

Calendar No. 681

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-282 }

SAFEGUARDING AMERICAN INNOVATION
ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1351

TO STRENGTHEN THE SECURITY AND INTEGRITY OF THE
UNITED STATES SCIENTIFIC AND RESEARCH ENTERPRISE



DECEMBER 19, 2022.—Ordered to be printed

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SAFEGUARDING AMERICAN INNOVATION ACT

DECEMBER 19, 2022.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1351]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1351), to strengthen the security and integrity of the United States scientific and research enterprise, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 1351, the *Safeguarding American Innovation Act*, aims to protect U.S. research and intellectual property from global competitors and improves the U.S.’ ability to combat threats to the American science and research enterprise. The bill establishes a council within the Office of Management and Budget (OMB) to update and standardize the grant application process across the federal government and to assess, inform, and protect against security risks to the U.S. research community. Further, the bill criminalizes federal grant application fraud in instances in which the applicant knowingly falsifies or misrepresents material information on a grant application or omits information about outside and foreign compensation. Additionally, the bill authorizes the Department of State (State Department) to deny visa applications of known or likely bad

actors seeking to travel to the U.S. to engage in espionage or other activity to acquire export-controlled technologies. The bill also requires that the sponsors of foreign researchers provide information on the extent of access the researcher will have to export-controlled technology on visa applications and to develop a plan to prevent the unauthorized release of export controlled technology. Finally, the bill reduces the minimum reporting requirements of colleges and universities for foreign gifts and contracts from \$250,000 to \$50,000.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The diversity and independence of U.S. research and development is vital to the innovative intellectual products that define American academia. Proactively promoting and protecting U.S. research, development, and intellectual property is a key element of maintaining the nation’s national security interests. While the U.S. has historically been an international leader in research and development (R&D), the U.S. share of global R&D has dropped significantly in recent decades.¹ In 1960, the U.S. accounted for 69 percent of global R&D, and the federal government funded twice as much R&D compared to U.S. Businesses.² This dominance in the R&D space is now on a decline—between 1960 and 2019, the U.S. share of global R&D fell to 30 percent, and the federal government’s share of R&D fell from 65 percent to 21 percent.³ According to an analysis by the Congressional Research Service, “this decline resulted primarily from more rapid increases in the R&D of other nations (public and private) and partially from increases in U.S. business R&D.”⁴ Maintaining and restoring U.S. global R&D shares is both an academic and national security priority.

Another concern pertaining to U.S. R&D is the theft of intellectual property by foreign researchers and entities, as well as conflicts of interest stemming from the participation in foreign talent recruitment programs. There have been efforts by some foreign governments to illicitly acquire U.S. research and technology by utilizing U.S.-based foreign nationals at universities or recruiting American scientists to covertly conduct research programs on their behalf.⁵ In 2019, the Committee’s Permanent Subcommittee on Investigations (PSI) staff released a staff report entitled, “Threats to the U.S. Research Enterprise: China’s Talent Recruitment Plans,” which found that China’s talent recruitment programs, like the Thousand Talents Plan, incentivize overseas researchers, academics, and professionals to provide the Chinese government with access and information to foreign technology.⁶ In response to these threats, the Trump Administration issued a National Security Presidential Memorandum (NSPM–33) in January 2021 to “strengthen protections of United States Government-supported

¹ Congressional Research Services, *The Global Research and Development Landscape and Implications for the Department of Defense* (R45403) (June 2021).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ The White House, *Clear Rules for Research Security and Researcher Responsibility* (Aug. 10, 2021) (<https://www.whitehouse.gov/ostp/news-updates/2021/08/10/clear-rules-for-research-security-and-researcher-responsibility/>).

⁶ Senate Permanent Subcommittee on Investigations, *Threats to the U.S. Research Enterprise: China’s Talent Recruitment Plans* (Nov. 2019).

R&D against foreign government interference and exploitation while maintaining an open environment to foster research discoveries and innovation that benefit our nation and the world.”⁷ In January 2022, the Biden Administration, through the National Science and Technology Council (NSTC), released implementation guidance for federal agencies of NSPM–33.⁸ However, there continues to be a lack of sufficient interagency coordination of research security programs.⁹

The *Safeguarding American Innovation Act* seeks to fill this coordination gap by imposing requirements to improve and standardize the federal grant application processes, establish interagency coordination to address threats, increase reporting for relevant information, and prevent known, or likely bad actors from acquiring U.S. research for nefarious purposes. Significantly, this bill establishes a Federal Research Security Council within OMB to develop federally funded research and grant making policy and management guidance to protect the national and economic security interests of the U.S. Through a streamlined and standardized grant application processes, the federal government will be able to better manage grants and ensure that taxpayer dollars are provided appropriately and efficiently while ensuring that institutions and departments that provide research grants, such as the Departments of Defense, Energy, Agriculture, Education, and the National Aeronautics and Space Administration (NASA) are applying grant standards and scrutiny in a uniform manner. This bill will help ensure that the federal government can protect intellectual property rights without undermining the openness and global collaboration necessary for innovative scientific discovery.

III. LEGISLATIVE HISTORY

Senator Portman (R–OH) introduced S. 1351 on April 22, 2021, with Senators Carper (D–DE), Rubio (R–FL), Coons (D–DE), Barrasso (R–WY), Cortez Masto (D–NV), Blackburn (R–TN), Hassan (D–NH), Grassley (R–IA), Manchin (D–WV), Hawley (R–MO), Shaheen (D–NH), Johnson (R–WI), Lankford (R–OK), Risch (R–ID), Romney (R–UT), Scott (R–FL), and Tillis (R–NC). The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. The Committee considered S. 1351 at a business meeting on May 12, 2021. The Committee ordered the bill reported favorably by voice vote with Senators Sinema and Padilla recorded as voting “no.” Senators present for the voice vote were Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Paul, Lankford, Romney, Scott, and Hawley.

