

DEFENDING EDUCATION TRANSPARENCY AND ENDING
ROGUE REGIMES ENGAGING IN NEFARIOUS TRANS-
ACTIONS ACT

NOVEMBER 24, 2023.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Ms. FOXX, from the Committee on Education and the Workforce,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5933]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 5933) to amend the Higher Education Act of 1965 to require additional information in disclosures of foreign gifts and contracts from foreign sources, restrict contracts with certain foreign entities and foreign countries of concern, require certain staff and faculty to report foreign gifts and contracts, and require disclosure of certain foreign investments within endowments, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the resolving clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions Act” or the “DETERRENT Act”.

SEC. 2. DISCLOSURES OF FOREIGN GIFTS.

(a) IN GENERAL.—Section 117 of the Higher Education Act of 1965 (20 U.S.C. 1011f) is amended to read as follows:

“SEC. 117. DISCLOSURES OF FOREIGN GIFTS.

“(a) DISCLOSURE REPORTS.—

“(1) AGGREGATE GIFTS AND CONTRACT DISCLOSURES.—An institution shall file a disclosure report in accordance with subsection (b)(1) with the Secretary on July 31 of the calendar year immediately following any calendar year in which—

“(A) the institution receives a gift from, or enters into a contract with, a foreign source (other than a foreign country of concern or foreign entity of concern)—

“(i) the value of which is \$50,000 or more, considered alone or in combination with all other gifts from, or contracts with, that foreign source within the calendar year; or

“(ii) the value of which is undetermined; or

“(B) the institution receives a gift from a foreign country of concern or foreign entity of concern, or, upon receiving a waiver under section 117A to enter into a contract with such a country or entity, enters into such contract, without regard to the value of such gift or contract.

“(2) FOREIGN SOURCE OWNERSHIP OR CONTROL DISCLOSURES.—In the case of an institution that is substantially controlled (as described in section 668.174(c)(3) of title 34, Code of Federal Regulations) (or successor regulations)) by a foreign source, the institution shall file a disclosure report in accordance with subsection (b)(2) with the Secretary on July 31 of each year.

“(3) TREATMENT OF AFFILIATED ENTITIES.—For purposes of this section, any gift to, or contract with, an affiliated entity of an institution shall be considered a gift to or contract with, respectively, such institution.

“(b) CONTENTS OF REPORT.—

“(1) GIFTS AND CONTRACTS.—Each report to the Secretary required under subsection (a)(1) shall contain the following:

“(A) With respect to a gift received from, or a contract entered into with, any foreign source—

“(i) the terms of such gift or contract, including—

“(I) the name of the individual, department, or benefactor at the institution receiving the gift or carrying out the contract;

“(II) the intended purpose of such gift or contract, as provided to the institution by such foreign source, or if no such purpose is provided by such foreign source, the intended use of such gift or contract, as provided by the institution; and

“(III) in the case of a restricted or conditional gift or contract, a description of the restrictions or conditions of such gift or contract;

“(ii) with respect to a gift—

“(I) the total fair market dollar amount or dollar value of the gift, as of the date of submission of such report; and

“(II) the date on which the institution received such gift;

“(iii) with respect to a contract—

“(I) the date on which such contract commences;

“(II) as applicable, the date on which such contract terminates; and

“(III) an assurance that the institution will—

“(aa) maintain an unredacted copy of the contract until the latest of—

“(AA) the date that is 4 years after the date on which the contract commences;

“(BB) the date on which the contract terminates; or

“(CC) the last day of any period that applicable State law requires a copy of such contract to be maintained; and

“(bb) upon request of the Secretary during an investigation under subsection (f)(1), produce such an unredacted copy of the contract; and

“(iv) an assurance that in a case in which information is required to be disclosed under this section with respect to a gift or contract that is not in English, such information is translated into English in compliance with the requirements of subsection (c)(1).

“(B) With respect to a gift received from, or a contract entered into with, a foreign source that is a foreign government (other than the government of a foreign country of concern)—

“(i) the name of such foreign government;

“(ii) the department, agency, office, or division of such foreign government that approved such gift or contract, as applicable; and

“(iii) the physical mailing address of such department, agency, office, or division.

“(C) With respect to a gift received from, or contract entered into with, a foreign source (other than a foreign government subject to the requirements of subparagraph (B))—

“(i) the legal name of the foreign source, or, if such name is not available, a statement certified by the compliance officer in accordance with subsection (f)(2) that the institution has reasonably attempted to obtain such name;

“(ii) in the case of a foreign source that is a natural person, the country of citizenship of such person, or, if such country is not known, the principal country of residence of such person;

“(iii) in the case of a foreign source that is a legal entity, the country in which such entity is incorporated, or if such information is not available, the principal place of business of such entity; and

“(iv) the physical mailing address of such foreign source, or if such address is not available, a statement certified by the compliance officer in accordance with subsection (f)(2) that the institution has reasonably attempted to obtain such address.

“(D) With respect to a contract entered into with a foreign source that is a foreign country of concern or a foreign entity of concern—

“(i) a complete and unredacted text of the original contract, and if such original contract is not in English, a translated copy of the text into English;

“(ii) a copy of the waiver received under section 117A for such contract; and

“(iii) the statement submitted by the institution for purposes of receiving such a waiver under section 117A(b)(1).

“(2) FOREIGN SOURCE OWNERSHIP OR CONTROL.—Each report to the Secretary required under subsection (a)(2) shall contain—

“(A) the legal name and address of the foreign source that owns or controls the institution;

“(B) the date on which the foreign source assumed ownership or control; and

“(C) any changes in program or structure resulting from the change in ownership or control.

“(c) TRANSLATION REQUIREMENTS.—Any information required to be disclosed under this section with respect to a gift or contract that is not in English shall be translated, for purposes of such disclosure, by a person that is not an affiliated entity or agent of the foreign source involved with such gift or contract.

“(d) PUBLIC INSPECTION.—

“(1) DATABASE REQUIREMENT.—Beginning not later than 60 days before the July 31 immediately following the date of the enactment of the DETERRENT Act, the Secretary shall—

“(A) establish and maintain a searchable database on a website of the Department, under which all reports submitted under this section (including any report submitted under this section before the date of the enactment of the DETERRENT Act)—

“(i) are made publicly available (in electronic and downloadable format), including any information provided in such reports (other than the information prohibited from being publicly disclosed pursuant to paragraph (2));

“(ii) can be individually identified and compared; and

“(iii) are searchable and sortable by—

“(I) the date the institution filed such report;

“(II) the date on which the institution received the gift, or entered into the contract, which is the subject of the report;

“(III) the attributable country of such gift or contract; and

“(IV) the name of the foreign source (other than a foreign source that is a natural person);

“(B) not later than 30 days after receipt of a disclosure report under this section, include such report in such database;

“(C) indicate, as part of the public record of a report included in such database, whether the report is with respect to a gift received from, or a contract entered into with—

“(i) a foreign source that is a foreign government; or

“(ii) a foreign source that is not a foreign government; and

“(D) with respect to a disclosure report that does not include the name or address of a foreign source, indicate, as part of the public record of such report included in such database, that such report did not include such information.

“(2) NAME AND ADDRESS OF FOREIGN SOURCE.—The Secretary shall not disclose the name or address of a foreign source that is a natural person (other than the attributable country of such foreign source) included in a disclosure report—

“(A) as part of the public record of such disclosure report described in paragraph (1); or

“(B) in response to a request under section 552 of title 5, United States Code (commonly known as the ‘Freedom of Information Act’), pursuant to subsection (b)(3) of such section.

“(e) INTERAGENCY INFORMATION SHARING.—Not later than 30 days after receiving a disclosure report from an institution in compliance with this section, the Secretary shall transmit an unredacted copy of such report (that includes the name and address of a foreign source disclosed in such report) to the Director of the Federal Bureau of Investigation, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Secretary of Energy, the Director of the National Science Foundation, and the Director of the National Institutes of Health.

“(f) COMPLIANCE OFFICER.—Any institution that is required to file a disclosure report under subsection (a) shall designate, before the filing deadline for such report, and maintain a compliance officer, who shall—

“(1) be a current employee or legally authorized agent of such institution; and

“(2) be responsible, on behalf of the institution, for personally certifying accurate compliance with the foreign gift reporting requirement under this section.

“(g) DEFINITIONS.—In this section:

“(1) AFFILIATED ENTITY.—The term ‘affiliated entity’, when used with respect to an institution, means an entity or organization that operates primarily for the benefit of, or under the auspices of, such institution, including a foundation of the institution or a related entity (such as any educational, cultural, or language entity).

“(2) ATTRIBUTABLE COUNTRY.—The term ‘attributable country’ means—

“(A) the country of citizenship of a foreign source who is a natural person, or, if such country is unknown, the principal residence (as applicable) of such foreign source; or

“(B) the country of incorporation of a foreign source that is a legal entity, or, if such country is unknown, the principal place of business (as applicable) of such foreign source.

“(3) CONTRACT.—The term ‘contract’—

“(A) means—

“(i) any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source;

“(ii) any affiliation, agreement, or similar transaction with a foreign source that involves the use or exchange of an institution’s name, likeness, time, services, or resources; and

“(iii) any agreement for the acquisition by purchase, lease, or barter, of property or services from a foreign source (other than an arms-length agreement for such acquisition from a foreign source that is not a foreign country of concern or a foreign entity of concern); and

“(B) does not include an agreement made between an institution and a foreign source regarding any payment of one or more elements of a student’s cost of attendance (as such term is defined in section 472), unless such an agreement is made for more than 15 students or is made under a restricted or conditional contract.

“(4) FOREIGN SOURCE.—The term ‘foreign source’ means—

“(A) a foreign government, including an agency of a foreign government;

“(B) a legal entity, governmental or otherwise, created under the laws of a foreign state or states;

“(C) a legal entity, governmental or otherwise, substantially controlled (as described in section 668.174(c)(3) of title 34, Code of Federal Regulations) (or successor regulations) by a foreign source;

“(D) a natural person who is not a citizen or a national of the United States or a trust territory or protectorate thereof; and

“(E) an agent of a foreign source, including—

“(i) a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source;

“(ii) a person that operates primarily for the benefit of, or under the auspices of, a foreign source, including a foundation or a related entity (such as any educational, cultural, or language entity); and

“(iii) a person who is an agent of a foreign principal (as such term is defined in section 1 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611)).

“(5) GIFT.—The term ‘gift’—

“(A) means any gift of money, property, resources, staff, or services; and

“(B) does not include—

“(i) any payment of one or more elements of a student’s cost of attendance (as such term is defined in section 472) to an institution by, or scholarship from, a foreign source who is a natural person, acting in their individual capacity and not as an agent for, at the request or direction of, or on behalf of, any person or entity (except the student), made for not more than 15 students, and that is not made under a restricted or conditional contract with such foreign source; or

“(ii) assignment or license of registered industrial and intellectual property rights, such as patents, utility models, trademarks, or copyrights, or technical assistance, that are not identified as being associated with a national security risk or concern by the Federal Research Security Council as described under section 7902 of title 31, United States Code; or

“(iii) decorations (as such term is defined in section 7342(a) of title 5, United States Code).

“(6) RESTRICTED OR CONDITIONAL GIFT OR CONTRACT.—The term ‘restricted or conditional gift or contract’ means any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding—

“(A) the employment, assignment, or termination of faculty;

“(B) the establishment of departments, centers, institutes, instructional programs, research or lecture programs, or new faculty positions;

“(C) the selection, admission, or education of students;

“(D) the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion; or

“(E) any other restriction on the use of a gift or contract.”.

(b) PROHIBITION ON CONTRACTS WITH CERTAIN FOREIGN ENTITIES AND COUNTRIES.—Part B of title I of the Higher Education Act of 1965 (20 U.S.C. 1011 et seq.) is amended by inserting after section 117 the following:

“SEC. 117A. PROHIBITION ON CONTRACTS WITH CERTAIN FOREIGN ENTITIES AND COUNTRIES.

“(a) IN GENERAL.—An institution shall not enter into a contract with a foreign country of concern or a foreign entity of concern.

“(b) WAIVERS.—

“(1) SUBMISSION.—

“(A) FIRST WAIVER REQUESTS.—

“(i) IN GENERAL.—An institution that desires to enter into a contract with a foreign entity of concern or a foreign country of concern may submit to the Secretary, not later than 120 days before the institution enters into such a contract, a request to waive the prohibition under subsection (a) with respect to such contract.

“(ii) CONTENTS OF WAIVER REQUEST.—A waiver request submitted by an institution under clause (i) shall include—

“(I) the complete and unredacted text of the proposed contract for which the waiver is being requested, and if such original contract is not in English, a translated copy of the text into English (in a manner that complies with section 117(c)); and

“(II) a statement that—

“(aa) is signed by the point of contact of the institution described in section 117(h); and

“(bb) includes information that demonstrates that such contract is for the benefit of the institution’s mission and students and will promote the security, stability, and economic vitality of the United States.

“(B) RENEWAL WAIVER REQUESTS.—

“(i) IN GENERAL.—An institution that has entered into a contract pursuant to a waiver issued under this section, the term of which is longer than the 1-year waiver period and the terms and conditions of which remain the same as the proposed contract submitted as part of the request for such waiver may submit, not later than 120 days before the expiration of such waiver period, a request for a renewal of such waiver for an additional 1-year period (which shall include any information requested by the Secretary).

“(ii) TERMINATION.—If the institution fails to submit a request under clause (i) or is not granted a renewal under such clause, such institution shall terminate such contract on the last day of the original 1-year waiver period.

“(2) WAIVER ISSUANCE.—The Secretary—

“(A) not later than 60 days before an institution enters into a contract pursuant to a waiver request under paragraph (1)(A), or before a contract described in paragraph (1)(B)(i) is renewed pursuant to a renewal request under such paragraph, shall notify the institution—

“(i) if the waiver or renewal will be issued by the Secretary; and

“(ii) in a case in which the waiver or renewal will be issued, the date on which the 1-year waiver period starts; and

“(B) may only issue a waiver under this section to an institution if the Secretary determines, in consultation with the heads of each agency and department listed in section 117(e), that the contract for which the waiver is being requested is for the benefit of the institution’s mission and students and will promote the security, stability, and economic vitality of the United States.

“(3) DISCLOSURE.—Not less than 2 weeks prior to issuing a waiver under paragraph (2), the Secretary shall notify the—

“(A) the Committee on Education and the Workforce of the House of Representatives; and

“(B) the Committee on Health, Education, Labor, and Pensions of the Senate, of the intent to issue the waiver, including a justification for the waiver.

“(4) APPLICATION OF WAIVERS.—A waiver issued under this section to an institution with respect to a contract shall only—

“(A) waive the prohibition under subsection (a) for a 1-year period; and

“(B) apply to the terms and conditions of the proposed contract submitted as part of the request for such waiver.

“(c) DESIGNATION DURING CONTRACT TERM.—In the case of an institution that enters into a contract with a foreign source that is not a foreign country of concern or a foreign entity of concern but which, during the term of such contract, is designated as a foreign country of concern or foreign entity of concern, such institution shall terminate such contract not later than 60 days after the Secretary notifies the institution of such designation.

“(d) CONTRACTS PRIOR TO DATE OF ENACTMENT.—

“(1) IN GENERAL.—In the case of an institution that has entered into a contract with a foreign country of concern or foreign entity of concern prior to the date of the enactment of the DETERRENT Act—

“(A) the institution shall immediately submit to the Secretary a waiver request in accordance with subsection (b)(1)(A)(ii); and

“(B) the Secretary shall, upon receipt of the request submitted under paragraph (1), immediately issue a waiver to the institution for a period beginning on the date on which the waiver is issued and ending on the sooner of—

“(i) the date that is 1 year after the date of the enactment of the DETERRENT Act; or

“(ii) the date on which the contract terminates.

“(2) RENEWAL.—An institution that has entered into a contract described in paragraph (1), the term of which is longer than the waiver period described in subparagraph (B) of such paragraph and the terms and conditions of which remain the same as the contract submitted as part of the request required under subparagraph (A) of such paragraph, may submit a request for renewal of the waiver issued under such paragraph in accordance with subsection (b)(1)(B).

“(e) CONTRACT DEFINED.—The term ‘contract’ has the meaning given such term in section 117(g).”

(c) INTERAGENCY INFORMATION SHARING.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Education shall transmit to the heads of each agency and department listed in section 117(e) of the Higher Education Act of 1965, as amended by this Act—

(1) any report received by the Department of Education under section 117 of the Higher Education Act of 1965 (20 U.S.C. 1011f) prior to the date of the enactment of this Act; and

(2) any report, document, or other record generated by the Department of Education in the course of an investigation—

(A) of an institution with respect to the compliance of such institution with such section; and

(B) initiated prior to the date of the enactment of this Act.

SEC. 3. POLICY REGARDING CONFLICTS OF INTEREST FROM FOREIGN GIFTS AND CONTRACTS.

The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), as amended by section 2 of this Act, is further amended by inserting after section 117A the following:

“SEC. 117B. INSTITUTIONAL POLICY REGARDING FOREIGN GIFTS AND CONTRACTS TO FACULTY AND STAFF.

“(a) **REQUIREMENT TO MAINTAIN POLICY AND DATABASE.**—Beginning not later than 90 days after the date of the enactment of the DETERRENT Act, each institution described in subsection (b) shall maintain—

“(1) a policy requiring covered individuals employed at the institution to disclose in a report to such institution on July 31 of each calendar year that begins after the year in which such enactment date occurs—

“(A) any gift received from a foreign source in the previous calendar year, the value of which is greater than the minimal value (as such term is defined in section 7342(a) of title 5, United States Code) or is of undetermined value, and including the date on which the gift was received;

“(B) any contract entered into with a foreign source in the previous calendar year, the value of which is \$5,000 or more, considered alone or in combination with all other contracts with that foreign source within the calendar year, and including the date on which such contract commences and, as applicable, the date on which such contract terminates;

“(C) any contract with a foreign source in force during the previous calendar year that has an undetermined monetary value, and including the date on which such contract commences and, as applicable, the date on which such contract terminates; and

“(D) any contract entered into with a foreign country of concern or foreign entity of concern in the previous calendar year, the value of which is \$0 or more, and including the beginning and ending dates of such contract and the full text of such contract and any addenda;

“(2) a publicly available and searchable database (in electronic and downloadable format), on a website of the institution, of the information required to be disclosed under paragraph (1) that—

“(A) makes available the information disclosed under paragraph (1) beginning on the date that is 30 days after receipt of the report under such paragraph containing such information and until the latest of—

“(i) the date that is 4 years after the date on which—

“(I) a gift referred to in paragraph (1)(A) is received; or

“(II) a contract referred to in subparagraph (B), (C) or (D) of paragraph (1) begins; or

“(ii) the date on which a contract referred to in subparagraph (B), (C) or (D) of paragraph (1) terminates; and

“(B) is searchable and sortable by—

“(i) the date received (if a gift) or the date commenced (if a contract);

“(ii) the attributable country with respect to which information is being disclosed;

“(iii) name of the individual making the disclosure; and

“(iv) the name of the foreign source (other than a foreign source who is a natural person);

“(3) a plan effectively to identify and manage potential information gathering by foreign sources through espionage targeting covered individuals that may arise from gifts received from, or contracts entered into with, a foreign source, including through the use of—

“(A) periodic communications;

“(B) accurate reporting under paragraph (2) of the information required to be disclosed under paragraph (1); and

“(C) enforcement of the policy described in paragraph (1).

“(b) **INSTITUTIONS.**—An institution shall be subject to the requirements of this section if such institution—

“(1) is an eligible institution for the purposes of any program authorized under title IV; and

“(2)(A) received more than \$50,000,000 in Federal funds in any of the previous five calendar years to support (in whole or in part) research and development (as determined by the institution and measured by the Higher Education Research and Development Survey of the National Center for Science and Engineering Statistics); or

“(B) receives funds under title VI.

“(c) **DEFINITIONS.**—In this section—

“(1) the terms ‘foreign source’ and ‘gift’ have the meanings given such terms in section 117(g);

“(2) the term ‘contract’—

“(A) means any—

“(i) agreement for the acquisition, by purchase, lease, or barter, of property or services by a foreign source;

“(ii) affiliation, agreement, or similar transaction with a foreign source involving the use or exchange of the name, likeness, time, services, or resources of covered individuals employed at an institution described in subsection (b); or

“(iii) purchase, lease, or barter of property or services from a foreign source that is a foreign country of concern or a foreign entity of concern; and

“(B) does not include any fair-market, arms-length agreement made by covered individuals for the acquisition, by purchase, lease, or barter of property or services from a foreign source other than such a foreign source that is a foreign country of concern or a foreign entity of concern;

“(3) the term ‘covered individual’—

“(A) has the meaning given such term in section 223(d) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (42 U.S.C. 6605); and

“(B) shall be interpreted in accordance with the Guidance for Implementing National Security Presidential Memorandum 33 (NSPM–33) on National Security Strategy for United States Government-supported Research and Development published by the Subcommittee on Research Security and the Joint Committee on the Research Environment in January 2022; and

“(4) the term ‘professional staff’ means professional employees, as defined in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).”.

SEC. 4. INVESTMENT DISCLOSURE REPORT.

The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), as amended by section 3 of this Act, is further amended by inserting after section 117B the following:

“SEC. 117C. INVESTMENT DISCLOSURE REPORT.

“(a) INVESTMENT DISCLOSURE REPORT.—A specified institution shall file a disclosure report in accordance with subsection (b) with the Secretary on July 31 immediately following any calendar year in which the specified institution purchases, sells, or holds (directly or indirectly through any chain of ownership) one or more investments of concern.

“(b) CONTENTS OF REPORT.—Each report to the Secretary required by subsection (a) with respect to any calendar year shall contain the following:

“(1) A list of the investments of concern purchased, sold, or held during such calendar year.

“(2) The aggregate fair market value of all investments of concern held as of the close of such calendar year.

“(3) The combined value of all investments of concern sold over the course of such calendar year, as measured by the fair market value of such investments at the time of the sale.

“(4) The combined value of all capital gains from such sales of investments of concern.

“(c) INCLUSION OF CERTAIN POOLED FUNDS.—

“(1) IN GENERAL.—An investment of concern acquired through a regulated investment company, exchange traded fund, or any other pooled investment shall be treated as acquired through a chain of ownership referred to in subsection (a), unless such pooled investment is certified by the Secretary as not holding any listed investments in accordance with subparagraph (B) of paragraph (2).

