



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

May 17, 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 American Council on Education, I write regarding the Senate consideration of the “Endless Frontier Act” and with serious concerns regarding several of the provisions being considered as part of the larger legislative package.

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. In that regard, we have strongly supported efforts to strengthen research security in several recently enacted bills¹ and the work of the White House Office of Science and Technology JCORE Research Security Subcommittee.² For several years, we have worked with the national security and federal research agencies 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 applaud the Senate for advancing the Endless Frontier Act (EFA) which seeks to strengthen the National Science Foundation (NSF), the federal research enterprise, and research security as part of a larger effort to enhance our economic competitiveness. America’s long-term economic growth depends upon sustained and strong investments in scientific research. Indeed, economists generally attribute more than half of all growth in the United States since the end of World War II to technological innovations and advancements, many of which trace their origins to federal investments in scientific research. We are pleased that the relevant Committees have worked to address our concerns in several areas of the various pieces of legislation, including provisions related to visas and J-1 sponsors in the “Safeguarding American Innovation Act.”

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.

However, we are deeply concerned that several provisions of these bills would detrimentally impact many colleges and universities, including smaller institutions and community colleges, impede international research partnerships, discourage international students from attending our institutions, and complicate efforts to enhance transparency of the financial relationships between institutions of higher education and foreign sources. Regrettably, the net effect of this legislation which is intended to enhance our economic competitiveness, in part through enhancing research activity, may undermine that laudatory goal.

We are specifically concerned with:

- Section 138 of the “Strategic Competition Act of 2021”, which would require the Committee on Foreign Investment in the United States (CFIUS) to review many foreign gifts donated to and contracts 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, as well as delay international research collaborations.
- The proposal of a new Section 124 of the Higher Education Act, without a formal hearing and markup, is a major new requirement which would require a large number of institutions of higher education to maintain searchable databases for every dollar received by individual researchers and staff at institutions of higher education. We support the goal of working to educate individual faculty and staff about concerns of foreign influence to enhance their vigilance, and we support ironclad conflict of interest provisions. But we believe this provision will result in collection of an ocean of data, much of it trivial and inconsequential, and do little to address the fundamental concerns regarding research security and foreign influence.
- We also remain concerned about lowering the reporting threshold to \$50,000 from the current level of \$250,000 under the updated Section 117 of the Higher Education Act. 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), needlessly capturing community colleges and small private institutions in the process even though the risks posed by such small gifts or contracts are minimal. This will only magnify the challenge for ED to effectively utilize the data, inevitably leading to reduced attention and scrutiny of individual reports, while simultaneously saddling more institutions with a burdensome regulatory mandate. Rather than lowering the threshold across the board, heightened and more effective scrutiny could be achieved through a lower threshold targeting gifts or contracts from certain countries of concern, such as the list of countries specified in Sec. 303 in Title III of the Endless Frontier Act which focuses on enhancing research security. 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.”

We also understand that there may be an effort to expand information reported through the Department of Homeland Security Student Exchange Visitor and Information System (SEVIS)

regarding partnerships with foreign governments, and international students receiving support from foreign governments; possible provisions regarding freedom of speech on college campuses; as well as possible language expanding the number of federal agencies reviewing Memorandums of Understanding (MOUs) establishing Confucius Institutes.

The number of additional provisions being added to the legislation, without hearings or substantial engagement with the higher education community, is concerning because they threaten to make international exchanges and scholarship burdensome and unworkable in ways that will undermine the U.S. research enterprise and ultimately weaken U.S. economic competitiveness.

While we appreciate the Senate's quick action on this legislation, the speed of consideration does not adequately allow for Congress, the public, or our members to assess how the array of new provisions being considered for inclusion may impact our country. As drafted, this legislation includes harmful and unintended consequences for U.S. colleges and universities. 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 in the Senate.

Sincerely,

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

Ted Mitchell, President