⁷The White House, *Presidential Memorandum on United States Government-Supported Research and Development National Security Policy* (NSPM–33) (Jan. 14, 2021).

⁸National Science and Technology Council, *Guidance for Implementing National Security Presidential Memorandum 33 (NSPM–33) on National Security Strategy for United States Government-Supported Research and Development* (Jan. 2022) (<https://www.whitehouse.gov/wp-content/uploads/2022/01/010422-NSPM-33-Implementation-Guidance.pdf>).

⁹*U.S. scientific research agencies tighten foreign affiliation rules*, Roll Call (Feb. 15, 2022) (<https://rollcall.com/2022/02/15/u-s-scientific-research-agencies-tighten-foreign-affiliation-rules/>).

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section designates the name of the bill as the “Safeguarding American Innovation Act.”

Section 2. Definitions

This section defines the terms “federal science agency,” “research and development,” “development,” “experimental development,” and “research.”

Section 3. Federal Research Security Council

Subsection (a) amends Subtitle V of title 31, United States Code, by establishing a new chapter 79 creating the Federal Research Security Council.

Section 7901 defines the terms “appropriate congressional committees,” “council,” “executive agency,” “federal research security risk,” “insider,” “insider threat,” “research and development,” and “United States research community.”

Section 7902 establishes the Federal Research Security Council in OMB to develop policy on federally funded research and development grant making policy and management guidance to protect the national and economic security interests of the U.S. This section also outlines the membership of the Council and the designation and functions of the Council’s lead representatives of each participating agency. This section also requires the Director of OMB to designate a senior-level official from OMB to serve as the chairperson of the Council, and delineates the functions of the chairperson. Lastly, this section designates the lead science advisor to the council as the Director of the Office of Science and Technology Policy (OSTP), and the lead security advisor as the Director of the National Counterintelligence and Security Center, and requires the council to meet no later than 60 days after the enactment of this legislation and at least quarterly thereafter.

Section 7903, subsection (a) defines the terms “implementing” and “uniform application process.”

Section 7903, subsection (b) outlines the functions and authorities of the Council, including the development of uniform grant application processes; the development and implementation of reporting processes; sharing information with stakeholders to mitigate security risks; the identification of an executive agency partners for various purposes; and identification and issuance of guidance regarding insider threat detection and mitigation.

Section 7903, subsection (c) establishes certain requirements as the Council develops the uniform application process for federal research and development grants.

Section 7903, subsection (d) establishes requirements for information-sharing criteria with respect to federal research security risks.

Section 7903, subsection (e) establishes the requirements that the Council must consider as they identify or develop insider threat program guidance.

Section 7903, subsection (f) requires the Council in conjunction with the lead security advisor to issue warnings of potential risks and vulnerabilities in international scientific cooperation that may

undermine the integrity and security of the U.S. research community or place at risk any federally funded research and development.

Section 7903, subsection (g) requires that the interagency working group established under section 1746 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92) be a working group under the Council. The section further requires the Council to use any findings or work product of the working group, and allows the Council to establish a program office and any committees, working groups, or other constituent bodies the Council deems appropriate, to carry out its functions.

Section 7903, subsection (h) requires the Interagency Suspension and Debarment Committee to provide quarterly reports to the Council in order to reduce federal research security risk.

Section 7903, subsection (i) provides that nothing in section 7903 may be construed to alter or diminish the authority of any federal agency or to alter any procedural requirements or remedies that were in place before the date of enactment of new Chapter 79.

Section 7904 requires the Council to develop a strategic plan within 180 days of enactment of this legislation that addresses federal research security risks and managing those risks. The plan will include information-sharing requirements for risks; identifications of authorities and best practices for addressing risks; recommendations to mitigate risks; and evaluations and plans for implementing new policies on existing federal grant processes, engaging with the private sector and other nongovernmental stakeholders to address those risks, and identifying, assessing, mitigating, and vetting federal research security risks. This section also requires the strategic plan be submitted to Congress 7 calendar days after the completion of the strategic plan.

Section 7905 requires the Chairperson of the Council to submit a report on the activities and progress of the Council to Congress no later than December 15 each year that describes the activities of the Council during the preceding fiscal year, and the progress made toward implementing the strategic plan required by section 7904 after the plan has been submitted to Congress.

Section 7906 requires all heads of executive agencies on the Council to assess, avoid, and mitigate risks to federally-funded research and align agency initiatives related to research grant policies with Council guidance. It also directs all heads of executive agencies on the Council to develop risk management strategies, integrate risk management practices, share information on federal research security risks as well as report on effectiveness of the federal research security risk management strategy.

Subsection (b) is a clerical amendment to change the table of chapters in title 31 of United States Code to reflect the new chapter 79.

Section 4. Federal grant application fraud

Subsection (a) amends Chapter 47 of title 18 of the United States Code by adding a new section 1041 that criminalizes Federal grant application fraud.

Section 1041, subsection (a) establishes definitions for terms “federal agency,” “federal grant,” “federal grant application,” “foreign compensation,” “foreign government,” “foreign government institu-

tion,” “foreign public enterprise,” “law enforcement agency,” and “outside compensation in the section.

