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## United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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April 1, 2019

### VIA ELECTRONIC TRANSMISSION

Patrick M. Shanahan  
Acting Secretary  
Department of Defense

Dear Acting Secretary Shanahan:

On December 12, 2018, while Chairman of the Judiciary Committee, I held a hearing on China's threats to U.S. national security.<sup>1</sup> In that hearing, Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) officials made clear that the threat to our research from foreign governments is known and ongoing. For example, the DOJ witness, Mr. John Demers, stated, "we need to adapt our enforcement strategy to reach non-traditional collectors, including researchers in labs, universities, and the defense industrial base, some of whom may have undisclosed ties to Chinese institutions and conflicted loyalties."<sup>2</sup> The FBI witness, Mr. Bill Priestap, stated that China's talent recruitment programs are effectively "brain gain programs" that "encourage theft of intellectual property from U.S. institutions."<sup>3</sup> Prior to that hearing, in February 2018, FBI Director Wray testified before the U.S. Senate Select Committee on Intelligence about worldwide threats. Director Wray testified, in part, that the Chinese are "exploiting" and "taking advantage" of our academic institutions.<sup>4</sup>

The threats to our academic and research institutions from foreign governments are well known. The threats extend to medical research, technological advancements, defense, and

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<sup>1</sup> *Hearing on China's Non-Traditional Espionage Against the United States: The Threat and Potential Policy Responses Before the S. Comm. on the Judiciary*, 115th Cong. (2018).

<sup>2</sup> *Id.* at 8 (statement of John C. Demers, Assistant Att'y Gen., National Security Div., Dep't of Justice), available at <https://www.judiciary.senate.gov/imo/media/doc/12-12-18%20Demers%20Testimony.pdf>.

<sup>3</sup> *Id.* at 5 (statement of E.W. "Bill" Priestap, Assistant Dir., Counterintelligence Div., Federal Bureau of Investigation), available at <https://www.judiciary.senate.gov/imo/media/doc/12-12-18%20Priestap%20Testimony.pdf>.

<sup>4</sup> *Open Hearing on Worldwide Threats Before the S. Select Comm. on Intelligence*, 115th Cong. (2018) (statement of Christopher Wray, Director, Federal Bureau of Investigation), available at <https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats-0#>.

energy research.<sup>5</sup> Our government must take all reasonable and necessary steps to protect the integrity of taxpayer-funded research, by ensuring that intellectual property created there is not stolen by agents of foreign governments and that researchers' backgrounds are properly vetted for foreign affiliations and contributions. To that end, I have written to the National Institutes of Health (NIH) regarding threats to taxpayer-funded medical research in an effort to better understand the steps they have taken to combat the threat and ensure the integrity of the research. However, NIH is not the only agency charged with dispensing academic research and development grants—among others, the Department of Defense also plays a significant role.

For example, in support of the World War II effort, the federal government created the U.S. Office of Scientific Research and Development (OSRD) in June 1941 to ensure “adequate provision for research on scientific and medical problems relating to the national defense.”<sup>6</sup> Several of today's largest and most prestigious U.S. national laboratories have their roots in OSRD's early efforts.<sup>7</sup> The Department of Defense Appropriations Act of 2019 provided the Department with over \$99 billion for continued research, development, test, and evaluation efforts.<sup>8</sup> In the past, those funds have been used for grants to academic institutions. For example, in FY2017 the Department funded more than \$5.6 billion in research and development at U.S. academic institutions.<sup>9</sup>

The Defense Department recently briefed my staff on the steps it has taken to protect national security-related research from foreign threats and the National Defense Authorization Act for FY2019 (FY2019 NDAA) requirement to conduct a review of current practices to safeguard Department research from potential foreign threats.<sup>10</sup> Accordingly, in light of my ongoing inquiry of foreign threats to taxpayer-funded research and in order to better assess the