“(2) CERTIFICATIONS OF POOLED FUNDS.—The Secretary, after consultation with the Secretary of the Treasury, shall establish procedures under which certain regulated investment companies, exchange traded funds, and other pooled investments—

“(A) shall be reported in accordance with the requirements under subsection (b); and

“(B) may be certified by the Secretary as not holding any listed investments.

“(d) TREATMENT OF RELATED ORGANIZATIONS.—For purposes of this section, assets held by any related organization (as defined in section 4968(d)(2) of the Internal Revenue Code of 1986) with respect to a specified institution shall be treated as held by such specified institution, except that—

“(1) such assets shall not be taken into account with respect to more than 1 specified institution; and

“(2) unless such organization is controlled by such institution or is described in section 509(a)(3) of the Internal Revenue Code of 1986 with respect to such institution, assets which are not intended or available for the use or benefit of such specified institution shall not be taken into account.

“(e) VALUATION OF DEBT.—For purposes of this section, the fair market value of any debt shall be the principal amount of such debt.

“(f) REGULATIONS.—The Secretary, after consultation with the Secretary of the Treasury, may issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance providing for the proper application of this section with respect to certain regulated investment companies, exchange traded funds, and pooled investments.

“(g) COMPLIANCE OFFICER.—Any specified institution that is required to submit a report under subsection (a) shall designate, before the submission of such report, and maintain a compliance officer, who shall—

“(1) be a current employee or legally authorized agent of such institution;

“(2) be responsible, on behalf of the institution, for personally certifying accurate compliance with the reporting requirements under this section; and

“(3) certify the institution has, for purposes of filing such report under subsection (a), followed an established institutional policy and conducted good faith efforts and reasonable due diligence to determine the accuracy and valuations of the assets reported.

“(h) DATABASE REQUIREMENT.—Beginning not later than 60 days before the July 31 immediately following the date of the enactment of the DETERRENT Act, the Secretary shall—

“(1) establish and maintain a searchable database on a website of the Department, under which all reports submitted under this section—

“(A) are made publicly available (in electronic and downloadable format), including any information provided in such reports;

“(B) can be individually identified and compared; and

“(C) are searchable and sortable; and

“(2) not later than 30 days after receipt of a disclosure report under this section, include such report in such database.

“(i) DEFINITIONS.—In this section:

“(1) INVESTMENT OF CONCERN.—

“(A) IN GENERAL.—The term ‘investment of concern’ means any specified interest with respect to any of the following:

“(i) A foreign country of concern.

“(ii) A foreign entity of concern.

“(B) SPECIFIED INTEREST.—The term ‘specified interest’ means, with respect to any entity—

“(i) stock or any other equity or profits interest of such entity;

“(ii) debt issued by such entity; and

“(iii) any contract or derivative with respect to any property described in clause (i) or (ii).

“(2) SPECIFIED INSTITUTION.—

“(A) IN GENERAL.—The term ‘specified institution’, as determined with respect to any calendar year, means an institution if—

“(i) such institution is not a public institution; and

“(ii) the aggregate fair market value of—

“(I) the assets held by such institution at the end of such calendar year (other than those assets which are used directly in carrying out the institution’s exempt purpose) is in excess of \$6,000,000,000; or

“(II) the investments of concern held by such institution at the end of such calendar year is in excess of \$250,000,000

“(B) REFERENCES TO CERTAIN TERMS.—For the purpose of applying the definition under subparagraph (A), the terms ‘aggregate fair market value’ and ‘assets which are used directly in carrying out the institution’s exempt purpose’ shall be applied in the same manner as such terms are applied for the purposes of section 4968(b)(1)(D) of the Internal Revenue Code of 1986.”.

SEC. 5. ENFORCEMENT AND OTHER GENERAL PROVISIONS.

(a) ENFORCEMENT AND OTHER GENERAL PROVISIONS.—The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), as amended by section 4 of this Act, is further amended by inserting after section 117C the following:

“SEC. 117D. ENFORCEMENT; SINGLE POINT-OF-CONTACT.

“(a) ENFORCEMENT.—

“(1) INVESTIGATION.—The Secretary (acting through the General Counsel of the Department) shall conduct investigations of possible violations of sections 117, 117A, 117B, and 117C by institutions.

“(2) CIVIL ACTION.—Whenever it appears that an institution has knowingly or willfully failed to comply with a requirement of any of the sections listed in paragraph (1) (including any rule or regulation promulgated under any such section) based on such an investigation, a civil action shall be brought by the Attorney General, at the request of the Secretary, in an appropriate district court of the United States, or the appropriate United States court of any territory or other place subject to the jurisdiction of the United States, to request such court to compel compliance with the requirement of the section that has been violated.

“(3) COSTS AND OTHER FINES.—An institution that is compelled to comply with a requirement of a section listed in paragraph (1) pursuant to paragraph (2) shall—

“(A) pay to the Treasury of the United States the full costs to the United States of obtaining compliance with the requirement of such section, including all associated costs of investigation and enforcement; and

“(B) be subject to the applicable fines described in paragraph (4).

“(4) FINES FOR VIOLATIONS.—The Secretary shall impose a fine on an institution that knowingly or willfully fails to comply with a requirement of a section listed in paragraph (1) as follows:

“(A) SECTION 117.—

“(i) FIRST-TIME VIOLATIONS.—In the case of an institution that knowingly or willfully fails to comply with a requirement of section 117 with respect to a calendar year, and that has not previously knowingly or willfully failed to comply with such a requirement, the Secretary shall impose a fine on the institution for such violation as follows:

“(I) In the case of an institution that knowingly or willfully fails to comply with a reporting requirement under subsection (a)(1) of section 117, such fine shall be in an amount that is—

“(aa) not less than \$50,000 but not more than the monetary value of the gift from, or contract with, the foreign source; or

“(bb) in the case of a gift or contract of no value or of indeterminable value, not less than 1 percent, and not more than 10 percent of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

“(II) In the case of an institution that knowingly or willfully fails to comply with the reporting requirement under subsection (a)(2) of section 117, such fine shall be in an amount that is not less than 10 percent of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

“(ii) SUBSEQUENT VIOLATIONS.—In the case of an institution that has been fined pursuant to clause (i) with respect to a calendar year, and that knowingly or willfully fails to comply with a requirement of section 117 with respect to any additional calendar year, the Secretary shall impose a fine on the institution with respect to any such additional calendar year as follows:

“(I) In the case of an institution that knowingly or willfully fails to comply with a reporting requirement under subsection (a)(1) of section 117 with respect to an additional calendar year, such fine shall be in an amount that is—

“(aa) not less than \$100,000 but not more than twice the monetary value of the gift from, or contract with, the foreign source; or

“(bb) in the case of a gift or contract of no value or of indeterminable value, not less than 1 percent, but not more than 10 percent, of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

“(II) In the case of an institution that knowingly or willfully fails to comply with a reporting requirement under subsection (a)(2) of section 117 with respect to an additional calendar year, such fine shall be in an amount that is not less than 20 percent of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

“(B) SECTION 117A.—

“(i) FIRST-TIME VIOLATIONS.—In the case of an institution that knowingly or willfully fails to comply with a requirement of section 117A for the first time, the Secretary shall impose a fine on the institution in

an amount that is not less than 5 percent, but not more than 10 percent, of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

“(ii) SUBSEQUENT VIOLATIONS.—In the case of an institution that has been fined pursuant to clause (i), the Secretary shall impose a fine on the institution for each subsequent time the institution knowingly or willfully fails to comply with a requirement of section 117A in an amount that is not less than 20 percent of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

“(C) SECTION 117B.—

“(i) FIRST-TIME VIOLATIONS.—In the case of an institution that knowingly or willfully fails to comply with a requirement of section 117B with respect to a calendar year, and that has not previously knowingly or willfully failed to comply with such a requirement, the Secretary shall impose a fine on the institution of not less than \$250,000, but not more than the total amount of gifts or contracts reported by such institution in the database required under section 117B(a)(2).

“(ii) SUBSEQUENT VIOLATIONS.—In the case of an institution that has been fined pursuant to clause (i) with respect to a calendar year, and that knowingly or willfully fails to comply with a requirement of section 117B with respect to any additional calendar year, the Secretary shall impose a fine on the institution with respect to any such additional calendar year in an amount that is not less than \$500,000, but not more than twice the total amount of gifts or contracts reported by such institution in the database required under section 117B(a)(2).

“(D) SECTION 117C.—

“(i) FIRST-TIME VIOLATIONS.—In the case of a specified institution that knowingly or willfully fails to comply with a requirement of section 117C with respect to a calendar year, and that has not previously knowingly or willfully failed to comply with such a requirement, the Secretary shall impose a fine on the institution in an amount that is not less than 50 percent and not more than 100 percent of the sum of—

“(I) the aggregate fair market value of all investments of concern held by such institution as of the close of such calendar year; and

“(II) the combined value of all investments of concern sold over the course of such calendar year, as measured by the fair market value of such investments at the time of the sale.

“(ii) SUBSEQUENT VIOLATIONS.—In the case of a specified institution that has been fined pursuant to clause (i) with respect to a calendar year, and that knowingly or willfully fails to comply with a requirement of section 117C with respect to any additional calendar year, the Secretary shall impose a fine on the institution with respect to any such additional calendar year in an amount that is not less than 100 percent and not more than 200 percent of the sum of—

“(I) the aggregate fair market value of all investments of concern held by such institution as of the close of such additional calendar year; and

“(II) the combined value of all investments of concern sold over the course of such additional calendar year, as measured by the fair market value of such investments at the time of the sale.

“(b) SINGLE POINT-OF-CONTACT AT THE DEPARTMENT.—The Secretary shall maintain a single point-of-contact at the Department to—

“(1) receive and respond to inquiries and requests for technical assistance from institutions regarding compliance with the requirements of sections 117, 117A, 117B, and 117C;

“(2) coordinate and implement technical improvements to the database described in section 117(d)(1), including—

“(A) improving upload functionality by allowing for batch reporting, including by allowing institutions to upload one file with all required information into the database;

“(B) publishing and maintaining a database users guide annually, including information on how to edit an entry and how to report errors;

“(C) creating a standing user group (to which chapter 10 of title 5, United States Code, shall not apply) to discuss possible database improvements, which group shall—

“(i) include at least—

- “(I) 3 members representing public institutions with high or very high levels of research activity (as defined by the National Center for Education Statistics);
 - “(II) 2 members representing private, nonprofit institutions with high or very high levels of research activity (as so defined);
 - “(III) 2 members representing proprietary institutions of higher education (as defined in section 102(b)); and
 - “(IV) 2 members representing area career and technical education schools (as defined in subparagraph (C) or (D) of section 3(3) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302(3)); and
 - “(ii) meet at least twice a year with officials from the Department to discuss possible database improvements;
 - “(D) publishing, on a publicly available website, recommended database improvements following each meeting described in subparagraph (C)(ii); and
 - “(E) responding, on a publicly available website, to each recommendation published under subparagraph (D) as to whether or not the Department will implement the recommendation, including the rationale for either approving or rejecting the recommendation;
 - “(3) provide, every 90 days after the date of enactment of the DETERRENT Act, status updates on any pending or completed investigations and civil actions under subsection (a)(1) to—
 - “(A) the authorizing committees; and
 - “(B) any institution that is the subject of such investigation or action;
 - “(4) maintain, on a publicly accessible website—
 - “(A) a full comprehensive list of all foreign countries of concern and foreign entities of concern; and
 - “(B) the date on which the last update was made to such list; and
 - “(5) not later than 7 days after making an update to the list maintained in paragraph (4)(A), notify each institution required to comply with the sections listed in paragraph (1) of such update.
- “(c) DEFINITIONS.—For purposes of sections 117, 117A, 117B, 117C, and this section:
- “(1) FOREIGN COUNTRY OF CONCERN.—The term ‘foreign country of concern’ includes the following:
 - “(A) A country that is a covered nation (as defined in section 4872(d) of title 10, United States Code).
 - “(B) Any country that the Secretary, in consultation with the Secretary of Defense, the Secretary of State, and the Director of National Intelligence, determines to be engaged in conduct that is detrimental to the national security or foreign policy of the United States.
 - “(2) FOREIGN ENTITY OF CONCERN.—The term ‘foreign entity of concern’ has the meaning given such term in section 10612(a) of the Research and Development, Competition, and Innovation Act (42 U.S.C. 19221(a)) and includes a foreign entity that is identified on the list published under section 1286(c)(8)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 22 4001 note; Public Law 115–232).
 - “(3) INSTITUTION.—The term ‘institution’ means an institution of higher education (as such term is defined in section 102, other than an institution described in subsection (a)(1)(c) of such section).”.
- (b) PROGRAM PARTICIPATION AGREEMENT.—Section 487(a) of the Higher Education Act of 1965 (20 U.S.C. 1094) is amended by adding at the end the following:
- “(30)(A) An institution will comply with the requirements of sections 117, 117A, 117B, and 117C.
 - “(B) An institution that, for 3 consecutive institutional fiscal years, violates any requirement of any of the sections listed in subparagraph (A), shall—
 - “(i) be ineligible to participate in the programs authorized by this title for a period of not less than 2 institutional fiscal years; and
 - “(ii) in order to regain eligibility to participate in such programs, demonstrate compliance with all requirements of each such section for not less than 2 institutional fiscal years after the institutional fiscal year in which such institution became ineligible.”.
- (c) GAO STUDY.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States—
- (1) shall conduct a study to identify ways to improve intergovernmental agency coordination regarding implementation and enforcement of sections 117, 117A, 117B, and 117C of the Higher Education Act of 1965 (20 U.S.C. 1011f),

as amended or added by this Act, including increasing information sharing, increasing compliance rates, and establishing processes for enforcement; and

(2) shall submit to the Congress, and make public, a report containing the results of such study.

PURPOSE

To amend the *Higher Education Act of 1965* to require additional information in disclosures of foreign gifts and contracts from foreign sources, restrict contracts with certain foreign entities and foreign countries of concern, require certain staff and faculty to report foreign gifts and contracts, and require disclosure of certain foreign investments within endowments.

COMMITTEE ACTION

117TH CONGRESS

First Session—Hearing

On June 24, 2021, the Committee on Education and Labor held a hearing on “Examining the Policies and Priorities of the U.S. Department of Education.” The purpose of the hearing was to examine the policies and priorities of the U.S. Department of Education. During the hearing, Representatives Virginia Foxx (R–North Carolina), Joe Wilson (R–South Carolina), Elise Stefanik (R–New York), Jim Banks (R–Indiana), and Burgess Owens (R–Utah) made comments and asked questions regarding foreign influence in postsecondary education. Testifying before the Committee was Department of Education Secretary Miguel Cardona, Washington, DC.

118TH CONGRESS

First Session—Hearing

On May 16, 2023, the Committee on Education and the Workforce held a hearing on “Examining the Policies and Priorities of the U.S. Department of Education.” The purpose of the hearing was to examine the policies and priorities of the U.S. Department of Education. During the hearing, Representatives Michelle Steel (R–California), James Comer (R–Kentucky), and Eric Burlison (R–Missouri) made comments and asked questions regarding foreign influence in postsecondary education. Testifying before the Committee was Miguel Cardona, Secretary, U.S. Department of Education, Washington, D.C.

On May 24, 2023, the Committee on Education and the Workforce held a hearing on “Breaking the System Part II: Examining the Implications of Biden’s Student Loan Policies for Students and Taxpayers.” The purpose of the hearing was to examine the Biden administration’s policies surrounding student loans and the Office of Federal Student Aid. During the hearing, Representative Banks asked whether the Biden administration has opened any new investigations into foreign funding in postsecondary education. Testifying before the Committee was the Honorable James Kvaal, Under Secretary of Education, U.S. Department of Education, Washington D.C., and Mr. Richard Cordray, Chief Operating Officer, Office of Federal Student Aid, U.S. Department of Education, D.C.

On July 13, 2023, the Committee on Education and the Workforce held a hearing on “Exposing the Dangers of the Influence of

Foreign Adversaries on College Campuses.” The purpose of the hearing was to examine the state of foreign influence in the American postsecondary education system. The hearing investigated how to prevent foreign adversaries from abusing America’s academic system to steal sensitive intellectual property, limit free expression, control curriculum, and indoctrinate students. Testifying before the Committee was Mr. Paul Moore, J.D., Senior Counsel, Defense of Freedom Institute, Washington, D.C; Mr. John C. Yang, President and Executive Director, Asian Americans Advancing Justice, Washington, D.C; Mr. Craig Singleton, China Program Deputy Director and Senior Fellow, Foundation for Defense of Democracies, Washington, D.C.

Legislative Action

On October 11, 2023, Representative Steel introduced the Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions (DETERRENT) Act (H.R. 5933) with Representatives Foxx, Owens, Joe Wilson, Glenn Thompson (R–Pennsylvania), Glenn Grothman (R–Wisconsin), Stefanik, Lloyd Smucker (R–Pennsylvania), Lisa McClain (R–Michigan), Julia Letlow (R–Louisiana), Brandon Williams (R–New York), Erin Houchin (R–Indiana), Ron Estes (R–Kansas), and Tim Walberg (R–Michigan).

The bill was referred solely to the Committee on Education and the Workforce. On November 8, 2023, the Committee considered H.R. 5933 in legislative session and reported it favorably, as amended, to the House of Representatives by a recorded vote of 27–11. The Committee considered the following amendments to H.R. 5933:

1. Representative Steel offered an Amendment in the Nature of a Substitute (ANS) that made changes to better align the bill with other federal laws and ensure more transparency around all types of donations among other changes. The amendment was adopted by voice vote.
2. Representative Thompson offered an amendment to clarify the definition of batch reporting and define the frequency, participants, and reports from the standing user group. The amendment was adopted by voice vote.
3. Representative Nathaniel Moran (R–Texas) offered an amendment to clarify the waiver process for existing contracts between an institution of higher education (IHE) and a country or foreign entity of concern and to adjust the time deadlines for submission and approval of waivers. The amendment was adopted by voice vote.
4. Representative Kathy Manning (D North Carolina) offered an amendment to strike the requirement that gifts and contracts to faculty be made publicly available. The amendment failed by a recorded vote of 11–22.
5. Ranking Member Robert C. “Bobby” Scott (D–Virginia) offered an amendment to exclude receptions, widely-attended events, charity events, and gifts of personal hospitality from being classified as “gifts” for purposes of reporting gifts and contracts to faculty and staff. The amendment failed by a recorded vote of 14–24.

6. Ranking Member Scott offered an amendment to increase the threshold for reporting by faculty and staff to \$25,000 (instead of \$5,000) and to eliminate the \$0 reporting threshold for countries of concern. The amendment failed by a recorded vote of 14–24.

7. Ranking Member Scott offered an Amendment in the Nature of a Substitute that provided a higher threshold for reporting for all foreign gifts or contracts and provided fewer public disclosures about the nature of the gifts and contracts. The amendment failed by a recorded vote of 14–24.

COMMITTEE VIEWS

INTRODUCTION

Foreign enemies, like the Chinese Communist Party, are infiltrating America's colleges and universities to subvert United States' interests. Foreign adversaries recognize the value of American education and research and continually seek to exert their influence on students and faculty. To combat these threats, section 117 of the *Higher Education Act* (HEA) requires institutions that receive federal financial assistance to disclose semiannually to the U.S. Department of Education (ED or Department) any gifts received from and/or contracts with a foreign source or foreign government that are valued at \$250,000 or more in a calendar year. These revisions are necessary due to section 117's current loose legislative language, the Biden administration's blatant crippling of enforcement efforts, and institutions' refusal to adhere to the law which have resulted in billions of dollars in foreign funds infiltrating the country undetected. The DETERRENT Act brings much-needed transparency, accountability, and clarity to foreign gift reporting requirements for colleges and universities across the nation.

Section 117 Background

Section 117 was enacted during the HEA reauthorization in 1986. The American Jewish Congress drafted and sponsored what was then-called section 1207 in response to large gifts from foreign governments, particularly a gift from Arab governments to Georgetown University for the purpose of creating a Center for Contemporary Arab Studies.¹

Section 117 details the contents of required disclosures as well as penalties. Each reported gift or contract from a foreign source needs to contain the aggregate dollar amount as well as the country of origin.² The statute also requires institutions owned or controlled by a foreign entity to report additional information.³

If an institution fails to properly disclose foreign gifts, the Attorney General may open a civil action to compel compliance and institutions can be found liable to pay for the subsequent investigation and enforcement costs.

¹ <https://www.nytimes.com/1986/10/16/opinion/1-education-act-would-curb-foreign-gifts-148386.html?searchResultPosition=1>.

² <https://www.govinfo.gov/content/pkg/COMPS-765/pdf/COMPS-765.pdf>, page 27.

³ <https://fsapartners.ed.gov/knowledge-center/topics/section-117-foreign-gift-and-contract-reporting>.

Section 117 Limitations

Congress first required IHEs to publicly report their foreign gifts and contracts to ED in 1986. Although the requirements of section 117 have been in place for over 30 years, the loose language in statute, poor federal enforcement, and lack of congressional oversight have resulted in very few and vague disclosures from institutions.

Most institutions fail to disclose the majority of foreign gifts they have received. A 2019 Senate report found that up to 70 percent of all institutions failed to comply with section 117 and that those that do comply often underreport.⁴ Investigations by the Trump administration discovered \$6.5 billion in previously undisclosed gifts and contributions provided to elite colleges from countries that pose serious national security threats.⁵ A recent study by the Network Contagion Research Institute further analyzed data between 2014 and 2019 and found that approximately \$13 billion in foreign gifts were undisclosed.⁶

Even when data is submitted, the accuracy of the amounts of funding and the breadth of relationships are unclear. All data submitted is self-reported by institutions and there is no requirement that the numbers are audited for accuracy by an independent body such as the Department's Inspector General or the Government Accountability Office (GAO).⁷ In 2022, research from the Lincoln Policy Network found that nearly 30 percent of reported payments had no receipt date, making it hard to discern when payments began or to notice any changes over time.⁸ The statute also allows institutions to report gift sources as "anonymous." In 2020, the Department estimated that schools had anonymized \$8.4 billion in foreign money over the past decade.⁹ Finally, several colleges and universities have affiliated nonprofit foundations or other entities that receive gifts for the university, and section 117 does not mention such entities explicitly.¹⁰

Problems of Foreign Influence

American universities often resemble multinational corporations and collaborate with global partners. International partnerships may have academic and research advantages; however, not all foreign partnerships are innocuous. Over 60 percent of foreign money given to U.S. universities comes from four sources: China, Saudi Arabia, the United Arab Emirates, and Qatar.¹¹ Nations that pose a heightened security risk shroud their contracts and gifts in secrecy, enabling these intellectual property, restricting academic freedom, recruiting foreign agents, and monitoring students on campus.

