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March 22, 2022

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H-232, U.S. Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, U.S. Capitol
Washington, DC 20515

The Honorable Chuck Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
S-230, U.S. Capitol
Washington, DC 20515

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader Schumer, and
Minority Leader McConnell:

On behalf of the undersigned higher education associations, I write regarding the conference consideration of H.R. 4521, the America Creating Opportunities for Manufacturing, Pre-Eminence in Technology, and Economic Strength (COMPETES) Act of 2022 and S. 1260, the U.S. Innovation and Competition Act (USICA).

We applaud the House and Senate for taking actions to strengthen our nation's competitiveness through policy changes and increased investments in federal STEM education programs, scientific research, research infrastructure, and innovation programs. We believe measures to this end will improve for years to come our nation's leadership in science and innovation that undergirds U.S. economic growth, competitiveness, and security. We commend the bipartisan efforts to date to craft these important provisions, and we outline our priorities below for these provisions.

As we described in a [September 2021 letter](#), we also have serious concerns about several provisions in these bills related to research security. We believe some of these provisions would have long-term, detrimental impacts on the ability of colleges and universities to work and compete with international partners to address issues of global importance. We hope that improvements can be made to these provisions in the conference process. Our institutions take seriously threats to research security and the concerns raised by federal policymakers regarding undue foreign influence and illegal technology transfer, and we have a strong interest in safeguarding the integrity of federally funded research and the intellectual property resulting from it. We have strongly supported efforts to

strengthen research security in recently enacted legislation¹ and the work of the White House Office of Science and Technology JCORE Research Security Subcommittee.²

The following are specific priority areas to which we urge your attention:

Include robust authorization levels for federal research agencies to increase competitiveness

Both COMPETES and USICA propose robust authorization levels for the National Science Foundation (NSF) and the Department of Energy Office of Science, as well as other federal research agencies. These reauthorizations are important and recognize that sustained investments are needed to ensure the continuing U.S. preeminence in innovation and research and development. We urge Congress to continue this support by providing robust appropriations for the agencies and programs authorized in the legislation.

Strike the proposed CFIUS requirement to review gifts and contracts to institutions of higher education in S. 1260

S. 1260 includes language that would require the U.S. Treasury Committee on Foreign Investment in the United States (CFIUS) to review gifts or contracts over \$1 million to institutions of higher education (S. 1260, Sec. 3138), as well as language that prohibits the review by CFIUS of foreign gifts and contracts to institutions of higher education (S. 1260, Sec. 5251). Sec. 3138 would overwhelm CFIUS with a task it was never designed to undertake, result in huge compliance costs for institutions, and significantly limit international research collaborations. For the first time ever, the federal government would have the broad authority to decide, in advance, what privately funded research could be conducted on college campuses. It is not clear what problems this provision is trying to solve, why CFIUS is an appropriate review mechanism, or how CFIUS would determine when a gift or contract is problematic. In addition, because both the House and Senate bills strengthen current foreign gift reporting under the Higher Education Act, the addition of CFIUS review is repetitive and will unnecessarily complicate foreign gift and contract reporting. Therefore, we ask that conferees strike Sec. 3138 of S. 1260 in the final conference legislation.

Recede to the House language regarding the creation of a new Section 124 Institutional Policy Regarding Foreign Gifts and Contracts to Faculty and Staff

Both H.R. 4521 and S. 1260 would create a new Section 124, Institutional Policy Regarding Foreign Gifts and Contracts to Faculty and Staff (H.R. 4521, Sec. 90304 and S. 1260, Sec. 6124) as part of the Higher Education Act. The House bill takes the very

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.

helpful step in including a reporting threshold of \$50,000 for the reportable gifts and contracts to individual faculty and staff (the Senate bill includes no reporting threshold). The House bill also narrows the number of institutions that would be required to create and maintain such database.