Section 1041, subsection (b) makes it unlawful for any individual to knowingly prepare or submit Federal grant applications that contains material misrepresentations, false statements, or omits receipt of outside or foreign compensation.

Section 1041, subsection (c) exempts lawful investigative, protective, or intelligence activities from the prohibition in subsection (b).

Section 1041, subsection (d) sets penalties for violators of subsection (b) including fines, or at most 5-year imprisonment, or both. Additionally, violators will be prohibited from receiving Federal grants for five years beginning when a sentence is imposed.

Subsection (b) amends the table of sections for chapter 47 of title 18, United States Code to reflect new section 1041.

Section 5. Restricting the acquisition of goods, technologies, and sensitive information to certain aliens

Subsection (a) amends Section 212(a)(3)(A)(i) of the Immigration and Nationality Act (8 U.S.C. § 1182(a)(3)(A)(i)) to authorize consular officers to deny visas to aliens seeking to travel to the U.S. to engage in espionage or activity to access export-controlled technologies if that access would be contrary to a national or economic security interest of the U.S.

Subsection (b) establishes factors for determining visa denials under the amended Section 212(a)(3)(A)(i) of the Immigration and Nationality Act. Further, the subsection directs the State Department to seek interagency assistance for establishing visa-denial criteria and to use machine-readable documents for visa applications.

Subsection (c) requires the State Department, in coordination with other federal departments and agencies, to submit a report to Congress that details the criteria developed in this section and the number of inadmissible individuals referenced in Section 212(a)(3)(A)(i) of the Immigration and Nationality Act.

Subsection (d) establishes that each annual report should be unclassified to the extent possible and include a classified appendix if necessary.

Subsection (e) requires the Secretary of State to submit a report to Congress within 45 days of enactment of this legislation regarding implementation of this section.

Section 6. Limitations on educational and cultural exchange programs

This section amends Section 102(b)(5) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. § 2452(b)(5)) to require exchange visa sponsors to provide the State Department with information on the exchange visitor’s access to export-controlled technologies through research, lectures, course work, conferences, and more. Additionally, this section requires visa sponsors to provide the State Department plans to mitigate unauthorized access to export-controlled technologies. Lastly, this section requires visa sponsors to demonstrate to the appropriate satisfaction of the Secretary of State, that they have received appropriate authorization from the appropriate Federal agency to allow the exchange visitor to access export-controlled technologies.

Section 7. Amendments to disclosures of foreign gifts

This section amends section 117 of the Higher Education Act of 1965 (20 U.S.C. § 1011f) to reduce the required reporting threshold for foreign gifts and contracts made to colleges and universities from \$250,000 to \$50,000. Further, this section allows the Secretary of Education to permit institutions to revise and update reports previously filed to account for the new minimum reporting requirement. The Secretary of Education is also required by this section to make disclosure reports publicly available in an electronic format. The Secretary of Education is also given the authority to fine institutions that have failed to disclose receipts of foreign gifts of at least \$50,000 for three years in a row. Additionally, this section requires the Secretary of Education to issue regulations using the negotiated rulemaking procedure for instructions related to reporting requirements. Lastly, this section requires that tuitions and scholarships not be considered a gift or contract under this section.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform bill (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 8—ALIENS AND NATIONALITY

* * * * *

CHAPTER 12—IMMIGRATION AND NATIONALITY

* * * * *

Subchapter II—Immigration

* * * * *

PART II—ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * *

SEC. 1182. INADMISSABLE ALIENS.

(a) * * *

(1) * * *

(2) * * *

(3) SECURITY AND RELATED GROUNDS.—

(A) IN GENERAL.—Any alien who a consular officer or the Attorney General knows, or has reasonable ground to believe, seeks to enter the United States to engage solely, principally, or incidentally in—

[(i) any activity (I) to violate any law of the United States relating to espionage or sabotage or (II) to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

[(ii) any other unlawful activity, or

[(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

[is inadmissible.]

(i) any activity—

(I) to violate any law of the United States relating to espionage or sabotage;

(II) to violate or evade any law prohibiting the export from the United States of goods, technologies, or sensitive information; or

(III) to acquire export-controlled goods, technologies, or sensitive information through any exclusions for items normally subject to export controls if the Secretary of State has determined that the acquisition of those goods, technologies, or sensitive information by that alien would be contrary to an articulable national security (including economic security) interest of the United States;

* * * * *

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

Sec.

1001. Statements or entries personally.

* * * * *

1041. Federal grant application fraud.

* * * * *

SEC. 1041. FEDERAL GRANT APPLICATION FRAUD.

(a) *DEFINITIONS.—In this section:*

(1) *FEDERAL AGENCY.—The term ‘Federal agency’ has the meaning given the term ‘agency’ in section 551 of title 5, United States Code.*

(2) *FEDERAL GRANT.—The term ‘Federal grant’—*

(A) means a grant awarded by a Federal agency;

(B) includes a subgrant awarded by a non-Federal entity to carry out a Federal grant program; and

(C) does not include—

(i) direct United States Government cash assistance to an individual;

(ii) a subsidy;

(iii) a loan;

(iv) a loan guarantee; or

(v) insurance.

(3) *FEDERAL GRANT APPLICATION.—The term ‘Federal grant application’ means an application for a Federal grant.*

(4) *FOREIGN COMPENSATION.—The term ‘foreign compensation’ means a title, monetary compensation, access to a laboratory or other resource, or other benefit received from—*

(A) a foreign government;

(B) a foreign government institution; or

(C) a foreign public enterprise.

