



One Dupont Circle NW
Washington, DC 20036
(202) 939-9300
acenet.edu

September 7, 2021

The Honorable Bobby Scott
Chairman
Education and Labor Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Virginia Foxx
Ranking Member
Education and Labor Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Patty Murray
Chairwoman
Health, Education, Labor and Pensions
Committee
U.S. Senate
Washington, DC 20510

The Honorable Richard Burr
Ranking Member
Health, Education, Labor and Pensions
Committee
U.S. Senate
Washington, DC 20510

The Honorable Gregory Meeks
Chairman
Foreign Affairs Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Michael McCaul
Ranking Member
Foreign Affairs Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Bob Menendez
Chairman
Foreign Relations Committee
U.S. Senate
Washington, DC 20510

The Honorable Jim Risch
Ranking Member
Foreign Relations Committee
U.S. Senate
Washington, DC 20510

The Honorable Maxine Waters
Chairwoman
Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Sherrod Brown
Banking, Housing, and Urban Affairs
Committee
U.S. Senate
Washington, DC 20510

The Honorable Pat Toomey
Banking, Housing, and Urban Affairs
Committee
U.S. Senate
Washington, DC 20510

Dear Chairs and Ranking Members:

On behalf of the undersigned higher education associations, I write regarding conference consideration of legislation supporting innovation, competition, and foreign security, including S. 1260, the U.S. Innovation and Competition Act (USICA); H.R. 2225, the National Science Foundation (NSF) for the Future Act; and H.R. 3524, the Ensuring American Global Leadership and Engagement (EAGLE) Act.

We applaud the House and Senate for taking actions to strengthen the U.S. education and research enterprise and support the federal research agencies. However, we have serious concerns regarding several provisions in these bills that would have long-term, detrimental impacts on our institutions' ability to compete and work with international partners to address issues of global importance.

Colleges and universities take very seriously threats to research security and the concerns raised by federal policymakers regarding undue foreign influence and illicit technology transfer. We share a strong interest with the government in safeguarding the integrity of government-funded research and intellectual property resulting from it. We have strongly supported efforts to strengthen research security in recently enacted legislation¹ and the work of the White House Office of Science and Technology JCORE Research Security Subcommittee.² For several years, we have worked with national security and federal research agencies, such as the FBI, the Office of the Director of National Intelligence, the National Institutes of Health (NIH), and the National Science Foundation (NSF), to educate campus leaders, faculty, and staff about the threat from undue foreign influence and to revamp campus policies and practices to better protect institutions from that threat.

We are concerned, however, that specific provisions under consideration would undermine the ability of U.S. colleges and universities—including smaller institutions, Historically Black Colleges and Universities, Minority Serving Institutions, and community colleges—to engage in valuable international research partnerships, attract top international students and scholars, and enhance the transparency of financial relationships they have with foreign entities. Regrettably, the net effect of this legislation intended to enhance our economic competitiveness may actually undermine that laudatory goal. We also support the letters recently sent by the [Association of American Universities](#) and the [Association of Public and Land-grant Universities](#) that flag many of these same problematic provisions.

We are specifically concerned with:

- **Section 3132 of S. 1260, which would require prior review of non-federally funded research by the Committee on Foreign Investment in the United States (CFIUS), including many foreign gifts donated to and contracts of at least \$1 million related to critical technologies entered into by our institutions.** This requirement will overwhelm CFIUS with a task it was never designed to undertake, result in huge new compliance costs for institutions, and significantly infringe on international research collaborations. In addition, it would be highly unusual to single out higher education for this type of review, when no industry or private research entity would be subject to such reviews. We outlined our concerns with this provision in an [April 20, 2021, letter](#) to the Senate Committee on Foreign Relations.
- **Section 6124 of S. 1260, which would create a new Section 124 within the Higher Education Act.** This provision, created without a formal hearing and markup, is a major new requirement that would require a large number of higher education institutions to create and maintain searchable databases of all gifts or contracts with a foreign actor or entity received by individual researchers and staff. This means faculty and staff would have to report when a

¹ These include the Securing American Science and Technology Act (SASTA), language in Section 1746 of the FY 2020 National Defense Authorization Act (P.L. 116-92), and Section 223 of the FY 2021 National Defense Authorization Act regarding disclosure of funding sources in applications for federal research and development awards.

