

Research Security: Update on Legislative Actions

Tobin Smith

Association of American Universities

NASEM Science, Technology and Security Roundtable Meeting
October 29, 2021



Association
of American
Universities
Inquiry · Innovation · Impact

Congressional Hearings & Roundtables

- *April 2018 – “[Scholars or Spies: Foreign Plots to Targeting America’s Research & Development](#),”* House Science Subcommittee on Oversight and Subcommittee on Research and Technology
- *Feb 2019 - “[China’s Impact on the U.S. Education System](#),”* Senate Homeland Security Permanent Subcommittee on Investigations. Two reports were subsequently issued focusing on Confucius Institutes and Foreign Talent Programs
- *June 2019 - “[Foreign Threats to Taxpayer – Funded Research: Oversight Opportunities and Policy Solutions](#),”* Senate Finance Committee
- *May 2021 - [Joint Staff-level Roundtable on Research Security](#),* House SS&T, HASC, Senate CST, and SASC
- *July 2021 – “[Researching while Chinese American](#),”* House Oversight Democratic Member Roundtable
- *[September 8, 2021 - U.S.-China Relations in 2021: Emerging Risks](#),* U.S.-China Economic and Security Review Commission
- *[October 5, 2021 - Balancing Open Science and Security in the U.S. Research Enterprise](#),* House SS&T Subcommittee on Investigations and Oversight & Subcommittee on Research and Technology

USICA Research Security Provisions – Additional Screening, Reporting and Review Requirements

Section	Title	Summary
Section 2308	Plan with respect to sensitive or controlled information and background screening.	Requires NSF to develop a plan to identify research areas that may include sensitive or controlled information and provide background screening for individuals working in such research areas who are employed by NSF or are recipients of NSF funds.
Section 2526	Supporting documents.	Mandates that NSF collect final copies of <u>any</u> contracts, agreements, or documentation of financial transactions between universities, their foundations, and related organizations and any educational, cultural, or language entity that is directly or indirectly funded by the PRC government. Also requires NSF to collect a descriptions of financial contributions to U.S. universities from the PRC government or affiliated organizations.
Section 3138	Review by CFIUS of certain foreign gifts and contracts to universities.	Expands CFIUS review to include certain gifts and contracts between universities and foreign persons.
Section 5212	Prohibition on reviews by CFIUS of certain foreign gifts and contracts to universities.	Prohibits use of funds by CFIUS to review or investigate gifts to an IHE from a foreign person.
Section 6104	Protecting America’s biomedical research enterprise.	Requires HHS to identify ways to improve the protection of IP, assess risks and to identify and develop research security strategies.
Section 6124	Disclosures of foreign gifts and contracts at institutions of higher education.	Lowers the Section 117 reporting threshold to \$50,000. Creates a new requirement titled “Institutional Policy Regarding Foreign Gifts and Contracts to Faculty and Staff” that would require universities to ensure that faculty and staff report <u>any</u> gifts from, or contracts entered into, with a foreign source, and then maintain this information in a searchable database.

USICA Research Security Provisions – Safeguarding American Innovation Act

Section	Title	Summary
Section 4493	OMB Federal Research Security Council.	Creates a new multi-agency research coordinating council at OMB in addition to existing OSTP/NSTC interagency coordinating committee.
Section 4494	Federal grant application fraud.	Assesses penalties for failure to disclose receipt of any outside compensation, including foreign compensation by a federal research grant applicant or falsifying information.
Section 4495	Restricting the acquisition of emerging technologies by certain aliens.	Acknowledges the State Department’s authority to determine if an alien is inadmissible if they are seeking to knowingly acquire sensitive or emerging technologies to undermine national security interests. Provides a list of “relevant factors” that the State Department shall consider in making such determinations. Provision sunsets 2 years after enactment and requires additional reporting to Congress.
Section 4497	Certifications regarding access to export-controlled technology in educational and cultural exchange programs.	Requires J-1 sponsors to certify to the State Department that they comply with export control regulations and that no export control licenses are required for technology that will be accessed by the J-1 visa holder and that they will prevent access to controlled technology or technical data by the exchange visitor. Sponsors who maintain export-controlled technology/data must submit a technology control plan on how they prevent unauthorized export or transfer to the Department of State.