(5) *FOREIGN GOVERNMENT.—The term ‘foreign government’ includes a person acting or purporting to act on behalf of—*

(A) a faction, party, department, agency, bureau, subnational administrative entity, or military of a foreign country; or

(B) a foreign government or a person purporting to act as a foreign government, regardless of whether the United States recognizes the government.

(6) *FOREIGN GOVERNMENT INSTITUTION.—The term ‘foreign government institution’ means a foreign entity owned by, subject to the control of, or subject to regulation by a foreign government.*

(7) *FOREIGN PUBLIC ENTERPRISE.—The term ‘foreign public enterprise’ means an enterprise over which a foreign government directly or indirectly exercises a dominant influence.*

(8) *LAW ENFORCEMENT AGENCY.—The term ‘law enforcement agency’—*

(A) means a Federal, State, local, or Tribal law enforcement agency; and

(B) includes—

(i) the Office of Inspector General of an establishment (as defined in section 12 of the Inspector General Act of 1978 (5 U.S.C. App.)) or a designated Federal entity (as defined in section 8G(a) of the Inspector General Act of 1978 (5 U.S.C. App.)); and

(ii) the Office of Inspector General, or similar office, of a State or unit of local government.

(9) *OUTSIDE COMPENSATION.*—The term ‘outside compensation’ means any compensation, resource, or support regardless of monetary value made available to the applicant in support of or related to any research endeavor, including, but not limited to, a title, research grant, cooperative agreement, contract, institutional award, access to a laboratory, or other resource, including, but not limited to, materials, travel compensation, or work incentives.

(b) *PROHIBITION.*—It shall be unlawful for any individual to knowingly—

(1) prepare or submit a Federal grant application that fails to disclose the receipt of any outside compensation, including foreign compensation, by the individual;

(2) forge, counterfeit, or otherwise falsify a document for the purpose of obtaining a Federal grant; or

(3) prepare, submit, or assist in the preparation or submission of a Federal grant application or document in connection with a Federal grant application that—

- (A) contains a false statement;
- (B) contains a material misrepresentation;
- (C) has no basis in law or fact; or
- (D) fails to disclose a material fact.

(c) *EXCEPTION.*—Subsection (b) does not apply to an activity—

(1) carried out in connection with a lawfully authorized investigative, protective, or intelligence activity of—

- (A) a law enforcement agency; or
- (B) a Federal intelligence agency; or

(2) authorized under chapter 224.

(d) *PENALTY.*—Any individual who violates subsection (b)—

(1) shall be fined in accordance with this title, imprisoned for not more than 5 years, or both; and

(2) shall be prohibited from receiving a Federal grant during the 5-year period beginning on the date on which a sentence is imposed on the individual under paragraph (1).

* * * * *

TITLE 20—EDUCATION

* * * * *

CHAPTER 28—HIGHER EDUCATION RESOURCES AND STUDENT ASSISTANCE

* * * * *

Subchapter I—General Provisions

* * * * *

PART B—ADDITIONAL GENERAL PROVISIONS

* * * * *

SEC. 1011f. DISCLOSURES OF FOREIGN GIFTS.

[(a) *DISCLOSURE REPORT.*—Whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is \$250,000 or

more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the Secretary on January 31 or July 31, whichever is sooner.】

(a) *DISCLOSURE REPORT.*—

(1) *IN GENERAL.*—*An institution shall file a disclosure report with the Secretary not later than March 31 occurring after—*

(A) *the calendar year in which a foreign source gains ownership of, or control over, the institution; or*

(B) *the calendar year in which the institution receives a gift from, or enters into a contract with, a foreign source, the value of which is \$50,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year.*

(2) *REVISIONS; UPDATES.*—*The Secretary shall permit institutions to revise and update disclosure reports previously filed to ensure accuracy, compliance, and the ability to cure.*

【(b) *Contents of report.*—Each report to the Secretary required by this section shall contain the following:

【(1) For gifts received from or contracts entered into with a foreign source other than a foreign government, the aggregate dollar amount of such gifts and contracts attributable to a particular country. The country to which a gift is attributable is the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business, for a foreign source which is a legal entity.

【(2) For gifts received from or contracts entered into with a foreign government, the aggregate amount of such gifts and contracts received from each foreign government.

【(3) In the case of an institution which is owned or controlled by a foreign source, the identity of the foreign source, the date on which the foreign source assumed ownership or control, and any changes in program or structure resulting from the change in ownership or control.】

(b) *CONTENTS OF REPORT.*—*Each report to the Secretary required by this section shall contain the following:*

(1) *For gifts received from or contracts entered into with a foreign source other than a foreign government, the aggregate dollar amount of such gifts and contracts attributable to a particular country and the legal or formal name of the foreign source. The country to which a gift is attributable is the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business, for a foreign source which is a legal entity.*

(2) *For gifts received from or contracts entered into with a foreign government, the aggregate amount of such gifts and contracts received from each foreign government.*

(3) *In the case of an institution which is owned or controlled by a foreign source, the identity of the foreign source, the date on which the foreign source assumed ownership or control, and any changes in program or structure resulting from the change in ownership or control.*

(4) *An assurance that the institution will maintain true copies of gift and contract agreements subject to the disclosure requirements under this section for at least the duration of the agreement.*

(5) *An assurance that the institution will produce true copies of gift and contract agreements subject to the disclosure requirements under this section upon request of the Secretary during a compliance audit or other institutional investigation.*

(c) * * *

(d) * * *

[(e) PUBLIC INSPECTION.—All disclosure reports required by this section shall be public records open to inspection and copying during business hours.]