⁴ <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/PSI%20Report%20China's%20Impact%20on%20the%20US%20Education%20System.pdf>.

⁵ <https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf>.

⁶ <https://networkcontagion.us/reports/11-6-23-the-corruption-of-the-american-mind/>.

⁷ <https://www.pogo.org/investigation/2019/02/universities-on-the-foreign-payrol>.

⁸ <https://lincolnpolicy.org/wp-content/uploads/2022/10/Foreign-Influence-in-American-Higher-Education.pdf>.

⁹ <https://www.washingtonexaminer.com/news/stanford-and-fordham-swept-up-in-education-department-investigation-into-chinese-influence>.

¹⁰ <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/2019-02-28%20Zais%20Testimony%20-%20PSI.pdf>.

¹¹ <https://www.meforum.org/64411/reed-rubinstein-on-foreign-influence-on-campus>.

China

China is one of the largest contributors to universities, with partnerships occurring in many forms. One of the most common is Confucius Institutes (CIs), Chinese government-funded centers on college campuses that claim to foster intercultural exchange through language classes and cultural celebrations. The Chinese government provides American campuses with funding and partnerships with Chinese institutions in return for hosting CIs. At the program's peak in 2017 there were nearly 120 CIs in the United States, with China spending over \$158 million on CIs between 2006 and 2019.¹²

Because the Chinese government provides the funding for CIs, they pose risks for U.S. host institutions regarding academic freedom, freedom of expression, governance, and national security.¹³ A 2019 Senate report further found that the Chinese government “approves all teachers, events, and speakers” at CIs and sometimes limits discussion of political topics unfavorable to China such as the independence of Taiwan or the Tiananmen Square massacre.¹⁴ A 2019 GAO report also revealed that some schools were hesitant to reveal details of CI contracts and that some of these contracts even included nondisclosure agreements.¹⁵

Increased political attention to CIs at the state and federal levels caused a vast majority to close, leaving an estimated fewer than five still operating in the United States as of October 2023.¹⁶ However, the National Association of Scholars estimates that at least 28 schools simply replaced their CI with a similar program and at least 58 still have close relationships with their former CI partner.¹⁷

American institutions also have extensive partnerships with Chinese businesses and academic institutions. In June 2020, a Bloomberg analysis found that 115 schools received nearly \$1 billion from Chinese sources between 2013 and 2020.¹⁸ Many schools maintain relationships and exchange programs with Chinese universities that are linked to the Chinese military.¹⁹ China has continually blurred the lines between its military and civilian research through self-proclaimed “military-civil fusion.”²⁰

Middle East

Countries in the Middle East such as Saudi Arabia and Qatar also are some of the largest foreign contributors to American universities. In 2017 alone, Saudi individuals, companies, and the Kingdom itself spent over \$89 million on gifts and contracts to

¹² <https://crsreports.congress.gov/product/pdf/IF/IF11180>.

¹³ <https://nap.nationalacademies.org/catalog/27065/foreign-funded-language-and-culture-institutes-at-us-institutions-of-higher-education>.

¹⁴ <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/PSI%20Report%20China's%20Impact%20on%20the%20US%20Education%20System.pdf>.

¹⁵ <https://www.gao.gov/assets/gao-19-278-highlights.pdf>.

¹⁶ <https://www.gao.gov/assets/d24105981.pdf>.

¹⁷ https://www.nas.org/blogs/article/how_many_confucius_institutes_are_in_the_united_states.

¹⁸ <https://www.bloomberg.com/news/articles/2020-02-06/harvard-leads-u-s-colleges-that-received-1-billion-from-china#xj4y7vzkg>.

¹⁹ <https://www.washingtonexaminer.com/news/rubio-calls-on-us-universities-to-cut-ties-with-china-military-industrial-complex/>.

²⁰ <https://www.nytimes.com/2023/02/16/world/asia/spy-balloon-military-china.html>.

IHEs including Columbia University, Tufts University, and the University of Southern California.²¹

Countries from the Middle East have a history of large contributions to fund academic centers (often known as Middle East Studies Centers, or MESCs) on college campuses. MESCs, whose stated goal is to promote Middle Eastern studies, have been criticized for giving students a biased perspective on issues pertaining to the Middle East, including Islam, women's rights, terrorism, and slavery.²² Additionally, the Network Contagion Research Institute found that institutions that received and did not report funding from Middle Eastern donors had, on average, 300 percent more antisemitic incidents than other institutions.²³

Administration Response

Under the Trump administration, then-Secretary Betsy DeVos took many steps to increase transparency and combat foreign influence. Secretary DeVos opened over a dozen section 117 investigations, issued guidance on section 117 reporting, and modernized the online section 117 portal to make compliance easier.²⁴ The Trump administration also issued improved disclosure requirements, including requiring the names of foreign sources to be listed.²⁵

Despite foreign influence continuing to be a major issue on American campuses, the Biden administration has failed to view foreign influence as a serious threat. Secretary Cardona has said little on this issue and has failed to build on the work done in the previous administration. The Department's most recent notice of investigation was in January 2021.²⁶

The Biden administration also has failed to open any additional section 117 investigations since taking office.²⁷ In August 2022, the American Council on Education issued a letter thanking President Biden after learning "ED plans to close the outstanding section 117 investigations that remain open."²⁸ In April 2023, ED announced an investigation into the University of Nevada, Las Vegas was closed.²⁹ While the other investigations are not closed officially yet, no clear indication has been given that these investigations have continued.

The Biden administration also plans to transfer section 117 enforcement away from the Office of General Counsel and into the Office of Federal Student Aid (FSA).³⁰ Due to FSA's workload, the move of section 117 enforcement raises concerns about the Department's resource allocation and prioritization.

²¹ <https://www.pogo.org/investigation/2019/02/universities-on-the-foreign-payroll>.

²² <https://www.nas.org/reports/hijacked/full-report>.

²³ <https://networkcontagion.us/reports/11-6-23-the-corruption-of-the-american-mind/>.

²⁴ <https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf>.

²⁵ <https://www.highereddive.com/news/ed-dept-steps-up-scrutiny-of-college-foreign-gifts-reporting/580376/>.

²⁶ <https://www.dailysignal.com/2023/02/06/two-years-later-little-evidence-biden-admin-enforcing-law-higher-ed-gifts-foreign-countries-china/>.

²⁷ <https://www.nationalreview.com/corner/biden-admin-winds-down-probes-into-universities-for-foreign-gifts/>.

²⁸ <https://www.cogr.edu/sites/default/files/081622%20FINAL%20August%202022%20ED%20letter%20on%20117%20follow%20up.pdf>.

²⁹ <https://www2.ed.gov/policy/highered/leg/20230411-un-closeout.pdf>.

³⁰ <https://www.federalregister.gov/documents/2023/05/04/2023-09503/agency-information-collection-activities-submission-to-the-office-of-management-and-budget-for>.

DETERRENT Act

On October 11, 2023, Representative Steel and Chairwoman Foxx introduced the DETERRENT Act. The legislation brings much-needed transparency, accountability, and clarity to foreign gift reporting requirements for colleges and universities across the nation in five key policies.

First, the bill slashes the foreign gift reporting threshold. The bill lowers the annual threshold from \$250,000 to \$50,000 for all foreign sources and lowers the threshold further to \$0 for countries of concern³¹ (China, Russia, Iran, and North Korea) or foreign entities of concern³² such as foreign terrorist organizations, individuals engaged in espionage, and academic institutions violating research integrity. The bill also prohibits all contracts with a foreign country of concern or entity of concern, except with an annual waiver from ED.

Second, the bill closes reporting loopholes and provides transparency. The bill requires institutions to submit names and addresses of foreign donors. Institutions also must submit the intended use of the gift or contract and maintain a compliance officer who personally certifies the accuracy of reports. The bill also requires institutions to report foreign gifts given to their affiliated entities, such as university foundations.

Third, the bill requires disclosures of foreign gifts or contracts to individual research faculty at institutions receiving more than \$50 million annually in federal funds or receiving international education funds under Title VI by requiring their faculty involved in research to report foreign gifts and contracts. These individual faculty reports would be published on the institution's website.

Fourth, the bill reveals troubling foreign investments in private endowments. The bill requires private institutions with endowments above \$6 billion or with investments of concern above \$250 million to report the value of those investments annually. Investments of concern are defined as investments in a country of concern or an entity of concern.

Finally, the bill enacts increasing penalties for noncompliance. If an institution is found to be in willful violation after an ED investigation and subsequent court order, the institution is required to pay the full cost of the court fees as well as a financial penalty that increases after the first violation. After three consecutive years of any violations, an institution loses HEA Title IV eligibility for a minimum of two years.

Comments of support for H.R. 5933 were received by the Defense of Freedom Institute, Foundation for Defense of Democracies Action, America First Policy Institute, the Middle East Forum, and National Association of Scholars.

CONCLUSION

America's foreign adversaries are targeting the nation's students. They attempt to steal research, push propaganda, and censor free speech. Colleges and universities are on the frontlines facing this malign foreign interference. Section 117 of the HEA is a key tool for combatting the threats posed by foreign adversaries, but the

³¹ As defined in 10 U.S.C. 4872.

³² As defined in 42 U.S.C. 19221.

Biden administration and many of the most prominent U.S. institutions have failed to take the threat of foreign influence seriously. The DETERRENT Act brings much needed transparency to the financial ties between postsecondary education and foreign entities. This bill will keep America's adversaries at bay and hold U.S. institutions to a higher standard.

SUMMARY

H.R. 5933 SECTION-BY-SECTION SUMMARY

Section 117. Disclosures of foreign gifts

The bill strikes and replaces the existing section 117, which requires biannual reports for gifts or contracts above \$250,000. The new section 117 created by the bill includes the following new requirements.

- An institution shall file a disclosure report annually on July 31 following a year when:
 - An institution received a gift from, or entered into a contract with, a foreign source (other than a foreign country of concern or foreign entity of concern) with a value of \$50,000 or more, or an undetermined value.
 - An institution receives a gift of any dollar amount from a foreign country of concern or from a foreign entity of concern.
 - An institution enters into a contract with a foreign country of concern or foreign entity of concern after receiving a waiver for such contract.
 - An institution is substantially controlled by a foreign source.
- A gift to, or contract with, an affiliated entity of an institution shall be considered a gift to or contract with such institution.
- All disclosure reports will contain the following:
 - the name of the individual, department, or benefactor at the institution receiving the gift or carrying out the contract;
 - the intended purpose of the gift or contract;
 - a description of any restrictions or conditions on the contract;
 - if a gift, the date received and the fair market dollar amount of the gift; and,
 - if a contract, the start and end date of the contract.
 - Institutions will also be required to maintain copies of contracts translated into English.
- A In addition to other requirements, gifts from or contracts with foreign governments will also contain:
 - the name of the government;
 - the department, agency, office, or division of the foreign government that approved the gift or contract;
 - the physical mailing address of the relevant foreign government department, agency, office, or division.
- In addition to other requirements, gifts from or contracts with foreign sources that are not foreign governments or foreign entities of concern will also contain the following:

- the legal name of the source or, if unavailable, a signed statement that the institution has reasonably attempted to obtain such a name;
 - if the source is a person, the country of citizenship or, if not known, the principal country of residence;
 - if the source is a legal entity, the country of incorporation or, if not known, the principal place of business; and
 - the physical mailing address of the source or, if unavailable, a signed statement that the institution has reasonably attempted to obtain such address.
- In addition to all other requirements, contracts with foreign governments of concern or foreign entities of concern will also contain the following:
 - a complete and unredacted text of the original contract translated into English;
 - a copy of the waiver from the Secretary allowing such a contract; and
 - the statement submitted by the institution to receive such a waiver.
- In addition to all other requirements, institutions substantially controlled by a foreign source must also report:
 - the legal name and address of the foreign source that owns or controls the institution;
 - the date on which the foreign source assumed ownership or control; and
 - any changes in program or structure resulting from the change in ownership or control.
- Any translations must be done by a person who is not affiliated with the foreign source.
- Not later than 60 days before the July 31 immediately following the date of enactment of the DETERRENT Act, the Secretary shall establish and maintain a searchable, public database on a website of the Department. This database shall:
 - contain all reports submitted, uploaded to the database by the Secretary no later than 30 days after submission;
 - include, in electronic and downloadable format, any information provided in such reports, excluding the names and addresses prohibited from being disclosed;
 - be searchable and sortable by date filed, by date of the gift received or contract entered into, by attributable country of the gift or contract, and by institution;
 - indicate whether a gift is from a foreign government or from a foreign source that is not a foreign government; and
 - indicate when a report does not contain the name or address of a foreign source.
- Names and addresses of foreign sources that are natural persons shall not be disclosed under such public database or under FOIA requests.
- Within 30 days of receiving a disclosure report, the Secretary shall transmit an unredacted copy of such report (that includes the name and addresses) to the Director of the Federal Bureau of Investigation, the Director of National Intelligence, the Director of the Central Intelligence Agency, the

Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Secretary of Energy, the Director of the National Science Foundation, and the Director of the National Institutes of Health.

- Institutions must designate a compliance officer who is a current employee or legally authorized agent and is responsible for personally certifying compliance.
- The bill defines the following terms: affiliated entity; attributable country; contract; foreign country of concern; foreign entity of concern; foreign source; gift; institution; restricted or conditional gift or contract.

Section 117a. Prohibitions on contracts with certain foreign entities and countries

- Prohibits an institution from entering into any contracts with foreign entities of concern or countries of concern.
- Sets the following parameters regulating waivers:
 - Institutions may, not later than 120 days prior to entering into a contract, submit a waiver request to the Secretary.
 - Waivers shall last for one year. Institutions may apply for renewals of waivers for contracts that remain unchanged.
 - If an institution is not granted a waiver, it must not enter into the contract or terminate it.
 - The Secretary shall notify the institution not later than 60 days before the institution enters into the contract of the waiver approval or denial.
 - The Secretary shall consult with the Director of the Federal Bureau of Investigation, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Secretary of Energy, the Director of the National Science Foundation, and the Director of the National Institutes of Health regarding the waiver.
 - Not less than two weeks prior to issuing the waiver, the Secretary shall notify the authorizing committees regarding the intent of and justification for the waiver.
- If an institution has a contract with an entity that is designated as an entity of concern during the contract, the institution has 60 days to withdraw from the contract.
- If an institution has a contract with an entity of concern prior to the enactment of the DETERRENT Act, the institution shall submit a waiver request and shall immediately be granted a waiver ending one year after the date of enactment of the Act or the date of the existing contract, whichever is sooner.
- All past reports and information shall be shared with the Director of the Federal Bureau of Investigation, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Secretary of Energy, the Director of

the National Science Foundation, and the Director of the National Institutes of Health.

Section 117b. Institutional policy regarding foreign gifts and contracts to faculty and staff

- Institutions receiving more than \$50,000,000 in federal funds in any given year in the last five years, or institutions receiving funds under Title VI of HEA, are required to maintain the following items.
 - A policy requiring faculty, professional staff, and other staff engaged in research and development to report on July 31 the following:
 - any gift from a foreign source greater than a minimal value (defined in section 7342(a) of title 5, United States Code) or of undetermined value, including the date received;
 - any contract with a foreign source with a value above \$5,000 or of undetermined value; and
 - any contract with a foreign source or country of concern of any value.
 - A publicly available and searchable database on the website of the institution, sortable and searchable by date received (if a gift), date commenced (if a contract), and the attributable country.
 - A plan to identify and manage potential information gathering by foreign sources through espionage. Such a plan shall include:
 - periodic communications;
 - accurate reporting; and
 - enforcement.

Section 117c. Investment disclosure report

- Private institutions with endowments above \$6 billion or with investments of concern above \$250 million shall report the following on July 31:
 - a list of the investments of concern purchased, sold, or held during such calendar year;
 - the aggregate fair market value of all investments of concern held as of the close of such calendar year;
 - the combined value of all investments of concern sold over the course of such calendar year, as measured by the fair market value of such investments at the time of the sale;
 - the combined value of all capital gains from such sales of investments of concern.
- Investments acquired through a regulated investment company, exchange traded fund, or any other pooled investment shall be treated as owned, unless otherwise noted.
- The Secretary, in consultation with the Department of the Treasury, will establish procedures for the exclusion of a regulated investment company, exchange traded fund, or any other pooled investment.
- Not later than 60 days before the July 31 immediately following the date of enactment of the DETERRENT Act, the Sec-

retary shall establish and maintain a searchable, public database on a website of the Department. This database shall:

- contain all reports submitted, uploaded to the database by the Secretary no later than 30 days after submission;
- include, in electronic and downloadable format, any information provided in such reports; and
- be searchable and sortable, and able to be individually identified and compared.
- Defines investment of concern and specified interest.

Section 117d. Enforcement

- Requires the Secretary (acting through the General Counsel of the Department) to conduct investigations of possible violations.

- Whenever it appears that an institution has knowingly or willfully failed to comply, a civil action shall be brought by the Attorney General, at the request of the Secretary, in an appropriate district court of the United States or the appropriate United States court of any territory or other place subject to the jurisdiction of the United States, to request such court to compel compliance.

- Maintains the current law requirement that an institution that is compelled to comply shall pay the full costs to the United States of obtaining compliance with the requirement of such section, including all associated costs of investigation and enforcement.

- In addition to paying the cost of enforcement, an institution shall also be subject to the following fines from the Secretary:

- Violations of Section 117
 - First time violations shall be no less than \$50,000 but not more than the monetary value of the gift from, or contract with, the foreign source.
 - In the case of a gift or contract of no value or of indeterminable value, the fine shall be not less than 1 percent and not more than 10 percent of the total amount of federal funds received.
 - Violations from institutions substantially controlled by a foreign source shall be no less than 10 percent of the total amount of federal funds received.
 - Subsequent violations shall be no less than \$100,000 but not more than twice the monetary value of the gift from, or contract with, the foreign source.
 - In the case of a gift or contract of no value or of indeterminable value, the subsequent fine shall be not less than 10 percent of the total amount of federal funds received.
 - Subsequent violations from institutions substantially controlled by a foreign source shall be no less than 20 percent of the total amount of federal funds received.
- Violations of Section 117A

- First time violations shall be not less than 5 percent and not more than 10 percent of the total amount of federal funds received by the institution.
 - Subsequent violations shall be not less than 20 percent of the total amount of federal funds received.
 - Violations of Section 117B
 - First time violations shall be not less than \$250,000 and not more than the total amount of gifts and contracts reported by faculty and staff.
 - Subsequent violations shall be not less than \$500,000 and not more than twice the total amount of gifts and contracts reported by faculty and staff.
 - Violations of Section 117C
 - First time violations shall be not less than 50 percent and not more than 100 percent of the sum of the aggregate fair value market value of all investments of concern held and sold by such institution at the close of the calendar year.
 - Subsequent violations shall be not less than 100 percent and not more than 200 percent of the sum of the aggregate fair value market value of all investments of concern held and sold by such institution at the close of the calendar year.
- ED shall maintain a single point of contact to:
 - receive and respond to inquiries and requests for technical assistance from IHEs regarding compliance;
 - coordinate and implement technical improvements to the database, including:
 - improving upload functionality by allowing for batch reporting;
 - publishing and maintaining a database users guide annually, including areas such as how to edit an entry and how to report errors; and
 - creating a standing user group, meeting biannually, to discuss possible database improvements, which will include members from a range of institutions and issue recommendations for technical improvements.
 - provide, every 90 days, updates on active and pending investigations to authorizing committees and the institution being investigated; and
 - maintain a publicly accessible list of all foreign countries and entities of concern and notify all schools of any changes within seven days.
- Institutions with any violations of this section in three consecutive years shall be considered in violation of the Program Participation Agreement.
 - Such violation will result in the loss of eligibility to participate in Title IV programs for two institutional years.
 - Institutions must demonstrate compliance in two subsequent institutional years to regain eligibility.
- The Government Accountability Office shall conduct a study identifying ways to improve intergovernmental agency coordination regarding implementation and enforcement.

EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the body of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. H.R. 5933 brings much-needed transparency, accountability, and clarity to foreign gift reporting requirements for colleges and universities across the nation to protect our nation’s interests against adversarial countries.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. This issue is addressed in the CBO letter.

EARMARK STATEMENT

H.R. 5933 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of House rule XXI.

ROLL CALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendments offered to the measure or matter the total number of votes for and against and the names of the Members voting for and against.

