



January 28, 2019

Chloe Kontos, Executive Director
National Science and Technology Council
Office of Science and Technology Policy
Executive Office of the President
Eisenhower Executive Office Building
1650 Pennsylvania Avenue
Washington, DC 20504

Submitted via email

Dear Executive Director Kontos,

On behalf of the undersigned higher education associations, I write to submit these comments in response to the request for information (RFI) on the American research environment published November 26 in the Federal Register. We are grateful for the opportunity to respond to the National Science and Technology Council regarding the important work of the Joint Committee on the Research Environment (JCORE) on these important issues. We will limit our comments specifically to two issues: 1) strengthening the security of America's science and technology (S&T) research enterprise; and, 2) fostering safe, inclusive and equitable research environments.

Strengthening the Security of America's S&T Research Enterprise

The higher education community takes extremely seriously the concerns raised by federal policymakers regarding undue foreign influence and potential 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. Furthermore, encouraging, enabling, and protecting academic freedom and free speech from untoward influence and/or interference – foreign or domestic – is a cornerstone of American higher education.

Regarding research security, we believe there are several actions the U.S. government should take (or continue to take):

- **Continue to engage with diverse groups of stakeholders.** The higher education community consists of a diverse array of institutions with various missions and models, from minority serving and faith-based institutions to private liberal arts colleges to public regional and flagship universities. We applaud Director Droegemeier's continuing efforts to engage with the community through stakeholder meetings in Washington D.C. as well as regional information-sharing efforts. It is important to continue and expand these conversations, and to do so in a way that engages the breadth of the higher education landscape.
- **Continuing coordination among the federal agencies.** Coordination between the federal agencies and the higher education community on science and security will facilitate and enhance the security of America's research enterprise. We strongly support such efforts. There

is one area where we have been unable to establish a dialogue with a federal agency and that is because the U.S. Department of Education refuses to meet or engage with the higher education community regarding Section 117 Foreign Gift and Contract reporting. While colleges and universities want to do the right thing and comply fully with foreign gift and contract reporting requirements, ED's actions only make that more difficult. Instead of clarifying the current requirements so that they are clear and unambiguous, the Department proposed an expanded information collection process that imposes a vast array of new requirements far exceeding the language of the statute.¹ The Department's continuing punitive and non-responsive actions on this issue have caused many institutions to be afraid of asking the Department questions for fear of being investigated. Schools that want to do the right thing should not have to guess at compliance issues. This runs counter to the goal of enhanced transparency of foreign gift and contract reporting. We appreciate JCORE's continuing attention to this issue.

- **Continue to educate and work with universities regarding existing regulations, and work collaboratively with institutions to bring them into compliance.** The federal government should continue to work with universities and colleges to bring them into compliance, unless actions by individuals or institutions were carried out with malfeasance and/or serious negligence. For our part, higher education associations continue to discuss with colleges and universities issues regarding potential undue foreign influence and illicit technology transfer risks and the need for compliance with existing regulations, specifically in the areas of foreign gifts and contracts, federal grant compliance requirements, visa regulations, and disclosure of foreign support.² We have seen many of our member institutions proactively address these issues in the last two years. We are anxious to increase the number of schools who are meeting the letter and spirit of all federal regulations.
- **Support the reaffirmation of National Security Decision Directive (NSDD) 189. NSDD 189, created in 1985, established a clear distinction between fundamental research and classified research.** We urge JCORE to take into account the recommendations made by the recent JASON report regarding the importance of fundamental research and ensuring that fundamental research should remain unrestricted and unclassified to the fullest extent possible.³
- **Continue to recognize the importance of international students and scholars to the U.S. research enterprise.** OSTP and the federal agencies engaged in JCORE should continue to recognize the importance of international scholars and partnerships to the U.S. research and education enterprises. As the recent JASON report noted, "There is a long and illustrious history of foreign-born scientists and engineers training and working in the United States, and they make essential contributions to our preeminence in science, engineering and technology today. Maintaining that leading position will require that the United States continues to attract and retain the best science talent globally."⁴

¹ See December 19, 2019, ACE and higher education comments on proposed information collection:

<https://www.acenet.edu/Documents/Sec-117-Updated-ICR-Comment-Letter-Memo.pdf>

² See May 10, 2019 letter to ACE members regarding compliance issues with existing regulations, page 5:

