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September 7, 2021

The Honorable Bobby Scott
Chairman
Education and Labor Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Virginia Foxx
Ranking Member
Education and Labor Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Patty Murray
Chairwoman
Health, Education, Labor and Pensions Committee
U.S. Senate
Washington, DC 20510

The Honorable Richard Burr
Ranking Member
Health, Education, Labor and Pensions Committee
U.S. Senate
Washington, DC 20510

The Honorable Gregory Meeks
Chairman
Foreign Affairs Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Michael McCaul
Ranking Member
Foreign Affairs Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Bob Menendez
Chairman
Foreign Relations Committee
U.S. Senate
Washington, DC 20510

The Honorable Jim Risch
Ranking Member
Foreign Relations Committee
U.S. Senate
Washington, DC 20510

The Honorable Maxine Waters
Chairwoman
Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Sherrod Brown
Banking, Housing, and Urban Affairs Committee
U.S. Senate
Washington, DC 20510

The Honorable Pat Toomey
Banking, Housing, and Urban Affairs Committee
U.S. Senate
Washington, DC 20510

Dear Chairs and Ranking Members:

On behalf of the undersigned higher education associations, I write regarding conference consideration of legislation supporting innovation, competition, and foreign security, including S. 1260, the U.S. Innovation and Competition Act (USICA); H.R. 2225, the National Science Foundation (NSF) for the Future Act; and H.R. 3524, the Ensuring American Global Leadership and Engagement (EAGLE) Act.

We applaud the House and Senate for taking actions to strengthen the U.S. education and research enterprise and support the federal research agencies. However, we have serious concerns regarding several provisions in these bills that would have long-term, detrimental impacts on our institutions' ability to compete and work with international partners to address issues of global importance.

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. We have strongly supported efforts to strengthen research security in recently enacted legislation[1] and the work of the White House Office of Science and Technology JCORE Research Security Subcommittee.[2] For several years, we have worked with national security and federal research agencies, such as the FBI, the Office of the Director of National Intelligence, the National Institutes of Health (NIH), and the National Science Foundation (NSF), 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 are concerned, however, that specific provisions under consideration would undermine the ability of U.S. colleges and universities—including smaller institutions, Historically Black Colleges and Universities, Minority Serving Institutions, and community colleges—to engage in valuable international research partnerships, attract top international students and scholars, and enhance the transparency of financial relationships they have with foreign entities. Regrettably, the net effect of this legislation intended to enhance our economic competitiveness may actually undermine that laudatory goal. We also support the letters recently sent by the Association of American Universities and the Association of Public and Land-grant Universities that flag many of these same problematic provisions.

We are specifically concerned with:

- **Section 3132 of S. 1260, which would require prior review of non-federally funded research by the Committee on Foreign Investment in the United States (CFIUS), including many foreign gifts donated to and contracts of at least $1 million related to critical technologies 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, and significantly infringe on international research collaborations. In addition, it would be highly unusual to single out higher education for this type of review, when no industry or private research entity would be subject to such reviews. We outlined our concerns with this provision in an April 20, 2021, letter to the Senate Committee on Foreign Relations.

- **Section 6124 of S. 1260, which would create a new Section 124 within the Higher Education Act.** This provision, created without a formal hearing and markup, is a major new requirement that would require a large number of higher education intuitions to create and maintain searchable databases of all gifts or contracts with a foreign actor or entity received by individual researchers and staff. This means faculty and staff would have to report when a

[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.

visiting foreign scholar buys lunch on campus for them or gives them a small gift, such as a coffee mug with the logo of the foreign visitor's home university. And once again, it imposes a requirement on faculty and staff at colleges and universities that does not apply to any other organization in the U.S. that receives federal funding. It does not, for example, apply to researchers at national laboratories or private organizations and industry who receive government grants and contracts. We support and are working to help universities educate individual faculty and staff about concerns of foreign influence to enhance their vigilance. We also support full faculty disclosure of foreign research funding sources to federal agencies as already required by law and strong conflict of interest policies. But this provision will result in collection of an ocean of data without much utility. There are no indications that this increase in data collection will address the fundamental concerns regarding research security and foreign influence, but instead could inadvertently undermine the U.S. economic competitiveness these bills are intended to enhance.