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<sup>5</sup> Letter from Francis S. Collins, Director, National Institutes of Health, to NIH Grantee Institutions (Aug. 20, 2018), *available at* <http://www.sciencemag.org/sites/default/files/NIH%20Foreign%20Influence%20Letter%20to%20Grantees%2008-20-18.pdf>. Similar concerns were expressed in subsequent testimony before the Senate Committee on Health, Education, Labor and Pensions. *See Prioritizing Cures: Science and Stewardship at the National Institutes of Health, Hearing before the S. Comm. on Health, Education, Labor and Pensions*, 115th Cong. (2018), *available at* <http://www.cq.com/doc/congressionaltranscripts-5378816?2>. *See also* Letter from Charles E. Grassley, Chairman, Senate Judiciary Committee, to Francis S. Collins, Director, National Institutes of Health (Oct. 23, 2018), *available at* [https://www.grassley.senate.gov/sites/default/files/constituents/2018-10-23%20CEG%20to%20NIH%20\(Research%20Threats\).pdf](https://www.grassley.senate.gov/sites/default/files/constituents/2018-10-23%20CEG%20to%20NIH%20(Research%20Threats).pdf); Letter from Charles E. Grassley, Chairman, Senate Finance Committee, to Matthew Whitaker, Acting Attorney General, Department of Justice, and Christopher Wray, Director, Federal Bureau of Investigations (Jan. 17, 2019), *available at* [https://www.grassley.senate.gov/sites/default/files/documents/2019-01-17%20CEG%20to%20DOJ%20\(NIH%20Research%20Threats\)0.pdf](https://www.grassley.senate.gov/sites/default/files/documents/2019-01-17%20CEG%20to%20DOJ%20(NIH%20Research%20Threats)0.pdf).

<sup>6</sup> Exec. Order No. 8807, 6 Fed. Reg. 3207 (1941), *available at* <https://www.govinfo.gov/content/pkg/FR-1941-07-02/pdf/FR-1941-07-02.pdf>.

<sup>7</sup> John F. Sargent Jr., Marcy E. Gallo, & Moshe Schwartz, CONG. RESEARCH SERV., R45403, *The Global Research and Development Landscape and Implications for the Department of Defense* (Nov. 8, 2018).

<sup>8</sup> Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, P.L. 115-245, at Div. A, Title IV (2018).

<sup>9</sup> *See National Center for Science and Engineering Statistics, Higher Education Research and Development Survey, FY2017*, National Science Foundation (last visited on Mar. 27, 2019), *available at* [https://ncesdata.nsf.gov/herd/2017/html/herd2017\\_dst\\_25.html](https://ncesdata.nsf.gov/herd/2017/html/herd2017_dst_25.html).

<sup>10</sup> John S. McCain National Defense Authorization Act for Fiscal Year 2019, P.L. 115-232, at Sec. 1286.

forthcoming report required in the FY2019 NDAA,<sup>11</sup> please answer the following no later than April 15, 2019:

1. Please describe in detail the process by which the Department, and recipients of Department funds for research purposes, conduct background checks of researchers and institutions prior to awarding grants.
2. What rules, procedures, or regulations currently exist to prevent potential foreign actors from acquiring, altering, or duplicating taxpayer-funded research data and findings?
3. How many staff and how much taxpayer money per year is budgeted to ensure compliance with and to identify and investigate potential violations of rules, procedures, and regulations concerning the foreign affiliations of researchers and foreign financial contributions to them? Please provide a copy of the budget and all other supporting documentation for the past five years.
4. With respect to the recipients of Department funds for research purposes, how many systematic reviews, or audits, have been performed of those entities in the past five years for the purpose of identifying potential violations concerning foreign affiliations and financial contributions? Please list each entity and the results of the review.
5. What enforcement mechanisms are available to the Department to protect intellectual property created by and resulting from taxpayer-funded research and to hold accountable foreign agents and institutions for violating Department policies and rules? Does the Department require additional statutory authorities to effectively punish and deter wrongdoers? If so, what are they?
6. Please provide the Committee a list of all entities currently under investigation for employing individuals that failed to disclose contributions from foreign governments. Is this publicly available? If not, do you plan to make that list public? If not, why not?
7. Does the Department regularly work with the Justice Department, State Department, and/or the Intelligence Community to properly track, assess, and analyze threats from foreign actors of potential theft, improper disclosure or manipulation of data collected and results reached through taxpayer-funded research, and the corresponding impact

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<sup>11</sup> *Id.* at Sec. 1286(e).

or effect on national security? If not, why not? If so, please describe those agency relationships.

8. Please provide a list of all instances in the past five years in which the following occurred: (1) foreign actors mounted systematic efforts to influence Department researchers; (2) foreign actors worked to transmit to other countries intellectual property produced by Department-supported research; (3) foreign actors contributed resources to Department-funded researchers in ways that could impact the integrity of the research; (4) researchers failed to disclose foreign financial support. For each instance, please describe in detail the nature of the violation and whether a referral was made to the Defense Department Inspector General or the Justice Department.

I anticipate that your written reply and most responsive documents will be unclassified. Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committee, and provide a classified addendum to the Office of Senate Security. Although the Committee complies with all laws and regulations governing the handling of classified information, it is not bound, absent its prior agreement, by any handling restrictions.

Should you have questions, please contact Josh Flynn-Brown or Daniel Boatright of my Committee staff at (202) 224-4515. Thank you for your attention to this important matter.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on Finance