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## United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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January 17, 2019

### VIA ELECTRONIC TRANSMISSION

The Honorable Daniel R. Levinson  
Inspector General  
U.S. Department of Health and Human Services

Dear Inspector General Levinson,

On October 23, 2018, I wrote to the National Institutes of Health (NIH) regarding foreign threats to the integrity of taxpayer funded research. My letter noted an August 20, 2018, letter to NIH grantee institutions from Dr. Francis S. Collins, the director of NIH, which called attention to a series of threats posed by foreign entities to the integrity of U.S. biomedical research. Dr. Collins warned that foreign actors have “mounted systematic programs to influence NIH researchers and peer reviewers” in an effort to divert intellectual property produced by NIH-supported research to other countries, and may have contributed resources to NIH-funded researchers in ways which could impact the integrity of the research.<sup>1</sup>

On December 12, 2018, I held a hearing on Chinese threats to national security.<sup>2</sup> In that hearing, Justice Department and FBI officials made clear that the threat to our research is real. For example, the Justice Department 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>3</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>4</sup> Prior to that hearing, in February 2018, Director

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<sup>1</sup> Letter from Francis S. Collins, Director, National Institutes of Health, to NIH Grantee Institutions (August 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 Senate Committee on Health, Education, Labor and Pensions*, 115<sup>th</sup> Cong. (2018) Transcript available at: <http://www.cq.com/doc/congressionaltranscripts-5378816?2>

<sup>2</sup> China’s Non-Traditional Espionage Against the United States: The Threat and Potential Policy Responses, 115<sup>th</sup> Cong. (Dec. 12, 2018).

<sup>3</sup> Statement of John Demers, Assistant Attorney General, Department of Justice, <https://www.judiciary.senate.gov/imo/media/doc/12-12-18%20Demers%20Testimony.pdf>

<sup>4</sup> Statement of E.W. “Bill” Priestap, Assistant Director, Counterintelligence Division, Federal Bureau of Investigation, <https://www.judiciary.senate.gov/imo/media/doc/12-12-18%20Priestap%20Testimony.pdf>

Wray testified before the Senate Select Committee on Intelligence about worldwide threats. Wray testified, in part, that the Chinese are “exploiting” and “taking advantage” of our academic institutions.<sup>5</sup>

The threats to our academic institutions from foreign governments are well known. Our government must take all reasonable and necessary steps to protect the integrity of taxpayer-funded research. Those steps must include constant and efficient communication between NIH, the Health and Human Services Inspector General, and other relevant agencies.

In response to my letter, NIH noted the important role additional agencies, including the Justice Department, play in safeguarding taxpayer funded research and intellectual property. Specifically, NIH stated that it “closely works with and fully cooperates with its federal partners, including but not limited to the HHS OIG and the Department of Justice, during their reviews and investigations.”<sup>6</sup> NIH’s response also noted that if institutions “fail to take corrective actions” they may be subject to administrative sanctions “which can include a referral to HHS OIG for further consideration.”<sup>7</sup> However, the letter also noted that the federal government does not vet these individuals who will work on federally funded research ex ante, but relies on the colleges and universities where they will be working to do so. That approach raises questions as to whether the federal government is taking the necessary steps to proactively identify and mitigate threats to research. Congress needs to fully understand how and to what extent the HHS OIG assists in identifying potential foreign agents and their threat to research and intellectual property developed in the United States with taxpayer funds. Congress also requires a clear understanding of what enforcement actions have been employed against such foreign agents and U.S. institutions where any conduct has occurred in violation of law or regulation. Accordingly, please answer the following no later than January 31, 2019:

1. Please describe in detail the process by which the Health and Human Services Inspector General interfaces with NIH, the Justice Department and other relevant agencies to protect the integrity of medical research from foreign threats.
2. In the past five years, how many institutions have been referred by NIH to HHS OIG for noncompliance issues related to medical research? In your response, please include data on referrals for the institution’s failure to take corrective action after learning researchers received contributions from foreign governments and did not disclose it, and referrals for institutions that failed to adequately perform background checks on researchers involved in taxpayer-funded research. For each referral, please

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<sup>5</sup> Open Hearing on Worldwide Threats: Hearing Before the Senate Select Committee on Intelligence, 115<sup>th</sup> Cong. (Feb. 13, 2018).

<sup>6</sup> Dr. Francis Collins, Director, National Institutes of Health, to Senator Grassley, Chairman, Senate Committee on the Judiciary (Dec. 21, 2018).

<sup>7</sup> *Id.* “Depending on the severity and duration of the noncompliance, NIH may decide to take one or more actions, which are also described in the NIH GPS, Section 8.5, Specific Award Conditions and Remedies for Noncompliance, including imposing specific award conditions, disallowing costs, withholding future awards for the project or program, suspending the award activities, making a referral for suspension or debarment, terminating the award, or revoking or taking title to the inventions made with the Federal support and pursuing patent protection or licensing the invention itself.”

- provide the reason for which the referral was made, the institution in question, and the resulting action taken by HHS OIG.
3. In the past five years, how many investigations has HHS OIG conducted of researchers who participated in federally funded research and allegedly failed to disclose their receipt of foreign government funding?
  4. In the past five years, how many investigations has HHS OIG conducted of researchers who were allegedly agents of a foreign government?
  5. In the past five years, how many investigations has HHS OIG conducted of researchers who allegedly stole intellectual property created by taxpayer-funded research?
  6. In the past five years, how many referrals has the HHS OIG made to the Justice Department for potential prosecution relating to researchers who participated in federally funded research and allegedly failed to disclose their receipt of foreign government funding; researchers who were allegedly agents of a foreign government; and researchers who allegedly stole intellectual property created by taxpayer-funded research? How many referrals were accepted for prosecution and what was the result of each?

In addition to providing answers, please provide a briefing to my staff no later than February 7, 2019.

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.

Thank you in advance for your prompt attention to these matters. Should you have any questions, please contact Josh Flynn-Brown of my Committee staff at (202) 224-4515.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on Finance