Date: 11/8/23

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 1

Bill: H.R. 5933

Amendment Number: n/a

Disposition: Not Adopted by a Full Committee Roll Call Vote (11 y - 22 n)

Sponsor/Amendment: Rep. Manning / MANNIN_036

| Name & State | Aye | No | Not Voting | Name & State | Aye | No | Not Voting |
|-----------------------------|-----|----|------------|--------------------------|-----|----|------------|
| Mrs. FOXX (NC) (Chairwoman) | | X | | Mr. SCOTT (VA) (Ranking) | X | | |
| Mr. WILSON (SC) | | X | | Mr. GRIJALVA (AZ) | | | X |
| Mr. THOMPSON (PA) | | X | | Mr. COURNTHEY (CT) | X | | |
| Mr. WALBERG (MI) | | X | | Mr. SABLON (MP) | | | X |
| Mr. GROTHMAN (WI) | | X | | Ms. WILSON (FL) | X | | |
| Ms. STEFANIK (NY) | | X | | Ms. BONAMICI (OR) | X | | |
| Mr. ALLEN (GA) | | X | | Mr. TAKANO (CA) | X | | |
| Mr. BANKS (IN) | | X | | Ms. ADAMS (NC) | | | X |
| Mr. COMER (KY) | | X | | Mr. DESAULNIER (CA) | | | X |
| Mr. SMUCKER (PA) | | X | | Mr. NORCROSS (NJ) | | | X |
| Mr. OWENS (UT) | | X | | Ms. JAYAPAL (WA) | | | X |
| Mr. GOOD (VA) | | | X | Ms. WILD (PA) | X | | |
| Mrs. MCCLAIN (MI) | | X | | Mrs. MCBATH (GA) | X | | |
| Mrs. MILLER (IL) | | | X | Mrs. HAYES (CT) | X | | |
| Mrs. STEEL (CA) | | X | | Ms. OMAR (MN) | | | X |
| Mr. ESTES (KS) | | X | | Ms. STEVENS (MI) | X | | |
| Ms. LETLOW (LA) | | X | | Ms. LEGER FERNÁNDEZ (NM) | | | X |
| Mr. KILEY (CA) | | X | | Ms. MANNING (NC) | X | | |
| Mr. BEAN (FL) | | X | | Mr. MRVAN (IN) | X | | |
| Mr. BURLISON (MO) | | | X | Mr. BOWMAN (NY) | | | X |
| Mr. MORAN (TX) | | X | | | | | |
| Mr. JAMES (MI) | | X | | | | | |
| Ms. CHAVEZ-DEREMER (OR) | | X | | | | | |
| Mr. WILLIAMS (NY) | | X | | | | | |
| Ms. HOUGHIN (IN) | | X | | | | | |

TOTALS: Ayes: 11

Nos: 22

Not Voting: 12

Total: 45 / Quorum: 33 / Report:

(25 R - 20 D)

Date: 11/8/23

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 2

Bill: H.R. 5933

Amendment Number: n/a

Disposition: Not Adopted by a Full Committee Roll Call Vote (14 y - 24 n)

Sponsor/Amendment: Rep. Scott / SCOTVA_022

| Name & State | Aye | No | Not Voting | Name & State | Aye | No | Not Voting |
|-----------------------------|-----|----|------------|--------------------------|-----|----|------------|
| Mrs. FOXX (NC) (Chairwoman) | | X | | Mr. SCOTT (VA) (Ranking) | X | | |
| Mr. WILSON (SC) | | X | | Mr. GRIJALVA (AZ) | | | X |
| Mr. THOMPSON (PA) | | X | | Mr. COURNTHEY (CT) | X | | |
| Mr. WALBERG (MI) | | X | | Mr. SABLON (MP) | X | | |
| Mr. GROTHMAN (WI) | | X | | Ms. WILSON (FL) | X | | |
| Ms. STEFANIK (NY) | | X | | Ms. BONAMICI (OR) | X | | |
| Mr. ALLEN (GA) | | X | | Mr. TAKANO (CA) | X | | |
| Mr. BANKS (IN) | | X | | Ms. ADAMS (NC) | | | X |
| Mr. COMER (KY) | | X | | Mr. DESAULNIER (CA) | X | | |
| Mr. SMUCKER (PA) | | X | | Mr. NORCROSS (NJ) | | | X |
| Mr. OWENS (UT) | | X | | Ms. JAYAPAL (WA) | | | X |
| Mr. GOOD (VA) | | | X | Ms. WILD (PA) | X | | |
| Mrs. MCCLAIN (MI) | | X | | Mrs. MCBATH (GA) | X | | |
| Mrs. MILLER (IL) | | X | | Mrs. HAYES (CT) | X | | |
| Mrs. STEEL (CA) | | X | | Ms. OMAR (MN) | | | X |
| Mr. ESTES (KS) | | X | | Ms. STEVENS (MI) | X | | |
| Ms. LETLOW (LA) | | X | | Ms. LEGER FERNÁNDEZ (NM) | X | | |
| Mr. KILEY (CA) | | X | | Ms. MANNING (NC) | X | | |
| Mr. BEAN (FL) | | X | | Mr. MRVAN (IN) | X | | |
| Mr. BURLISON (MO) | | X | | Mr. BOWMAN (NY) | | | X |
| Mr. MORAN (TX) | | X | | | | | |
| Mr. JAMES (MI) | | X | | | | | |
| Ms. CHAVEZ-DEREMER (OR) | | X | | | | | |
| Mr. WILLIAMS (NY) | | X | | | | | |
| Ms. HOUGHIN (IN) | | X | | | | | |

TOTALS: Ayes: 14

Nos: 24

Not Voting: 7

Total: 45 / Quorum: 38 / Report:

(25 R - 20 D)

Date: 11/8/23

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 3

Bill: H.R. 5933

Amendment Number: n/a

Disposition: Not Adopted by a Full Committee Roll Call Vote (14 y - 24 n)

Sponsor/Amendment: Rep. Scott / THRESHOLD_01

| Name & State | Aye | No | Not Voting | Name & State | Aye | No | Not Voting |
|-----------------------------|-----|----|------------|--------------------------|-----|----|------------|
| Mrs. FOXX (NC) (Chairwoman) | | X | | Mr. SCOTT (VA) (Ranking) | X | | |
| Mr. WILSON (SC) | | X | | Mr. GRIJALVA (AZ) | | | X |
| Mr. THOMPSON (PA) | | X | | Mr. COURNTHEY (CT) | X | | |
| Mr. WALBERG (MI) | | X | | Mr. SABLAN (MP) | X | | |
| Mr. GROTHMAN (WI) | | X | | Ms. WILSON (FL) | X | | |
| Ms. STEFANIK (NY) | | X | | Ms. BONAMICI (OR) | X | | |
| Mr. ALLEN (GA) | | X | | Mr. TAKANO (CA) | X | | |
| Mr. BANKS (IN) | | X | | Ms. ADAMS (NC) | | | X |
| Mr. COMER (KY) | | X | | Mr. DESAULNIER (CA) | X | | |
| Mr. SMUCKER (PA) | | X | | Mr. NORCROSS (NJ) | | | X |
| Mr. OWENS (UT) | | X | | Ms. JAYAPAL (WA) | | | X |
| Mr. GOOD (VA) | | X | | Ms. WILD (PA) | X | | |
| Mrs. MCCLAIN (MI) | | X | | Mrs. MCBATH (GA) | X | | |
| Mrs. MILLER (IL) | | X | | Mrs. HAYES (CT) | X | | |
| Mrs. STEEL (CA) | | X | | Ms. OMAR (MN) | | | X |
| Mr. ESTES (KS) | | X | | Ms. STEVENS (MI) | X | | |
| Ms. LETLOW (LA) | | X | | Ms. LEGER FERNÁNDEZ (NM) | X | | |
| Mr. KILEY (CA) | | X | | Ms. MANNING (NC) | X | | |
| Mr. BEAN (FL) | | | X | Mr. MRVAN (IN) | X | | |
| Mr. BURLISON (MO) | | X | | Mr. BOWMAN (NY) | | | X |
| Mr. MORAN (TX) | | X | | | | | |
| Mr. JAMES (MI) | | X | | | | | |
| Ms. CHAVEZ-DEREMER (OR) | | X | | | | | |
| Mr. WILLIAMS (NY) | | X | | | | | |
| Ms. HOUCHIN (IN) | | X | | | | | |

TOTALS: Ayes: 14

Nos: 24

Not Voting: 7

Total: 45 / Quorum: 38 / Report:

(25 R - 20 D)

Date: 11/8/23

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 4

Bill: H.R. 5933

Amendment Number: n/a

Disposition: Not Adopted by a Full Committee Roll Call Vote (14 y - 24 n)

Sponsor/Amendment: Rep. Scott / DSUB_01

| Name & State | Aye | No | Not Voting | Name & State | Aye | No | Not Voting |
|-----------------------------|-----|----|------------|--------------------------|-----|----|------------|
| Mrs. FOXX (NC) (Chairwoman) | | X | | Mr. SCOTT (VA) (Ranking) | X | | |
| Mr. WILSON (SC) | | X | | Mr. GRIJALVA (AZ) | | | X |
| Mr. THOMPSON (PA) | | X | | Mr. COURNTHEY (CT) | X | | |
| Mr. WALBERG (MI) | | X | | Mr. SABLON (MP) | X | | |
| Mr. GROTHMAN (WI) | | X | | Ms. WILSON (FL) | X | | |
| Ms. STEFANIK (NY) | | X | | Ms. BONAMICI (OR) | X | | |
| Mr. ALLEN (GA) | | X | | Mr. TAKANO (CA) | X | | |
| Mr. BANKS (IN) | | X | | Ms. ADAMS (NC) | | | X |
| Mr. COMER (KY) | | X | | Mr. DESAULNIER (CA) | X | | |
| Mr. SMUCKER (PA) | | X | | Mr. NORCROSS (NJ) | | | X |
| Mr. OWENS (UT) | | X | | Ms. JAYAPAL (WA) | | | X |
| Mr. GOOD (VA) | | X | | Ms. WILD (PA) | X | | |
| Mrs. MCCLAIN (MI) | | X | | Mrs. MCBATH (GA) | X | | |
| Mrs. MILLER (IL) | | X | | Mrs. HAYES (CT) | X | | |
| Mrs. STEEL (CA) | | X | | Ms. OMAR (MN) | | | X |
| Mr. ESTES (KS) | | X | | Ms. STEVENS (MI) | X | | |
| Ms. LETLOW (LA) | | X | | Ms. LEGER FERNÁNDEZ (NM) | X | | |
| Mr. KILEY (CA) | | X | | Ms. MANNING (NC) | X | | |
| Mr. BEAN (FL) | | | X | Mr. MRVAN (IN) | X | | |
| Mr. BURLISON (MO) | | X | | Mr. BOWMAN (NY) | | | X |
| Mr. MORAN (TX) | | X | | | | | |
| Mr. JAMES (MI) | | X | | | | | |
| Ms. CHAVEZ-DEREMER (OR) | | X | | | | | |
| Mr. WILLIAMS (NY) | | X | | | | | |
| Ms. HOUGHIN (IN) | | X | | | | | |

TOTALS: Ayes: 14

Nos: 24

Not Voting: 7

Total: 45 / Quorum: 38 / Report:

(25 R - 20 D)

Date: 11/8/23

COMMITTEE ON EDUCATION AND THE WORKFORCE RECORD OF COMMITTEE VOTE

Roll Call: 5

Bill: H.R. 5933

Amendment Number: n/a

Disposition: Adopted by a Full Committee Roll Call Vote (27 y - 11 n)

Sponsor/Amendment: Rep. Steel / STEEL_055 / MOTION TO REPORT ANS, AS AMENDED

| Name & State | Aye | No | Not Voting | Name & State | Aye | No | Not Voting |
|-----------------------------|-----|----|------------|--------------------------|-----|----|------------|
| Mrs. FOXX (NC) (Chairwoman) | X | | | Mr. SCOTT (VA) (Ranking) | | X | |
| Mr. WILSON (SC) | X | | | Mr. GRIJALVA (AZ) | | | X |
| Mr. THOMPSON (PA) | X | | | Mr. COURNTHEY (CT) | X | | |
| Mr. WALBERG (MI) | X | | | Mr. SABLON (MP) | | X | |
| Mr. GROTHMAN (WI) | X | | | Ms. WILSON (FL) | | X | |
| Ms. STEFANIK (NY) | X | | | Ms. BONAMICI (OR) | | X | |
| Mr. ALLEN (GA) | X | | | Mr. TAKANO (CA) | | X | |
| Mr. BANKS (IN) | X | | | Ms. ADAMS (NC) | | | X |
| Mr. COMER (KY) | X | | | Mr. DESAULNIER (CA) | | X | |
| Mr. SMUCKER (PA) | X | | | Mr. NORCROSS (NJ) | | | X |
| Mr. OWENS (UT) | X | | | Ms. JAYAPAL (WA) | | | X |
| Mr. GOOD (VA) | X | | | Ms. WILD (PA) | X | | |
| Mrs. MCCLAIN (MI) | X | | | Mrs. MCBATH (GA) | | X | |
| Mrs. MILLER (IL) | X | | | Mrs. HAYES (CT) | | X | |
| Mrs. STEEL (CA) | X | | | Ms. OMAR (MN) | | | X |
| Mr. ESTES (KS) | X | | | Ms. STEVENS (MI) | | X | |
| Ms. LETLOW (LA) | X | | | Ms. LEGER FERNÁNDEZ (NM) | | X | |
| Mr. KILEY (CA) | X | | | Ms. MANNING (NC) | X | | |
| Mr. BEAN (FL) | | | X | Mr. MRVAN (IN) | | X | |
| Mr. BURLISON (MO) | X | | | Mr. BOWMAN (NY) | | | X |
| Mr. MORAN (TX) | X | | | | | | |
| Mr. JAMES (MI) | X | | | | | | |
| Ms. CHAVEZ-DEREMER (OR) | X | | | | | | |
| Mr. WILLIAMS (NY) | X | | | | | | |
| Ms. HOUGHIN (IN) | X | | | | | | |

TOTALS: Ayes: 27

Nos: 11

Not Voting: 7

Total: 45 / Quorum: 38 / Report:

(25 R - 20 D)

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause (3)(c) of House rule XIII, the goal of H.R. 5933, the DETERRENT Act, is to protect our nation's interests against adversarial foreign countries by bringing transparency, accountability, and clarity to foreign gift reporting requirements for colleges and universities.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 5933 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the committee's oversight findings and recommendations are reflected in the body of this report.

REQUIRED COMMITTEE HEARING

In compliance with clause 3(c)(6) of rule XIII the following hearing held during the 118th Congress was used to develop or consider H.R. 5933: On July 13, 2023, the Committee on Education and the Workforce held a hearing on “Exposing the Dangers of the Influence of Foreign Adversaries on College Campuses.”

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the committee has received the following estimate for H.R. 5933 from the Director of the Congressional Budget Office:

| H.R. 5933, DETERRENT Act | | | |
|--|------|---|---------------|
| As ordered reported by the House Committee on Education and the Workforce on November 8, 2023 | | | |
| By Fiscal Year, Millions of Dollars | 2024 | 2024-2028 | 2024-2033 |
| Direct Spending (Outlays) | * | * | * |
| Revenues | * | * | * |
| Increase or Decrease (-) in the Deficit | * | * | * |
| Spending Subject to Appropriation (Outlays) | * | * | not estimated |
| Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034? | No | Statutory pay-as-you-go procedures apply? | Yes |
| | | Mandate Effects | |
| Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034? | No | Contains intergovernmental mandate? | No |
| | | Contains private-sector mandate? | No |
| * = between -\$500,000 and \$500,000. | | | |

H.R. 5933 would expand disclosure and reporting requirements for institutions of higher education that receive gifts from or enter into contracts with foreign countries or entities. Institutions that fail to meet the new requirements could be assessed civil penalties or lose eligibility for federal student financial aid. Specifically, H.R. 5933 would:

- Reduce from \$250,000 to \$50,000 the value of gifts and contracts from foreign sources that institutions would need to disclose annually in reports to the Department of Education,
- Prohibit institutions from entering into contracts with any foreign entity of concern (China or Russia, for example) without obtaining a waiver,
- Require certain institutions to report on gifts or contracts between faculty members and foreign entities, and
- Require private institutions with endowments greater than \$6 billion or more than \$250 million in specified investments to file investment disclosure reports annually.

In addition, H.R. 5933 would require the department to create a searchable database with information about institutions' foreign gifts, contracts, and investments. Finally, the bill would require the Government Accountability Office (GAO) to study how to improve coordination among federal agencies for implementing and enforcing the bill's provisions.

H.R. 5933 would authorize the Secretary of Education to assess civil penalties and fines on institutions that fail to meet the new requirements; such penalties are recorded in the federal budget as revenues. Additionally, institutions that fail to meet the new requirements for three consecutive years would lose access to federal student financial aid for two years. Outlays for some federal student aid programs, such as the federal student loan program, are recorded in the budget as direct spending; spending for other programs, such as the Federal Work-Study Program, is funded through annual appropriations. CBO expects that institutions would generally comply with the new requirements, and that any decreases in spending on federal student aid or increases in reve-

nues from civil penalties over the 2024–2033 period would be insignificant.

Using information about the cost of similar activities, CBO estimates that it would cost the Department of Education and GAO less than \$500,000, in total, over the 2024–2028 period to implement the bill. That spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Leah Koestner. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 5933. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when, as with the present report, the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

HIGHER EDUCATION ACT OF 1965

* * * * *

TITLE I—GENERAL PROVISIONS

* * * * *

PART B—ADDITIONAL GENERAL PROVISIONS

* * * * *

[SEC. 117. DISCLOSURES OF FOREIGN GIFTS.

[(a) DISCLOSURE REPORT.—Whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the Secretary on January 31 or July 31, whichever is sooner.

[(b) CONTENTS OF REPORT.—Each report to the Secretary required by this section shall contain the following:

[(1) For gifts received from or contracts entered into with a foreign source other than a foreign government, the aggregate dollar amount of such gifts and contracts attributable to a particular country. The country to which a gift is attributable is the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business, for a foreign source which is a legal entity.

[(2) For gifts received from or contracts entered into with a foreign government, the aggregate amount of such gifts and contracts received from each foreign government.

[(3) In the case of an institution which is owned or controlled by a foreign source, the identity of the foreign source, the date on which the foreign source assumed ownership or control, and any changes in program or structure resulting from the change in ownership or control.

[(c) ADDITIONAL DISCLOSURES FOR RESTRICTED AND CONDITIONAL GIFTS.—Notwithstanding the provisions of subsection (b), whenever any institution receives a restricted or conditional gift or contract from a foreign source, the institution shall disclose the following:

[(1) For such gifts received from or contracts entered into with a foreign source other than a foreign government, the amount, the date, and a description of such conditions or restrictions. The report shall also disclose the country of citizenship, or if unknown, the principal residence for a foreign source which is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.

[(2) For gifts received from or contracts entered into with a foreign government, the amount, the date, a description of such conditions or restrictions, and the name of the foreign government.

[(d) RELATION TO OTHER REPORTING REQUIREMENTS.—

[(1) STATE REQUIREMENTS.—If an institution described under subsection (a) is within a State which has enacted requirements for public disclosure of gifts from or contracts with a foreign source that are substantially similar to the requirements of this section, a copy of the disclosure report filed with the State may be filed with the Secretary in lieu of a report required under subsection (a). The State in which the institution is located shall provide to the Secretary such assurances as the Secretary may require to establish that the institution has met the requirements for public disclosure under State law if the State report is filed.

[(2) USE OF OTHER FEDERAL REPORTS.—If an institution receives a gift from, or enters into a contract with, a foreign source, where any other department, agency, or bureau of the executive branch requires a report containing requirements substantially similar to those required under this section, a copy of the report may be filed with the Secretary in lieu of a report required under subsection (a).

[(e) PUBLIC INSPECTION.—All disclosure reports required by this section shall be public records open to inspection and copying during business hours.

[(f) ENFORCEMENT.—

[(1) COURT ORDERS.—Whenever it appears that an institution has failed to comply with the requirements of this section, including any rule or regulation promulgated under this section, a civil action may be brought by the Attorney General, at the request of the Secretary, in an appropriate district court of the United States, or the appropriate United States court of any territory or other place subject to the jurisdiction of the United States, to request such court to compel compliance with the requirements of this section.

[(2) COSTS.—For knowing or willful failure to comply with the requirements of this section, including any rule or regulation promulgated thereunder, an institution shall pay to the Treasury of the United States the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement.

[(g) REGULATIONS.—The Secretary may promulgate regulations to carry out this section.

[(h) DEFINITIONS.—For the purpose of this section—

[(1) the term “contract” means any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties;

[(2) the term “foreign source” means—

[(A) a foreign government, including an agency of a foreign government;

[(B) a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states;

[(C) an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; and

[(D) an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source;

[(3) the term “gift” means any gift of money or property;

[(4) the term “institution” means any institution, public or private, or, if a multicampus institution, any single campus of such institution, in any State, that—

[(A) is legally authorized within such State to provide a program of education beyond secondary school;

[(B) provides a program for which the institution awards a bachelor’s degree (or provides not less than a 2-year program which is acceptable for full credit toward such a degree) or more advanced degrees; and

[(C) is accredited by a nationally recognized accrediting agency or association and to which institution Federal financial assistance is extended (directly or indirectly through another entity or person), or which institution receives support from the extension of Federal financial assistance to any of the institution’s subunits; and

[(5) the term “restricted or conditional gift or contract” means any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding—

[(A) the employment, assignment, or termination of faculty;

[(B) the establishment of departments, centers, research or lecture programs, or new faculty positions;

[(C) the selection or admission of students; or
 [(D) the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.]]

SEC. 117. DISCLOSURES OF FOREIGN GIFTS.

(a) DISCLOSURE REPORTS.—

(1) AGGREGATE GIFTS AND CONTRACT DISCLOSURES.—An institution shall file a disclosure report in accordance with subsection (b)(1) with the Secretary on July 31 of the calendar year immediately following any calendar year in which—

(A) the institution receives a gift from, or enters into a contract with, a foreign source (other than a foreign country of concern or foreign entity of concern)—

(i) the value of which is \$50,000 or more, considered alone or in combination with all other gifts from, or contracts with, that foreign source within the calendar year; or

(ii) the value of which is undetermined; or

(B) the institution receives a gift from a foreign country of concern or foreign entity of concern, or, upon receiving a waiver under section 117A to enter into a contract with such a country or entity, enters into such contract, without regard to the value of such gift or contract.

(2) FOREIGN SOURCE OWNERSHIP OR CONTROL DISCLOSURES.—In the case of an institution that is substantially controlled (as described in section 668.174(c)(3) of title 34, Code of Federal Regulations) (or successor regulations)) by a foreign source, the institution shall file a disclosure report in accordance with subsection (b)(2) with the Secretary on July 31 of each year.

(3) TREATMENT OF AFFILIATED ENTITIES.—For purposes of this section, any gift to, or contract with, an affiliated entity of an institution shall be considered a gift to or contract with, respectively, such institution.

(b) CONTENTS OF REPORT.—

(1) GIFTS AND CONTRACTS.—Each report to the Secretary required under subsection (a)(1) shall contain the following:

(A) With respect to a gift received from, or a contract entered into with, any foreign source—

(i) the terms of such gift or contract, including—

(I) the name of the individual, department, or benefactor at the institution receiving the gift or carrying out the contract;

(II) the intended purpose of such gift or contract, as provided to the institution by such foreign source, or if no such purpose is provided by such foreign source, the intended use of such gift or contract, as provided by the institution; and

(III) in the case of a restricted or conditional gift or contract, a description of the restrictions or conditions of such gift or contract;

(ii) with respect to a gift—

(I) the total fair market dollar amount or dollar value of the gift, as of the date of submission of such report; and

(II) the date on which the institution received such gift;

(iii) with respect to a contract—

(I) the date on which such contract commences;

(II) as applicable, the date on which such contract terminates; and

(III) an assurance that the institution will—

(aa) maintain an unredacted copy of the contract until the latest of—

(AA) the date that is 4 years after the date on which the contract commences;

(BB) the date on which the contract terminates; or

(CC) the last day of any period that applicable State law requires a copy of such contract to be maintained; and

(bb) upon request of the Secretary during an investigation under subsection (f)(1), produce such an unredacted copy of the contract; and

(iv) an assurance that in a case in which information is required to be disclosed under this section with respect to a gift or contract that is not in English, such information is translated into English in compliance with the requirements of subsection (c)(1).