² See January 2021 Presidential Memorandum on United States Government-Supported Research and Development National Security Policy (NSPM-33) and the White House OSTP/NSTC report titled Recommended Practices for Strengthening the Security and Integrity of America's Science and Technology Enterprise.

visiting foreign scholar buys lunch on campus for them or gives them a small gift, such as a coffee mug with the logo of the foreign visitor's home university. And once again, it imposes a requirement on faculty and staff at colleges and universities that does not apply to any other organization in the U.S. that receives federal funding. It does not, for example, apply to researchers at national laboratories or private organizations and industry who receive government grants and contracts. We support and are working to help universities educate individual faculty and staff about concerns of foreign influence to enhance their vigilance. We also support full faculty disclosure of foreign research funding sources to federal agencies as already required by law and strong conflict of interest policies. But this provision will result in collection of an ocean of data without much utility. There are no indications that this increase in data collection will address the fundamental concerns regarding research security and foreign influence, but instead could inadvertently undermine the U.S. economic competitiveness these bills are intended to enhance.

We have engaged outside counsel to prepare an analysis regarding the new Section 124 provision (see attached). The memo concludes that Section 124 is unworkable, burdensome, overly complicated, and may well be ineffective in discouraging foreign influence or improving research security. Specifically, the memo finds that Section 124 is unduly onerous while not providing additional protections or transparency against foreign influence; is invasive and violates the privacy of U.S. higher education faculty and staff without significantly advancing its intended goal; and is overly vague and would be undermined by inconsistent compliance because of the broad reporting requirements. A far more effective approach would be enhanced sanctions and enforcement of laws already on the books against individual faculty or other campus staff for failing to properly disclose foreign funding to federal science agencies as part of the grant application and oversight process.

- **The proposed reduction in S. 1260 of the reporting threshold in Section 117 of the Higher Education Act from the current level of \$250,000 to \$50,000.** We share the goal of improving transparency of the relationships colleges and universities have with foreign actors to help identify nefarious conduct or malign foreign influence. However, lowering the threshold would undercut that goal by vastly increasing the number of gifts or contracts reported to the Department of Education (ED), even though the risks posed by such small gifts or contracts are minimal. The lower threshold would also increase ED's workload exponentially, when the department has already proven unable to effectively manage the existing 117 requirement. Rather than lowering the threshold across the board, heightened and more effective scrutiny could be achieved through a lower threshold targeting gifts or contracts only from specific countries of concern (e.g., China, Russia, Iran, and North Korea). In addition, we are concerned about vague new expansive provisions and fines added to Section 117, such as the requirement to report "contracts with undetermined monetary value." This language should be struck in the conference as it is poorly defined and is unclear what it is meant to capture.
- **Two provisions in S. 1260 that place further restrictions on the eligibility for federal funding from ED and NSF on higher education institutions that support Confucius Institutes (CIs).** Section 1062 of the William M. (Mac) Thornberry National Defense Authorization Act of FY 2021 imposed a "Limitation on provision of funds to institutions of higher education hosting Confucius Institutes." This language already limits Department of Defense (DOD) funding to institutions that host CIs, unless that institution receives a waiver. DOD is actively engaged in the process of creating a waiver. We believe Section 6122 and Section 2525 of S. 1260 should be aligned and reference back to the waiver process established in the FY 2021 NDAA, as it will be important to align that process across federal agencies.

We urge the conference to adopt in the final conference report:

- The amendment offered by Rep. Tom Malinowski (D-NJ) and included in H.R. 3524 that would create the “Liu Xiaobo Fund for the Study of Chinese Language” and authorize \$10 million in new spending at the U.S. Department of State. This new fund will encourage institutions to establish new Chinese language programs as an alternative to the programs previously overseen and sponsored by Confucius Institutes.
- The reauthorization of the Title VI international and foreign language education programs, as included in Section 6121 of S.1260. These programs, the federal government’s most comprehensive effort to develop national capacity in international and foreign language education, help educate individuals whose abilities ensure successful international engagement among America's education, government, and business sectors. The reauthorization would strengthen these important programs, while also expanding and diversifying the types of institutions participating.

We look forward to working with you to address our concerns and advance the broader goal of enhancing our economic competitiveness and security as this process moves forward towards final consideration.

Sincerely,



Ted Mitchell, President

Attachment: “Memorandum on U.S. Innovation and Competition Act of 2021- Section 6124 (b) Issues”

Cc: Claire Viall, Professional Staff Member, House Education and Labor
Amy Jones, Education and Human Services Policy Director, House Education and Labor
Bryce McKibben, Senior Policy Advisor, Senate HELP Committee
David Cleary, Staff Director, Senate HELP Committee
Anubhav Gupta, Senior Professional Staff Member, House Foreign Affairs
Brendan Shields, Staff Director, House Foreign Affairs minority
Megan Bartley, Chief Investigative Counsel, Senate Foreign Relations
Chris Socha, Staff Director, Senate Foreign Relations
Daniel McGlinchey, International Affairs Director, House Financial Services Committee
Kim Betz, Policy Director, House Financial Services Committee
Phil Rudd, Professional Staff Member, Senate Banking, Housing, and Urban Affairs
Dylan Clement, National Security Advisor, Senate Banking, Housing, and Urban Affairs

On behalf of:

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