

Confucius Institute Waiver Program Guidance to U.S. Institutions of Higher Education

1. Overview

Section 1062 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 prohibits the Department from providing funding to any U.S. institution of higher education hosting a Confucius Institute unless that institution receives a waiver from the Secretary of Defense. This prohibition does not apply to direct funding to students attending U.S. institutions of higher education. International institutions that host Confucius Institutes are not subject to the prohibition in section 1062 of the NDAA for FY 2021 and thus do not require waivers to receive Department of Defense (DoD) funding. The prohibition on funding goes into effect on October 1, 2023.

The DoD Office of the Under Secretary of Defense for Research and Engineering Confucius Institute Waiver Program (CIWP) is responsible for considering and approving or denying waiver applications from any U.S. institution of higher education that is hosting a Confucius Institute and desires a waiver from the prohibition on funding required by Section 1062 of the NDAA for FY 2021. The CIWP uses the NDAA for FY 2021 definition of Confucius Institute, which is: *a cultural institute funded either directly or indirectly by the Government of the People's Republic of China.*

The Department has a separate process for reviewing and adjudicating waiver requests of the prohibition in Section 1091 of the NDAA for FY 2019 on obligating or spending funds for Chinese language instruction provided by a Confucius Institute. U.S. institutions of higher education hosting a Confucius Institute granted a waiver of the prohibition in Section 1062 of the NDAA for FY 2021 may still be subject to the prohibition in Section 1091 of the NDAA for FY 2019.

2. Waiver Application

U.S. institutions of higher education that are hosting an institute meeting the definition of a Confucius Institute may apply for a waiver from the CIWP. U.S. institutions of higher education are advised that the prohibition in section 1062 of the NDAA for FY 2021 applies to any institute that meets the definition of a Confucius Institute, whether or not it is titled “Confucius Institute.” Throughout this guidance, the U.S. institution of higher education hosting a Confucius Institute that is applying to the CIWP for a waiver is referred to as the “host institution.”

A host institution applying to the CIWP for a waiver must provide a waiver application package to the CIWP that includes the following:

- A letter signed by a senior official¹ at the host institution requesting the waiver from the Secretary of Defense and certifying that the host institution meets the CIWP waiver criteria (listed in section 3, below);
- The documentation required by the CIWP (also listed in section 3, below); and
- Attestation that the host institution will notify the DoD of any change in the contractual relationship between the Confucius Institute and the host institution.

The waiver application package should be sent to the following email address:

osd.mc-alex.ousd-r-e.mbx.confucius-institute-waiver-program@mail.mil

The waiver application package may be sent by a senior official at the host institution or by an authorized representative of the host institution. The CIWP will accept applications for waivers at any time. However, the Department cannot guarantee that waiver decisions will be made before October 1, 2023 (the date the prohibition under Section 1062 of the NDAA for FY 2021 takes effect) for any waiver application package submitted to the CIWP after **June 1, 2023**.

3. Waiver Criteria and Documentation

Any host institution applying for a waiver must be able to demonstrate and provide the following:

- a. Subject to Policies for Similar Centers and Institutes: The host institution must demonstrate to the CIWP that the Confucius Institute was established by a similar policy used to establish other centers and institutes at the host institution.
 - i. Elements:
 - A. The policy under which the Confucius Institute was established must subject the Confucius Institute to all policies and procedures prescribed for the host institution’s faculty, staff, and students, such as codes of conduct.
 - B. The policy under which the Confucius Institute was established must also cover any host institution shared governance documents ensuring that

¹ The senior official should be at or above the level of vice president/vice chancellor or the equivalent at the host institution.

centers and institutes at the host institution support the values of the host institution (e.g., academic freedom, openness, respectful behavior towards other academic units).

