

JIM BANKS
THIRD DISTRICT, INDIANA



COMMITTEE ON
ARMED SERVICES

COMMITTEE ON
EDUCATION AND THE WORKFORCE

SELECT COMMITTEE ON THE
STRATEGIC COMPETITION
BETWEEN THE U.S. AND THE
CHINESE COMMUNIST PARTY

Congress of the United States
House of Representatives
Washington, DC 20515-1403

April 21, 2023

The Honorable Lloyd Austin III
Secretary
Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Dear Secretary Austin,

I write to convey my concern over recent Department of Defense (DOD) guidance for providing waivers for U.S. universities that host Confucius Institutes (CIs) while maintaining access to DOD funding. I urge the DOD to revise this inadequate guidance, which undermines Congress's intent in Section 1062 of the National Defense Authorization Act (NDAA) for Fiscal Year 2021 (FY2021).

In Sec. 1062 of the FY2021 NDAA, Congress prohibited the DOD from providing any funding to any institution of higher education that hosts a Confucius Institute after October 1, 2023. The prohibition followed a more limited provision in the FY2019 NDAA. CIs act as agents of the Chinese Communist Party (CCP) on U.S. campuses, spreading Party propaganda, monitoring students and dissidents, and providing China a launching pad for espionage against our nation's most valuable research and technology. Congress intended for the Sec. 1062 restriction to encourage the removal of all CIs from U.S. campuses and to remove the espionage threat which CIs pose to DOD-sponsored research and development (R&D).

The guidance that the DOD issued on March 28, 2023 on implementing the Sec. 1062 restrictions offers conditions by which a U.S. university may receive DOD funds without closing any Confucius Institutes on campus. While the guidance imposes some restrictions on CIs for colleges to qualify for waivers, it also introduces significant loopholes and fails to take seriously the threat posed by CIs to national security.

The waivers that DOD grants to universities to continue operating with CIs can theoretically last for an unlimited duration. Per the guidance, DOD also relies on the host universities, which often want to preserve their Confucius Institutes, to notify DOD of any changes to their contract with their CI before DOD reviews their waivers. The waiver guidance

also requires universities with CIs to report the foreign travel of any staff involved in R&D but does not require any foreign travel reporting for Confucius Institute employees. While the guidance restricts some Confucius Institute employees from accessing any federally funded scientific data, it does not restrict CI employees from accessing this research if they are also employees of the host university.

The guidance also fails to address other loopholes related to DOD funding of universities that host CIs. While DOD imposes some constraints on U.S. universities with CIs, DOD can continue funding foreign universities with CIs without any new waiver process whatsoever. The guidance also refuses to specify whether, after October 1, 2023, DOD will continue to pay contracts and grants awarded to universities with CIs that did not receive a waiver. . Given that many federal grants can last for periods of three to five years, this means that DOD may violate the law by continuing to fund universities that did not even succeed at implementing the modest controls required by this guidance.

With this guidance, DOD is bowing to the wishes of academia and the scientific community to continue their deep ties with China, despite the growing threat of CCP propaganda and espionage. Much of the recent guidance derives from a report the DOD commissioned from the National Academies of Sciences, Engineering, and Medicine earlier this year, which argued in favor of such generous waivers to allow Confucius Institutes to continue operating on U.S. campuses. The report expressed concern about the “mistrust” that DOD had created by not sufficiently involving universities in the waiver process for the FY2019 restriction and the “genuine [surprise]” many institutions felt after being denied a waiver to keep their CI. However disappointing it may be for U.S. universities to be forced to close CCP propaganda posts on their campuses, this should not be a concern for the DOD, and I hope that these motivations played no part in developing the department’s recently-published guidance.

Regardless, the Department was only required by Sec. 1062 to consult with the National Academies on these waivers, not to agree to their recommendations wholesale. DOD should at most have used the waiver provided for in Sec. 1062 to give universities more time to wind down their Confucius Institutes, not to justify DOD continuing to fund them indefinitely. University access to DOD funding is a privilege, not a right. It is your department’s duty to deny that privilege to institutions that prioritize their ties to a U.S. adversary over national security. As such, I urge you to revise this guidance immediately to comply with Congress’ intent rather than let these agents of CCP influence and infiltration continue to operate on U.S. campuses.


In light of these concerns, please provide my office with a response to the following questions by May 10:

1. Does DOD believe that these guidelines provide it with the authorities to review the existing Sec. 1062 waivers of institutions without first receiving a notification from those institutions that their contractual relationship with their CIs has changed?
 - a. If yes, does this ability to review existing waivers without notification extend beyond receiving the copies of the institutions’ annual reviews of their CIs?

2. Will DOD commit to regularly review institutions' Sec. 1062 waivers to maintain a CI and not only rely on notifications from universities that their contractual relationship with their CIs has changed?
3. Does DOD plan to impose any penalties beyond revoking waivers on institutions which fail to notify DOD of changes to their contractual relationship with their CIs? Will any of these penalties go beyond revoking the university's Sec. 1062 waiver?
4. After October 1, 2023, will DOD continue to pay existing contracts and grants to universities that retained their CIs but did not receive a Sec. 1062 waiver?
5. Why did DOD not require employees of CIs to also report their foreign travel as a requirement for the host institution to receive a Sec. 1062 waiver?
6. Why did DOD not restrict CI employees that were also employees of the host university from accessing federally funded research as a requirement for the host institution to receive a Sec. 1062 waiver?

Thank you for your attention to this important matter. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Jim Banks". The signature is written in a cursive, slightly slanted style.

Jim Banks
Member of Congress