(e) PUBLIC INSPECTION.—Not later than 30 days after receiving a disclosure report under this section, the Secretary shall make such report electronically available to the public for downloading on a searchable database under which institutions can be individually identified and compared.

(f) **ENFORCEMENT.—**

(1) * * *

(2) * * *

(3) **FINES.—**

(A) IN GENERAL.—The Secretary may impose a fine on any institution that repeatedly fails to file a disclosure report for a receipt of a gift from or contract with a foreign source in accordance with subsection (a) in an amount that is not more than 3 times the amount of the gift or contract with the foreign source.

(B) DEFINITION OF REPEATEDLY FAILS.—In this paragraph, the term “repeatedly fails” means that the institution failed to file disclosure report for a receipt of a gift from or contract with a foreign source in 3 consecutive years.

[(g) REGULATIONS.—The Secretary may promulgate regulations to carry out this section.]

(g) **RULEMAKING.—**

(1) IN GENERAL.—Not later than 1 year after the enactment of the Safeguarding American Innovation Act, the Secretary shall issue regulations to carry out this section using the negotiated rulemaking procedure set forth in section 492(b).

(2) ELEMENTS.—Regulations issued pursuant to paragraph (1) shall—

(A) incorporate instructions for—

(i) reporting structured gifts and contracts; and

(ii) reporting contracts that balances the need for transparency, while protecting the proprietary information of institutes of higher education; and

(B) clarify the definition of “subunit”, for purposes of subsection (i)(4)(C).

(h) TREATMENT OF TUITION PAYMENT.—A tuition and related fees and expenses payment to an institution by, or a scholarship from, a foreign source made on behalf of a student enrolled at such institution shall not be considered a gift from or contract with a foreign source under this section.

[(h)] (i) DEFINITIONS.—For the purposes of this section—

(1) * * *

(2) * * *

(3) the term “gift” means any gift of money [or property], property, resources, or staff, including any funds provided to the institution and used to pay, or designated for the payment of, staff;

(4) * * *

(5) the term “restricted or conditional gift or contract” means any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding—

(A) * * *

(B) the establishment of departments, centers, *institutes*, *instructional programs*, research or lecture programs, or new faculty positions;

* * * * *

TITLE 22—FOREIGN RELATIONS AND INTERCOURSE

* * * * *

CHAPTER 23—MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE PROGRAM

* * * * *

SEC. 2452. AUTHORIZATION OF ACTIVITIES.

(a) * * *

(b) OTHER EXCHANGES.—In furtherance of the purposes of this chapter, the President is further authorized to provide for—

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) promoting and supporting medical, scientific, cultural, and educational research and development[;] by developing exchange programs for foreign researchers and scientists, while protecting technologies regulated by export control laws important to the national security and economic interests of the United States, including requiring sponsors—

(A) to disclose to the Department of State whether an exchange visitor, as a primary part of his or her exchange program, will have released to them controlled technology or technical data regulated by export control laws at sponsor organizations through research activities, lectures, course work, sponsor employees, officers, agents, third parties at which the sponsor places the exchange visitor, volunteers, or other individuals or entities associated with a sponsor’s administration of the exchange visitor program;

(B) to provide a plan to the Department of State that establishes appropriate program safeguards to prevent the unauthorized release of controlled technology or technical data regulated by export control laws at sponsor organizations or through their employees, officers, agents, third parties, volunteers, or other individuals or entities associated

with a sponsor’s administration of the exchange visitor program; and

(C) to demonstrate, to the satisfaction of the Secretary of State, that programs that will release controlled technology or technical data to an exchange visitor at the sponsor organization through exchange visitor programs have received appropriate authorization from the Department of State, the Department of Commerce, other cognizant Federal agency before the sponsor releases controlled technology or technical data;

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CHAPTER 79—FEDERAL RESEARCH SECURITY COUNCIL

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SEC. 7901. DEFINITIONS.

In this chapter:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

- (A) the Committee on Homeland Security and Governmental Affairs of the Senate;
- (B) the Committee on Commerce, Science, and Transportation of the Senate;
- (C) the Select Committee on Intelligence of the Senate;
- (D) the Committee on Foreign Relations of the Senate;
- (E) the Committee on Armed Services of the Senate;
- (F) the Committee on Health, Education, Labor, and Pensions of the Senate;

(G) the Committee on Oversight and Reform of the House of Representatives;

(H) the Committee on Homeland Security of the House of Representatives;

(I) the Committee on Energy and Commerce of the House of Representatives;

(J) the Permanent Select Committee on Intelligence of the House of Representatives;

(K) the Committee on Foreign Affairs of the House of Representatives;

(L) the Committee on Armed Services of the House of Representatives; and

(M) the Committee on Education and Labor of the House of Representatives.

(2) COUNCIL.—The term ‘Council’ means the Federal Research Security Council established under section 7902(a).

(3) EXECUTIVE AGENCY.—The term ‘Executive agency’ has the meaning given that term in section 105 of title 5.

(4) FEDERAL RESEARCH SECURITY RISK.—The term ‘Federal research security risk’ means the risk posed by malign state actors and other persons to the security and integrity of research and development conducted using grants awarded by Executive agencies.

(5) INSIDER.—The term ‘insider’ means any person with authorized access to any United States Government resource, including personnel, facilities, information, research, equipment, networks, or systems.

