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July 21, 2020

The Honorable Ron Johnson
United States Senate
Committee on Homeland Security and
Governmental Affairs
Washington, D.C. 20015

The Honorable Gary C. Peters
United States Senate
Committee on Homeland Security and
Governmental Affairs
Washington, D.C. 20015

Dear Chairman Johnson and Ranking Member Peters,

On behalf of the American Council on Education (ACE) and the undersigned associations, we write with concerns regarding S. 3997, the "Safeguarding American Innovation Act," being considered this week by the Senate Committee on Homeland Security and Governmental Affairs.

Our member institutions share a common interest with the government in ensuring that intellectual property, proprietary information, sensitive data, and other classified and/or otherwise controlled government information developed or housed at our institutions is not susceptible to academic exfiltration, espionage, or exploitation. Accordingly, we welcome the opportunity to continue to work constructively and cooperatively with Congress to protect national security interests associated with research and educational activities conducted at universities.

We appreciate the bipartisan and thoughtful efforts around this legislation. However, we continue to be concerned that several provisions of this legislation will impede international partnerships, discourage international students from attending our institutions, and will complicate efforts to encourage transparency. Our comments focus specifically around Sections 5, 6, and 7 of the legislation.

Section 5 would amend the Immigration and Nationality Act (INA) to include language which would allow the Department of State to deny visas to individuals based on the suspicion of activity, rather than on an actual violation of the law. The State Department currently has the authority to deny visa applicants based on national security concerns, and we are concerned that this language could be used to keep out individuals who are coming to study in a broad range of science, technology, engineering, and mathematics (STEM) fields or carry out fundamental research, as well as possibly increasing administrative processing for our students and scholars. In addition, visa policy is based on reciprocity and, if this were enacted, it is very possible other countries would move to reciprocate, denying entry to any U.S. citizen seeking to enter based on the same criteria, with significant consequences for U.S. commerce and innovation.

Section 6 would increase the administrative hurdles for sponsors of J-1 educational and cultural exchange programs. Under this section, a sponsor, such as a college or university,

would need to disclose to the Department of State whether an exchange visitor that, “as a primary part of his or her exchange program, will have released to them controlled technology or technical data regulated by export control laws” through various activities in the exchange program. It would also require sponsors to provide a plan to the Department of State that “establishes appropriate safeguards.” We continue to have significant concerns about the implementation of this language. In addition, universities and industry are already required to comply with security requirements and, as necessary, develop security control plans for foreign nationals under existing export control rules. Therefore, these new requirements appear unnecessary and will create further burden for our institutions acting as J-1 sponsors.

Section 7 would amend Section 117 of the Higher Education Act (HEA) requiring institutions of higher education to report foreign gifts made to an institution. The language included in the “Safeguarding American Innovation Act” would lower the reporting threshold from \$250,000 to \$50,000. This would greatly increase the reporting burden for our institutions, and will likely capture institutions who have not previously reported, such as community colleges. In addition, the legislation includes language that expands Section 117 reporting beyond institutions to include payments to individual staff. By greatly expanding the volume of information to be reported this change may actually undermine the transparency of the relationships colleges and universities have with foreign individuals and entities, and efforts to identify nefarious conduct or inappropriate relationships. If you are looking for a needle, it makes no sense to make the haystack bigger.

In addition, this excessively low threshold will impose significant compliance burdens on institutions while it remains unclear how useful the additional information will be in assessing foreign government influence. For example, at a mid-sized, private research university reporting would increase from an average of 20 gifts and contracts, to over 90 gifts and contracts. A large, public research university would see their reporting increase from 65 gifts and contracts each reporting period, to over 250 gifts and contracts under this new threshold.

Section 7 also includes language that could be interpreted to expand reporting to capture amounts to individual staff, even if the institution is unaware of such payments. Institutions will be exposed to sanction and liability even though they must rely on the truthfulness of faculty and staff who are reporting this information, which we know can be suspect from several recent high-profile cases of faculty misconduct involving relationships with foreign actors. Moreover, faculty engaged in federally funded research are already required to disclose foreign support on federal grant applications and conflicts of interest. If the goal is to enhance transparency and to protect institutions against malign foreign actors, it would be more effective to enhance scrutiny and sanctions against individual faculty and staff for their misconduct. It is also unclear why this should be led by the Department of Education, rather than the federal research agencies who are already engaged on improving and standardizing individual disclosures of foreign funding.

And finally, we encourage you to work closely with the Senate Committee on Health, Education, Labor, and Pensions on changes to Section 117 and amending the HEA. They have engaged with our institutions on these important issues in the lead up to the reauthorization of the HEA.

We look forward to working productively with you as you advance legislation to improve national security.

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 Catholic Colleges and Universities
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Council for Christian Colleges and Universities
Council of Graduate Schools
NAFSA: Association of International Educators
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators

Cc: The Honorable Rob Portman
The Honorable Tom Carper
The Honorable Lamar Alexander
The Honorable Patty Murray