We have engaged outside counsel to prepare an analysis regarding the new Section 124 provision (see attached). The memo concludes that Section 124 is unworkable, burdensome, overly complicated, and may well be ineffective in discouraging foreign influence or improving research security. Specifically, the memo finds that Section 124 is unduly onerous while not providing additional protections or transparency against foreign influence; is invasive and violates the privacy of U.S. higher education faculty and staff without significantly advancing its intended goal; and is overly vague and would be undermined by inconsistent compliance because of the broad reporting requirements. A far more effective approach would be enhanced sanctions and enforcement of laws already on the books against individual faculty or other campus staff for failing to properly disclose foreign funding to federal science agencies as part of the grant application and oversight process.

- **The proposed reduction in S. 1260 of the reporting threshold in Section 117 of the Higher Education Act from the current level of $250,000 to $50,000.** 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), even though the risks posed by such small gifts or contracts are minimal. The lower threshold would also increase ED's workload exponentially, when the department has already proven unable to effectively manage the existing 117 requirement. Rather than lowering the threshold across the board, heightened and more effective scrutiny could be achieved through a lower threshold targeting gifts or contracts only from specific countries of concern (e.g., China, Russia, Iran, and North Korea). 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." This language should be struck in the conference as it is poorly defined and is unclear what it is meant to capture.

- **Two provisions in S. 1260 that place further restrictions on the eligibility for federal funding from ED and NSF on higher education institutions that support Confucius Institutes (CIs).** Section 1062 of the William M. (Mac) Thornberry National Defense Authorization Act of FY 2021 imposed a "Limitation on provision of funds to institutions of higher education hosting Confucius Institutes." This language already limits Department of Defense (DOD) funding to institutions that host CIs, unless that institution receives a waiver. DOD is actively engaged in the process of creating a waiver. We believe Section 6122 and Section 2525 of S. 1260 should be aligned and reference back to the waiver process established in the FY 2021 NDAA, as it will be important to align that process across federal agencies.

We urge the conference to adopt in the final conference report:

- The amendment offered by Rep. Tom Malinowski (D-NJ) and included in H.R. 3524 that would create the "Liu Xiaobo Fund for the Study of Chinese Language" and authorize $10 million in new spending at the U.S. Department of State. This new fund will encourage institutions to establish new Chinese language programs as an alternative to the programs previously overseen and sponsored by Confucius Institutes.

- The reauthorization of the Title VI international and foreign language education programs, as included in Section 6121 of S.1260. These programs, the federal government's most comprehensive effort to develop national capacity in international and foreign language education, help educate individuals whose abilities ensure successful international engagement among America's education, government, and business sectors. The reauthorization would strengthen these important programs, while also expanding and diversifying the types of institutions participating.

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 towards final consideration.

Sincerely,

Ted Mitchell, President

Attachment: "Memorandum on U.S. Innovation and Competition Act of 2021- Section 6124 (b) Issues"

Cc: Claire Viall, Professional Staff Member, House Education and Labor
Amy Jones, Education and Human Services Policy Director, House Education and Labor
Bryce McKibben, Senior Policy Advisor, Senate HELP Committee
David Cleary, Staff Director, Senate HELP Committee
Anubhav Gupta, Senior Professional Staff Member, House Foreign Affairs
Brendan Shields, Staff Director, House Foreign Affairs minority
Megan Bartley, Chief Investigative Counsel, Senate Foreign Relations
Chris Socha, Staff Director, Senate Foreign Relations
Daniel McGlinchey, International Affairs Director, House Financial Services Committee
Kim Betz, Policy Director, House Financial Services Committee
Phil Rudd, Professional Staff Member, Senate Banking, Housing, and Urban Affairs
Dylan Clement, National Security Advisor, Senate Banking, Housing, and Urban Affairs

On behalf of:

American Council on Education
American Association of State Colleges and Universities
Association of American Universities
Association of Public and Land-grant Universities
National Association of Independent Colleges and Universities