While the House bill improves on the Senate language, we remain concerned about the creation of this new reporting requirement. It imposes a new disclosure requirement on faculty and staff at colleges and universities that does not apply to any other organization in the United States that receives federal funding or that conducts sensitive research. We fully support full disclosure of foreign research funding sources to federal agencies as already required by law, strong conflict of interest policies, and the efforts under NSPM-33³ to better standardize those disclosure requirements across the federal science agencies. There are no indications that this new reporting requirement and increase in data collection would 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 appreciate the House's efforts to focus this new reporting requirement and if Section 124 must be included in a final bill, we ask that the final conference bill include the House language.

Adopt changes to HEA Section 117 to improve institutional reporting of foreign gifts

Both H.R. 4521 (Sec. 90304) and S. 1260 (Sec. 6124) make changes to Section 117 of the Higher Education Act (HEA). Section 117 was enacted as part of HEA reauthorization in 1986. As we have communicated to Congress and the Department of Education (ED), we share the goal of improving transparency of the relationships colleges and universities have with foreign actors to help identify inappropriate conduct or malign foreign influence. We appreciate that both bills require the Department to undertake negotiated rulemaking with stakeholders on these complicated reporting provisions. We are also grateful that this language would move the report to an annual submission rather than the current biannual requirement, allow institutions to correct and update reports, and require the Department to have a single point of contact for institutions that have questions.

However, we remain concerned that both the House and Senate bills would lower the reporting threshold. The Senate bill would drastically lower the reporting threshold from \$250,000 to \$50,000. The House version would lower the reporting threshold to \$100,000 with a trigger to report gifts and contracts that reach \$250,000 over a three-year period. Such low reporting thresholds will vastly increase the number of gifts or contracts reported to ED, even though the risks posed by such small gifts or contracts are minimal. The lower threshold will also increase ED's workload exponentially, a key consideration given that the Department is unable to effectively manage the existing Section 117 requirement.

³ <https://www.whitehouse.gov/wp-content/uploads/2022/01/010422-NSPM-33-Implementation-Guidance.pdf>

A large increase in the number of reports will overwhelm the current Section 117 reporting system, as well as create an incredible and expensive reporting burden for institutions. We appreciate that the House bill balances the increasing congressional concern to capture more foreign gifts and contracts, while recognizing that open-ended requirements will impose severe costs and burdens on the Department and the schools. On the reporting threshold, we ask that the House language carry forward.

In addition, both the Senate and House bills, include new vague and expansive provisions of concern, including the requirement to report “contracts with undetermined monetary value” and new fines added to Section 117 around “knowingly and willfully” and administrative failures. We appreciate that the House language attempts to make the fines more reasonable for institutions around this complicated reporting requirement. In addition, we appreciate that the House bill includes clinical trials in exemptions from Section 117. We also ask that the final conferenced bill specify that institutions will still be allowed to preserve the anonymity of gifts from natural persons by ensuring that those names and addresses remain off the publicly available Section 117 data, as is consistent with long established Supreme Court precedent⁴, that tax exempt organizations have the right to preserve donor anonymity under the First Amendment as well as the Internal Revenue Code⁵, which mandates that the IRS preserve donor anonymity from public disclosure.

Adopt key House provisions to support workforce development programs that contribute to our nation’s competitiveness

H.R.4521 includes a number of provisions of particular importance to community colleges, including a reauthorization and improvements to the key Trade Adjustment Assistance Community College and Career Training Grants program (H.R. 4521, Sec. 101301- 101302). This program was initially funded in 2010 and plays a central role in strengthening the economy by addressing the urgent need for qualified employees. The legislation also contains provisions to strengthen and modernize the nation’s apprenticeship system, an initiative that will help address the nation’s needs for highly skilled technical employees. Finally, H.R. 4521 also modifies and reauthorizes the National Science Foundation’s Advanced Technological Education (ATE) program (H.R. 4521, Sec. 10304 STEM Education). The ATE program is the most important source of NSF support for community colleges. We strongly support these provisions in the House bill, and we urge conferees to accept them in the final bill.