(6) INSIDER THREAT.—The term ‘insider threat’ means the threat that an insider will use his or her authorized access (wittingly or unwittingly) to harm the national and economic security of the United States or negatively affect the integrity of a Federal agency’s normal processes, including damaging the United States through espionage, sabotage, unauthorized disclosure of national security information or non-public information, or through the loss or degradation of departmental resources, capabilities, and functions.

(7) RESEARCH AND DEVELOPMENT.—

(A) IN GENERAL.—The term ‘research and development’ means all research activities, both basic and applied, and all development activities.

(B) DEVELOPMENT.—The term ‘development’ means experimental development.

(C) EXPERIMENTAL DEVELOPMENT.—The term ‘experimental development’ means creative and systematic work, drawing upon knowledge gained from research and practical experience, which—

(i) is directed toward the production of new products or processes or improving existing products or processes; and

(ii) like research, will result in gaining additional knowledge.

(D) RESEARCH.—The term ‘research’—

(i) means a systematic study directed toward fuller scientific knowledge or understanding of the subject studied; and

(ii) includes activities involving the training of individuals in research techniques if such activities—

(I) utilize the same facilities as other research and development activities; and

(II) are not included in the instruction function.

(8) UNITED STATES RESEARCH COMMUNITY.—The term ‘United States research community’ means—

(A) research and development centers of Executive agencies;

(B) private research and development centers in the United States, including for-profit and nonprofit research institutes;

(C) research and development centers at institutions of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)));

(D) research and development centers of States, United States territories, Indian tribes, and municipalities;

(E) government-owned, contractor-operated United States Government research and development centers; and

(F) any person conducting federally funded research or receiving Federal research grant funding.

SEC. 7902. FEDERAL RESEARCH SECURITY COUNCIL ESTABLISHMENT AND MEMBERSHIP.

(a) ESTABLISHMENT.—There is established, in the Office of Management and Budget, a Federal Research Security Council, which shall develop federally funded research and development grant making policy and management guidance to protect the national and economic security interests of the United States.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The following agencies shall be represented on the Council:

(A) The Office of Management and Budget.

(B) The Office of Science and Technology Policy.

(C) The Department of Defense.

(D) The Department of Homeland Security.

(E) The Office of the Director of National Intelligence, including the National Counterintelligence and Security Center.

(F) The Department of Justice, including the Federal Bureau of Investigation.

(G) The Department of Energy.

(H) The Department of Commerce, including the National Institute of Standards and Technology.

(I) The Department of Health and Human Services, including the National Institutes of Health.

(J) The Department of State.

(K) The Department of Transportation.

(L) The National Aeronautics and Space Administration.

(M) The National Science Foundation.

(N) The Department of Education.

(O) The Small Business Administration.

(P) The Council of Inspectors General on Integrity and Efficiency.

(Q) Other Executive agencies, as determined by the Chairperson of the Council.

(2) *LEAD REPRESENTATIVES.*—

(A) *DESIGNATION.*—Not later than 45 days after the date of the enactment of this chapter, the head of each agency represented on the Council shall designate a representative of that agency as the lead representative of the agency on the Council.

(B) *FUNCTIONS.*—The lead representative of an agency designated under subparagraph (A) shall ensure that appropriate personnel, including leadership and subject matter experts of the agency, are aware of the business of the Council.

(c) *CHAIRPERSON.*—

(1) *DESIGNATION.*—Not later than 45 days after the date of the enactment of this chapter, the Director of the Office of Management and Budget shall designate a senior-level official from the Office of Management and Budget to serve as the Chairperson of the Council.

(2) *FUNCTIONS.*—The Chairperson shall perform functions that include—

(A) subject to subsection (d), developing a schedule for meetings of the Council;

(B) designating Executive agencies to be represented on the Council under subsection (b)(1)(Q);

(C) in consultation with the lead representative of each agency represented on the Council, developing a charter for the Council; and

(D) not later than 7 days after completion of the charter, submitting the charter to the appropriate congressional committees.

(3) *LEAD SCIENCE ADVISOR.*—The Director of the Office of Science and Technology Policy shall be the lead science advisor to the Chairperson for purposes of this chapter.

(4) *LEAD SECURITY ADVISOR.*—The Director of the National Counterintelligence and Security Center shall be the lead security advisor to the Chairperson for purposes of this chapter.

(d) *MEETINGS.*—The Council shall meet not later than 60 days after the date of the enactment of this chapter and not less frequently than quarterly thereafter.

SEC. 7903. FUNCTIONS AND AUTHORITIES.(a) *DEFINITIONS.*—In this section:

(1) *IMPLEMENTING.*—The term ‘implementing’ means working with the relevant Federal agencies, through existing processes and procedures, to enable those agencies to put in place and enforce the measures described in this section.

(2) *UNIFORM APPLICATION PROCESS.*—The term ‘uniform application process’ means a process employed by Federal science agencies to maximize the collection of information regarding applicants and applications, as determined by the Council.

(b) *IN GENERAL.*—The Chairperson of the Council shall consider the missions and responsibilities of Council members in determining the lead agencies for Council functions. The Council shall perform the following functions:

(1) Developing and implementing, across all Executive agencies that award research and development grants, a uniform application process for grants in accordance with subsection (c).