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MEMORANDUM

ATTORNEY CLIENT PRIVILEGED

To:	**Peter McDonough** **Vice President and General Counsel American Council on Education**
From:	**Randy Nuckolls** **Nick Allard** **Mike Pfeifer**
Date:	**August 19, 2021**
Subject:	**Memorandum on U.S. Innovation and Competition Act of 2021 - Section 6124(b) Issues**

This memorandum, prepared at the request of the American Council on Education, offers our assessment of several significant issues posed by Section 6124(b) of the U.S. Innovation and Competition Act of 2021 ("USICA") that passed the U.S. Senate on June 8, 2021.[1] It would create a new Section 124 of Part B of Title I of the Higher Education Act of 1965 ("Section 124") that would require hundreds or even several thousand colleges and universities nationwide to maintain a "searchable" database that collects information from faculty and other staff "engaged in research and development" on "any gifts received from, or contracts entered into with, a foreign source." We understand that you intend to share this memorandum with House offices as they prepare to consider their version of the proposed legislation.

Background Our assessment is based on the language of Section 124, and is informed by our review of other reporting obligations that exist at the federal and state level for U.S. higher education institutions, various gift rules and disclosures that apply in other instances, and a sample of existing conflict of interest policies at U.S. colleges and universities.

Conclusion Simply put, we conclude that Section 124 is unworkable, burdensome, overly complicated, and it is unclear if it would actually discourage foreign influence or improve research

[1] S. 1260, 117th Cong. § 6124(b) (2021), https://www.congress.gov/bill/117th-congress/senate-bill/1260/text.

security. In addition, it could prove to be counterproductive to the worthy purpose of safeguarding and advancing America's preeminence in research. It could create an atmosphere where U.S. higher education institutions are seen as less favorable places for talented academics and researchers to work and develop critical new knowledge and scientific innovation, inadvertently undermining the very U.S. economic competitiveness that USICA is intended to enhance. And, although there are cases where foreign actors have stolen or attempted to steal American intellectual property and know-how, this proposed law could hinder the creation of new global partnerships and exchanges for U.S. researchers and scientists. A far more effective approach would be enhanced sanctions and enforcement of laws already on the books against individual faculty or other campus staff for failing to properly disclose foreign funding to federal science agencies as part of the grant application and oversight process.

Analysis

Section 124 is Anti-Competitive: The Research & Development Capacity of U.S. Higher Education Will Suffer

Section 124 requirements would burden every higher education institution with research and development expenditures exceeding $5 million in the previous five years -- a very low threshold for the research and development arena. For context, in 2019 universities spent $83.7 billion on research and development, representing a $4.5 billion increase from the previous year.[2] The amount spent on research means this threshold goes far beyond America's leading public and private R1 and R2 research institutions and could impact hundreds or even several thousand colleges and universities, even those with minor research programs, such as community colleges, or those looking to grow research programs, such as minority serving institutions. Indeed, according to the National Science Foundation, over 400 colleges and universities had research and development expenditures of at least $5 million when the data was last available in 2017.[3] The reporting and compliance burden on these smaller, and in many cases under-resourced, institutions would be significant at a time when many of these same institutions are struggling due to budget and staffing constraints exacerbated by the COVID pandemic.

Many higher education institutions would likely need to engage in a cost-benefit analysis to determine whether continuing relationships with foreign partners, even those friendly with the

[2] NAT'L. CTR. FOR SCIENCE AND ENGINEERING STATISTICS, UNIVERSITIES REPORT 5.7% GROWTH IN R&D SPENDING IN FY 1019, REACHING $84 BILLION (Jan. 13, 2021), https://ncses.nsf.gov/pubs/nsf21313.

[3] . NAT'L. SCIENCE FOUNDATION. RANKINGS BY TOTAL R&D EXPENDITURES. (2017 LATEST). https://ncsesdata.nsf.gov/profiles/site?method=rankingbysource&ds=herd.

United States, is worth the cost of compliance with Section 124. No matter what size of the institution, each will be forced to dedicate human and financial resources to comply with the data collection and guesswork required by Section 124, which would divert valuable time and resources from the focus of keeping a competitive edge in research and development. For some institutions, these burdens could be too significant to justify continuing professional relationships with friendly foreign research and other academic program partners. This chilling effect on international research collaborations would undermine the broader goal of USICA to enhance U.S. economic competitiveness.

