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May 24, 2021

The Honorable Chuck Schumer
United States Senate
S-221, The Capitol
Washington, DC 20510

The Honorable Mitch McConnell
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

Dear Leader Schumer and Leader McConnell,

On behalf of the undersigned higher education associations, I write in strong opposition to amendment #1802 being offered by Senator Rubio as part of the consideration of S.1260, the “U.S. Innovation and Competition Act of 2021.”

This amendment would require three separate federal security agencies—the Director of National Intelligence, the Director of the National Counterintelligence and Security Center, and the Director of the FBI—to certify if a person receiving funding under this act “has sufficient protections in place to protect against misappropriation of U.S. intellectual property, research and development, and innovation efforts, and other threats from foreign governments and other entities.” Since S. 1260 authorizes programs at several federal science agencies, this would be broadly applied to grants from the National Science Foundation (NSF), NASA, the Department of Energy, the Department of Commerce, and others.

We support efforts to address threats of foreign influence and interference, especially in federally funded research. However, we strongly oppose this amendment for several reasons. First, this amendment ignores the fact that universities already have in place multiple ways to protect research conducted on behalf of the federal government, including any intellectual property developed under federal research grants. We regularly develop, implement, and provide to appropriate federal agencies Technology Control Plans when export controls or other appropriate federal research regulations are involved. We also require that any intellectual property (IP) developed as a result of federally funded research is disclosed by faculty, at which point a university will often seek a patent to protect this IP. When and if the faculty fail to disclose such information about IP to the university, the university will often take legal action since IP generated from federal research is the property of the university, not the individual faculty member.

Second, the requirements in this amendment work against the very objectives of this bill, slowing down as opposed to speeding up our ability to outrun, out innovate, and successfully compete with China. In fact, the amendment would paralyze scientific research in the U.S. NSF alone awards 12,000 grants every year. Delaying awards until three separate agencies have conducted a security review will add months, perhaps years, to the process by which grants are awarded and cost federal agencies millions of dollars.

Third, it's not clear what problem this amendment is attempting to address. Criminal charges brought against the very small number of federally funded researchers to date involve the failure to disclose foreign funding not theft of intellectual property.

Beyond research, many of our institutions, including community colleges receive funding from NSF and the other federal science agencies to strengthen STEM programs, create STEM workforce and training programs, and increase diversity within the STEM fields. Some NSF funding goes to elementary and secondary schools. The broad implications of this amendment mean thousands of organizations would be affected by this amendment but with little or no impact for national or economic security.

The goal of this legislation is to surpass China by making us more competitive. Instead, this provision will paralyze our research and innovation capacity, grinding it to a halt, for no apparent return on improved security. Because of this, we strongly oppose this amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Mitchell". The signature is stylized and cursive.

Ted Mitchell
President

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

Cc: United States Senate