

## [EXTERNAL] RE: CFIUS provision

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**From:** David Goldston (b) (6)  
**To:** "Matheny, Jason G. EOP/OSTP" (b) (6)  
**Date:** Sun, 31 Oct 2021 13:07:13 -0400

Great, thanks.

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**From:** Matheny, Jason G. EOP/OSTP (b) (6) >  
**Sent:** Sunday, October 31, 2021 12:50 PM  
**To:** David Goldston (b) (6) >  
**Subject:** RE: CFIUS provision

Thanks, David. We flagged this for the Hill as one of OSTP's main objections. We hope they'll cut the provision. More soon.

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**From:** David Goldston (b) (6) >  
**Sent:** Tuesday, October 26, 2021 8:19 AM  
**To:** Matheny, Jason G. EOP/OSTP <(b) (6)>  
**Subject:** [EXTERNAL] CFIUS provision

Jason,

When we spoke in advance of last Friday's helpful meeting, you asked for more information on the CFIUS provision in USICA we are extremely concerned about. As you know, Richard mentioned the provision in the meeting.

**Sec. 3138** of USICA, in the Foreign Relations Committee's title, would subject many university gifts and contracts from *any* foreign country to CFIUS review. The Committee Democrats got a few helpful changes in the provision before it was included, but nothing that takes care of the fundamental flaws. The provision is controversial within the Senate. **Sec. 5212** of USICA, from the Senate Banking Committee (which has jurisdiction over CFIUS) forbids CFIUS from reviewing university gifts and contracts. So, the provision and its repeal are both in the bill, and the Senate needs to figure out how to proceed. Both Senate provisions had bipartisan support. The House appears opposed to CFIUS review on a bipartisan basis, and as far as we know, the Schumer folks view CFIUS review as excessive. CFIUS itself doesn't feel it could handle the additional, unrelated work, we understand. Despite all that, we are hearing that efforts to keep the provision in the bill are **heating up**.

Here are some talking points that explain why CFIUS review is a bad idea. I can also send you the letter of opposition university associations sent to Senate Foreign Relations when the provision was pending. Let me know if you need anything more. Also, please let me know how you'd like to follow up on the e-mail the other day on future China meetings, and asking for the names of who we should talk to on the NSC staff about Skoltech and Russia. Thanks.

TALKING POINTS ON CFIUS PROVISION

- This imposes a review of some university gifts and contracts without any exploration or indication that such gifts or contracts have damaged the U.S., and without any exploration of the steps universities have taken to review such gifts and contracts themselves.
- It sets up a policy mechanism without enunciating a policy – it’s not clear what criteria would or should be used to determine that a gift or contract is a problem.
- The likely result is that U.S. universities and research will be hampered without any commensurate gain in national security.
- The CFIUS process was not designed to review university gifts or contracts. Ongoing control of corporations raises different questions than providing a gift or engaging in a specific collaboration with a university.
- The bill language uses vague, subjective terms to describe which gifts and contracts will be subject to CFIUS review. This will lead to confusion and false accusations about lack of compliance, or will just deter a wide range of gifts and contracts that are beneficial to the U.S.
- The membership of CFIUS does not include any official with knowledge and understanding of research other than the director of OSTP. Adding the Secretary of Education does nothing to remedy this problem as neither the Secretary nor the Department has any involvement with scientific research on critical technologies other than the ministerial role of collecting information reported by universities on foreign gifts and contracts.
- Under CFIUS, decisions can take at least 105 days, and the actual time line – which involves pre-reviews – would be far longer. Such a lengthy review is not required for university gifts and contracts, which are far less elaborate than the corporate activities CFIUS was designed to cover. The lengthy review will likely just lead those interested in gifts and contracts to make arrangements in other countries instead.
- The bill seeks to add a balancing factor in the reviews of university gifts and contracts by referencing “academic freedom.” This is helpful, but vague and incomplete, and its relevance to the CFIUS review is not spelled out.