Additionally, for many institutions international research and programming initiatives gain publicity that attracts students and talented faculty capable of making scientific advancements. When institutions, particularly smaller ones, are forced to devote significant resources to upgrade compliance programs unnecessarily, it detracts from their research capabilities. In forcing institutions to choose between an overly broad compliance regime and successful collaborative research programs, Section 124 would be detrimental to the greater research and development endeavors that USICA seeks to enhance.

Section 124 is Unduly Onerous, While Not Providing Protections or Additional Transparency Against Foreign Influence or Research Security

The proposed requirements set forth in Section 124 would be onerous. They would compel each covered institution to create and maintain an additional database to solicit and capture information about foreign gifts received or contract entered into by **individual** faculty and staff. Section 117 of Part B of Title I of the Higher Education Act of 1965 ("Section 117") already requires higher education institutions to report foreign gifts and contracts received by the **institution**, exceeding an aggregate amount of $250,000, to the U.S. Department of Education ("ED") twice a year.[4] To catalogue these reports, ED has created a publicly searchable database and portal specifically for foreign gift reporting.[5] Section 124 would require hundreds of schools, large and small, to collect and itemize information from individual faculty and staff without regard to the size of the gift or contract, and with very broad and ambiguous definitions of what constitutes a gift or agreement to be reported to ED.[6] This would be incredibly costly and time consuming,

4 20 U.S.C. § 1011(f) (2019).

5 College Foreign Gift and Contract Reporting, DEP'T. OF EDUC., https://sites.ed.gov/foreigngifts/.

6 Several of the definitions found in Section 6124(b) refer directly back to definitions found in Section 117.

particularly for the hundreds of smaller research institutions captured by the wide breadth of Section 124.[7]

They also would be functionally duplicative. The typical institution of higher education engaged in research activity already has conflict of interest and conflict of commitment policies in place, including requirements for research faculty and staff to disclose gifts or contracts, especially at a specific threshold.[8] And, federal science agencies are actively engaged in efforts to strengthen and create shared disclosure requirements around foreign funding to individual researchers for grant applications and to ensure greater oversight.[9]

Given the ongoing issues surrounding Section 117 compliance oversight, ED is the wrong agency to oversee such a massive new reporting requirement—even if the misguided Section 124 proposal was better structured. ED continues to have major challenges regarding Section 117 information collection. For instance, ED currently has two databases with information regarding Section 117 reports, which don't align or reflect the same information, and do not reflect the most recent Section 117 reporting data.[10]

The proposed Section 124 requirements would impose a significant and costly new administrative burden on covered institutions that already comply with federal disclosure frameworks without any real additional benefits. Few, if any, academic institutions and research centers abroad are required to navigate such a regulatory bramblebush. Section 124 would create a competitive advantage for many foreign institutions versus their U.S. counterparts in seeking international collaborations.

Section 124 is Invasive: The Proposed Language Violates the Privacy of U.S. Higher Education Faculty and Staff and Infringes Upon Institutional Conflict of Interest Policies

The disclosure requirements set forth in Section 124 would unduly invade the privacy of individual faculty and professional staff. In addition, the requirements may likely be inconsistent

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7 Section 6124(b) of USICA imposes the new disclosure framework on all higher education institutions with more than $5 million in research and development expenditures in any of the previous five years.

8 For example, see Texas A&M policies: https://vpr.tamu.edu/manage-research/COI and Stanford University policies: https://doresearch.stanford.edu/policies/research-policy-handbook/conflicts-commitment-and-interest/faculty-policy-conflict-commitment-and-interest.

9 NSPM-33 "Presidential Memorandum on United States Government Supported Research and Development National Security Policy: https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-united-states-government-supported-research-development-national-security-policy/.

10 *See* OGC searchable database: https://sites.ed.gov/foreigngifts/ and FSA excel spreadsheet: https://studentaid.gov/data-center/school/foreign-gifts.

with existing conflict of interest policies aimed at ensuring transparency in the research and development arena.