- C. If the host institution does not have policies governing centers and institutes, the host institution must have documented policies for oversight of the Confucius Institute that include the elements listed in A and B, above.
- D. The host institution must conduct annual reviews of the Confucius Institute's budget, personnel, and operations.

ii. Documentation:

- A. The host institution must provide relevant sections of its policies for institutes and centers, if applicable.
- B. The host institution must provide documentation of its annual review process for the Confucius Institute's budget and operations.
- C. The host institution must provide all of its written policies on academic freedom and freedom of expression.
- D. The host institution must provide all bylaws and governance documents for the Confucius Institute, including operational and administrative policies and practices that apply to the Confucius Institute.

b. Research Security Requirements: The host institution must demonstrate that it has adequate measures in place to secure information, including information generated by scientific research.

i. Elements:

- A. Foreign Travel Security: The host institution must have a policy requiring that all faculty and staff performing research and research and development activities report foreign travel conducted for professional purposes to the host institution.
- B. Cybersecurity: The host institution must have cybersecurity protocols that, at minimum, include the security controls listed in Federal Acquisition Regulation clause 52.204-21, subsections (b)(1)(i) – (iv) and (b)(1)(x) – (xv), for any host institution information system that stores or has access to scientific data funded in part or entirely with Federal research and development funding. To implement National Presidential Security Memorandum 33 the Federal Government will be requiring that U.S. institutions of higher education receiving greater than \$50 million in Federal funding implement similar cybersecurity protocols. The CIWP cybersecurity requirements for host institutions receiving any funding from the DoD will be updated to align with Federal Government requirements for U.S. institutions of higher education receiving greater than \$50 million in Federal funding.
- C. Access: The host institution must prohibit Confucius Institute employees and visitors who are not host institution employees from accessing any host institution information system that stores or has access to scientific data funded in part or entirely with Federal research and development funding.

- D. **Research Security Point of Contact:** The host institution must designate a point of contact to handle matters related to research security² that may arise at the host institution and maintain a public website that provides the research security point of contact's name and contact information.
- ii. **Documentation:**
- A. The host institution must provide its foreign travel disclosure policy.
 - B. The host institution must provide evidence establishing that it has implemented cybersecurity protections that, at minimum, include the security controls listed in Federal Acquisition Regulation clause 52.204-21, subsections (b)(1)(i) – (iv) and (b)(1)(x) – (xv), for any host institution information system that stores or has access to scientific data funded in part or entirely with Federal research and development funding.
 - C. The host institution must provide documentation that Confucius Institute employees and visitors that are not host institution employees are not permitted to access any host institution information system that stores or has access to scientific data funded in part or entirely with Federal research and development funding. Such documentation could consist of the host institution's cybersecurity and visitor information/computer network access policies.
 - D. The host institution must provide the web address of the host institution's public website that provides the research security point of contact's name and contact information.
- c. **Managerial Control of Confucius Institute:** The host institution must demonstrate that it possesses full managerial control of the Confucius Institute's curriculum, instructors, textbooks, teaching materials, programmatic decisions, and research grants, as applicable.
- i. **Elements:**
- A. The host institution must require that individuals at the host institution affiliated with a Confucius Institute are either host institution employees or visiting scholars and are subject to the host institution's human resources policies and procedures. The Confucius Institute must hire its employees in accordance with the host institution's human resources policies and procedures.
 - B. The host institution must require that the Confucius Institute's curricula, including syllabi, textbooks, and teaching materials, are approved through the host institution's faculty governance review.
 - C. The host institution must exercise oversight over the Confucius Institute's supported research grants, if applicable.
- ii. **Documentation:**

² Research security is defined as safeguarding against the misappropriation of research and development efforts and results to the detriment of national or economic security, related violations of research integrity, and foreign government interference.

