



September 25, 2024

The Honorable Jack Reed  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, D.C. 20510

The Honorable Mike Rogers  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Roger Wicker  
Ranking Member  
Committee on Armed Services  
United States Senate  
Washington, D.C. 20510

The Honorable Adam Smith  
Ranking Member  
Committee on Armed Services  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Reed, Ranking Member Wicker, Chairman Rogers, and Ranking Member Smith:

On behalf of the Association of Public and Land-grant Universities (APLU) and the Association of American Universities (AAU), associations whose combined membership includes more than 280 of our nation's top research universities, we appreciate the opportunity to provide feedback as the House and Senate work to reconcile differences between fiscal year 2025 (FY25) National Defense Authorization Act (NDAA) measures S. 4638 and H.R. 8070. Universities are critical partners in generating the discoveries that sustain the American national security innovation base. The research conducted at U.S. universities is foundational to the scientific and technological advances that equip the warfighter, protect the homeland, and help us outpace our adversaries. This government-university partnership in science and technology is what sets the United States apart from strategic competitors and has been critical to our economic competitiveness and national security.

As you work to reconcile your respective versions of the FY25 defense authorization bill, we urge you to enact policies that will support and protect this critical partnership and reject those that undermine the United States' ability to out-innovate our competitors. Our specific conference recommendations are outlined below. Please note that, as members of the Coalition for National Security Research (CNSR), our organizations also share the Defense Science and Technology (S&T) priorities outlined in the Coalition's letter.<sup>1</sup>

### **Provisions We Support**

#### **Alignment of DOD Grants with the Academic Calendar**

We strongly support the inclusion of Senate Section 234, which aligns Department of Defense (DOD) grant fund spending timelines with the academic calendar. The provision requires the Department of Defense to

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<sup>1</sup>[Coalition for National Security Research FY25 NDAA Priorities Letter](#)

submit a report on the obligation and expenditure rates for DOD basic and applied research conducted at institutions of higher education. House Report 118-529, *“Expenditure benchmarks policies on grants aligned with academic institutions’ fiscal calendar,”* also recommends this requirement. Currently, researchers face challenges meeting DOD expenditure benchmark policies because the purchase of required equipment and instrumentation can have long wait times and cannot be billed until after they have been received. Additionally, given academic calendars, teaching responsibilities, and graduate student workloads, progress on many research projects cannot be tied to the same schedule as DOD industry partners. Improving the congruency of accounting policies and academic calendars will reduce the need for scientists and researchers to request funding carryover and also reduce agency burden when obligating DOD funds.

***Recommendation: We urge you to include Senate Section 234 in the final FY25 NDAA conference agreement.***

#### Access to Shared Classified Infrastructure

We support House Section 865 and Senate Section 1547, which would establish a pilot program to expand access to shared classified commercial infrastructure for entities such as institutions of higher education and small businesses. Having increased access to state-of-the-art facilities that can support classified research will not only widen individual universities’ ability to conduct more classified defense-related research, but will also expand DOD’s pool of qualified researchers to conduct this research.

***Recommendation: We urge you to include House Section 865 and Senate Section 1547 in the final FY25 NDAA conference agreement.***

#### **Provisions of Concern**

Outlined below are provisions that would jeopardize the continuity of crucially important research and development projects, thereby undermining research universities’ ability to deliver scientific advancements that guarantee our nation’s technological leadership. At a time when the United States must marshal all resources to outpace our adversaries, these proposed policy changes would seriously damage universities’ ability to quickly deliver new defense-related discoveries. Using the NDAA as a cudgel to punish educational institutions is short-sighted and would seriously damage our national security capabilities. We urge you to work in a bipartisan and bicameral way to support research institutions’ capacity to continue to fuel U.S. innovation and contribute to national defense by removing or modifying the provisions detailed below.

#### Research Security

Universities take seriously the national security threats posed by malign foreign entities. Over the past several years, the university community has worked closely with Congress on the passage and implementation of provisions enacted in previous defense policy bills as well as the CHIPS and Science Act. These new federal statutes require mandatory research security training for all federal research award applicants, prohibit participation in malign foreign talent recruitment programs, require new reporting to the National Science Foundation for institutions receiving certain gifts or contracts from “countries of

concern,” and mandate that DOD provide a list of foreign institutions and talent programs that pose a national security threat.<sup>2</sup>

In June of last year, DOD released its new Policy on Risk-Based Security Reviews of Fundamental Research, and a list of foreign entities confirmed as engaging in problematic activity, as required in Section 1286 of the FY19 NDAA. The policy has helped DOD and institutions identify and establish mitigation procedures to alleviate potential risks to their funded research. This July, the White House Office of Science and Technology Policy – as outlined in National Security Presidential Memorandum 33 – released final guidelines to federal research agencies on research security programs at certain universities and federally-funded research institutions.<sup>3</sup> Last year, the agencies also took steps to finalize common disclosure forms that require a greater level of detail in the information collected from researchers on collaborations and relationships with foreign entities. Several federal agencies have recently started implementing a multitude of new research security provisions enacted in the CHIPS and Science Act.