The broad definition of what constitutes a covered contract under Section 124 would capture private information and transactions of staff and researchers not relevant to the larger issues that USICA was designed to target.[11] Section 124 purports to cover any agreement regardless of value and, as written, would require virtually any agreement between a faculty member of a U.S. higher education institution and a foreign individual to be disclosed regardless of whether the context was personal or professional. This impossibly broad and vague definition would not only require institutions to seek and capture vast amounts of transactions that are irrelevant to policing foreign influence in U.S. higher education, but would threaten to invade covered individuals' private lives.

Many states have public records laws that would require public higher education institutions to release the data collected from faculty and staff pursuant to inquiries from the media or other parties.[12] This reality would produce a chilling effect on compliance by faculty even when the agreements were completely legitimate or of no consequence in regard to undue influence from any foreign person or entity. Such information could even make faculty the target of criticism from certain segments of the pubic who are less supportive of collaborative international scientific partnerships and endeavors.

Further, there is the potential concern that collecting and itemizing data about foreign gifts and agreements with individual faculty that could be accessed by the public or media could expose certain foreign donors or collaborators to punishment or threats if the foreign individual or entity is located in a foreign country with an authoritarian government that would look with disfavor on its citizens or organizations collaborating with individuals in the United States. For example, a foreign professor living in an authoritarian regime might be exposed and subjected to potential harm if his/her agreement with a U.S. faculty member promoting democracy, human rights, or rule of law were included in a database that was subject to public scrutiny.

The overreach in regard to reporting gifts is exacerbated by Section 124's definition of a gift. It includes "any gift of money or property" from not only a foreign source that is a foreign

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[11] Section 6124(b) of USICA expands the definition of contract beyond what is now captured by Section 117 to include any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties; or any affiliation, agreement, or similar transaction with a foreign source based on the use or exchange of the name, likeness, time, services, or resources of faculty, professional staff, and other staff engaged in research and development.

[12] *See*, e.g., California Public Records Act, Cal. Gov't Code § 6250 et seq.

government or a foreign legal entity, but also "an individual who is not a citizen or national of the United States."

Section 124 also lacks a monetary disclosure threshold that is typically seen in other gift reporting frameworks. Even Congressional and Executive Branch gift rules have explicitly-defined dollar thresholds and minimum intrinsic values for accepting and reporting foreign gifts.[13]

As currently written, Section 124's lack of both a reporting threshold requirement and a minimum intrinsic value makes it impracticably vague and potentially illogical. For example:

- If a Brazilian biomedical professor, with an art avocation, serves for one year as a visiting professor at Wake Forest University School of Medicine and she gives a thank you gift of a meal (valued at $15) and one of her paintings (in a $100 frame) to her Wake Forest colleague, does that need to be reported? Would the meal be considered a gift reportable under Section 124? Would the framed painting?
- If a European film producer enters into an agreement to contribute a movie, posters, financial support and the time of a personal assistant to a film festival being hosted by the Film School at UCLA, is that reportable? Is it reported as a contract or a gift?
- If a Canadian school of forestry and a Canadian environmental foundation agree to give $15K each to support a research and data collection project to be conducted by a professor and graduate student at the University of Washington on the impact of forest fires on forestry operations in the Pacific Northwest and western Canadian Provinces, does the support of the Canadian entities require reporting as a gift or contract?
- If a research assistant at the University of San Diego goes to a conference in New Zealand focused on the loss of coral reefs at the invitation of the New Zealand university hosting the conference, does he need to report the value of room and board?
- If a group of U.S. faculty attend a Shakespeare Symposium at Cambridge University and are invited to attend afternoon tea in the homes of British faculty, do the U.S. faculty report the value of the tea to their universities under Section 124?

<u>Section 124 is Overly Vague: Transparency Will be Undermined by Inconsistent Compliance</u>

Section 124 fails to define several of its own key terms, which undermines the goal of transparency by creating a framework that will inevitably lead to inconsistent compliance. Despite

[13] Foreign Gifts and Decorations Act, 5 U.S.C. § 7342 (2019).

the best efforts of covered institutions, each might interpret the requirements of Section 124 differently, and thus generate different reporting outcomes.

