



December 6, 2019

The Honorable Rob Portman
Chairman
Permanent Subcommittee on
Investigations, Homeland Security and
Government Affairs
United States Senate
Washington DC 20515

The Honorable Thomas R. Carper
Ranking Member
Permanent Subcommittee on
Investigations, Homeland Security and
Government Affairs
United States Senate
Washington DC 20515

Dear Chairman Portman and Ranking Member Carper,

We appreciate the continuing efforts by the subcommittee to address the issues of undue foreign influence and interference in American higher education. The recent hearing and in-depth report entitled, “Threats to the U.S. Research Enterprise: China’s Talent Recruitment Plans,” marked an additional important step in this work. As noted in the report, the American Council on Education (ACE) and other higher education associations have been actively engaged with federal national security and science agencies on addressing these critical issues.

Our member institutions share a common interest with the government in ensuring that intellectual property, proprietary information, sensitive data, and other classified and/or otherwise controlled government information developed or housed at our institutions is not susceptible to academic exfiltration, espionage, or exploitation. Accordingly, we welcome the opportunity to continue to work constructively and cooperatively with Congress and the major federal agencies to protect national security interests associated with scientific research conducted at universities.

Following the February hearing, we have learned that on November 27 the Department of Education (ED) sent a letter to the Permanent Subcommittee on Investigations regarding ED’s activity around Section 117. Because the letter¹ has been made public, and makes imprecise and misleading statements about the higher education community and our institutions, we feel compelled to respond.

Overall, the letter is rife with inaccuracies and distortions, but we will note just one example here. According to the Department’s letter, several universities under investigation have or had relationships with foreign entities, including Kaspersky, a multinational Russian cybersecurity company, and Huawei, a multinational Chinese telecommunications company. However, the ED letter fails to note that Huawei was not listed on the Bureau of Industry and Security entity list until May 2019² and there was no final rule regarding Kaspersky and government contracts until September 2019.³ Therefore, until recently, there were no federal requirements stopping or discouraging a university, or any U.S. organization or business for that matter, from engaging

¹ https://www.al-monitor.com/pulse/files/live/sites/almonitor/files/documents/2019/department_of_education_letter_to_rob_portman_foreign_funding_universities.pdf

² <https://www.bis.doc.gov/index.php/documents/pdfs/2447-huawei-entity-listing-faqs/file>

³ <https://www.federalregister.gov/documents/2019/09/10/2019-19360/federal-acquisition-regulation-use-of-products-and-services-of-kaspersky-lab>

and working with those companies.⁴

Unfortunately, the Department's letter illustrates a continuing problem: 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 has proposed an expanded information collection process that imposes a vast array of new requirements far exceeding the language of the statute.⁵ The Department's continuing punitive and non-responsive actions towards Section 117 compliance have caused many institutions to be afraid of asking the Department questions, for fear of being investigated. This runs counter to the goal of enhanced transparency of foreign gift and contract reporting.

As was noted at the recent hearing, the White House Office of Science and Technology Policy is currently bringing together agencies through the Joint Committee on the Research Environment (JCORE) to address these issues in a coordinated way. We have engaged with JCORE and that important interagency work. However, the Department appears to only be nominally involved in these coordinated efforts.

Finally, we thank you and your staff for the work you have done on these important issues. We hope to continue working with you and your staff to proactively address concerns with Section 117 and its implementation, including seeking clear regulatory guidance from the Department. As part of the government-university partnership, U.S. universities share a responsibility with the federal government to ensure that research conducted under their auspices contributes to our national defense and homeland security and is protected from outside intrusion or theft by malign foreign actors or governments.

Sincerely,



Ted Mitchell
President

Cc: Andrew Polesovsky, Chief Investigator and Counsel, Majority Staff
Will Dargusch, Investigator, Majority Staff
John Kilvington, Staff Director, Minority Staff

⁴ Moreover, even after the federal government flagged those two entities as problematic, it is not clear that these concerns fall under the purview of the Department of Education, rather than the U.S. Department of Commerce or the State Department.

⁵ See November 5, 2019, ACE and higher education comments on proposed information collection: www.acenet.edu/Documents/Comments-Memo-Sec-117.pdf