Reauthorize the Department of Education (ED) Title VI international education programs

We appreciate that both bills (S. 1260, Sec.6121 and H.R. 4521, Sec. 90301) would reauthorize the Title VI International Education programs at ED. These programs are essential for strengthening international education and growing our global leadership. Title VI programs include foreign language and area studies fellowships, authorization for national resources centers, other programs that support undergraduate and graduate

⁴ https://www.supremecourt.gov/opinions/20pdf/19-251_p86b.pdf

⁵ 26 U.S.C. § 6104(b)

education, and scholarly work in international area studies. These programs educate the next generation of U.S. leaders to engage in a global economy, as well as support the U.S. response in times of global crisis, such as the current crisis in the Ukraine. We urge the conferees to adopt the language in Section 6121 of S. 1260, as it contains all the provisions we believe should be included in the final bill.

Adopt the STEM immigration provisions in H.R. 4521

The final bill should include the STEM immigration provisions in H.R. 4521. Specifically, Sec. 80303 on advance degree STEM graduates that would make it easier for U.S.-educated international students in high-need STEM fields to remain in the country and ultimately gain U.S. citizenship. Sec. 80303 would exempt STEM PhD graduates with advanced degrees from the current numerical caps on green cards. In addition, amendments that passed during the House floor debate would expand this to include master's degrees, as well as health professions and related degrees. We urge conferees to expand the list of eligible STEM programs to include all STEM programs included in the Department of Homeland Security (DHS) STEM CIP code list. Likewise, we ask that this provision be expanded to cover all public and nonprofit institutions of higher education.

The [Association of American Universities \(AAU\)](#) and the [Association of Public and Land-grant Universities \(APLU\)](#) have also sent individual letters detailing conference priorities regarding research security provisions in the legislation, and we support those recommendations. We applaud Congress for taking up this important legislation and urge you to reach a bipartisan agreement. Our nation achieved its status as the global science and innovation leader due in significant part to decades of sustained federal research and education investments. We commend the proposals in the legislation that set ambitious increased research and STEM education authorization levels. It is vital that Congress meet these targets with appropriations.

We look forward to continuing to work with you to advance the broader goal of enhancing our economic competitiveness and security as the conference process moves forward.

Sincerely,



Ted Mitchell, President

Cc:

Chairman Scott and Ranking Member Foxx, House Committee on Education and Labor;
Chairwoman Murray and Ranking Member Burr, Senate Committee on Health,
Education, Labor and Pensions;
Chairwoman Johnson and Ranking Member Lucas, House Committee on Science, Space
and Technology;
Chairwoman Cantwell and Ranking Member Wicker, Senate Committee on Commerce,

Science and Transportation;
Chairwoman Waters and Ranking Member McHenry, House Committee on Financial Services;
Chairman Brown and Ranking Member Toomey, Senate Committee on Banking, Housing and Urban Affairs;
Chairman Meeks and Ranking Member McCaul, House Committee on Foreign Affairs;
Chairman Menendez and Ranking Member Risch, Senate Committee on Foreign Relations;
Chairman Nadler and Ranking Member Dean, House Committee on the Judiciary; and
Chairman Durbin and Ranking Member Grassley, Senate Committee on the Judiciary

On behalf of:

American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
APPA, "Leadership in Educational Facilities"
Association of American Medical Colleges
Association of American Universities
Association of Catholic Colleges and Universities
Association of Community College Trustees
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Association of Research Libraries
Consortium of Universities of the Washington Metropolitan Area
Council for Christian Colleges & Universities
Council of Graduate Schools
EDUCAUSE
Hispanic Association of Colleges and Universities
NAFSA: Association of International Educators
National Association of Colleges and Employers
National Association of Independent Colleges and Universities
Presidents' Alliance on Higher Education and Immigration
State Higher Education Executive Officers Association