As previously discussed, Section 124 fails to set value requirements for the gifts and contracts that must be reported. While some institutions may interpret the lack of value requirement to mean that all gifts or contracts, regardless of value, must be reported, other institutions may continue to use the threshold from Section 117, or other state-level reporting thresholds. Institutions with the former interpretation, however, would be faced with making determinations such as whether a cup of coffee or sandwich at lunch should be reported. If institutions are really required to report every gift or contract, regardless of value, the excess reporting could cause more troublesome disclosures to become lost among all the smaller ticket items.

Section 124 also provides little clarity as to the recordkeeping requirements for covered institutions which will lead to further confusion for those trying to comply, and produce inconsistent and fragmented reporting policies. Section 124 requires covered institutions to maintain a policy and searchable database for the foreign gifts and contracts that faculty and staff may receive.[14] There is no guidance on whether existing frameworks, such as measures the institution takes to comply with Section 117, would be sufficient to meet this requirement.

In the same vein, Section 124 does not include any guidance on the searchable database it requires covered institutions to maintain.[15] It does not indicate whether these databases mirror the existing Section 117 portal, nor does it indicate the format for the databases. Furthermore, it does not identify by whom the databases must be searchable. While institutions might assume the public, a database that must be searchable by the public looks very different from one that need only be searchable by ED or institutional affiliates.

Section 124 also mandates that institutions maintain a plan to effectively identify and manage potential information gathering by foreign sources through espionage.[16] This language goes so far as to suggest that the institution should play a role as a quasi-intelligence gathering agency which it is ill-suited and not qualified to perform. It is unclear if this plan is supposed to be part of the general foreign gift reporting policy, or a separate requirement with which covered institutions must comply. It is also unclear whether current security measures that institutions use to keep research data secure would be sufficient. This provision may also be unnecessary when

14 S. 1260, at § 6124(b)(a)(1)-(2).

15 *Id*.

16 *Id*. at § 6124(b)(a)(3).

compared against current federal statutes that govern technology transfers with foreign entities.[17] Additionally, the directive that the plan effectively identify and manage potential information gathering gives no context for what it would consider to be "effective".[18] As written, covered institutions would be left wondering whether failure of a plan (or even current security measures) to prevent such foreign espionage would mean that they could be held liable under Section124. The uncertainty of these curious and unprecedented requirements and concerns over legal risk could chill both the research mission the legislation seeks to protect and promote, and interfere with academic freedom.

Finally, Section 124 fails to define what it means by "research and development expenditures" and delegates institutions the authority to determine which staff members will be required to comply with the disclosure requirements.[19] Not only does the lack of definition mean that that each covered institution could interpret "research and development expenditures" differently, but it means that institutions could define "research and development expenditures" in a way that excludes activity that Section 124 intends to capture.

With its failure to define several core elements of its own policy, Section 124 invites countless interpretations of its requirements that would result in inconsistent compliance across covered institutions. These vague definitions of the central policy requirements defeat the mission of USICA in providing increased transparency of undue foreign influence in higher education. While some of the overreach and vague language of Section 124 might be clarified and corrected through the Negotiated Rulemaking process at ED, that would be a lengthy and burdensome process for ED and its stakeholders that in the meantime would interfere with institutions' academic mission and international competitiveness.

In Summary

The proposed new Section 124 outlined in USICA is seriously flawed. It creates an overly broad and imprecise compliance framework that would be confusing, burdensome, and invasive to covered institutions and their individual faculty and senior staff. It would create an enforcement nightmare for higher education institutions, and create a massive new reporting requirement that ED is ill-equipped to put into effect and oversee. Congress should rethink the need for Section 124 and its onerous provisions. Its misguided compliance approach needs to be significantly

[17] 15 C.F.R. §§ 770-774; 22 C.F.R. §§ 120-130.

[18] S. 1260, at § 6124(b)(a)(3).

[19] *Id.*, at § 6124(b)(a)(1).

revamped at a minimum, or eliminated entirely in favor of continued improvements to existing disclosure requirements for faculty and staff receiving funding from the federal science agencies.

Sincerely,

C. Randall Nuckolls
Partner

CN:pk