(B) With respect to a gift received from, or a contract entered into with, a foreign source that is a foreign government (other than the government of a foreign country of concern)—

(i) the name of such foreign government;

(ii) the department, agency, office, or division of such foreign government that approved such gift or contract, as applicable; and

(iii) the physical mailing address of such department, agency, office, or division.

(C) With respect to a gift received from, or contract entered into with, a foreign source (other than a foreign government subject to the requirements of subparagraph (B))—

(i) the legal name of the foreign source, or, if such name is not available, a statement certified by the compliance officer in accordance with subsection (f)(2) that the institution has reasonably attempted to obtain such name;

(ii) in the case of a foreign source that is a natural person, the country of citizenship of such person, or, if such country is not known, the principal country of residence of such person;

(iii) in the case of a foreign source that is a legal entity, the country in which such entity is incorporated, or if such information is not available, the principal place of business of such entity; and

(iv) the physical mailing address of such foreign source, or if such address is not available, a statement

certified by the compliance officer in accordance with subsection (f)(2) that the institution has reasonably attempted to obtain such address.

(D) With respect to a contract entered into with a foreign source that is a foreign country of concern or a foreign entity of concern—

(i) a complete and unredacted text of the original contract, and if such original contract is not in English, a translated copy of the text into English;

(ii) a copy of the waiver received under section 117A for such contract; and

(iii) the statement submitted by the institution for purposes of receiving such a waiver under section 117A(b)(1).

(2) FOREIGN SOURCE OWNERSHIP OR CONTROL.—Each report to the Secretary required under subsection (a)(2) shall contain—

(A) the legal name and address of the foreign source that owns or controls the institution;

(B) the date on which the foreign source assumed ownership or control; and

(C) any changes in program or structure resulting from the change in ownership or control.

(c) TRANSLATION REQUIREMENTS.—Any information required to be disclosed under this section with respect to a gift or contract that is not in English shall be translated, for purposes of such disclosure, by a person that is not an affiliated entity or agent of the foreign source involved with such gift or contract.

(d) PUBLIC INSPECTION.—

(1) DATABASE REQUIREMENT.—Beginning not later than 60 days before the July 31 immediately following the date of the enactment of the DETERRENT Act, the Secretary shall—

(A) establish and maintain a searchable database on a website of the Department, under which all reports submitted under this section (including any report submitted under this section before the date of the enactment of the DETERRENT Act)—

(i) are made publicly available (in electronic and downloadable format), including any information provided in such reports (other than the information prohibited from being publicly disclosed pursuant to paragraph (2));

(ii) can be individually identified and compared; and

(iii) are searchable and sortable by—

(I) the date the institution filed such report;

(II) the date on which the institution received the gift, or entered into the contract, which is the subject of the report;

(III) the attributable country of such gift or contract; and

(IV) the name of the foreign source (other than a foreign source that is a natural person);

(B) not later than 30 days after receipt of a disclosure report under this section, include such report in such database;

(C) indicate, as part of the public record of a report included in such database, whether the report is with respect to a gift received from, or a contract entered into with—

- (i) a foreign source that is a foreign government; or
- (ii) a foreign source that is not a foreign government;

and

(D) with respect to a disclosure report that does not include the name or address of a foreign source, indicate, as part of the public record of such report included in such database, that such report did not include such information.

(2) **NAME AND ADDRESS OF FOREIGN SOURCE.**—The Secretary shall not disclose the name or address of a foreign source that is a natural person (other than the attributable country of such foreign source) included in a disclosure report—

(A) as part of the public record of such disclosure report described in paragraph (1); or

(B) in response to a request under section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”), pursuant to subsection (b)(3) of such section.

(e) **INTERAGENCY INFORMATION SHARING.**—Not later than 30 days after receiving a disclosure report from an institution in compliance with this section, the Secretary shall transmit an unredacted copy of such report (that includes the name and address of a foreign source disclosed in such report) to the Director of the Federal Bureau of Investigation, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Secretary of Energy, the Director of the National Science Foundation, and the Director of the National Institutes of Health.

(f) **COMPLIANCE OFFICER.**—Any institution that is required to file a disclosure report under subsection (a) shall designate, before the filing deadline for such report, and maintain a compliance officer, who shall—

(1) be a current employee or legally authorized agent of such institution; and

(2) be responsible, on behalf of the institution, for personally certifying accurate compliance with the foreign gift reporting requirement under this section.

(g) **DEFINITIONS.**—In this section:

(1) **AFFILIATED ENTITY.**—The term “affiliated entity”, when used with respect to an institution, means an entity or organization that operates primarily for the benefit of, or under the auspices of, such institution, including a foundation of the institution or a related entity (such as any educational, cultural, or language entity).

(2) **ATTRIBUTABLE COUNTRY.**—The term “attributable country” means—

(A) the country of citizenship of a foreign source who is a natural person, or, if such country is unknown, the principal residence (as applicable) of such foreign source; or

(B) the country of incorporation of a foreign source that is a legal entity, or, if such country is unknown, the prin-

cipal place of business (as applicable) of such foreign source.

(3) **CONTRACT.**—The term “contract”—

(A) means—

(i) any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source;

(ii) any affiliation, agreement, or similar transaction with a foreign source that involves the use or exchange of an institution’s name, likeness, time, services, or resources; and

(iii) any agreement for the acquisition by purchase, lease, or barter, of property or services from a foreign source (other than an arms-length agreement for such acquisition from a foreign source that is not a foreign country of concern or a foreign entity of concern); and

(B) does not include an agreement made between an institution and a foreign source regarding any payment of one or more elements of a student’s cost of attendance (as such term is defined in section 472), unless such an agreement is made for more than 15 students or is made under a restricted or conditional contract.

(4) **FOREIGN SOURCE.**—The term “foreign source” means—

(A) a foreign government, including an agency of a foreign government;

(B) a legal entity, governmental or otherwise, created under the laws of a foreign state or states;

(C) a legal entity, governmental or otherwise, substantially controlled (as described in section 668.174(c)(3) of title 34, Code of Federal Regulations) (or successor regulations)) by a foreign source;

(D) a natural person who is not a citizen or a national of the United States or a trust territory or protectorate thereof; and

(E) an agent of a foreign source, including—

(i) a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source;

(ii) a person that operates primarily for the benefit of, or under the auspices of, a foreign source, including a foundation or a related entity (such as any educational, cultural, or language entity); and

(iii) a person who is an agent of a foreign principal (as such term is defined in section 1 of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611).

(5) **GIFT.**—The term “gift”—

(A) means any gift of money, property, resources, staff, or services; and

(B) does not include—

(i) any payment of one or more elements of a student’s cost of attendance (as such term is defined in section 472) to an institution by, or scholarship from, a foreign source who is a natural person, acting in their individual capacity and not as an agent for, at the request or direction of, or on behalf of, any person or entity (except the student), made for not more than

15 students, and that is not made under a restricted or conditional contract with such foreign source; or

(ii) assignment or license of registered industrial and intellectual property rights, such as patents, utility models, trademarks, or copyrights, or technical assistance, that are not identified as being associated with a national security risk or concern by the Federal Research Security Council as described under section 7902 of title 31, United States Code; or

(iii) decorations (as such term is defined in section 7342(a) of title 5, United States Code).

(6) **RESTRICTED OR CONDITIONAL GIFT OR CONTRACT.**—The term “restricted or conditional gift or contract” means any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding—

(A) the employment, assignment, or termination of faculty;

(B) the establishment of departments, centers, institutes, instructional programs, research or lecture programs, or new faculty positions;

(C) the selection, admission, or education of students;

(D) the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion; or

(E) any other restriction on the use of a gift or contract.

SEC. 117A. PROHIBITION ON CONTRACTS WITH CERTAIN FOREIGN ENTITIES AND COUNTRIES.

(a) **IN GENERAL.**—An institution shall not enter into a contract with a foreign country of concern or a foreign entity of concern.

(b) **WAIVERS.**—

(1) **SUBMISSION.**—

(A) **FIRST WAIVER REQUESTS.**—

(i) **IN GENERAL.**—An institution that desires to enter into a contract with a foreign entity of concern or a foreign country of concern may submit to the Secretary, not later than 120 days before the institution enters into such a contract, a request to waive the prohibition under subsection (a) with respect to such contract.

(ii) **CONTENTS OF WAIVER REQUEST.**—A waiver request submitted by an institution under clause (i) shall include—

(I) the complete and unredacted text of the proposed contract for which the waiver is being requested, and if such original contract is not in English, a translated copy of the text into English (in a manner that complies with section 117(c)); and

(II) a statement that—

(aa) is signed by the point of contact of the institution described in section 117(h); and

(bb) includes information that demonstrates that such contract is for the benefit of the institution’s mission and students and will pro-

mote the security, stability, and economic vitality of the United States.

(B) RENEWAL WAIVER REQUESTS.—

(i) IN GENERAL.—An institution that has entered into a contract pursuant to a waiver issued under this section, the term of which is longer than the 1-year waiver period and the terms and conditions of which remain the same as the proposed contract submitted as part of the request for such waiver may submit, not later than 120 days before the expiration of such waiver period, a request for a renewal of such waiver for an additional 1-year period (which shall include any information requested by the Secretary).

(ii) TERMINATION.—If the institution fails to submit a request under clause (i) or is not granted a renewal under such clause, such institution shall terminate such contract on the last day of the original 1-year waiver period.

(2) WAIVER ISSUANCE.—The Secretary—

(A) not later than 60 days before an institution enters into a contract pursuant to a waiver request under paragraph (1)(A), or before a contract described in paragraph (1)(B)(i) is renewed pursuant to a renewal request under such paragraph, shall notify the institution—

(i) if the waiver or renewal will be issued by the Secretary; and

(ii) in a case in which the waiver or renewal will be issued, the date on which the 1-year waiver period starts; and

(B) may only issue a waiver under this section to an institution if the Secretary determines, in consultation with the heads of each agency and department listed in section 117(e), that the contract for which the waiver is being requested is for the benefit of the institution's mission and students and will promote the security, stability, and economic vitality of the United States.

(3) DISCLOSURE.—Not less than 2 weeks prior to issuing a waiver under paragraph (2), the Secretary shall notify the—

(A) the Committee on Education and the Workforce of the House of Representatives; and

(B) the Committee on Health, Education, Labor, and Pensions of the Senate, of the intent to issue the waiver, including a justification for the waiver.

(4) APPLICATION OF WAIVERS.—A waiver issued under this section to an institution with respect to a contract shall only—

(A) waive the prohibition under subsection (a) for a 1-year period; and

(B) apply to the terms and conditions of the proposed contract submitted as part of the request for such waiver.

(c) DESIGNATION DURING CONTRACT TERM.—In the case of an institution that enters into a contract with a foreign source that is not a foreign country of concern or a foreign entity of concern but which, during the term of such contract, is designated as a foreign country of concern or foreign entity of concern, such institution shall termi-

nate such contract not later than 60 days after the Secretary notifies the institution of such designation.

(d) **CONTRACTS PRIOR TO DATE OF ENACTMENT.**—

(1) **IN GENERAL.**—In the case of an institution that has entered into a contract with a foreign country of concern or foreign entity of concern prior to the date of the enactment of the **DETERRENT Act**—

(A) the institution shall immediately submit to the Secretary a waiver request in accordance with subsection (b)(1)(A)(ii); and

(B) the Secretary shall, upon receipt of the request submitted under paragraph (1), immediately issue a waiver to the institution for a period beginning on the date on which the waiver is issued and ending on the sooner of—

(i) the date that is 1 year after the date of the enactment of the **DETERRENT Act**; or

(ii) the date on which the contract terminates.

(2) **RENEWAL.**—An institution that has entered into a contract described in paragraph (1), the term of which is longer than the waiver period described in subparagraph (B) of such paragraph and the terms and conditions of which remain the same as the contract submitted as part of the request required under subparagraph (A) of such paragraph, may submit a request for renewal of the waiver issued under such paragraph in accordance with subsection (b)(1)(B).

(e) **CONTRACT DEFINED.**—The term “contract” has the meaning given such term in section 117(g).

SEC. 117B. INSTITUTIONAL POLICY REGARDING FOREIGN GIFTS AND CONTRACTS TO FACULTY AND STAFF.

(a) **REQUIREMENT TO MAINTAIN POLICY AND DATABASE.**—Beginning not later than 90 days after the date of the enactment of the **DETERRENT Act**, each institution described in subsection (b) shall maintain—

(1) a policy requiring covered individuals employed at the institution to disclose in a report to such institution on July 31 of each calendar year that begins after the year in which such enactment date occurs—

(A) any gift received from a foreign source in the previous calendar year, the value of which is greater than the minimal value (as such term is defined in section 7342(a) of title 5, United States Code) or is of undetermined value, and including the date on which the gift was received;

(B) any contract entered into with a foreign source in the previous calendar year, the value of which is \$5,000 or more, considered alone or in combination with all other contracts with that foreign source within the calendar year, and including the date on which such contract commences and, as applicable, the date on which such contract terminates;

(C) any contract with a foreign source in force during the previous calendar year that has an undetermined monetary value, and including the date on which such contract commences and, as applicable, the date on which such contract terminates; and

(D) any contract entered into with a foreign country of concern or foreign entity of concern in the previous calendar year, the value of which is \$0 or more, and including the beginning and ending dates of such contract and the full text of such contract and any addenda;

(2) a publicly available and searchable database (in electronic and downloadable format), on a website of the institution, of the information required to be disclosed under paragraph (1) that—

(A) makes available the information disclosed under paragraph (1) beginning on the date that is 30 days after receipt of the report under such paragraph containing such information and until the latest of—

(i) the date that is 4 years after the date on which—

(I) a gift referred to in paragraph (1)(A) is received; or

(II) a contract referred to in subparagraph (B), (C) or (D) of paragraph (1) begins; or

(ii) the date on which a contract referred to in subparagraph (B), (C) or (D) of paragraph (1) terminates; and

(B) is searchable and sortable by—

(i) the date received (if a gift) or the date commenced (if a contract);

(ii) the attributable country with respect to which information is being disclosed;

(iii) name of the individual making the disclosure; and

(iv) the name of the foreign source (other than a foreign source who is a natural person);

(3) a plan effectively to identify and manage potential information gathering by foreign sources through espionage targeting covered individuals that may arise from gifts received from, or contracts entered into with, a foreign source, including through the use of—

(A) periodic communications;

(B) accurate reporting under paragraph (2) of the information required to be disclosed under paragraph (1); and

(C) enforcement of the policy described in paragraph (1).

(b) INSTITUTIONS.—An institution shall be subject to the requirements of this section if such institution—

(1) is an eligible institution for the purposes of any program authorized under title IV; and

(2)(A) received more than \$50,000,000 in Federal funds in any of the previous five calendar years to support (in whole or in part) research and development (as determined by the institution and measured by the Higher Education Research and Development Survey of the National Center for Science and Engineering Statistics); or

(B) receives funds under title VI.

(c) DEFINITIONS.—In this section—

(1) the terms “foreign source” and “gift” have the meanings given such terms in section 117(g);

(2) the term “contract”—

(A) means any—

(i) agreement for the acquisition, by purchase, lease, or barter, of property or services by a foreign source;

(ii) affiliation, agreement, or similar transaction with a foreign source involving the use or exchange of the name, likeness, time, services, or resources of covered individuals employed at an institution described in subsection (b); or

(iii) purchase, lease, or barter of property or services from a foreign source that is a foreign country of concern or a foreign entity of concern; and

(B) does not include any fair-market, arms-length agreement made by covered individuals for the acquisition, by purchase, lease, or barter of property or services from a foreign source other than such a foreign source that is a foreign country of concern or a foreign entity of concern;

(3) the term “covered individual”—

(A) has the meaning given such term in section 223(d) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (42 U.S.C. 6605); and

(B) shall be interpreted in accordance with the Guidance for Implementing National Security Presidential Memorandum 33 (NSPM–33) on National Security Strategy for United States Government-supported Research and Development published by the Subcommittee on Research Security and the Joint Committee on the Research Environment in January 2022; and

(4) the term “professional staff” means professional employees, as defined in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

SEC. 117C. INVESTMENT DISCLOSURE REPORT.

(a) **INVESTMENT DISCLOSURE REPORT.**—A specified institution shall file a disclosure report in accordance with subsection (b) with the Secretary on July 31 immediately following any calendar year in which the specified institution purchases, sells, or holds (directly or indirectly through any chain of ownership) one or more investments of concern.

(b) **CONTENTS OF REPORT.**—Each report to the Secretary required by subsection (a) with respect to any calendar year shall contain the following:

(1) A list of the investments of concern purchased, sold, or held during such calendar year.

(2) The aggregate fair market value of all investments of concern held as of the close of such calendar year.

(3) The combined value of all investments of concern sold over the course of such calendar year, as measured by the fair market value of such investments at the time of the sale.

(4) The combined value of all capital gains from such sales of investments of concern.

(c) **INCLUSION OF CERTAIN POOLED FUNDS.**—

(1) **IN GENERAL.**—An investment of concern acquired through a regulated investment company, exchange traded fund, or any other pooled investment shall be treated as acquired through a chain of ownership referred to in subsection (a), unless such pooled investment is certified by the Secretary as not holding

any listed investments in accordance with subparagraph (B) of paragraph (2).

(2) **CERTIFICATIONS OF POOLED FUNDS.**—The Secretary, after consultation with the Secretary of the Treasury, shall establish procedures under which certain regulated investment companies, exchange traded funds, and other pooled investments—

(A) shall be reported in accordance with the requirements under subsection (b); and

(B) may be certified by the Secretary as not holding any listed investments.

(d) **TREATMENT OF RELATED ORGANIZATIONS.**—For purposes of this section, assets held by any related organization (as defined in section 4968(d)(2) of the Internal Revenue Code of 1986) with respect to a specified institution shall be treated as held by such specified institution, except that—

(1) such assets shall not be taken into account with respect to more than 1 specified institution; and

(2) unless such organization is controlled by such institution or is described in section 509(a)(3) of the Internal Revenue Code of 1986 with respect to such institution, assets which are not intended or available for the use or benefit of such specified institution shall not be taken into account.

(e) **VALUATION OF DEBT.**—For purposes of this section, the fair market value of any debt shall be the principal amount of such debt.

(f) **REGULATIONS.**—The Secretary, after consultation with the Secretary of the Treasury, may issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance providing for the proper application of this section with respect to certain regulated investment companies, exchange traded funds, and pooled investments.

(g) **COMPLIANCE OFFICER.**—Any specified institution that is required to submit a report under subsection (a) shall designate, before the submission of such report, and maintain a compliance officer, who shall—

(1) be a current employee or legally authorized agent of such institution;

(2) be responsible, on behalf of the institution, for personally certifying accurate compliance with the reporting requirements under this section; and

(3) certify the institution has, for purposes of filing such report under subsection (a), followed an established institutional policy and conducted good faith efforts and reasonable due diligence to determine the accuracy and valuations of the assets reported.

(h) **DATABASE REQUIREMENT.**—Beginning not later than 60 days before the July 31 immediately following the date of the enactment of the **DETERRENT** Act, the Secretary shall—

(1) establish and maintain a searchable database on a website of the Department, under which all reports submitted under this section—

(A) are made publicly available (in electronic and downloadable format), including any information provided in such reports;

- (B) can be individually identified and compared; and
- (C) are searchable and sortable; and
- (2) not later than 30 days after receipt of a disclosure report under this section, include such report in such database.
- (i) **DEFINITIONS.**—In this section:
 - (1) **INVESTMENT OF CONCERN.**—
 - (A) **IN GENERAL.**—The term “investment of concern” means any specified interest with respect to any of the following:
 - (i) A foreign country of concern.
 - (ii) A foreign entity of concern.
 - (B) **SPECIFIED INTEREST.**—The term “specified interest” means, with respect to any entity—
 - (i) stock or any other equity or profits interest of such entity;
 - (ii) debt issued by such entity; and
 - (iii) any contract or derivative with respect to any property described in clause (i) or (ii).
 - (2) **SPECIFIED INSTITUTION.**—
 - (A) **IN GENERAL.**—The term “specified institution”, as determined with respect to any calendar year, means an institution if—
 - (i) such institution is not a public institution; and
 - (ii) the aggregate fair market value of—
 - (I) the assets held by such institution at the end of such calendar year (other than those assets which are used directly in carrying out the institution’s exempt purpose) is in excess of \$6,000,000,000; or
 - (II) the investments of concern held by such institution at the end of such calendar year is in excess of \$250,000,000
 - (B) **REFERENCES TO CERTAIN TERMS.**—For the purpose of applying the definition under subparagraph (A), the terms “aggregate fair market value” and “assets which are used directly in carrying out the institution’s exempt purpose” shall be applied in the same manner as such terms are applied for the purposes of section 4968(b)(1)(D) of the Internal Revenue Code of 1986.

SEC. 117D. ENFORCEMENT; SINGLE POINT-OF-CONTACT.

- (a) **ENFORCEMENT.**—
 - (1) **INVESTIGATION.**—The Secretary (acting through the General Counsel of the Department) shall conduct investigations of possible violations of sections 117, 117A, 117B, and 117C by institutions.
 - (2) **CIVIL ACTION.**—Whenever it appears that an institution has knowingly or willfully failed to comply with a requirement of any of the sections listed in paragraph (1) (including any rule or regulation promulgated under any such section) based on such an investigation, a civil action shall be brought by the Attorney General, at the request of the Secretary, in an appropriate district court of the United States, or the appropriate United States court of any territory or other place subject to the jurisdiction of the United States, to request such court to compel

compliance with the requirement of the section that has been violated.

(3) *COSTS AND OTHER FINES.*—An institution that is compelled to comply with a requirement of a section listed in paragraph (1) pursuant to paragraph (2) shall—

(A) pay to the Treasury of the United States the full costs to the United States of obtaining compliance with the requirement of such section, including all associated costs of investigation and enforcement; and

(B) be subject to the applicable fines described in paragraph (4).

