foreign talent recruitment program contract, agreement, or other arrangement;

(3) prohibit research and development awards from being made for any proposal in which a covered individual is participating in a malign foreign talent recruitment program; and

(4) to the extent practicable, require recipient institutions to prohibit covered individuals participating in malign foreign talent recruitment programs from working on projects supported by research and development awards.

(c) Definition of foreign talent recruitment programs

As part of the guidance under subsection (b), the Director of the Office of Science and Technology Policy shall define and describe the characteristics of a foreign talent recruitment program.

(d) Implementation

Not later than one year after August 9, 2022, each Federal research agency shall issue a policy utilizing the guidelines under subsection (b).

(e) Consistency

The Director of the Office of Science and Technology Policy shall ensure that the policies issued by the Federal research agencies under subsection (d) are consistent to the greatest extent practicable.

(Pub. L. 117–167, div. B, title VI, § 10631, Aug. 9, 2022, 136 Stat. 1664.)

Editorial Notes

REFERENCES IN TEXT

The Intergovernmental Personnel Act of 1970, referred to in subsec. (b)(1), is Pub. L. 91–648, Jan. 5, 1971, 84 Stat. 1909, which is classified principally to chapter 62 (§ 4701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of this title and Tables.

§ 19232. Malign foreign talent recruitment program prohibition**(a) In general**

Not later than 24 months after August 9, 2022, each Federal research agency shall establish a policy that, as part of a proposal for a research and development award from the agency—

(1) each covered individual listed in such proposal certify that each such individual is not a party to a malign foreign talent recruitment program in the proposal submission of each such individual and annually thereafter for the duration of the award; and

(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 been made aware of the requirements under this section and complied with the requirement under paragraph (1).

(b) Stakeholder input

In establishing a policy under subsection (a), Federal research agencies shall publish a de-

¹ So in original. Probably should be followed by a period.

scription of the proposed policy in the Federal Register and provide an opportunity for submission of public comment for a period of not more than 60 days.

(c) Compliance with existing law

Each Federal research agency and recipient shall comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) in the establishment of policies pursuant to under¹ subsection (a).

(d) International collaboration

Each policy developed under subsection (a) shall not prohibit, unless such activities are 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 not otherwise controlled under current law;

(2) participation in international conferences or other international exchanges, research projects or programs that involve open and reciprocal exchange of scientific information, and which are aimed at advancing international scientific understanding and not otherwise controlled under current law;

(3) advising a foreign student enrolled at an institution of higher education or writing a recommendation for such a student, at such student's request; and

(4) other international activities determined appropriate by the Federal research agency head or designee.

(e) Limitation

The certifications required under subsection (a) shall not apply retroactively to research and development awards made or applied for prior to the establishment of the policy by the Federal research agency.

(f) Training

Each Federal research agency shall ensure that, as a requirement of an award from each such agency, recipient institutions provide training on the risks of malign foreign talent recruitment programs to covered individuals employed at such institutions, including those individuals who are participating in activities described in subsection (d).

(Pub. L. 117-167, div. B, title VI, §10632, Aug. 9, 2022, 136 Stat. 1665.)

Editorial Notes

REFERENCES IN TEXT

The Civil Rights Act of 1964, referred to in subsec. (c), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VI of the Act is classified generally to subchapter V (§2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

¹ So in original.

§ 19233. Review of contracts and agreements

(a) In general

In addition to existing authorities for preventing waste, fraud, abuse, and mismanagement of Federal funds, each Federal research agency shall have the authority to—

(1) require, upon request, the submission to such agency, by an institution of higher education or other organization applying for a research and development award, of supporting documentation, including copies of contracts, grants, or any other agreement specific to foreign appointments, employment with a foreign institution, participation in a foreign talent recruitment program and other information reported as current and pending support for all covered individuals in a research and development award application;

(2) require such institution of higher education or other organization to review any documents requested under paragraph (1) for compliance with the Federal research agency's award terms and conditions, including guidance on conflicts of interest and conflicts of commitment; and

(3) upon receipt and review of the information provided under paragraph (1) and in consultation with the institution of higher education or other organization submitting such information, initiate the substitution or removal of a covered individual from a research and development award, reduce the award funding amount, or suspend or terminate the award if the agency head determines such contracts, grants, or agreements include obligations that—

(A) interfere with the capacity for agency-supported activities to be carried out; or

(B) create duplication with agency-supported activities.

(b) Limitations

In exercising the authorities under subsection (a), each Federal research agency shall—

(1) take necessary steps, as practicable, to protect the privacy of all covered individuals and other parties specified in the documentation submitted under paragraph (1) of such subsection;

(2) endeavor to provide justification for requests for supporting documentation made under such paragraph;

(3) require that allegations be proven by a preponderance of evidence; and

(4) as practicable, afford subjects an opportunity to provide comments and rebuttal and an opportunity to appeal before final administrative action is taken.

(Pub. L. 117-167, div. B, title VI, §10633, Aug. 9, 2022, 136 Stat. 1666.)

§ 19234. Research security training requirement for Federal research award personnel

(a) Annual training requirement

(1) In general

Not later than 12 months after August 9, 2022, each Federal research agency shall establish a requirement that, as part of an application for a research and development award from the agency—