

University Concerns Regarding Gallagher Amendment
Sec. 1283 of H.R. 5515, FY2019 National Defense Authorization Act
and Proposed Alternative Approach for
Addressing Science and Security Issues on University Campuses

Background:

Language in Section 1283 of the House-passed FY2019 National Defense Authorization Act (H.R. 5515) would prohibit Department of Defense (DOD) funding from supporting researchers who have in the past or are currently participating in a “foreign talent or expert recruitment program” of China, Russia, Iran, or North Korea. The legislation would further require that an institution receiving or applying to receive DOD funding certify that such funds will not be made available to an individual who has or is currently participating in such a talent or expert recruitment program. If an institution is unable to provide such certification, the DOD may terminate all funding to the institution and/or prohibit any future funding to the institution. The language was offered as an amendment by Representative Mike Gallagher (R-WI) and adopted by the House Armed Services Committee during its consideration of H.R. 5515, the National Defense Authorization Act (NDAA) of 2019.

The university community understands and appreciates the intent of the language included in Section 1283. The community wants to work with Rep. Gallagher and other members of the House and Senate to take appropriate actions to successfully address threats posed by these types of talent and expert recruitment programs, as well as to appropriately and comprehensively address other national security vulnerabilities facing universities and federally sponsored university research.

Concerns about Section 1283

As written, the language in Section 1283 is overly broad and would have unintended and adverse consequences for the conduct of DOD research and universities conducting research on DOD’s behalf. Specific concerns regarding the language include:

- *Retrospective restrictions are likely to have unintended and adverse consequences for DOD research and DOD researchers.* By retrospectively restricting U.S. researchers who, in the past, participated in such talent or expert recruitment programs from working on DOD-sponsored scientific research, the language may well unintentionally bar some legitimate and very talented U.S. researchers from continuing to conduct research on behalf of the Department of Defense. Only recently has the U.S. government and Congress raised concerns about participation by U.S. researchers in such talent recruitment programs. Given that some of the programs – such as China’s “1000 Talents Programs” – have previously been viewed by both Chinese and U.S. researchers as honorific and prestigious awards which offer them additional resources to conduct their research, any restriction on participation in such programs should be made prospectively and not enacted on a retrospective basis. Had researchers who participated in these programs in the past been made aware that the U.S. government had concerns or that participation in these programs would prevent them from conducting research on behalf of DOD or other U.S. research agencies, many of them would not have participated.

- *The lack of definition and explicit listing of specific talent/expert recruitment programs of concern would make institutional and individual compliance challenging and impractical.* The current language provides no definition of what a “talent or expert recruitment program” is, nor does it specify how such programs would be determined and publicly listed. Without such clarity, compliance for research universities and other institutions would be very difficult, if not impossible. Moreover, it would be difficult to alert university faculty and students prospectively about which specific programs they should avoid participating in should they want to receive DOD funding in the future. It is essential for both national security and compliance reasons that the government make such threats and programs transparent. Moreover, the government should clearly identify such programs going forward to discourage researchers from participating in these programs.
- *Requiring universities to provide certification that DOD funds are not made available to any individual who has participated or is participating in such talent or expert recruitment programs would be problematic.* The provision requires that universities, as the granting or contracting agent of DOD funding, provide this certification. Unlike DOD research awards and contracts, however, foreign talent and expert recruitment awards are usually made directly to the individual. Since these types of awards go to the individual and do not flow through the institution, information on who has received such talent awards is not something about which the university has any formal record and such information would be very difficult to obtain retrospectively.
- *Retrospective review would add excess burden on institutions and likely would not be effective.* Requiring institutions to retrospectively review DOD grants and contracts to ensure that no one working on those grants and contracts has participated in such talent/expert recruitment programs would entail a significant level of additional time and burden. As mentioned above, this is not information that institutions have a means of tracking since funds for such talent recruitment programs go directly to the individual and do not pass through the institution. A more effective way to accomplish this objective would be for DOD to obtain such certification directly from the principal investigator (PI) prior to the final award of any future DOD grant award, contract, funding renewal and/or extension.

An Alternative Approach

Senator John Cornyn (R-TX) with support from other senators including Tom Cotton (R-AR) filed an amendment during Senate consideration of the FY2019 NDAA. This amendment would authorize DOD to create a new forum through which it would work with other national security agencies to engage universities to discuss and determine effective means to address issues involving national security. Through ongoing collaboration and information sharing, this forum would help develop and establish sound policies and appropriate safeguards to protect sensitive scientific research and to address emerging national security threats on university campuses. The university community believes that one of the first tasks such a forum could deal with is how to 1) appropriately address the concerns about foreign talent/expert recruitment programs, including how to appropriately identify and discourage U.S. citizens from participating in these programs, and 2) develop a national strategy to ensure that the U.S. has in place its own talent and expert recruitment programs to make certain that we are producing an adequate supply of talent in STEM, foreign languages, and other areas of critical need required to safeguard our nation’s future national and economic security needs.

The university community urges adoption of the language like that proposed by Senator Cornyn as a more comprehensive and effective way to address U.S. security concerns relating to the conduct of federally sponsored university research and other matters involving national security on college campuses.