<https://www.acenet.edu/Documents/Memo-ACE-membership-foreign-espionage.pdf#search=foreign%20espionage>

³ December 6, 2019 JSR-19-2I Fundamental Research Security report, page 3 :

<https://fas.org/irp/agency/dod/jason/fundamental.pdf>

⁴ Id. at 2: <https://fas.org/irp/agency/dod/jason/fundamental.pdf>

We continue to share a common goal of ensuring that the U.S. remains welcoming to international students and scholars. We support careful and thorough vetting of prospective students and scholars, but we believe those processes should be predictable, consistent, transparent, and timely. We hope that the interagency work being undertaken by JCORE, State, DHS and others will help strengthen the Optional Practical Training (OPT) program, ensure efficient visa processing, and ensure we can continue to attract and retain the most talented international students. This has become a debate about international competitiveness as well as national security.

On the issues of research security, we support and amplify the more detailed comments being submitted by our member associations, including the Association of American Universities (AAU), the Association of Public and Land-grant Universities (APLU), and the Council on Governmental Relations (COGR) regarding these important issues.

Fostering Safe, Inclusive and Equitable Research Environments

Institutions of higher education have clear and unambiguous responsibilities under Title IX, Title VII of the Civil Rights Act, and other federal requirements to respond to allegations of sexual harassment, including sexual assault. Colleges and universities are committed to upholding civil rights and to creating and maintaining campus environments that are safe, supportive, and responsive for all students so that they can benefit from the widest possible array of educational opportunities.

Regarding the questions posed in the RFI regarding safe and inclusive research environments, we note the detailed comments submitted by ACE and six other associations in response to the May 2018 NSF proposed “reporting requirements regarding findings of sexual harassment, other forms of harassment, or sexual assault”⁵ and the August 2019 NASA proposed “reporting requirements regarding findings of sexual harassment, other forms of harassment, or sexual assault.”⁶

As we stated in those comments, we welcome the opportunity to work with the federal agencies toward our joint goal of eliminating sexual harassment and sexual assault from the scientific and education workplace. We believe that a safe and harassment-free work environment for all students, faculty, and personnel is essential if colleges and universities are to carry out their missions, model appropriate behaviors, and enable students to achieve the preparation necessary to flourish in their careers and contribute to society.

As JCORE considers these important issues, we hope that the Committee will take into account existing regulations, specifically interaction with pending Title IX rules and other existing federal and state rules. Overlapping but different requirements imposed by new terms and conditions from the federal science agencies will cause confusion and create conflicting obligations for institutions that are committed to complying with all applicable laws. Once again, clear and consistent federal requirements will enhance compliance.

⁵ See May 4, 2018 comments: <https://www.acenet.edu/Documents/Comments-to-NSF-on-Sexual-Harassment-Reporting-Requirements.pdf#search=nsf%20harassment>

⁶ See August 16, 2019 comments: <https://www.acenet.edu/Documents/Comments-NASA-Harassment-Reporting-Requirements.pdf#search=nasa%20harassment>

Federal policy should give institutions enough flexibility to ensure that all legal and other obligations—no matter their source—are properly addressed when resolving sexual harassment allegations. The U.S. Department of Education published a proposed Title IX rule in late 2018 and the higher education community submitted comments in January 2019.⁷ When the rule is finalized later this year, colleges and universities will likely undertake changes in campus policies and structures to implement the final rule. This, as well as the new terms and condition from NSF, NASA, and other federal agencies, without coordination or shared definitions, will make compliance responsibilities confusing and more complicated for the person reporting the harassment and the institution complying with the various rules. We ask wherever possible, federal agencies utilize existing definitions and harmonize with other federal agencies regarding existing rules and reporting requirements.

We applaud the OSTP and the Committee's efforts to engage with the stakeholder community on these important issues, as well as the whole of government approach in tackling these significant and complicated issues. We stand ready to be a resource and look forward to continuing to engage as JCORE moves forward in its important work.

Sincerely,



Ted Mitchell, President
American Council on Education

On behalf of:

American Association of State Colleges and Universities
American Council on Education
National Association of Independent Colleges and Universities

⁷ January 30 2019 comments on Title IX proposed rules to Secretary of Education Betsy DeVos:
<https://www.acenet.edu/Documents/Comments-to-Education-Department-on-Proposed-Rule-Amending-Title-IX-Regulations.pdf>