(2) *Developing and implementing a uniform and regular reporting process for identifying persons participating in federally funded research and development or that have access to non-public federally funded information, data, research findings, and research and development grant proposals.*

(3) *Identifying or developing criteria, in accordance with subsection (d), for sharing and receiving information with respect to Federal research security risks in order to mitigate such risks with—*

(A) *members of the United States research community; and*

(B) *other persons participating in federally funded research and development.*

(4) *Identifying an appropriate Executive agency—*

(A) *to accept and protect information submitted by Executive agencies and non-Federal entities based on the processes established under paragraphs (1) and (2); and*

(B) *to facilitate the sharing of information received under subparagraph (A) to support, as necessary and appropriate—*

(i) *oversight of federally funded research and development;*

(ii) *criminal and civil investigations of misappropriated Federal funds, resources, and information; and*

(iii) *counterintelligence investigations.*

(5) *Identifying, as appropriate, Executive agencies to provide—*

(A) *shared services, such as support for conducting Federal research security risk assessments, activities to mitigate such risks, and oversight and investigations with respect to grants awarded by Executive agencies; and*

(B) *common contract solutions to support enhanced information collection and sharing and the verification of the identities of persons participating in federally funded research and development.*

(6) *Identifying and issuing guidance, in accordance with subsection (e) and in coordination with the National Insider Threat Task Force established by Executive Order 13587 (50 U.S.C. 3161 note) for developing and implementing insider threat programs for Executive agencies to deter, detect, and mitigate insider threats, including the safeguarding of sensitive information from exploitation, compromise, or other unauthorized disclosure, taking into account risk levels and the distinct needs, missions, and systems of each such agency.*

(7) *Identifying and issuing guidance for developing compliance and oversight programs for Executive agencies to ensure that research and development grant recipients accurately report conflicts of interest and conflicts of commitment in accordance with subsection (c)(1). Such programs shall include an assessment of—*

(A) *a grantee's support from foreign sources and affiliations with foreign funding institutions or laboratories; and*

(B) *the impact of such support and affiliations on United States national security and economic interests.*

(8) *Assessing and making recommendations with respect to whether openly sharing certain types of federally funded research and development is in the economic and national security interests of the United States.*

(9) *Identifying and issuing guidance to the United States research community, and other recipients of Federal research and development funding, to ensure that such institutions and recipients adopt existing best practices to reduce the risk of misappropriation of research data.*

(10) *Identifying and issuing guidance on additional steps that may be necessary to address Federal research security risks arising in the course of Executive agencies providing shared services and common contract solutions under paragraph (5)(B).*

(11) *Engaging with the United States research community in performing the functions described in paragraphs (1), (2), and (3) and with respect to issues relating to Federal research security risks.*

(12) *Carrying out such other functions, as determined by the Council, that are necessary to reduce Federal research security risks.*

(c) **REQUIREMENTS FOR UNIFORM GRANT APPLICATION PROCESS.**—*In developing the uniform application process for Federal research and development grants required under subsection (b)(1), the Council shall—*

(1) *ensure that the process—*

(A) *requires principal investigators, co-principal investigators, and senior personnel associated with the proposed Federal research or development grant project—*

(i) *to disclose biographical information, all affiliations, including any foreign military, foreign government-related organizations, and foreign-funded institutions, and all current and pending support, including from foreign institutions, foreign governments, or foreign laboratories, and all support received from foreign sources; and*

(ii) *to certify the accuracy of the required disclosures under penalty of perjury; and*

(B) *uses a machine-readable application form to assist in identifying fraud and ensuring the eligibility of applicants;*

(2) *design the process—*

(A) *to reduce the administrative burden on persons applying for Federal research and development funding; and*

(B) *to promote information sharing across the United States research community, while safeguarding sensitive information; and*

(3) *complete the process not later than 1 year after the date of the enactment of the Safeguarding American Innovation Act.*

(d) **REQUIREMENTS FOR INFORMATION SHARING CRITERIA.**—*In identifying or developing criteria and procedures for sharing information with respect to Federal research security risks under subsection (b)(3), the Council shall ensure that such criteria address, at a minimum—*

(1) *the information to be shared;*

(2) the circumstances under which sharing is mandated or voluntary;

(3) the circumstances under which it is appropriate for an Executive agency to rely on information made available through such sharing in exercising the responsibilities and authorities of the agency under applicable laws relating to the award of grants;

(4) the procedures for protecting intellectual capital that may be present in such information; and

(5) appropriate privacy protections for persons involved in Federal research and development.

(e) *REQUIREMENTS FOR INSIDER THREAT PROGRAM GUIDANCE.*—In identifying or developing guidance with respect to insider threat programs under subsection (b)(6), the Council shall ensure that such guidance provides for, at a minimum—

(1) such programs—

(A) to deter, detect, and mitigate insider threats; and

(B) to leverage counterintelligence, security, information assurance, and other relevant functions and resources to identify and counter insider threats;

(2) the development of an integrated capability to monitor and audit information for the detection and mitigation of insider threats, including through—

(A) monitoring user activity on computer networks controlled by Executive agencies;

(B) providing employees of Executive agencies with awareness training with respect to insider threats and the responsibilities of employees to report such threats;

(C) gathering information for a centralized analysis, reporting, and response capability; and

(D) information sharing to aid in tracking the risk individuals may pose while moving across programs and affiliations;

(3) the development and implementation of policies and procedures under which the insider threat program of an Executive agency accesses, shares, and integrates information and data derived from offices within the agency;

(4) the designation of senior officials with authority to provide management, accountability, and oversight of the insider threat program of an Executive agency and to make resource recommendations to the appropriate officials; and

(5) such additional guidance as is necessary to reflect the distinct needs, missions, and systems of each Executive agency.