***We strongly urge Congress to allow for existing requirements to be fully implemented and for their outcomes to be assessed before adding additional regulations. We believe that this would allow for more well-informed legislative approaches to address any remaining or newly evolved security gaps and prevent the creation of duplicative, conflicting, unnecessary, and, in some cases, potentially counterproductive new research security requirements.***

#### Prohibition on Contracts

House Section 225 prohibits DOD from providing funds to an institution that has any type of contract with a covered nation or foreign entity of concern. A wholesale prohibition on contracts with a covered nation or foreign entity of concern would undoubtedly impact activities outside the scope of DOD research and national security concerns. Contracts pertaining to arts programs, language programs, history programs, study abroad exchanges – areas that have little to do with a DOD research grant – would all require waivers and approval from DOD. As outlined above, DOD has recently established several mechanisms to handle and mitigate research security concerns while still enabling productive, low-risk partnerships to move forward. This provision is also inconsistent with National Security Presidential Memorandum 33, which calls for the federal government to clearly identify specific threats and what information it must collect in order to protect and mitigate national security concerns. It is unclear what specific concern is to be mitigated with such a broad prohibition. It also threatens to disincentivize crucially important international collaborations and reduce the pool of students and faculty available to work on cutting-edge defense research.

***Recommendation: We urge you to oppose inclusion of House Section 225 in the final FY25 NDAA conference agreement.***

#### Prohibitions on Fundamental Research

House Section 226 prohibits DOD from providing funds to an institution of higher education if the involved academics conduct fundamental research in direct or *indirect* collaboration with a covered nation or foreign entity of concern. Similarly, House Section 1316 requires a report on the feasibility and effects of a

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<sup>2</sup> [Office of the Under Secretary of Defense for Research & Engineering | Academic Research Security](#)

<sup>3</sup> [Office of Science and Technology Policy Research Security Programs Guidelines Memo](#)

prohibition of DOD funds to an institution if the grantee is formally or *informally* partnered with an individual or institution from a country of concern. In addition to our concerns regarding House Section 225, we are particularly concerned with the implication of prohibiting “indirect” and “informal” collaborations. Given that no clear definition is provided for these terms, the result could be the widespread denial of research proposals due to diminutive actions such as a U.S. researcher co-serving on a panel or attending the same conference as a covered individual. Given the small circles of academic communities and the international nature of most fields of science, this could significantly reduce the pool of eligible U.S. researchers and severely stifle advancements in basic and applied research that may be important for defense applications.

Furthermore, the inherent assumption that fundamental research relationships, direct or indirect, should trigger prohibitions of funding severely misunderstands the nature of fundamental scientific research and undermines established national security policy (NSDD-189), which supports open and collaborative interactions as well as publication of fundamental research results.

A similar prohibition of funds to academic institutions is included within Senate Section 218. However, the definition of collaboration does not include *indirect* or *informal* partnerships, and the scope of the prohibition is narrowed to partnerships with institutions on the 1286 list.

***Recommendation: We urge you to oppose inclusion of House Sections 226 and 1316 in the final FY25 NDAA conference agreement. Instead, we urge you to base conference deliberations on Senate Section 218, which is a better starting place to negotiate language that is complimentary with interagency efforts on research security.***

#### Post-Employment Restrictions for DOD-Funded Researchers

House Section 1077 bans researchers who work on DOD projects in critical or emerging technologies areas from accepting employment funded by a foreign entity of concern for 10 years. While we share Congress’ goal of ensuring that discoveries born from federally funded research are not inappropriately obtained by our competitors, an employment ban is not an effective means of protecting U.S. government intellectual property. Furthermore, in 10 years, the list of foreign entities of concern is likely to change based on global geopolitics. Thus, a researcher today will have limited insight into what type of employment prohibitions will exist in the future, and how this provision could restrict their employment potential.

Such activities may be more efficiently and effectively addressed through the implementation of expanded authority granted to the Department of Commerce Bureau of Industrial Security under the Export Control Reform Act of 2018 (ECRA) to control the activities of U.S. persons, which would allow for continuing prohibitions on such activities in real-time.