(4) *FINES FOR VIOLATIONS.*—The Secretary shall impose a fine on an institution that knowingly or willfully fails to comply with a requirement of a section listed in paragraph (1) as follows:

(A) *SECTION 117.*—

(i) *FIRST-TIME VIOLATIONS.*—In the case of an institution that knowingly or willfully fails to comply with a requirement of section 117 with respect to a calendar year, and that has not previously knowingly or willfully failed to comply with such a requirement, the Secretary shall impose a fine on the institution for such violation as follows:

(I) In the case of an institution that knowingly or willfully fails to comply with a reporting requirement under subsection (a)(1) of section 117, such fine shall be in an amount that is—

(aa) not less than \$50,000 but not more than the monetary value of the gift from, or contract with, the foreign source; or

(bb) in the case of a gift or contract of no value or of indeterminable value, not less than 1 percent, and not more than 10 percent of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

(II) In the case of an institution that knowingly or willfully fails to comply with the reporting requirement under subsection (a)(2) of section 117, such fine shall be in an amount that is not less than 10 percent of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

(ii) *SUBSEQUENT VIOLATIONS.*—In the case of an institution that has been fined pursuant to clause (i) with respect to a calendar year, and that knowingly or willfully fails to comply with a requirement of section 117 with respect to any additional calendar year, the Secretary shall impose a fine on the institution with respect to any such additional calendar year as follows:

(I) In the case of an institution that knowingly or willfully fails to comply with a reporting requirement under subsection (a)(1) of section 117 with respect to an additional calendar year, such fine shall be in an amount that is—

(aa) not less than \$100,000 but not more than twice the monetary value of the gift from, or contract with, the foreign source; or

(bb) in the case of a gift or contract of no value or of indeterminable value, not less than 1 percent, but not more than 10 percent, of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

(II) In the case of an institution that knowingly or willfully fails to comply with a reporting requirement under subsection (a)(2) of section 117 with respect to an additional calendar year, such fine shall be in an amount that is not less than 20 percent of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

(B) SECTION 117A.—

(i) *FIRST-TIME VIOLATIONS.*—In the case of an institution that knowingly or willfully fails to comply with a requirement of section 117A for the first time, the Secretary shall impose a fine on the institution in an amount that is not less than 5 percent, but not more than 10 percent, of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

(ii) *SUBSEQUENT VIOLATIONS.*—In the case of an institution that has been fined pursuant to clause (i), the Secretary shall impose a fine on the institution for each subsequent time the institution knowingly or willfully fails to comply with a requirement of section 117A in an amount that is not less than 20 percent of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

(C) SECTION 117B.—

(i) *FIRST-TIME VIOLATIONS.*—In the case of an institution that knowingly or willfully fails to comply with a requirement of section 117B with respect to a calendar year, and that has not previously knowingly or willfully failed to comply with such a requirement, the Secretary shall impose a fine on the institution of not less than \$250,000, but not more than the total amount of gifts or contracts reported by such institution in the database required under section 117B(a)(2).

(ii) *SUBSEQUENT VIOLATIONS.*—In the case of an institution that has been fined pursuant to clause (i) with respect to a calendar year, and that knowingly or willfully fails to comply with a requirement of section 117B with respect to any additional calendar year, the Secretary shall impose a fine on the institution with respect to any such additional calendar year in an amount that is not less than \$500,000, but not more than twice the total amount of gifts or contracts reported by such institution in the database required under section 117B(a)(2).

(D) SECTION 117C.—

(i) *FIRST-TIME VIOLATIONS.*—*In the case of a specified institution that knowingly or willfully fails to comply with a requirement of section 117C with respect to a calendar year, and that has not previously knowingly or willfully failed to comply with such a requirement, the Secretary shall impose a fine on the institution in an amount that is not less than 50 percent and not more than 100 percent of the sum of—*

(I) the aggregate fair market value of all investments of concern held by such institution as of the close of such calendar year; and

(II) the combined value of all investments of concern sold over the course of such calendar year, as measured by the fair market value of such investments at the time of the sale.

(ii) *SUBSEQUENT VIOLATIONS.*—*In the case of a specified institution that has been fined pursuant to clause (i) with respect to a calendar year, and that knowingly or willfully fails to comply with a requirement of section 117C with respect to any additional calendar year, the Secretary shall impose a fine on the institution with respect to any such additional calendar year in an amount that is not less than 100 percent and not more than 200 percent of the sum of—*

(I) the aggregate fair market value of all investments of concern held by such institution as of the close of such additional calendar year; and

(II) the combined value of all investments of concern sold over the course of such additional calendar year, as measured by the fair market value of such investments at the time of the sale.

(b) *SINGLE POINT-OF-CONTACT AT THE DEPARTMENT.*—*The Secretary shall maintain a single point-of-contact at the Department to—*

(1) receive and respond to inquiries and requests for technical assistance from institutions regarding compliance with the requirements of sections 117, 117A, 117B, and 117C;

(2) coordinate and implement technical improvements to the database described in section 117(d)(1), including—

(A) improving upload functionality by allowing for batch reporting, including by allowing institutions to upload one file with all required information into the database;

(B) publishing and maintaining a database users guide annually, including information on how to edit an entry and how to report errors;

(C) creating a standing user group (to which chapter 10 of title 5, United States Code, shall not apply) to discuss possible database improvements, which group shall—

(i) include at least—

(I) 3 members representing public institutions with high or very high levels of research activity (as defined by the National Center for Education Statistics);

(II) 2 members representing private, nonprofit institutions with high or very high levels of research activity (as so defined);

(III) 2 members representing proprietary institutions of higher education (as defined in section 102(b)); and

(IV) 2 members representing area career and technical education schools (as defined in subparagraph (C) or (D) of section 3(3) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302(3)); and

(ii) meet at least twice a year with officials from the Department to discuss possible database improvements; (D) publishing, on a publicly available website, recommended database improvements following each meeting described in subparagraph (C)(ii); and

(E) responding, on a publicly available website, to each recommendation published under subparagraph (D) as to whether or not the Department will implement the recommendation, including the rationale for either approving or rejecting the recommendation;

(3) provide, every 90 days after the date of enactment of the DETERRENT Act, status updates on any pending or completed investigations and civil actions under subsection (a)(1) to—

(A) the authorizing committees; and

(B) any institution that is the subject of such investigation or action;

(4) maintain, on a publicly accessible website—

(A) a full comprehensive list of all foreign countries of concern and foreign entities of concern; and

(B) the date on which the last update was made to such list; and

(5) not later than 7 days after making an update to the list maintained in paragraph (4)(A), notify each institution required to comply with the sections listed in paragraph (1) of such update.

(c) DEFINITIONS.—For purposes of sections 117, 117A, 117B, 117C, and this section:

(1) FOREIGN COUNTRY OF CONCERN.—The term “foreign country of concern” includes the following:

(A) A country that is a covered nation (as defined in section 4872(d) of title 10, United States Code).

(B) Any country that the Secretary, in consultation with the Secretary of Defense, the Secretary of State, and the Director of National Intelligence, determines to be engaged in conduct that is detrimental to the national security or foreign policy of the United States.

(2) FOREIGN ENTITY OF CONCERN.—The term “foreign entity of concern” has the meaning given such term in section 10612(a) of the Research and Development, Competition, and Innovation Act (42 U.S.C. 19221(a)) and includes a foreign entity that is identified on the list published under section 1286(c)(8)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (10 U.S.C. 22 4001 note; Public Law 115–232).

(3) *INSTITUTION.*—The term “institution” means an institution of higher education (as such term is defined in section 102, other than an institution described in subsection (a)(1)(c) of such section).

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TITLE IV—STUDENT ASSISTANCE

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PART G—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

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SEC. 487. PROGRAM PARTICIPATION AGREEMENTS.

(a) **REQUIRED FOR PROGRAMS OF ASSISTANCE; CONTENTS.**—In order to be an eligible institution for the purposes of any program authorized under this title, an institution must be an institution of higher education or an eligible institution (as that term is defined for the purpose of that program) and shall, except with respect to a program under subpart 4 of part A, enter into a program participation agreement with the Secretary. The agreement shall condition the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:

(1) The institution will use funds received by it for any program under this title and any interest or other earnings thereon solely for the purpose specified in and in accordance with the provision of that program.

(2) The institution shall not charge any student a fee for processing or handling any application, form, or data required to determine the student’s eligibility for assistance under this title or the amount of such assistance.

(3) The institution will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under this title, together with assurances that the institution will provide, upon request and in a timely fashion, information relating to the administrative capability and financial responsibility of the institution to—

- (A) the Secretary;
- (B) the appropriate guaranty agency; and
- (C) the appropriate accrediting agency or association.

(4) The institution will comply with the provisions of subsection (c) of this section and the regulations prescribed under that subsection, relating to fiscal eligibility.

(5) The institution will submit reports to the Secretary and, in the case of an institution participating in a program under part B or part E, to holders of loans made to the institution’s students under such parts at such times and containing such information as the Secretary may reasonably require to carry out the purpose of this title.

(6) The institution will not provide any student with any statement or certification to any lender under part B that

qualifies the student for a loan or loans in excess of the amount that student is eligible to borrow in accordance with sections 425(a), 428(a)(2), and 428(b)(1) (A) and (B).

(7) The institution will comply with the requirements of section 485.

(8) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, the institution will make available to prospective students, at or before the time of application (A) the most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements, and (B) relevant State licensing requirements of the State in which such institution is located for any job for which the course of instruction is designed to prepare such prospective students.

(9) In the case of an institution participating in a program under part B or D, the institution will inform all eligible borrowers enrolled in the institution about the availability and eligibility of such borrowers for State grant assistance from the State in which the institution is located, and will inform such borrowers from another State of the source for further information concerning such assistance from that State.

(10) The institution certifies that it has in operation a drug abuse prevention program that is determined by the institution to be accessible to any officer, employee, or student at the institution.

(11) In the case of any institution whose students receive financial assistance pursuant to section 484(d), the institution will make available to such students a program proven successful in assisting students in obtaining a certificate of high school equivalency.

(12) The institution certifies that—

(A) the institution has established a campus security policy; and

(B) the institution has complied with the disclosure requirements of section 485(f).

(13) The institution will not deny any form of Federal financial aid to any student who meets the eligibility requirements of this title on the grounds that the student is participating in a program of study abroad approved for credit by the institution.

(14)(A) The institution, in order to participate as an eligible institution under part B or D, will develop a Default Management Plan for approval by the Secretary as part of its initial application for certification as an eligible institution and will implement such Plan for two years thereafter.

(B) Any institution of higher education which changes ownership and any eligible institution which changes its status as a parent or subordinate institution shall, in order to participate as an eligible institution under part B or D, develop a Default Management Plan for approval by the Secretary and implement such Plan for two years after its change of ownership or status.

(C) This paragraph shall not apply in the case of an institution in which (i) neither the parent nor the subordinate institu-

tion has a cohort default rate in excess of 10 percent, and (ii) the new owner of such parent or subordinate institution does not, and has not, owned any other institution with a cohort default rate in excess of 10 percent.

(15) The institution acknowledges the authority of the Secretary, guaranty agencies, lenders, accrediting agencies, the Secretary of Veterans Affairs, and the State agencies under subpart 1 of part H to share with each other any information pertaining to the institution's eligibility to participate in programs under this title or any information on fraud and abuse.

(16)(A) The institution will not knowingly employ an individual in a capacity that involves the administration of programs under this title, or the receipt of program funds under this title, who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of funds under this title, or has been judicially determined to have committed fraud involving funds under this title or contract with an institution or third party servicer that has been terminated under section 432 involving the acquisition, use, or expenditure of funds under this title, or who has been judicially determined to have committed fraud involving funds under this title.

(B) The institution will not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been—

(i) convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of funds under this title; or

(ii) judicially determined to have committed fraud involving funds under this title.

(17) The institution will complete surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal postsecondary institution data collection effort, as designated by the Secretary, in a timely manner and to the satisfaction of the Secretary.

(18) The institution will meet the requirements established pursuant to section 485(g).

(19) The institution will not impose any penalty, including the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a loan made under this title due to compliance with the provisions of this title, or delays attributable to the institution.

(20) The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except that this paragraph shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(21) The institution will meet the requirements established by the Secretary and accrediting agencies or associations, and will provide evidence to the Secretary that the institution has the authority to operate within a State.

(22) The institution will comply with the refund policy established pursuant to section 484B.

(23)(A) The institution, if located in a State to which section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)) does not apply, will make a good faith effort to distribute a mail voter registration form, requested and received from the State, to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make such forms widely available to students at the institution.

(B) The institution shall request the forms from the State 120 days prior to the deadline for registering to vote within the State. If an institution has not received a sufficient quantity of forms to fulfill this section from the State within 60 days prior to the deadline for registering to vote in the State, the institution shall not be held liable for not meeting the requirements of this section during that election year.

(C) This paragraph shall apply to general and special elections for Federal office, as defined in section 301(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(3)), and to the elections for Governor or other chief executive within such State).

(D) The institution shall be considered in compliance with the requirements of subparagraph (A) for each student to whom the institution electronically transmits a message containing a voter registration form acceptable for use in the State in which the institution is located, or an Internet address where such a form can be downloaded, if such information is in an electronic message devoted exclusively to voter registration.

(24) In the case of a proprietary institution of higher education (as defined in section 102(b)), such institution will derive not less than ten percent of such institution's revenues from sources other than Federal funds that are disbursed or delivered to or on behalf of a student to be used to attend such institution (referred to in this paragraph and subsection (d) as "Federal education assistance funds"), as calculated in accordance with subsection (d)(1), or will be subject to the sanctions described in subsection (d)(2).

(25) In the case of an institution that participates in a loan program under this title, the institution will—

(A) develop a code of conduct with respect to such loans with which the institution's officers, employees, and agents shall comply, that—

(i) prohibits a conflict of interest with the responsibilities of an officer, employee, or agent of an institution with respect to such loans; and

(ii) at a minimum, includes the provisions described in subsection (e);

(B) publish such code of conduct prominently on the institution's website; and

(C) administer and enforce such code by, at a minimum, requiring that all of the institution's officers, employees, and agents with responsibilities with respect to such loans be annually informed of the provisions of the code of conduct.

(26) The institution will, upon written request, disclose to the alleged victim of any crime of violence (as that term is defined in section 16 of title 18, United States Code), or a non-forcible sex offense, the report on the results of any disciplinary proceeding conducted by such institution against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph.

(27) In the case of an institution that has entered into a preferred lender arrangement, the institution will at least annually compile, maintain, and make available for students attending the institution, and the families of such students, a list, in print or other medium, of the specific lenders for loans made, insured, or guaranteed under this title or private education loans that the institution recommends, promotes, or endorses in accordance with such preferred lender arrangement. In making such list, the institution shall comply with the requirements of subsection (h).

(28)(A) The institution will, upon the request of an applicant for a private education loan, provide to the applicant the form required under section 128(e)(3) of the Truth in Lending Act (15 U.S.C. 1638(e)(3)), and the information required to complete such form, to the extent the institution possesses such information.

(B) For purposes of this paragraph, the term "private education loan" has the meaning given such term in section 140 of the Truth in Lending Act.

(29) The institution certifies that the institution—

(A) has developed plans to effectively combat the unauthorized distribution of copyrighted material, including through the use of a variety of technology-based deterrents; and

(B) will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution.

(30)(A) *An institution will comply with the requirements of sections 117, 117A, 117B, and 117C.*

(B) *An institution that, for 3 consecutive institutional fiscal years, violates any requirement of any of the sections listed in subparagraph (A), shall—*

(i) be ineligible to participate in the programs authorized by this title for a period of not less than 2 institutional fiscal years; and

(ii) in order to regain eligibility to participate in such programs, demonstrate compliance with all requirements of each such section for not less than 2 institutional fiscal

years after the institutional fiscal year in which such institution became ineligible.

(b) HEARINGS.—(1) An institution that has received written notice of a final audit or program review determination and that desires to have such determination reviewed by the Secretary shall submit to the Secretary a written request for review not later than 45 days after receipt of notification of the final audit or program review determination.

(2) The Secretary shall, upon receipt of written notice under paragraph (1), arrange for a hearing and notify the institution within 30 days of receipt of such notice the date, time, and place of such hearing. Such hearing shall take place not later than 120 days from the date upon which the Secretary notifies the institution.

(c) AUDITS; FINANCIAL RESPONSIBILITY; ENFORCEMENT OF STANDARDS.—(1) Notwithstanding any other provisions of this title, the Secretary shall prescribe such regulations as may be necessary to provide for—

(A)(i) except as provided in clauses (ii) and (iii), a financial audit of an eligible institution with regard to the financial condition of the institution in its entirety, and a compliance audit of such institution with regard to any funds obtained by it under this title or obtained from a student or a parent who has a loan insured or guaranteed by the Secretary under this title, on at least an annual basis and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary and shall be available to cognizant guaranty agencies, eligible lenders, State agencies, and the appropriate State agency notifying the Secretary under subpart 1 of part H, except that the Secretary may modify the requirements of this clause with respect to institutions of higher education that are foreign institutions, and may waive such requirements with respect to a foreign institution whose students receive less than \$500,000 in loans under this title during the award year preceding the audit period;

(ii) with regard to an eligible institution which is audited under chapter 75 of title 31, United States Code, deeming such audit to satisfy the requirements of clause (i) for the period covered by such audit; or

(iii) at the discretion of the Secretary, with regard to an eligible institution (other than an eligible institution described in section 102(a)(1)(C)) that has obtained less than \$200,000 in funds under this title during each of the 2 award years that precede the audit period and submits a letter of credit payable to the Secretary equal to not less than $\frac{1}{2}$ of the annual potential liabilities of such institution as determined by the Secretary, deeming an audit conducted every 3 years to satisfy the requirements of clause (i), except for the award year immediately preceding renewal of the institution's eligibility under section 498(g);

(B) in matters not governed by specific program provisions, the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid under this title, including any matter the Secretary deems necessary to the sound administration of the financial aid programs, such as the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution;

(C)(i) except as provided in clause (ii), a compliance audit of a third party servicer (other than with respect to the servicer's functions as a lender if such functions are otherwise audited under this part and such audits meet the requirements of this clause), with regard to any contract with an eligible institution, guaranty agency, or lender for administering or servicing any aspect of the student assistance programs under this title, at least once every year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(ii) with regard to a third party servicer that is audited under chapter 75 of title 31, United States Code, such audit shall be deemed to satisfy the requirements of clause (i) for the period covered by such audit;

(D)(i) a compliance audit of a secondary market with regard to its transactions involving, and its servicing and collection of, loans made under this title, at least once a year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(ii) with regard to a secondary market that is audited under chapter 75 of title 31, United States Code, such audit shall be deemed to satisfy the requirements of clause (i) for the period covered by the audit;

(E) the establishment, by each eligible institution under part B responsible for furnishing to the lender the statement required by section 428(a)(2)(A)(i), of policies and procedures by which the latest known address and enrollment status of any student who has had a loan insured under this part and who has either formally terminated his enrollment, or failed to re-enroll on at least a half-time basis, at such institution, shall be furnished either to the holder (or if unknown, the insurer) of the note, not later than 60 days after such termination or failure to re-enroll;

(F) the limitation, suspension, or termination of the participation in any program under this title of an eligible institution, or the imposition of a civil penalty under paragraph (3)(B) whenever the Secretary has determined, after reasonable notice and opportunity for hearing, that such institution has vio-

lated or failed to carry out any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this section shall exceed 60 days unless the institution and the Secretary agree to an extension or unless limitation or termination proceedings are initiated by the Secretary within that period of time;

(G) an emergency action against an institution, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to the institution (by registered mail, return receipt requested), withhold funds from the institution or its students and withdraw the institution's authority to obligate funds under any program under this title, if the Secretary—

(i) receives information, determined by the Secretary to be reliable, that the institution is violating any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation,

(ii) determines that immediate action is necessary to prevent misuse of Federal funds, and

(iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (D) for limitation, suspension, or termination,

except that an emergency action shall not exceed 30 days unless limitation, suspension, or termination proceedings are initiated by the Secretary against the institution within that period of time, and except that the Secretary shall provide the institution an opportunity to show cause, if it so requests, that the emergency action is unwarranted;

(H) the limitation, suspension, or termination of the eligibility of a third party servicer to contract with any institution to administer any aspect of an institution's student assistance program under this title, or the imposition of a civil penalty under paragraph (3)(B), whenever the Secretary has determined, after reasonable notice and opportunity for a hearing, that such organization, acting on behalf of an institution, has violated or failed to carry out any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this subparagraph shall exceed 60 days unless the organization and the Secretary agree to an extension, or unless limitation or termination proceedings are initiated by the Secretary against the individual or organization within that period of time; and

(I) an emergency action against a third party servicer that has contracted with an institution to administer any aspect of the institution's student assistance program under this title, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to such individual or organization (by registered mail, return receipt requested), withhold funds from the individual or organization and withdraw the individual or organization's authority to act on behalf of an institution under any program under this title, if the Secretary—

(i) receives information, determined by the Secretary to be reliable, that the individual or organization, acting on behalf of an institution, is violating any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation,

(ii) determines that immediate action is necessary to prevent misuse of Federal funds, and

(iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (F), for limitation, suspension, or termination, except that an emergency action shall not exceed 30 days unless the limitation, suspension, or termination proceedings are initiated by the Secretary against the individual or organization within that period of time, and except that the Secretary shall provide the individual or organization an opportunity to show cause, if it so requests, that the emergency action is unwarranted.

(2) If an individual who, or entity that, exercises substantial control, as determined by the Secretary in accordance with the definition of substantial control in subpart 3 of part H, over one or more institutions participating in any program under this title, or, for purposes of paragraphs (1) (H) and (I), over one or more organizations that contract with an institution to administer any aspect of the institution's student assistance program under this title, is determined to have committed one or more violations of the requirements of any program under this title, or has been suspended or debarred in accordance with the regulations of the Secretary, the Secretary may use such determination, suspension, or debarment as the basis for imposing an emergency action on, or limiting, suspending, or terminating, in a single proceeding, the participation of any or all institutions under the substantial control of that individual or entity.

(3)(A) Upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates, the Secretary may suspend or terminate the eligibility status for any or all programs under this title of any otherwise eligible institution, in accordance with procedures specified in paragraph (1)(D) of this subsection, until the Secretary finds that such practices have been corrected.

(B)(i) Upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution—

(I) has violated or failed to carry out any provision of this title or any regulation prescribed under this title; or

(II) has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, and the employability of its graduates,

the Secretary may impose a civil penalty upon such institution of not to exceed \$25,000 for each violation or misrepresentation.

(ii) Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the institution of higher education subject to the determination, and the gravity of the violation, failure, or misrepresentation shall

be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the institution charged.

(4) The Secretary shall publish a list of State agencies which the Secretary determines to be reliable authority as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for all Federal student assistance programs.

(5) The Secretary shall make readily available to appropriate guaranty agencies, eligible lenders, State agencies notifying the Secretary under subpart 1 of part H, and accrediting agencies or associations the results of the audits of eligible institutions conducted pursuant to paragraph (1)(A).

(6) The Secretary is authorized to provide any information collected as a result of audits conducted under this section, together with audit information collected by guaranty agencies, to any Federal or State agency having responsibilities with respect to student financial assistance, including those referred to in subsection (a)(15) of this section.