(f) *ISSUANCE OF WARNINGS RELATING TO RISKS AND VULNERABILITIES IN INTERNATIONAL SCIENTIFIC COOPERATION.*—

(1) *IN GENERAL.*—The Council, in conjunction with the lead security advisor under section 7902(c)(4), shall establish a process for informing members of the United States research community and the public, through the issuance of warnings described in paragraph (2), of potential risks and vulnerabilities in international scientific cooperation that may undermine the integrity and security of the United States research community or place at risk any federally funded research and development.

(2) *CONTENT.*—A warning described in this paragraph shall include, to the extent the Council considers appropriate, a description of—

(A) activities by the national government, local governments, research institutions, or universities of a foreign country—

(i) to exploit, interfere, or undermine research and development by the United States research community;

or

(ii) to misappropriate scientific knowledge resulting from federally funded research and development;

(B) efforts by strategic competitors to exploit the research enterprise of a foreign country that may place at risk—

(i) the science and technology of that foreign country;

or

(ii) federally funded research and development; and

(C) practices within the research enterprise of a foreign country that do not adhere to the United States scientific values of openness, transparency, reciprocity, integrity, and merit-based competition.

(g) *PROGRAM OFFICE AND COMMITTEES.*—The interagency working group established under section 1746 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92) shall be a working group under the Council performing duties authorized under such section and as directed by the Council. The Council shall use any findings or work product, existing or forthcoming, by such working group. The Council may also establish a program office and any committees, working groups, or other constituent bodies the Council deems appropriate, in its sole and unreviewable discretion, to carry out its functions.

(h) *EXCLUSION ORDERS.*—To reduce Federal research security risk, the Interagency Suspension and Debarment Committee shall provide quarterly reports to the Council that detail—

(1) the number of ongoing investigations by Council Members related to Federal research security that may result, or have resulted, in agency pre-notice letters, suspensions, proposed debarments, and debarments;

(2) Federal agencies' performance and compliance with interagency suspensions and debarments;

(3) efforts by the Interagency Suspension and Debarment Committee to mitigate Federal research security risk;

(4) proposals for developing a unified Federal policy on suspensions and debarments; and

(5) other current suspension and debarment related issues.

(i) *SAVINGS PROVISION.*—Nothing in this section may be construed to alter or diminish the authority of any Federal agency or to alter any procedural requirements or remedies that were in place before the date of the enactment of this chapter.

SEC. 7904. STRATEGIC PLAN.

(a) *IN GENERAL.*—Not later than 180 days after the date of the enactment of this chapter, the Council shall develop a strategic plan for addressing Federal research security risks and for managing such risks, that includes—

(1) the criteria and processes required under section 7903(b), including a threshold and requirements for sharing relevant in-

formation about such risks with all Executive agencies and, as appropriate, with other Federal entities, foreign governments, and non-Federal entities;

(2) an identification of existing authorities for addressing such risks;

(3) an identification and promulgation of best practices and procedures, and an identification of available resources, for Executive agencies to assess and mitigate such risks;

(4) recommendations for any legislative, regulatory, or other policy changes to improve efforts to address such risks;

(5) recommendations for any legislative, regulatory, or other policy changes to incentivize the adoption of best practices for avoiding and mitigating Federal research security risks by the United States research community and key United States foreign research partners;

(6) an evaluation of the effect of implementing new policies or procedures on existing Federal grant processes, regulations, and disclosures of conflicts of interest and conflicts of commitment;

(7) a plan for engaging with Executive agencies, the private sector, and other nongovernmental stakeholders to address such risks and share information between Executive agencies, the private sector, and nongovernmental stakeholders; and

(8) a plan for identification, assessment, mitigation, and vetting of Federal research security risks.

(b) **SUBMISSION TO CONGRESS.**—Not later than 7 calendar days after completion of the strategic plan required by subsection (a), the Chairperson of the Council shall submit the plan to the appropriate congressional committees.

SEC. 7905. ANNUAL REPORT.

Not later than December 15 of each year, the Chairperson of the Council shall submit a report to the appropriate congressional committees that describes—

(1) the activities of the Council during the preceding fiscal year; and

(2) the progress made toward implementing the strategic plan required under section 7904 after such plan has been submitted to Congress.

SEC. 7906. REQUIREMENTS FOR EXECUTIVE AGENCIES.

(a) **IN GENERAL.**—The head of each Executive agency on the Council shall be responsible for—

(1) assessing Federal research security risks posed by persons participating in federally funded research and development;

(2) avoiding or mitigating such risks, as appropriate and consistent with the standards, guidelines, requirements, and practices identified by the Council under section 7903(b);

(3) prioritizing Federal research security risk assessments conducted under paragraph (1) based on the applicability and relevance of the research and development to the national security and economic competitiveness of the United States; and

(4) ensuring that all agency initiatives impacting federally funded research grant making policy and management to protect the national and economic security interests of the United States are integrated with the activities of the Council.

(b) *INCLUSIONS.*—*The responsibility of the head of an Executive agency for assessing Federal research security risk described in subsection (a) includes—*

(1) developing an overall Federal research security risk management strategy and implementation plan and policies and processes to guide and govern Federal research security risk management activities by the Executive agency;

(2) integrating Federal research security risk management practices throughout the lifecycle of the grant programs of the Executive agency;

(3) sharing relevant information with other Executive agencies, as determined appropriate by the Council in a manner consistent with section 7903; and

(4) reporting on the effectiveness of the Federal research security risk management strategy of the Executive agency consistent with guidance issued by the Office of Management and Budget and the Council.

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