



April 20, 2021

Senator Bob Menendez
Chairman
U.S. Senate Committee on Foreign Relations
423 Dirksen Senate Office Building
Washington, DC 20510

Senator James E. Risch
Ranking Member
U.S. Senate Committee on Foreign Relations
423 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Menendez and Ranking Member Risch:

We understand the Senate Committee on Foreign Relations will consider the Strategic Competition Act (S. 1169) on Wednesday, April 21, 2021. We write on behalf of the nation's colleges, universities, medical schools, and teaching hospitals to express our opposition to Section 138 of the bill which would require the Committee on Foreign Investment in the United States (CFIUS) to review many gifts and contracts offered to the institutions we represent.

We want to be clear that U.S. higher education institutions are very concerned with preventing foreign entities from taking undue advantage of our institutions and federal research funding. Indeed, we have supported several pieces of legislation Congress has recently enacted to strengthen research security.¹ Our associations and our member institutions have been working closely with federal research and security agencies to revamp campus policies and to better educate faculty and staff about the threats posed by foreign entities. Many campuses have created new review processes for international collaborations that include consultation with their local FBI field offices. We appreciate the efforts of the Senate Foreign Relations Committee, and we would be happy to work with the Committee to develop targeted approaches to address specific research security concerns. Unfortunately, Section 138 would only make it harder for our institutions to carry out important and groundbreaking research.

The proposed expansion of CFIUS's role would damage U.S. research and our economic competitiveness. Section 138 would create a process that will overwhelm CFIUS with a task it was never designed to undertake. Moreover, the provision establishes a policy mechanism

¹ These include the [Securing American Science and Technology Act \(SASTA\)](#) and encouraging the inclusion of this language in Section 1746 of the FY 2020 National Defense Authorization Act ([P.L. 116-92](#)). The White House Office of Science and Technology JCORE Research Security Subcommittee's work created by the enactment of this legislation resulted in the issuance of the 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](#). The university associations also supported the [Section 223](#) language on the disclosure of funding sources in applications for federal research and development awards in the final FY 2021 National Defense Authorization Act.

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. Finally, this provision would also inappropriately tie the CFIUS process to Department of Education Section 117 foreign gift reporting.

Section 138 is a sweeping provision that would require expensive and time-consuming reviews of a wide range of university gifts and contracts against unknown and ill-defined criteria by an agency not designed or equipped to carry out this task. CFIUS was created to prevent ongoing foreign control of U.S. corporations. With regards to U.S. universities, it is not clear what a CFIUS review of gifts and contracts would be designed to counter or how proper review would be determined when applied to university gifts and contracts. No provision of the bill limits CFIUS's scope in a clear or significant way, and the bill requires review by CFIUS regardless of whether the country of origin is hostile to the United States or not. Furthermore, the provision limits review of gifts to those that are "restricted." Many foreign gifts fall into this category because they are for a specific purpose rather than a gift to support an institution's general operations. Many gifts to both large and small colleges and universities will exceed the bill's proposed \$1 million threshold. Moreover, the definitions in the bill concerning what "...relates to research, development or production of critical technologies" and what constitutes "control" in the context of university gift and contracts, as opposed to foreign investment, is likely to result in significant uncertainty for universities and their potential donors and research collaborators. This uncertainty will be a significant disincentive for philanthropic giving from foreign sources to support U.S. university research efforts.

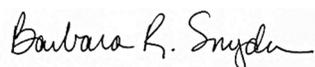
The result of this expansive use of CFIUS is likely to be detrimental for the United States in several ways. First, donors and research collaborators are likely to seek out non-U.S. partners rather than spend months awaiting a government review with results and timing that will be hard to predict. This will hamper the ability of U.S. institutions to invest in research at the very moment when our nation's competitiveness is facing great challenges. The large number of required reviews will also burden the CFIUS process with gifts and contracts that are likely to be of little concern when the Committee could better focus on the problem of corporate control that it was created to address.

Finally, the bill itself signals that CFIUS is not currently structured to review gifts and contracts to colleges and universities. While Section 138 would add the Secretary of Education to CFIUS for such reviews because the department is charged with collecting information on foreign gifts and contracts, the department lacks the technical expertise to assess the risks involved relating to the critical technologies with which the bill is concerned. Meanwhile, the bill fails to invite representatives from other major federal research agencies to participate in CFIUS reviews such as the NSF and NIH which would possess such expertise.

Application of CFIUS to university gifts and contracts will likely discourage a wide range of gifts and contracts that have not been shown to be a significant threat to the U.S. – gifts and contracts that often help U.S. science advance in an increasingly competitive environment.

While we appreciate the hard work of your staff in trying to address our concerns with Section 138, we are compelled to oppose this provision. We stand ready to work with you on alternative ways address research security concerns.

Sincerely,



Barbara R. Snyder
President
Association of American Universities



Peter McPherson
President
Association of Public and Land-grant Universities



Ted Mitchell
President
American Council on Education



David J. Skorton, MD
President and CEO
Association of American Medical Colleges

cc: Members, Senator Foreign Relations Committee

The Association of American Universities (AAU) is an association of 63 U.S. and two Canadian leading research universities that transform lives through education, research, and innovation. AAU member universities collectively help shape policy for higher education, science, and innovation; promote best practices in undergraduate and graduate education and strengthen the contributions of leading research universities to American society. The Association of Public and Land-grant Universities (APLU) is a research, policy, and advocacy organization with a membership of over 240 public research universities, land-grant institutions, state university systems, and affiliated organizations in the U.S., Canada, and Mexico, that is dedicated to strengthening and advancing the work of public universities. The American Council on Education (ACE) is the major coordinating body for American higher education. Its more than 1,700 members reflect the extraordinary breadth and contributions of four-year, two-year, public and private colleges and universities. ACE members educate two out of every three students in accredited, degree-granting U.S. institutions. The Association of American Medical Colleges (AAMC) is a not-for-profit association dedicated to transforming health through medical education, health care, medical research, and community collaborations. Its members are all 155 accredited U.S. and 17 accredited Canadian medical schools; more than 400 teaching hospitals and health systems, including Department of Veterans Affairs medical centers; and more than 70 academic societies.