- A. The host institution must provide documentation, such as an employment contract or agreement, establishing that the director of the Confucius Institute is employed by the host institution with a reporting line to the host institution’s chief academic officer or their designee.
 - B. The host institution must provide documentation, such as a public-facing personnel roster, establishing that individuals affiliated with the Confucius Institute at the host institution are either host institution employees or visiting scholars.
 - C. The host institution must provide its policies requiring the review of Confucius Institute curricula and provide evidence that the host institution maintains oversight over the Confucius Institute’s supported research grants, if applicable.
- d. Fiduciary and Financial Oversight: The host institution must demonstrate appropriate fiduciary and financial oversight of the Confucius Institute.
- i. Elements:
 - A. The host institution must exercise oversight of the Confucius Institute’s budget, including all financial contributions to the Confucius Institute from sources outside of the host institution.
 - B. The host institution must ensure that all financial contributions to the Confucius Institute have a corresponding expense articulated in the Confucius Institute’s budget.
 - C. The host institution must manage the financial agreement(s) between the host institution and the Confucius Institute’s establishing organization³ and between the host institution and any partnering Chinese institutions associated with the Confucius Institute, if applicable, in a manner similar to how the host institution manages financial agreement(s) between other sponsored programs at the host institution and the programs’ sponsors.
 - D. The host institution must ensure that no contract or other written agreement pertaining to the creation or operation of the Confucius Institute requires or permits the application of foreign law to any aspect of the Confucius Institute’s operation at any U.S. campus of the host institution.
 - ii. Documentation:
 - A. The host institution must provide the annual budget for the Confucius Institute, which must reflect all sources of revenue and their corresponding expenses.
 - B. The host institution must provide copies of all agreements between the host institution and the Confucius Institute’s establishing organization and between the host institution and any partnering Chinese institutions associated with the Confucius Institute, if applicable, including, but not

³ An establishing organization is any organization directly or indirectly funded by the People’s Republic of China that promotes, manages, or funds a Confucius Institute. Hanban is an example of an establishing organization. “Hanban” is the colloquial term for the Chinese International Education Foundation (CIEF), now known as the Ministry of Education Center for Language Education and Cooperation (CLEC).

limited to, the agreement establishing the Confucius Institute and any revisions to that agreement. The host institution must provide copies of the original versions of the agreements including copies of the original versions of the agreements in Chinese, if applicable.

- C. The host institution must provide evidence establishing that it manages the financial agreement between the host institution and the Confucius Institute's establishing organization in a manner similar to how the host institution manages the financial agreement(s) between other sponsored programs at the host institution and the programs' sponsors.

4. Review Process

Upon submission of a complete waiver application package to the CIWP (meeting the requirements set forth in section 2, above), the Department will notify the host institution that it has received the waiver application package and is considering it. DoD personnel and DoD contractor personnel will review the waiver application package and may request additional information and/or documentation. The DoD may, at its unilateral discretion, also consult personnel at the National Science Foundation in reviewing the waiver application package.

5. DoD Decision

The DoD will decide whether to grant the waiver after reviewing the waiver application package, as well as any supplemental additional information and/or documentation provided by the host institution. The waiver decision will be made based on the waiver criteria and the information/documentation provided by the host institution. The Department's waiver decision will be provided to the host institution via a letter to the personnel requesting the waiver. The decision letter will explain the basis for the decision and what factors led to granting or denying the waiver. Any host institution with a complete waiver application package submitted by **June 1, 2023**, should receive a decision by **September 1, 2023**.

6. Waiver Duration

A waiver of the prohibition in Section 1062 of the NDAA for FY 2021 provided to a host institution from the DoD through the CIWP is valid for as long as the contractual relationship between the Confucius Institute and the host institution remains unchanged from the relationship in effect at the time when the waiver is granted. Any change in the relationship between a Confucius Institute and the host institution that impacts any of the criteria listed in section 3, above, will require review by the CIWP to certify that the waiver is still valid and may remain in effect. If such review by the CIWP determines that the waiver is no longer valid, the CIWP will notify the host institution, in writing, that the waiver has been rescinded.

A host institution that has been granted a waiver from the CIWP must notify and consult with the CIWP regarding any changes about, or related to, the Confucius Institute hosted by the host

institution that may impact the criteria in section 3, above, to ensure that the waiver remains valid. A host institution that has been granted a waiver from the CIWP must also provide to the CIWP a copy of the annual review of the Confucius Institute's budget, personnel, and operations.

7. Point of Contact

Host institutions may direct any questions regarding the CIWP, the funding prohibition under Section 1062 of the NDAA for FY 2021 NDAA, the definition of a Confucius Institute, the waiver application process, the status of a waiver application, or any other information relevant to the CIWP to the following email address:

osd.mc-alex.ousd-r-e.mbx.confucius-institute-waiver-program@mail.mil