(7) Effective with respect to any audit conducted under this subsection after December 31, 1988, if, in the course of conducting any such audit, the personnel of the Department of Education discover, or are informed of, grants or other assistance provided by an institution in accordance with this title for which the institution has not received funds appropriated under this title (in the amount necessary to provide such assistance), including funds for which reimbursement was not requested prior to such discovery or information, such institution shall be permitted to offset that amount against any sums determined to be owed by the institution pursuant to such audit, or to receive reimbursement for that amount (if the institution does not owe any such sums).

(d) IMPLEMENTATION OF NON-FEDERAL REVENUE REQUIREMENT.—

(1) CALCULATION.—In making calculations under subsection (a)(24), a proprietary institution of higher education shall—

(A) use the cash basis of accounting, except in the case of loans described in subparagraph (D)(i) that are made by the proprietary institution of higher education;

(B) consider as revenue only those funds generated by the institution from—

(i) tuition, fees, and other institutional charges for students enrolled in programs eligible for assistance under this title;

(ii) activities conducted by the institution that are necessary for the education and training of the institution's students, if such activities are—

(I) conducted on campus or at a facility under the control of the institution;

(II) performed under the supervision of a member of the institution's faculty; and

(III) required to be performed by all students in a specific educational program at the institution; and

(iii) funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible for funds under this title, if the program—

(I) is approved or licensed by the appropriate State agency;

(II) is accredited by an accrediting agency recognized by the Secretary; or

(III) provides an industry-recognized credential or certification;

(C) presume that any Federal education assistance funds that are disbursed or delivered to or on behalf of a student will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student's account or pays those funds directly to the student, except to the extent that the student's tuition, fees, or other institutional charges are satisfied by—

(i) grant funds provided by non-Federal public agencies or private sources independent of the institution;

(ii) funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who are in need of that training;

(iii) funds used by a student from savings plans for educational expenses established by or on behalf of the student and which qualify for special tax treatment under the Internal Revenue Code of 1986; or

(iv) institutional scholarships described in subparagraph (D)(iii);

(D) include institutional aid as revenue to the school only as follows:

(i) in the case of loans made by a proprietary institution of higher education on or after July 1, 2008 and prior to July 1, 2012, the net present value of such loans made by the institution during the applicable institutional fiscal year accounted for on an accrual basis and estimated in accordance with generally accepted accounting principles and related standards and guidance, if the loans—

(I) are bona fide as evidenced by enforceable promissory notes;

(II) are issued at intervals related to the institution's enrollment periods; and

(III) are subject to regular loan repayments and collections;

(ii) in the case of loans made by a proprietary institution of higher education on or after July 1, 2012, only the amount of loan repayments received during the applicable institutional fiscal year, excluding repayments on loans made and accounted for as specified in clause (i); and

(iii) in the case of scholarships provided by a proprietary institution of higher education, only those scholarships provided by the institution in the form of mon-

etary aid or tuition discounts based upon the academic achievements or financial need of students, disbursed during each fiscal year from an established restricted account, and only to the extent that funds in that account represent designated funds from an outside source or from income earned on those funds;

(E) in the case of each student who receives a loan on or after July 1, 2008, and prior to July 1, 2011, that is authorized under section 428H or that is a Federal Direct Unsubsidized Stafford Loan, treat as revenue received by the institution from sources other than funds received under this title, the amount by which the disbursement of such loan received by the institution exceeds the limit on such loan in effect on the day before the date of enactment of the Ensuring Continued Access to Student Loans Act of 2008; and

(F) exclude from revenues—

(i) the amount of funds the institution received under part C, unless the institution used those funds to pay a student's institutional charges;

(ii) the amount of funds the institution received under subpart 4 of part A;

(iii) the amount of funds provided by the institution as matching funds for a program under this title;

(iv) the amount of funds provided by the institution for a program under this title that are required to be refunded or returned; and

(v) the amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

(2) SANCTIONS.—

(A) INELIGIBILITY.—A proprietary institution of higher education that fails to meet a requirement of subsection (a)(24) for two consecutive institutional fiscal years shall be ineligible to participate in the programs authorized by this title for a period of not less than two institutional fiscal years. To regain eligibility to participate in the programs authorized by this title, a proprietary institution of higher education shall demonstrate compliance with all eligibility and certification requirements under section 498 for a minimum of two institutional fiscal years after the institutional fiscal year in which the institution became ineligible.

(B) ADDITIONAL ENFORCEMENT.—In addition to such other means of enforcing the requirements of this title as may be available to the Secretary, if a proprietary institution of higher education fails to meet a requirement of subsection (a)(24) for any institutional fiscal year, then the institution's eligibility to participate in the programs authorized by this title becomes provisional for the two institutional fiscal years after the institutional fiscal year in which the institution failed to meet the requirement of subsection (a)(24), except that such provisional eligibility shall terminate—

(i) on the expiration date of the institution's program participation agreement under this subsection that is in effect on the date the Secretary determines that the institution failed to meet the requirement of subsection (a)(24); or

(ii) in the case that the Secretary determines that the institution failed to meet a requirement of subsection (a)(24) for two consecutive institutional fiscal years, on the date the institution is determined ineligible in accordance with subparagraph (A).

(3) PUBLICATION ON COLLEGE NAVIGATOR WEBSITE.—The Secretary shall publicly disclose on the College Navigator website—

(A) the identity of any proprietary institution of higher education that fails to meet a requirement of subsection (a)(24); and

(B) the extent to which the institution failed to meet such requirement.

(4) REPORT TO CONGRESS.—Not later than July 1, 2009, and July 1 of each succeeding year, the Secretary shall submit to the authorizing committees a report that contains, for each proprietary institution of higher education that receives assistance under this title, as provided in the audited financial statements submitted to the Secretary by each institution pursuant to the requirements of subsection (a)(24)—

(A) the amount and percentage of such institution's revenues received from sources under this title; and

(B) the amount and percentage of such institution's revenues received from other sources.

(e) CODE OF CONDUCT REQUIREMENTS.—An institution of higher education's code of conduct, as required under subsection (a)(25), shall include the following requirements:

(1) BAN ON REVENUE-SHARING ARRANGEMENTS.—

(A) PROHIBITION.—The institution shall not enter into any revenue-sharing arrangement with any lender.

(B) DEFINITION.—For purposes of this paragraph, the term "revenue-sharing arrangement" means an arrangement between an institution and a lender under which—

(i) a lender provides or issues a loan that is made, insured, or guaranteed under this title to students attending the institution or to the families of such students; and

(ii) the institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an officer or employee of the institution, or an agent.

(2) GIFT BAN.—

(A) PROHIBITION.—No officer or employee of the institution who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or agent who has responsibilities with respect to education loans, shall solicit or accept any gift from a lender, guarantor, or servicer of education loans.

(B) DEFINITION OF GIFT.—

(i) IN GENERAL.—In this paragraph, the term “gift” means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(ii) EXCEPTIONS.—The term “gift” shall not include any of the following:

(I) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.

(II) Food, refreshments, training, or informational material furnished to an officer or employee of an institution, or to an agent, as an integral part of a training session that is designed to improve the service of a lender, guarantor, or servicer of education loans to the institution, if such training contributes to the professional development of the officer, employee, or agent.

(III) Favorable terms, conditions, and borrower benefits on an education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(IV) Entrance and exit counseling services provided to borrowers to meet the institution’s responsibilities for entrance and exit counseling as required by subsections (b) and (l) of section 485, as long as—

(aa) the institution’s staff are in control of the counseling, (whether in person or via electronic capabilities); and

(bb) such counseling does not promote the products or services of any specific lender.

(V) Philanthropic contributions to an institution from a lender, servicer, or guarantor of education loans that are unrelated to education loans or any contribution from any lender, guarantor, or servicer that is not made in exchange for any advantage related to education loans.

(VI) State education grants, scholarships, or financial aid funds administered by or on behalf of a State.

(iii) RULE FOR GIFTS TO FAMILY MEMBERS.—For purposes of this paragraph, a gift to a family member of an officer or employee of an institution, to a family member of an agent, or to any other individual based on that individual’s relationship with the officer, employee, or agent, shall be considered a gift to the officer, employee, or agent if—

(I) the gift is given with the knowledge and acquiescence of the officer, employee, or agent; and

(II) the officer, employee, or agent has reason to believe the gift was given because of the official position of the officer, employee, or agent.

(3) CONTRACTING ARRANGEMENTS PROHIBITED.—

(A) PROHIBITION.—An officer or employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or an agent who has responsibilities with respect to education loans, shall not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to education loans.

(B) EXCEPTIONS.—Nothing in this subsection shall be construed as prohibiting—

(i) an officer or employee of an institution who is not employed in the institution's financial aid office and who does not otherwise have responsibilities with respect to education loans, or an agent who does not have responsibilities with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;

(ii) an officer or employee of the institution who is not employed in the institution's financial aid office but who has responsibility with respect to education loans as a result of a position held at the institution, or an agent who has responsibility with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans, if the institution has a written conflict of interest policy that clearly sets forth that officers, employees, or agents must recuse themselves from participating in any decision of the board regarding education loans at the institution; or

(iii) an officer, employee, or contractor of a lender, guarantor, or servicer of education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding education loans at the institution.

(4) INTERACTION WITH BORROWERS.—The institution shall not—

(A) for any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or

(B) refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency.

(5) PROHIBITION ON OFFERS OF FUNDS FOR PRIVATE LOANS.—

(A) PROHIBITION.—The institution shall not request or accept from any lender any offer of funds to be used for private education loans (as defined in section 140 of the

Truth in Lending Act), including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with—

- (i) a specified number of loans made, insured, or guaranteed under this title;
- (ii) a specified loan volume of such loans; or
- (iii) a preferred lender arrangement for such loans.

(B) DEFINITION OF OPPORTUNITY POOL LOAN.—In this paragraph, the term “opportunity pool loan” means a private education loan made by a lender to a student attending the institution or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family.

(6) BAN ON STAFFING ASSISTANCE.—

(A) PROHIBITION.—The institution shall not request or accept from any lender any assistance with call center staffing or financial aid office staffing.

(B) CERTAIN ASSISTANCE PERMITTED.—Nothing in paragraph (1) shall be construed to prohibit the institution from requesting or accepting assistance from a lender related to—

- (i) professional development training for financial aid administrators;
- (ii) providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or
- (iii) staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or federally declared natural disasters, federally declared national disasters, and other localized disasters and emergencies identified by the Secretary.

(7) ADVISORY BOARD COMPENSATION.—Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, shall be prohibited from receiving anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses incurred in serving on such advisory board, commission, or group.

(f) INSTITUTIONAL REQUIREMENTS FOR TEACH-OUTS.—

(1) IN GENERAL.—In the event the Secretary initiates the limitation, suspension, or termination of the participation of an institution of higher education in any program under this title under the authority of subsection (c)(1)(F) or initiates an emergency action under the authority of subsection (c)(1)(G) and its prescribed regulations, the Secretary shall require that institution to prepare a teach-out plan for submission to the institu-

tion's accrediting agency or association in compliance with section 496(c)(3), the Secretary's regulations on teach-out plans, and the standards of the institution's accrediting agency or association.

(2) TEACH-OUT PLAN DEFINED.—In this subsection, the term “teach-out plan” means a written plan that provides for the equitable treatment of students if an institution of higher education ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency or association, an agreement between institutions for such a teach-out plan.

(g) INSPECTOR GENERAL REPORT ON GIFT BAN VIOLATIONS.—The Inspector General of the Department shall—

(1) submit an annual report to the authorizing committees identifying all violations of an institution's code of conduct that the Inspector General has substantiated during the preceding year relating to the gift ban provisions described in subsection (e)(2); and

(2) make the report available to the public through the Department's website.

(h) PREFERRED LENDER LIST REQUIREMENTS.—

(1) IN GENERAL.—In compiling, maintaining, and making available a preferred lender list as required under subsection (a)(27), the institution will—

(A) clearly and fully disclose on such preferred lender list—

(i) not less than the information required to be disclosed under section 153(a)(2)(A);

(ii) why the institution has entered into a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(B) ensure, through the use of the list of lender affiliates provided by the Secretary under paragraph (2), that—

(i) there are not less than three lenders of loans made under part B that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) the preferred lender list under this paragraph—

(I) specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(II) if a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(C) prominently disclose the method and criteria used by the institution in selecting lenders with which to enter into preferred lender arrangements to ensure that such lenders

are selected on the basis of the best interests of the borrowers, including—

- (i) payment of origination or other fees on behalf of the borrower;
- (ii) highly competitive interest rates, or other terms and conditions or provisions of loans under this title or private education loans;
- (iii) high-quality servicing for such loans; or
- (iv) additional benefits beyond the standard terms and conditions or provisions for such loans;

(D) exercise a duty of care and a duty of loyalty to compile the preferred lender list under this paragraph without prejudice and for the sole benefit of the students attending the institution, or the families of such students;

(E) not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under this title for those borrowers who choose a lender that is not included on the preferred lender list; and

(F) comply with such other requirements as the Secretary may prescribe by regulation.

(2) LENDER AFFILIATES LIST.—

(A) IN GENERAL.—The Secretary shall maintain and regularly update a list of lender affiliates of all eligible lenders, and shall provide such list to institutions for use in carrying out paragraph (1)(B).

(B) USE OF MOST RECENT LIST.—An institution shall use the most recent list of lender affiliates provided by the Secretary under subparagraph (A) in carrying out paragraph (1)(B).

(i) DEFINITIONS.—For the purpose of this section:

(1) AGENT.—The term “agent” has the meaning given the term in section 151.

(2) AFFILIATE.—The term “affiliate” means a person that controls, is controlled by, or is under common control with another person. A person controls, is controlled by, or is under common control with another person if—

(A) the person directly or indirectly, or acting through one or more others, owns, controls, or has the power to vote five percent or more of any class of voting securities of such other person;

(B) the person controls, in any manner, the election of a majority of the directors or trustees of such other person; or

(C) the Secretary determines (after notice and opportunity for a hearing) that the person directly or indirectly exercises a controlling interest over the management or policies of such other person's education loans.

(3) EDUCATION LOAN.—The term “education loan” has the meaning given the term in section 151.

(4) ELIGIBLE INSTITUTION.—The term “eligible institution” means any such institution described in section 102 of this Act.

(5) OFFICER.—The term “officer” has the meaning given the term in section 151.

(6) PREFERRED LENDER ARRANGEMENT.—The term “preferred lender arrangement” has the meaning given the term in section 151.

(j) CONSTRUCTION.—Nothing in the amendments made by the Higher Education Amendments of 1992 shall be construed to prohibit an institution from recording, at the cost of the institution, a hearing referred to in subsection (b)(2), subsection (c)(1)(D), or subparagraph (A) or (B)(i) of subsection (c)(2), of this section to create a record of the hearing, except the unavailability of a recording shall not serve to delay the completion of the proceeding. The Secretary shall allow the institution to use any reasonable means, including stenographers, of recording the hearing.

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MINORITY VIEWS

INTRODUCTION

H.R. 5933, the *Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions* (DETERRENT) Act would amend the *Higher Education Act of 1965* (HEA) to impose increased reporting requirements for foreign gifts and contracts. If enacted, H.R. 5933 would force institutions of higher education to comply with overly burdensome and duplicative reporting requirements with no discernable increase of security or oversight. Further, H.R. 5933 would jeopardize the essential global partnerships among institutions that play a critical role in the United States' social, economic, and technological progress.

RESEARCH AND DEVELOPMENT IN HIGHER EDUCATION

Institutions of higher education have long been incubators of research and development that advances the scientific knowledge of the United States. Institutions conduct innovative, collaborative, multidisciplinary research with the goal to improve the economy, international competitiveness, and quality of life for individuals.¹ Federal investment has played a key role in this collaborative process for over 80 years: the National Science Foundation was established in 1950 based federal government sponsorship of university research to aid the Allied effort in World War II; the first federal student loans were authorized to increase technical and scientific knowledge of U.S. scientists to help prevail in the Cold War.² The system has evolved to a point where institutions heavily rely on federal investments to advance their research and development priorities. The federal government, via grants from a multitude of federal agencies, provides roughly \$30 billion annually to institutions to support research and development efforts, and this federal funding accounts for roughly 60 percent of institutions' research and development budgets.³ Institutions also collaborate with a range of international entities on grants received from the federal government through partnerships with foreign universities and faculty. The research community and Committee Democrats agree: to successfully advance complex research, it is essential to have a "diver-

¹See generally e.g., Ass'n of Pub. & Land-Grant Univs., *Public Impact Research: APLU Impact*, Our Work: Fostering Research & Innovation To Meet Societal Needs, <https://www.aplu.org/our-work/2-fostering-research-innovation/public-impact-research/> (last visited Nov. 13, 2023); Ass'n of Pub. & Land-Grant Univ., *University Innovation and Entrepreneurship Showcase: APLU Impact*, Our Work: Econ. Dev. & Cmty. Engagement, <https://www.aplu.org/our-work/5-archived-projects/economic-development-and-community-engagement/university-innovation-and-entrepreneurship-showcase/> (last visited Nov. 13, 2023).

²National Science Foundation, *History*, <https://new.nsf.gov/about/history>; National Defense Education Act of 1958, Title II, Pub. L. 85-864; 72 Stat. 1580, Sept. 2, 1958.

³See Am. Ass'n for the Advancement of Sci., *R&D at Colleges and Universities*, Programs: R D Budget And Pol'y (Oc. 2022) <https://www.aaas.org/programs/r-d-budget-and-policy/rd-colleges-and-universities>.

sity of research capabilities, perspectives, and access to resources.”⁴

ADDRESSING UNDUE FOREIGN INFLUENCE IN RESEARCH

Due to the inherent international nature of research, protecting against undue foreign influence is important for institutions and the federal government.⁵ Institutions recognize they have a responsibility to safeguard research and protect against intellectual property theft, but unwarranted or overinflated concerns of undue foreign influence can inhibit the ability of institutions and individual scholars to develop a global perspective in their research and teaching. Unfortunately, these unjustifiable concerns may also often lead to the fueling of xenophobic rhetoric and behaviors, particularly towards Asians, Asian Americans, and Middle Eastern Americans conducting research in the United States or in collaboration with American partners. This rhetoric is extremely harmful, and it contributes to the diminishing of the United States’ “superpower of attracting global scientific talent.”⁶

Committee Republicans argue that institutions refuse “to adhere to the law” with respect to foreign influence,⁷ but this could not be further from reality. The country’s leading research universities have proven they are committed to securing federally funded research and are demonstrating that commitment by constantly working to ensure compliance with foreign influence laws and regulations. In 2020, the Association of American Universities (AAU) and the Association of Public and Land-grant Universities (APLU) conducted a survey that found institutions are consistently working to improve their disclosure policies, enhancing training around foreign security risks, and developing robust risk mitigation strategies and assessments.⁸ Further, a recent letter signed by seventeen of the leading higher education organizations emphasized that institutions have increasingly strengthened relationships with the Federal Bureau of Investigations and other security agencies to ensure “compliance with export-control laws and other federal requirements.”⁹

⁴*Id.*

⁵See generally e.g., Candice N. Wright, *Agency Actions Needed to Address Foreign Influence*, U.S. Gov. Acct. Off.: Fed. Rsch. 1, Testimony before the Subcmte. on Investigation & Oversight, and the Subcmte. on Rsch. & Technology of the H. Comm. on Sci. Space & Tech. (Oct. 5, 2021) <https://www.gao.gov/assets/gao-22-105434.pdf>; Off. of the Chief of Rsch Section Strategy & Pol’y, *Research Security at the National Science Foundation*, Nat’l Sci. Found.: Rsch Section <https://new.nsf.gov/research-security> (last visited Nov. 13, 2023).

⁶Dr. Eric Lander, *Guidance for U.S. Scientific Research Security That Preserves International Collaboration*, The White House: OSTP Ostp Blog (Jan. 4, 2022) <https://www.whitehouse.gov/ostp/news-updates/2022/01/04/guidance-for-u-s-scientific-research-security-that-preserves-international-collaboration/>.

⁷See H. Comm. on Educ. & the Workforce, Fact Sheet, DETERRENT ACT, https://edworkforce.house.gov/uploadedfiles/10.11.23_deterrent_act_118th_congress_bill_fact_sheet_final_pdf.pdf.

⁸See generally Ass’n of Am. Univ., *University Actions to Address Concerns About Security Threats and Undue Foreign Government Influence on Campus, Actions Taken By Univ. To Address Sci. And Sec. Concerns 1–2* (May 19, 2020) <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Science-Security/2020-Effective-Science-Security-Practices-Summary.pdf>.

⁹Letter from Ted Mitchell, President, Am. Council on Educ., to Chairwoman Virginia Foxx & Ranking Member Bobby Scott, U.S. H. Comm. on Educ. & the Workforce 1–2 (Nov. 6, 2023) (on file with Comm. on Educ. & the Workforce, Minority Staff).

FEDERAL POLICIES ON FOREIGN INFLUENCE

Institutions have expressed that to better address research security at institutions, *intentional* federal interagency coordination is essential.¹⁰ As described in detail below, the federal government has acted on this concern and established robust coordinated policies to ensure institutions can address undue foreign influence in a manner that is not overly duplicative or burdensome. While Committee Republicans argue the Department of Education should be leading the fight against foreign influence, this position fails to recognize that the overwhelming majority of research funding flowing to our institutions are coming from agencies and Departments other than the Department of Education. This push to centralize operations at the Department of Education ignores the multitude of policies and initiatives within the federal government that already exist to address research security and protect institutions from undue foreign influence. Through these policies and initiatives, most of which are outside the jurisdiction of this Committee, the Biden Administration is already establishing one cohesive compliance process across agencies, one that adoption of H.R. 5933 would needlessly complicate.

Office for Science and Technology Policy and NSPM-33 Federal Guidance

The Office for Science and Technology Policy (OSTP) advises the President on matters related to Science and Technology.¹¹ OSTP coordinates with federal agencies, Congress, and external partners, including institutions of higher education, to support research, regulation, and innovation.¹² In 2021, President Biden issued the *Presidential Memorandum on United States Government-Supported Research and Development National Security Policy* (NSPM-33) to direct “action to strengthen protections of United States Government-supported Research and Development against foreign government interference and exploitation.”¹³ This guidance establishes the priorities of OSTP and other agencies involved in enforcing disclosures of funds, foreign influence, and other research security risks.¹⁴ NSPM 33 outlines the central priorities of enforcement on foreign influence for all institutions including: sharing awareness of risks and disclosure requirements, limiting access and vetting for-

¹⁰ See generally Letter from Ass’n of Am. Univ., to Dr. Eric Lander, Assistant to the President & Dir., Off. of Sci. & Tech. Pol’y 1–2 (Sept. 30, 2021) <https://www.acenet.edu/Documents/Comments-OSTP-Presidential-Memo-NSPM-33-093021.pdf>.

