

## Talking Points on the U.S. Innovation and Competition Act of 2021

### Section 3138: Requires Prior Federal Approval of Non-Federally Funded Research Projects

#### Background

- The U.S. Innovation and Competition Act of 2021 (S.1260), currently being debated on the Senate floor, contains a provision (Sec. 3138) that would have a significant impact on gifts and research contracts with foreign sources.
- This provision would mandate that restricted gifts or research contracts of \$1 million or more between universities and any foreign individual, entity, or government be subject to a prior approval process at the Committee on Foreign Investment in the United States (CFIUS).

#### Talking Points

- Under this proposal, for the first time the federal government would have the broad authority to decide, in advance, what privately funded research could be conducted on college campuses. This could lead to research projects being denied funding for political reasons, not on their scientific merit.
- The provision establishes a policy mechanism without ever identifying the precise problem it is trying to solve, why CFIUS is an appropriate review mechanism, or how CFIUS would determine when a gift or contract is problematic.
- This requirement would result in huge new compliance costs for institutions and delay or prohibit research projects, and will overwhelm CFIUS with a task it was never designed to undertake.

### Section 124: Requires Colleges to Collect Information about Gifts to Individual Faculty and Staff

#### Background

- S.1260 would create a new requirement in Sec. 124 of the Higher Education Act entitled “Institutional Policy Regarding Foreign Gifts and Contracts to Faculty and Staff.”
- This provision requires campuses with research and development activities of \$5 million or more<sup>1</sup> to collect data on any foreign gifts or contracts received by individual faculty and staff. Institutions must:

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<sup>1</sup> Annual total R&D expenditures for institutions of higher education can be found here: <https://ncesdata.nsf.gov/profiles/site?method=rankingBySource&ds=herd>

- Have a policy requiring faculty, professional, and other staff who are engaged in research and development to disclose to the institution any gifts from, or contracts entered into, with a foreign source (in other words, a \$15 lunch would need to be reported);
  - Create a searchable database of the disclosed gifts or contracts; and,
  - Develop a plan to identify and manage potential information gathering by foreign sources through espionage targeting faculty, professional, and other staff who are engaged in research and development arising from disclosed gifts or contracts.
- Sec. 124 uses the definition of “gift” and “foreign source” in Sec. 117 (foreign gift and contract reporting requirements) of the Higher Education Act, but expands the definition of “contract” to include:
    - Any “affiliation, agreement, or similar transaction” involving the use of the “name, likeness, time, services or resources” of faculty, professional, and other staff who are engaged in research and development. This could include an honorarium, visiting scholar status, or even a speaking engagement at a foreign campus.

### **Talking Points**

- This new requirement would force colleges and universities to ensure that faculty and staff maintain this information in a searchable database. This seriously invades the privacy of faculty and staff and allows private financial transactions of faculty and staff to be made public.
- There does not appear to be a dollar amount associated with the reporting requirement, meaning a \$15 lunch would be covered. This will make it extremely difficult for institutions to collect the requisite information and could overwhelm them in the quantity of data to be collected.
- Schools are totally dependent upon faculty and staff to voluntarily report data and information.
- We must take steps to educate faculty and staff about concerns of foreign influence to enhance their vigilance, and we support ironclad conflict of interest provisions. But 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.

### **Section 117: Lowers the Reporting Threshold on the Disclosure of Foreign Gifts**

#### **Background**

- S. 1260 amends Section 117 foreign gift and contract reporting by lowering the reporting threshold from \$250,000 to \$50,000. This would capture institutions which have not

previously reported, such as smaller colleges and community colleges, and greatly increase the reporting burden.

### **Talking Points**

- 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 Education Department (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.
- The threshold should remain at \$250,000. Lowering the threshold would substantially increase the amount of data being reported, producing many more than the 7,000 annual reports currently received by ED, which cannot manage the data that it currently receives—it already has two databases that do not reflect the same information.
- Gifts or contracts of concern will be few and far between. Indeed, ED has never identified any instances of malign foreign influence through this reporting.
- When looking for a needle in a haystack, dramatically increasing the size of the haystack will make identifying nefarious conduct or malign foreign influence more difficult by reducing the scrutiny that is given to individual reports.
- Rather than lowering the threshold across the board, 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 the Endless Frontier Act (Title III, Sec. 303), which focuses on enhancing research security.
- The lower threshold is likely to capture other gifts and contracts such as alumni giving, which was never meant to be captured by reporting requirements and would not otherwise raise national security concerns.
- We also are concerned about vague new expansive provisions and fines added to Sec. 117, such as the requirement to report “contracts with undetermined monetary value” and new sanctions for noncompliance, as well as the creation of a new compliance officer for institutions submitting a Sec. 117 report.