

September 9, 2024

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-232 The Capitol
Washington D.C. 20515

The Honorable Hakeem Jeffries
House Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington D.C. 20515

Dear Speaker Johnson and Minority Leader Jeffries,

On behalf of the American Council on Education and the undersigned higher education associations, we write regarding several pieces of legislation which will be considered this week by the U.S. House of Representatives related to the People's Republic of China (PRC). Below we highlight our views on the specific bills we have identified that will impact our colleges and universities, including our researchers, students, and campuses.

Our colleges and universities acknowledge the threats posed by foreign malign actors and governments that seek to undermine U.S. national security through economic espionage and malign influence activities. The higher education community has worked closely for the past several years with the various federal agencies to address these threats, including addressing and improving research security, raising awareness of foreign malign influence and transnational repression of students and faculty, as well as the implementation of new policies around graduate student visas. All of these efforts seek to address bipartisan national security concerns.

We understand that the slate of legislation to be considered includes H.R. 1157, "Countering the PRC Malign Influence Fund Authorization Act of 2023." This bill, which we support, would authorize new funding to be used by the U.S. Department of State to identify specific strategic priorities to counter malign influence activities, including those activities that "...undermine the national security...or, undermine the economic security of the United States." We believe this could be helpful in establishing or expanding programs at our institutions seeking to support civil society, strengthen democracy, as well as countering PRC-funded language and cultural study programs. We also support H.R. 7686, "To amend the Research and Development, Competition, and Innovation Act to clarify the definition of foreign country for purposes of malign foreign talent recruitment restriction, and for other purposes" which would provide an important clarification to the "CHIPS and Science Act of 2022" requirements related to research security.

However, we strongly oppose H.R.1398, "Protect America's Innovation and Economic Security from CCP Act of 2024," which would establish a "CCP Initiative" in the National Security Division of the U.S. Department of Justice (DOJ), reviving the previously known "China Initiative." While the "China Initiative" was ended by DOJ in 2022, DOJ has continued to devote considerable resources to address threats from numerous countries of concern, including China. We are concerned that re-establishing an initiative focused on a specific

country will be perceived as racial profiling. The “China Initiative” had a deep and disturbing impact on the research community, and led to few actual convictions, with many cases brought under the initiative ending in dropped charges, dismissals, and acquittals. Since the ending of the “China Initiative” we have seen DOJ, as well as the Inspector Generals of the federal research agencies, continue to pursue cases with a focus on compliance, administrative actions, and sanctions instead of criminal cases. This has led to several fines and institutional settlements with colleges and universities, as well as sanctions against researchers who are not in compliance with the various reporting requirements regarding foreign funding. This country-agnostic approach focuses on compliance and helps address some of the concerns from the larger community regarding racial profiling. As noted in the recent National Academies of Science, Engineering, and Medicine (NASEM) consensus study report International Talent Programs in the Changing Global Environment: “The nation has had difficulty cultivating research environments that are welcoming and inclusive for all and do not inadvertently discriminate against people on the basis of national origin or ethnicity during, and in the aftermath of, the U.S. Department of Justice’s China Initiative.... All efforts should be taken to ensure that programs and policies intended to protect critical research from malign foreign influence do not target or inadvertently discriminate against people on the basis of national origin or ethnicity.” We believe this legislation will cause more unnecessary harm to our researchers, as well as the U.S. scientific enterprise and our national security, while also diverting and confusing the current efforts by DOJ to address these very important issues.

We also strongly oppose H.R.1516, the “DHS Restrictions on Confucius Institutes and Chinese Entities of Concern Act,” which would ban any Department of Homeland Security (DHS) funding from U.S. institutions of higher education that host Confucius Institutes or have any type of working relationships with the majority of Chinese colleges or universities. Following the previously enacted legislation related to Confucius Institutes, which creates restrictions around U.S. Department of Defense and National Science Foundation funding¹, there are fewer than five remaining in the United States.² This also follows efforts by our associations to amplify the bipartisan concerns regarding these institutes.³ NASEM has also published two reports on the topic, including one on how institutions can access and mitigate risks around any foreign funded language and cultural institute.⁴ Duplicative and expanded restrictions at other federal agencies are unnecessary and will likely only generate confusion given other congressional and agency actions focused on research security. We do not believe a duplicative program, creating even more restrictions at yet another federal agency, will be helpful.