USICA Research Security Provisions – RSI-ISA0

Section	Title	Summary
Section 2302	Research security and integrity information sharing analysis organization.	Establishes a research security and integrity information sharing analysis organization (RSI-ISA0) to serve as a clearinghouse for information on identifying improper or illegal efforts by foreign entities to obtain research results, know-how, materials, and IP and for other purposes.

House FY 2022 NDAA (H.R. 4350)

Section	Title	Summary
Section 240	Research Security Training Requirement for Federal Research Grant Personnel	Requires OSTP Director, in collaboration with NSF, NIH and other relevant agencies, to develop an online research security training modules. Requires PIs and other key covered individuals/key personnel to take the training and universities to certify that they have made them aware of this training requirement.
Section 6446	Admission of Essential Scientists and Technical Experts to Promote and Protect National Security Innovation Base	Allows a small number of essential international scientists and technical experts working on basic and applied research to be granted special immigrant status.
Section 6484	NASEM Science, Technology and Security Roundtable	Directs the Roundtable to appoint and ad-hoc consensus study to conduct a report on the feasibility of establishing an independent, non-profit entity to further protect the United States research enterprise against foreign interference, theft, and espionage.
Section 6485	EcoHealth Alliance, Inc. Funding Prohibition	Prohibits funds authorized under this Act from being made available for any purpose to EcoHealth Alliance, Inc.
Section 6499E	Malign Foreign Talent Recruitment Program Prohibition.	Requires federal research R&D award applicants to certify they are not an active participant of a malign foreign talent recruitment program from specific counties of concern.

NDAA for FY 2022 (H.R. 4350)

Malign Foreign Talent Recruitment Program Prohibition – Section 6499E

- Requires federal research R&D award applicants to certify they are not an active participant of a malign foreign talent recruitment program from a foreign country of concern (e.g., China, Russia, Iran, North Korea). Allows for Department of State to expand the list of countries of concern in the future if deemed appropriate.
- Requires institutions applying for an award to certify that each covered individual who is employed by the institution has been made aware of the requirement.
- Narrowly defines “malign” foreign talent recruitment programs.
- Includes specific language to protect international collaborations and not limit scholarly presentations, participation in international conferences, or other international exchanges/partnerships/programs that involve open and reciprocal exchange of scientific information, and other activities.
- The new policy would not be applied retroactively.

NDAA for FY 2022 (H.R. 4350)

NASEM Science, Technology and Security Provision – Section 6484

- Calls on the NASEM Science, Technology and Security roundtable to convene an ad-hoc committee to study and complete a report on the feasibility of establishing an independent, non-profit entity to further protect the U.S. research enterprise against foreign interference, theft, and espionage
- Study Purpose: To provide recommendations how such a non-profit entity could be established to provide risk assessment, timely and actionable information, advice, open-source intelligence analysis, and products and services to assist the research enterprise in protecting against foreign interference, theft, and espionage of R&D.
- Specific study elements:
 - Organizational structure
 - Relationship to the Federal Government
 - Required financial resources for startup
 - Self-sustainability model

Intelligence Authorization Act for FY 2022 – H.R. 5412

DoD pilot program for security vetting of certain individuals – Section 701

- The Under Secretary of Defense for Intelligence and Security *may* establish a pilot program to identify risks associated with individuals who are performing unclassified research funded by the Department of Defense who would not otherwise undergo Federal personnel vetting.
 - Program Size
 - Process
 - Risk Criteria
- Responds to a request for vetting authority that was included in the DoD legislative package.
- Not in the Senate NDAA or the House NDAA.