¹¹ See generally Off. of Sci. & Tech. Pol’y, The White House: Off. Of Sci. & Tech. Pol’y, <https://www.whitehouse.gov/ostp/> (2022) (explaining that how the OSTP was established by the National Science and Technology Policy, Organizations and Priorities Act of 1976).

¹² *Id.* Six teams that steer the recommendations through the OSTP: Climate and Environment, Energy, Health Outcomes, National Security and Science and Society, Technology. For further specifics see Off. of Sci. & Tech. Pol’y, The White House: Off. Of Sci. & Tech. Pol’y, <https://www.whitehouse.gov/ostp/> (2022).

¹³ Exec. Off. of the President, *Presidential Memorandum on United States Government-Supported Research and Development National Security Policy*, Nat’l Section Presidential Memorandum 33, <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-united-states-government-supported-research-development-national-security-policy/> (Jan. 14, 2021) (calling on various Executive Officials to work on increasing roles, responsibilities and priorities to combat the significant influence from foreign entities on U.S. Research and Development).

¹⁴ See *id.* (elaborating on how the Secretary of Homeland Security, the Director of National Intelligence, and Director of the Office of Science and Technology Policy on the National Science and Technology Council to work as representative of their fields to develop coordinated activities for protection and outreach).

eign students, and providing research to “protect federally funded R&D from foreign government interference.”¹⁵ NSPM–33 plays an integral role “in advancing American competitiveness and keeping America at the forefront of innovation and technological development.” For example, OSTP is currently working to standardize the forms utilized for reporting across all agencies, to ensure that institutions report accurate and consistent information.¹⁶ Through engaging with the U.S. research community, this guidance establishes robust requirements to safeguard against undue foreign influence.¹⁷

CHIPS and Science Act

The *CHIPS and Science Act of 2022* establishes the National Science Foundation (NSF) as the primary agency charged with coordinating research security initiatives, since it provides the relevant prohibitions, guidance, and disclosure requirements “around foreign talent recruitment programs and potential conflicts of interest.”¹⁸ NSF is required to create policies, protocols, and resources to identify and address any potential security risks to research integrity for institutions.¹⁹ Furthermore, the Act requires NSF to create a Research Security and Policy Office in the Office of the Director to coordinate all security policies and conduct due diligence regarding compliance with any security standards set forth.²⁰ Similarly, *CHIPS and Science Act* requires that all institutions must annually report to NSF in any financial information associated with a foreign country of concern and directs NSF to create guardrails around foreign talent programs.²¹

While Republicans argue that the Biden Administration is “crippling” its enforcement of foreign influence,²² it is evident that the administration has already committed to implementing a cohesive,

¹⁵ See generally Morgan Dwyer, Christina Ciocca Eller, & Ryan Donohue, *An Update on Research Security: Streamlining Disclosure Standards to Enhance Clarity, Transparency, and Equity*, The White House: OSTP Blog <https://www.whitehouse.gov/ostp/news-updates/2022/08/31/an-update-on-research-security-streamlining-disclosure-standards-to-enhance-clarity-transparency-and-equity/> (Aug. 31, 2022) (elaborating the other priorities include, information sharing amongst agencies, reviewing funding agencies, identifying risks and conduct analysis and promoting international research and development cooperation).

¹⁶ *Id.*

¹⁷ See *id.*

¹⁸ *CHIPS and Science Act*, § 10631, Pub. L. 117–167, 72 Stat. 1580, Aug. 9, 2022 (“Not later than 180 days after the date of enactment of this Act, the Director of the Office of Science and Technology Policy, in coordination with the interagency working group established under . . . [23 U.S.C. 6601] . . . shall publish and widely distribute a uniform set of guidelines for federal research agencies regarding foreign talent recruitment programs.”). The CHIPS and Science Act also requires that the N.S.F. establishes an independent risk assessment center to help institutions and researchers understand and mitigate security risks. See Nat’l Sci. Found., *CHIPS and Science*, Nat’l Sci. Found. <https://new.nsf.gov/chips> (last visited Nov. 13, 2023).

¹⁹ *CHIPS and Science Act* § 10331(1).

²⁰ *Id.*; See Ass’n of Am. Univs. & Ass’n of Pub. & Land-Grant Univs., *Research Security Provisions*, The CHIPS & p And s And Sci. Act Of 2022 1 (H.R. 4346) (last updated Aug. 8, 2022) <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Science-Security/CHIPSandScienceFinalResearchSecurityProvisions.pdf> (quoting H.R. 4346, 117th Cong. § 10331 (2022)).

²¹ *CHIPS and Science Act* § 10339B, 10631; See Ass’n of Am. Univs. & Ass’n of Pub. & Land-Grant Univs., *Research Security Provisions*, The THE CH& And Sci. Act Of 2022 022 1 (H.R. 4346) (last updated Aug. 8, 2022) <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Science-Security/CHIPSandScienceFinalResearchSecurityProvisions.pdf>.

²² See Press Release, Congresswoman Michelle Steel Press Off., Steel, Foxx Bill Will Deter Foreign Adversaries’ Influences in Postsecondary Education, (Oct. 11, 2023) <https://steel.house.gov/media/press-releases/steel-foxx-bill-will-deter-foreign-adversaries-influence-post-secondary>.

interagency plan to combat undue foreign influence by passing robust provisions doing so into law.

SECTION 117 OF THE HIGHER EDUCATION ACT

While other federal agencies may dominate the research security space, the Department of Education (Department) does have a role to play. HEA section 117 requires institutions of higher education receiving federal financial assistance to disclose any gifts received from, and contracts with, foreign sources valued at \$250,000 or more per year.²³ This disclosure is designed to “promote public transparency about the role of foreign funding in U.S. higher education” and protect government-funded activities from foreign influence.²⁴ Although Congress first required institutions to report foreign gifts and contracts to the Department in 1986, institutions only recently received formal guidance from the Department on Section 117 compliance through the creation of a website containing written guidance, webinars, and other resources to assist institutions.²⁵

Section 117 Enforcement and Changes

Under the Trump Administration, the Department’s Office of General Counsel (OGC) initiated 12 civil investigations to ensure Section 117 compliance.²⁶ These investigations did not ultimately lead to charges of criminal activity by any institution. In 2020, the Department created an online portal for institutions to submit reports on contracts with, and gifts from, foreign sources. Currently, gift and contract report submissions occur through the portal, rather than through the institution’s process for accessing federal student aid program participation. This was a strong step forward for streamlining the reporting requirements.

Section 117 oversight was the sole responsibility of the Office of Federal Student Aid (FSA) at the Department until 2020, at which time OGC assumed responsibility for most aspects of Section 117 administration. However, in June 2022, the Department moved oversight of this requirement back to FSA and assured stakeholders that FSA would work with OGC to ensure robust compliance.²⁷ The Department believes that FSA is well positioned to execute this responsibility because it has robust auditing and review expertise, given that FSA has previously been responsible for the

²³ Higher Education Act of 1965, § 117, 20 U.S.C. 1011f (2023); see Off. of Fed. Student Aid, *Section 117 Foreign Gift and Contract Reporting, Knowledge Ctr Home: Topics: Fed. Student Aid* (May 15, 2023) <https://fsapartners.ed.gov/knowledge-center/topics/section-117-foreign-gift-and-contract-reporting>.

²⁴ *Id.*

²⁵ See e.g., Pub. Law 99-498, Higher Education Amendments of 1986, Title XII, Section 1206, adding HEA Title XII, § 1207 (Oct. 17, 1986) (then codified at 20 U.S.C. 1145(d)); Off. of Fed. Student Aid, *Section 117 Foreign Gift and Contract Reporting, Knowledge Ctr Home: Topics: Fed. Student Aid* (May 15, 2023) <https://fsapartners.ed.gov/knowledge-center/topics/section-117-foreign-gift-and-contract-reporting>.

²⁶ Institutions investigated include Georgetown Univ., Texas A&M Univ., Rutgers Univ., Cornell Univ., Univ. of Maryland, Massachusetts Institute of Tech., Harvard Univ., Yale Univ., Univ. of Texas, Case Western Reserve Univ., Fordham Univ., and Stanford Univ. See for further information on institution actions, U.S. Dept. of Educ., *Institutional Compliance with Section 117 of the Higher Education Act of 1965* (Oct. 2020).

²⁷ See U.S. Dept. of Educ., *Section 117 of the Higher Education Act*, Presentation by U.S. Dept of Educ. (2020) <https://www2.ed.gov/policy/highered/leg/section117-webinar-202206.pdf>; also James Kvaal, Undersecretary, U.S. Dept. of Educ., Opinion Letter to Virginia Foxx, Ranking Member, Educ. and the Workforce Comm. to Response to Comm’s Letter about § 117 of HEA, U.S. H.R. 2-3 (May 15, 2023).

systems used to collect Section 117 data and it already collects data from institutions participating in federal student aid programs.²⁸ The Department has also committed to collaborating with other federal agencies to continue enhancing interagency initiatives through the NSPM–33 guidance.²⁹ And while Committee Republicans argue that Section 117 is “the single biggest enforcement tool to protect against the threats posed by foreign adversaries,” Section 117 is merely one piece of the collective foreign influence work done across the federal government.³⁰

Department of Education Has Seen an Increase in Section 117 Compliance

Committee Republicans have also expressed concern over reports of unreported foreign gifts and continue to push the Department to more forcefully implement Section 117 reporting.³¹ It is worth noting, however, that the Department under the Biden Administration is already overseeing the most robust compliance reporting ever with the effort led by FSA; over 30,000 transactions and \$1.5 billion more of gifts and contracts have been reported under this administration compared to the previous administration.³² Further improvements of Section 117 enforcement under FSA include the conducting of investigations and initiating a data collection effort not undertaken before.³³ Given these drastic improvements to institutional reporting, it is disingenuous at best to say that the administration and institutions are not committed to ensuring Section 117 compliance.

H.R. 5933 PARTIALLY STREAMLINES SECTION 117 REPORTING

Committee Republicans claim the DETERRENT Act will address what they argue are outstanding compliance issues caused by reporting failures of institutions and enforcement failures of the Department.³⁴ While most of H.R. 5933 is cause for alarm, it is first worth noting the provisions that Committee Democrats were pleased to see included in the bill. First, the bill would make Sec-

²⁸ See James Kvaal, Undersecretary, U.S. DEPT. OF EDUC., Letter to Rep. Banks, U.S. H.R. Comm. on Educ. and the Workforce as a Response to Comm’s Letter about § 117 of HEA 3 (April 3, 2023) <https://fsapartners.ed.gov/sites/default/files/2023-05/LettertoRepresentativeBanksApril32023.pdf>.

²⁹ Exec. Off. of the President, *Presidential Memorandum on United States Government: Supported Research and Development National Security Policy*, Nat’l Section Presidential Memorandum 33 (Jan. 14, 2021) <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-united-states-government-supported-research-development-national-security-policy/>.

³⁰ Press Release, Congresswoman Michelle Steel Press Office, Steel, Foxx Bill Will Deter Foreign Adversaries’ Influences in Postsecondary Education, (Oct. 11, 2023) <https://steel.house.gov/media/press-releases/steel-foxx-bill-will-deter-foreign-adversaries-influence-postsecondary>.

³¹ See generally H. Comm. on Educ. and Workforce Majority Party Members, Opinion Letter to Sec’y of Educ. on the Off. of Gen. Couns’ Rep. re: Requirements of Foreign Gift Reporting (Apr. 7, 2023) https://edworkforce.house.gov/uploadedfiles/letter_to_secretary_cardona_on_Section_117_vf.pdf.

³² *Examining the Policies and Priorities of the Department of Education: Hearing Before the H. Comm. On Educ. & the Workforce*, 118th Cong. (May 16, 2023) (statement of Honorable Miguel Cardona, Sec’y U.S. Dept. Of Educ.) <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=409132>.

³³ See James Kvaal, Undersecretary, U.S. Dept Of Educ., Opinion Letter to Virginia Foxx, Ranking Member, Educ. and the Workforce Comm. on § 117 of the HEA Act, U.S. H.R. 3 (May 15, 2023) <https://fsapartners.ed.gov/sites/default/files/2023-05/LettertoRepresentativeBanksApril32023.pdf>.

³⁴ Press Release, H. Comm. On Educ. & Workforce, Steel, Foxx Bill Will Deter Foreign Adversaries’ Influence in Postsecondary Education (Oct. 11, 2023) <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=409661>.

tion 117 reporting an annual requirement. This improves upon the current biannual reporting requirement and aligns with the new NSF reporting obligations.³⁵ Second, H.R. 5933 would require the Department to establish and maintain a searchable, public database containing details on all disclosure reports submitted. The database, in conjunction with the new portal introduced in 2020, would streamline the reporting process for institutions. Finally, the bill would require the Department to designate a single point of contact for Section 117 communications. This would allow institutions to have a clear understanding of who they can reach out to for questions and concerns related to initial reporting, updates to reports, and any issues around the database. Unfortunately, these are the only components of H.R. 5933 that meaningfully improve Section 117. Committee Democrats offered a Democratic Amendment in the Nature of a Substitute (Substitute) that included these streamlined changes, in addition to other sensible updates to Section 117, but the amendment was defeated.

H.R. 5933 DOES NOT PROMOTE SECTION 117 COMPLIANCE

Despite its beneficial provisions, H.R. 5933 would pile on unnecessary and unmeaningful requirements that will make it harder for institutions to comply with Section 117, ignoring the significant strides taken by the Trump and Biden Administrations to align research security protocols across federal agencies.

Unworkable Waivers

One example of the lack of workability of H.R. 5933 surrounds the waiver process for collaborating with foreign entities of concerns outlined in the newly proposed HEA Section 117a. The provision would require institutions to obtain a waiver from the Department before entering into any contracts with foreign entities of concern. This assumes that the Department has the expertise to review detailed contracts focused on scientific research in a uniform, timely fashion. It is strange to expect a federal agency focused on education to also have the technical expertise to assess potential risks associated with research and technologies at the center of these partnerships. Rather, Congress should be encouraging institutions to comply with the existing export-control requirements maintained by NSF and the Departments of Commerce, Treasury, and State.³⁶

Enforcement

The enforcement structure under the newly proposed HEA Section 117d is also deeply concerning. The bill would force immediate and harsh enforcement penalties onto institutions without offering

³⁵ See generally Letter from Ted Michell, President of Am. Council on Educ., to Suzanne H. Plimpton, Reports Clearance Officer, Nat'l Sci. Found. (June 12, 2023) <https://www.acenet.edu/Documents/Comments-NSF-PAPPG-Foreign-Gifts-061223.pdf> (elaborating within June 23 comment on N.S.F. Proposal and Awards Policies & Procedure Guide (PAPPG)).

³⁶ Bureau of Industry & Sec., *Entity List*, Dept. Of Com.: Bureau Of Indus. & Sec. <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list> (last visited Nov. 15, 2023); Off. of Foreign Assets Control, *About OFAC*, U.S. Dept. Of The Treasury: Off. Of Foreign Assets Control <https://ofac.treasury.gov/about-ofac> (last visited Nov. 15, 2023); Directorate of Def. Trade Controls, *Announcements, About D.D.T.C. & Access D.E.C.C.S.*, U.S. Dept. Of State: Directorate Of Def. Trade Controls https://www.pmddtc.state.gov/ddtc_public/ddtc_public (last visited Nov. 15, 2023).

any measures to support institutions. For example, first-time violations of Section 117 would automatically trigger a fine not less than \$50,000 and could lead to a sanction of millions of dollars for large scale contracts. These sanctions do not take into consideration the potential for mistakes, which are bound to occur; under the higher reporting standards mandated by H.R. 5933 including broader definitions of “reportable gifts” and “contracts”, institutions could be submitting hundreds of reports to the Department every year. The Democratic Substitute offered a sensible enforcement policy that gives the Department discretion to determine fines and would require institutions to establish robust plans to address any compliance concerns identified by the Department.

Another troubling component of the enforcement structure is that it ties violations of Section 117 to the loss of federal student aid funding under Title IV of the HEA. This means students, who often have limited connections to research decisions at institutions, could be punished for *de minimis* errors in foreign gift reporting. If the purpose of H.R. 5933 is to improve the institutional compliance, it is hard to see how such inflexible and harsh sanctions, in conjunction with the misalignment with other federal policies, reach this goal.

H.R. 5933 WOULD CREATE A CHILLING EFFECT FOR INTERNATIONAL RESEARCH AND SCHOLARS

Institutions of higher education recognize the importance of creating diverse campus communities by supporting international students and scholars on their campuses. Fostering a positive campus climate helps create a learning and social environment which benefits all students and scholars.³⁷ Additionally, it is clear xenophobic attitudes have contributed to the decreased safety of international students and scholars.³⁸ Due to the continued, heightened discrimination against students of color and international scholars, it is imperative that we do not inadvertently perpetuate more hatred when developing policy to address foreign influence on college campuses.

There have been a multitude of cases where international scholars have been wrongfully accused of inciting undue foreign influence, and the consequences are damning. A 2022 study published by the National Academy of Sciences surveying over 1,300 Asian American faculty found that although the majority (89 percent) of these faculty desire to contribute to U.S. advancements in science and technology, many (72 percent) feel unsafe conducting research in the U.S.³⁹ One poignant example—the experience of Dr. Greg Chen—highlights the significant negative impact these wrongful accusations. A former Massachusetts Institute of Technology professor, Dr. Chen, was wrongfully accused of espionage, and chose

³⁷ Julia Starkey, *Effective Strategies for Building and Sustaining a Positive School Culture and Climate*, 27 ACAD. OF EDUC. LEADERSHIP J. 2, 1–2 (2023) <https://www.abacademies.org/articles/Effective-strategies-for-building-and-sustaining-a-positive-school-culture-and-climate-1528-2643-27-S2-004.pdf>.

³⁸ See Goldie Blumenstyk, *How Xenophobia Affects Higher Education*, The Chron. Of Higher Educ.: Glob. (May 29, 2019) <https://www.chronicle.com/article/how-xenophobia-affects-higher-education/>.

³⁹ See Yu Xie, Xihong Lin, & et. Al., *Caught in the crossfire: Fears of Chinese-American scientists*, Proc. Of Nat'l Acad. Of Sci. Of The U.S. Of Am.: Rsch Article: Soc. Sci. 3–5 (June 27, 2023) <https://www.pnas.org/doi/10.1073/pnas.2216248120#body-ref-r1>.

to no longer continue his research studies due to fear and anxiety around being racially profiled.⁴⁰ As a Chinese immigrant, Dr. Chen emphasized how his wrongful accusation has caused damage and will be difficult to overcome.⁴¹

H.R. 5933 would create a chilling effect for international scholars and research by encouraging these types of attacks. The newly proposed HEA Section 117b would require institutions to maintain a public database of gifts to, and contracts with, individual faculty and staff—a database that would include personal information of faculty and staff. Not only does this provision create an egregious amount of insignificant and unnecessary data collection, but it also raises serious privacy and security concerns. By listing individual names, faculty and staff can be easily targeted by foreign adversaries. Further, H.R. 5933 would perpetuate the misguided and heightened scrutiny of international scholars. Due to the lack of clarity in the bill, faculty and staff will struggle to know when to report common interactions with their international colleagues that don't pose national security threats, such as attending events in their personal capacity and accepting collegial hospitality. Ultimately, this will lead to international scholars being avoided by their colleagues merely for fear of being connected to international funding. This perpetuates the idea that collaborations with foreign partners are fundamentally problematic, which cannot be further from the goals of research at institutions.

Committee Democrats are committed to maintaining a welcoming campus for *all*, including international students, faculty, and scholars. During the markup, Ranking Member Scott put forth two amendments to address this issue that would narrow the types of gifts and contracts needed to be reported under Section 117b, to ensure only meaningful data is being collected. Additionally, Ms. Manning offered an amendment that would protect faculty from the disclosure of their individual names on their public databases. Committee Republicans voted down these amendments, painting a clear picture that protecting scholars from foreign targeting or racial harassment is not a priority. Their refusal to accept these amendments shows that H.R. 5933 is not a serious attempt to address the serious topic of national security.

DEMOCRATIC AMENDMENTS OFFERED DURING MARKUP OF H.R. 5933

Committee Democrats put forward three discrete amendments to improve the underlying bill. These amendments would have streamlined Section 117 reporting and protected the privacy of faculty and staff. Democrats also offered an Amendment in the Nature of a Substitute to create a HEA Section 117 that recognizes its role as part of, but not the center of undue foreign influence and research security framework. Committee Republicans rejected all of the Democratic amendments that were considered.

⁴⁰ See generally Kimmy Yam, *MIT Professor Wrongfully Accused of Spying for China Helps Make a Major Discovery*, NBC News: Asian Am. (Aug. 25, 2022) <https://www.nbcnews.com/news/asian-america/mit-professor-wrongfully-accused-spying-china-helps-make-major-discovery-rcna44637>.

⁴¹ *Id.*

| Amendment | Offered By | Description | Action Taken |
|-----------|-------------------|---|--------------|
| #1 | Ms. Manning | To remove certain requirements related to the database established under Sec. 117b. | Defeated |
| #2 | Mr. Scott | To exclude from the definition of a gift for the purposes of Sec. 117b any receptions, widely attended events, charity events, or personal hospitality. | Defeated |
| #3 | Mr. Scott | To increase the gift and contract reporting threshold for individual faculty in Sec. 117b to \$25,000.. | Defeated |
| #4 | Mr. Scott | Democratic Amendment in the Nature of a Substitute | Defeated |

CONCLUSION

H.R. 5933 is an attempt to overcorrect problems that are currently being addressed across the federal government. Institutions of higher education have shown their efforts to comply with all federal foreign influence laws and regulations, including Section 117 of the *Higher Education Act*, and the Department of Education has indicated its commitment to help institutions remain in compliance. While Committee Republicans argue this legislation will deter nefarious actions, H.R. 5933 merely deters institutions from making great strides on innovative research that impacts the global community and American competitiveness. For the reasons stated above, we urge the House of Representatives to oppose H.R. 5933.

ROBERT C. “BOBBY” SCOTT,
Ranking Member.
 GREGORIO KILILI CAMACHO
 SABLAN.
 MARK DESAULNIER.
 JAHANA HAYES.