H.R. 1516 also creates a new category of “Chinese Entities of Concern,” which is so broadly defined it would likely include the majority of Chinese colleges and universities. This legislation, which appears to have substantially expanded since it was considered by the House Committee on Homeland Security, would ban any DHS funding from a U.S. institution with a “relationship” with a Chinese entity of concern.⁵ This broad ban would likely end student exchange programs between U.S. and Chinese institutions, study abroad programs for U.S. students in China, as well as important research and development work on issues of national importance, which are already in compliance with the various research security provisions created to protect U.S. research. Additionally, given that the bill would ban any DHS funding, it would restrict FEMA funds that would be used to respond to natural disasters. Moreover, it would effectively create a broad ban on any work with Chinese universities, something which has previously been carefully considered and avoided in the creation of research security

provisions. It is also duplicative of other lists that have been created, such as the annually updated Department of Defense list of foreign institutions engaging in “problematic activity” created under Section 1286 of the FY2019 National Defense Authorization Act legislation (NDAA).⁶

Our associations and our institutions continue to work with federal agencies to implement new reporting requirements under NSPM-33, which is targeted at improving research security and addressing concerns around federal funding. We are also engaged in implementing new requirements under the “CHIPS and Science Act” and ensuring compliance with statutory requirements enacted in previous NDAA legislation.⁷ Rather than adding new duplicative and confusing restrictions, Congress should focus on implementation of these existing laws. We strongly oppose H.R. 1398 and H.R.1516 and urge Congress to reject these bills.

Sincerely,



Ted Mitchell, President

Cc: The Honorable Michael Burgess, Chairman, House Committee on Rules
The Honorable Jim McGovern, Ranking Member, House Committee on Rules

On behalf of:

American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Public and Land-grant Universities
National Association of Independent Colleges and Universities

¹ This includes restrictions established in the FY2019 and FY2021 National Defense Authorization Acts (NDAAs) regarding Department of Defense funding for institutions hosting CIs: https://basicresearch.defense.gov/Portals/61/Documents/Academic%20Research%20Security%20Page/Confucius%20Institute%20Waiver%20Program%20Guidance_3.28.2023.pdf?ver=u8kHF5hDwgV-Ofm9gBeXKQ%3D%3D, as well as restrictions around funding from the National Science Foundation (NSF) for institutions that host CIs, established in the 2022 “CHIPS and Science Act”: <https://new.nsf.gov/research-security#policies>.

² October 2023 U.S. Government Accountability Office (GAO) report: “CHINA: With Nearly All U.S. Confucius Institutes Closed, Some Schools Sought Alternative Language Support,” GAO-24-10598: <https://www.gao.gov/products/gao-24-105981>

³ July 2018 letter from ACE President Ted Mitchell to member presidents and chancellors regarding Confucius Institutes: <https://www.acenet.edu/Documents/Letter-on-Confucius-Institutes.pdf>.

⁴ NASEM study “Confucius Institutes at U.S. Institutions of Higher Education”: <https://www.nationalacademies.org/our-work/confucius-institutes-at-us-institutions-of-higher-education>

⁵ Rules Committee Print 118-46 H.R.1516, as ordered reported by the Committee on Homeland Security: “(1) CHINESE ENTITY OF CONCERN.—The term ‘Chinese entity of concern’ means any university or college in the People’s Republic of China that— (A) is involved in the implementation of military-civil fusion; (B) participates in the Chinese defense industrial base; (C) is affiliated with the Chinese State Administration for Science, Technology and Industry for the National Defense; (D) receives funding from any organization subordinate to the Central Military Commission of the Chinese Communist Party; or (E) provides support to any security, defense, police, or intelligence organization of the Government of the People’s Republic of China or the Chinese Communist Party.” And “(4) RELATIONSHIP.—The term ‘relationship’ means, with respect to an institution of higher education, any contract awarded, or agreement entered into, as well as any in-kind donation or gift, received from a Confucius Institute or Chinese entity of concern.”

https://docs.house.gov/billsthisweek/20240909/RCP_H1516_xml.pdf

⁶ DOD FY23 Lists Published in Response to Section 1286 of the NDAA for Fiscal Year 2019 (Public Law 115-232): <https://basicresearch.defense.gov/Portals/61/Documents/Research%20Security/1286%20List.pdf?ver=nEagju7uAK3DCdfMt9yZGg%3d%3d>

⁷ See AAU list of “Action Taken to Address Foreign Security Threats, Undue Foreign Interference and Protect Research Integrity at U.S. Universities”: <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Science-Security/Actions-Taken-Research-Security.pdf>