***Recommendation: We urge you to oppose inclusion of House Section 1077 in the final FY25 NDAA conference agreement.***

#### Prohibitions on Advanced Biological Research

Section 1707 of the House-passed bill would prevent DOD from undertaking life-saving advanced biological research projects by prohibiting funding of gain-of-function research of concern. An overly broad definition of “gain-of-function” in this bill could impede the types of research techniques that have resulted in

therapies for fighting cancer, improved insulin production, and increased crop resiliency and yields. The United States recently updated its oversight and policy of “Dual Use Research of Concern” through a lengthy, comprehensive process that engaged scientific experts and the public; it is aimed at preserving the benefits of life sciences research while minimizing the risk of misuse of the knowledge, information, products, or technologies provided by such research. As written, this provision wrongly characterizes a crucial field of life science, runs counter to U.S. policy, and is extraordinarily broad and poorly defined. As you review life sciences research regulations, we urge you to consider the benefits of federally funded scientific research that improves the lives of Americans by delivering new medications and ensures warfighters remain safe from future biological threats.

***Recommendation: We urge you to strike “gain-of-function research of concern” from House Section 1707 in the final FY25 NDAA conference agreement.***

#### Prohibition of Funds for Civil Rights “Violations”

Senate Section 220 would prohibit DOD research contracts or grants to educational institutions that are found to be *in violation* of Title VI of the Civil Rights Act of 1964. We strongly support the Committee’s interest to ensure compliance of colleges and universities with the Civil Rights Act and that appropriate corrective steps are taken should an institution not acceptably protect the rights of students.

However, this provision inappropriately punishes researchers and students. Rarely, if ever, will the researchers and students impacted by the withholding of DOD funds be the individuals directly involved in a Title VI compliance matter. Therefore, the outcome of this provision will be to unduly punish academic researchers while not addressing the actual wrongful behavior resulting in an alleged Title VI violation. Should a research and development project be halted due to an open Title VI investigation, there could be significant impacts on national security given the duration of research cycles and how long these cases can remain open.

Of further concern, this provision does not specify whether being “*in violation*” means a federal court ruling, a settlement with the Department of Education, or even an allegation or investigation. The term also does not specify when an institution’s eligibility for DOD funds may be reinstated. We fear that “*in violation*” could be overly broad and inconsistently applied, creating an uncertain future for universities’ ability to receive DOD research funds, and stifling the ability of leading research institutions to further our nation’s national security.

This provision assumes a level of coordination between the Defense Department and the Department of Education that is currently nonexistent and would require significant interagency coordination. The Department of Education, which has primary responsibility for investigating complaints related to Title VI of the Civil Rights Act of 1964, remains the most appropriate federal agency for addressing allegations of campus-based discrimination. The Departments of Education and Justice have broad authority to enforce Title VI. It is wholly unnecessary to extend, particularly with vague and ambiguous mandates, novel requirements on the Department of Defense. Though incredibly important to address allegations of civil rights violations, this provision is misplaced and does not address the problem; rather it would create another.

***Recommendation: We urge you to oppose inclusion of Senate Section 220 in the final FY25 NDAA conference agreement. The Department of Defense is not the appropriate agency to enforce Title VI of the Civil Rights Act.***

Prohibition on Contracts with a “Person” Engaged in a Boycott of Israel

House Section 877 prohibits DOD from entering into contracts with a “person” involved in a boycott of the State of Israel. As written, this provision is overly broad and would be difficult for DOD and universities to interpret and implement. Our associations do not favor and have even come out against boycotts of Israel.<sup>4</sup> That said, we do not see how DOD or our member institutions could know if they have faculty, staff, or students engaging in their individual and personal capacities in boycotts of Israel.

Furthermore, under the Export Control Reform Act, laws are already in place to address boycotts of Israel through the Bureau of Industry & Security’s Office of Antiboycott Compliance.<sup>5</sup> Thus, this prohibition is duplicative and potentially interferes with existing law.

***Recommendation: We urge you to oppose inclusion of House Section 877 in the final FY25 NDAA conference agreement.***

As negotiations continue toward a final conference agreement, we thank you for taking our above recommendations into consideration. Please do not hesitate to contact AAU Associate Vice President for Government Relations and Public Policy Hanan Saab ([hanan.saab@aau.edu](mailto:hanan.saab@aau.edu)) or APLU Director of Government Relations Megan McKeown ([mmckeown@aplu.edu](mailto:mmckeown@aplu.edu)) if we can be of any assistance as you work to finalize the FY25 National Defense Authorization Act.

Sincerely,



Barbara R. Snyder  
President  
Association of American Universities



Mark Becker  
President  
Association of Public and Land-grant Universities

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<sup>4</sup> [AAU Statement Reaffirming Opposition to Proposals to Boycott Academic Institutions](#)

<sup>5</sup> [Office of Antiboycott Compliance \(OAC\) | Bureau of Industry and Security](#)