

118TH CONGRESS
1ST SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 11, 2023

Mrs. STEEL (for herself, Ms. FOXX, Mr. OWENS, Mr. WILSON of South Carolina, Mr. THOMPSON of Pennsylvania, Mr. GROTHMAN, Ms. STEFANIK, Mr. SMUCKER, Mrs. MCCLAIN, Ms. LETLOW, Mr. WILLIAMS of New York, Mrs. HOUCHIN, Mr. ESTES, and Mr. WALBERG) introduced the following bill

OCTOBER 25, 2023

Referred to the Committee on Education and the Workforce

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DISCLOSURES OF FOREIGN GIFTS.**

7 (a) IN GENERAL.—Section 117 of the Higher Edu-
8 cation Act of 1965 (20 U.S.C. 1011f) is amended to read
9 as follows:

10 **“SEC. 117. DISCLOSURES OF FOREIGN GIFTS.**

11 **“(a) DISCLOSURE REPORTS.—**

12 **“(1) AGGREGATE GIFTS AND CONTRACT DIS-**
13 **CLOSURES.—**An institution shall file a disclosure re-
14 port in accordance with subsection (b)(1) with the
15 Secretary on July 1 of the calendar year imme-
16 diately following any calendar year in which—

17 **“(A) the institution receives a gift from, or**
18 **enters into a contract with, a foreign source**
19 **(other than a foreign country of concern or for-**
20 **eign entity of concern)—**

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

1 “(ii) the value of which is undeter-
2 mined; or

3 “(B) the institution receives a gift from a
4 foreign country of concern or foreign entity of
5 concern, or, upon receiving a waiver under sec-
6 tion 117A to enter into a contract with such a
7 country or entity, enters into such contract,
8 without regard to the value of such gift or con-
9 tract.

10 “(2) FOREIGN SOURCE OWNERSHIP OR CON-
11 TROL DISCLOSURES.—In the case of an institution
12 that is substantially controlled (as described in sec-
13 tion 668.174(c)(3) of title 34, Code of Federal Reg-
14 ulations) by a foreign source, the institution shall
15 file a disclosure report in accordance with subsection
16 (b)(2) with the Secretary on July 1 of each year.

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

22 “(b) CONTENTS OF REPORT.—

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

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

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

6 “(I) the name of the individual,
7 department, or benefactor at the insti-
8 tution receiving the gift or carrying
9 out the contract;

10 “(II) the intended purpose of
11 such gift or contract, as provided to
12 the institution by such foreign govern-
13 ment, or if no such purpose is pro-
14 vided by such government, the in-
15 tended use of such gift or contract, as
16 provided by the institution; and

17 “(III) in the case of a restricted
18 or conditional gift or contract, a de-
19 scription of the restrictions or condi-
20 tions of such gift or contract;

21 “(ii) with respect to a gift—

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

1 “(II) the date on which the insti-
2 tution received such gift;

3 “(iii) with respect to a contract—

4 “(I) the date on which such con-
5 tract commences;

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

8 “(III) an assurance that the in-
9 stitution will—

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

13 “(AA) the date that is
14 4 years after the date on
15 which the contract com-
16 mences;

17 “(BB) the date on
18 which the contract termi-
19 nates; or

20 “(CC) the last day of
21 any period that applicable
22 State law requires a copy of
23 such contract to be main-
24 tained; and

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

5 “(iv) an assurance that in a case in
6 which information is required to be dis-
7 closed under this section with respect to a
8 gift or contract that is not in English, such
9 information is translated into English in
10 compliance with the requirements of sub-
11 section (c)(1).

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

16 “(i) the name of such foreign govern-
17 ment;

18 “(ii) the department, agency, office,
19 or division of such foreign government that
20 approved such gift or contract, as applica-
21 ble; and

22 “(iii) the physical mailing address of
23 such department, agency, office, or divi-
24 sion.

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

5 “(i) the legal name of the foreign
6 source, or, if such name is not available, a
7 statement certified by the compliance offi-
8 cer in accordance with subsection (f)(2)
9 that the institution has reasonably at-
10 tempted to obtain such name;

11 “(ii) in the case of a foreign source
12 that is a natural person, the country of
13 citizenship of such person, or, if such coun-
14 try is not known, the principal country of
15 residence of such person;

16 “(iii) in the case of a foreign source
17 that is a legal entity, the country in which
18 such entity is incorporated, or if such in-
19 formation is not available, the principal
20 place of business of such entity; and

21 “(iv) the physical mailing address of
22 such foreign source, or if such address is
23 not available, a statement certified by the
24 compliance officer in accordance with sub-

1 section (f)(2) that the institution has rea-
2 sonably attempted to obtain such address.

3 “(D) With respect to a contract entered
4 into with a foreign source that is a foreign
5 country of concern or a foreign entity of con-
6 cern—

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

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

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

16 “(2) FOREIGN SOURCE OWNERSHIP OR CON-
17 TROL.—Each report to the Secretary required under
18 subsection (a)(2) shall contain—

19 “(A) the legal name and address of the
20 foreign source that owns or controls the institu-
21 tion;

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

1 “(C) any changes in program or structure
2 resulting from the change in ownership or con-
3 trol.

4 “(c) TRANSLATION REQUIREMENTS.—Any informa-
5 tion required to be disclosed under this section with re-
6 spect to a gift or contract that is not in English shall be
7 translated, for purposes of such disclosure, by a person
8 that is not an affiliated entity or agent of the foreign
9 source involved with such gift or contract.

10 “(d) PUBLIC INSPECTION.—

11 “(1) DATABASE REQUIREMENT.—Beginning not
12 later than 60 days before the July 1 immediately fol-
13 lowing the date of the enactment of the DETER-
14 RENT Act, the Secretary shall—

15 “(A) establish and maintain a searchable
16 database on a website of the Department, under
17 which all reports submitted under this section
18 (including any report submitted under this sec-
19 tion before the date of the enactment of the
20 DETERRENT Act)—

21 “(i) are made publicly available (in
22 electronic and downloadable format), in-
23 cluding any information provided in such
24 reports (other than the information prohib-

1 ited from being publicly disclosed pursuant
2 to paragraph (2));

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

5 “(iii) are searchable and sortable—

6 “(I) by the date the institution
7 filed such report;

8 “(II) by the date on which the in-
9 stitution received the gift, or entered
10 into the contract, which is the subject
11 of the report; and

12 “(III) by the attributable country
13 of such gift or contract;

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

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

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

23 “(ii) a foreign source that is not a for-
24 eign government; and

1 “(D) with respect to a disclosure report
2 that does not include the name or address of a
3 foreign source, indicate, as part of the public
4 record of such report included in such database,
5 that such report did not include such informa-
6 tion.

7 “(2) NAME AND ADDRESS OF FOREIGN
8 SOURCE.—The Secretary shall not disclose the name
9 or address of a foreign source (other than the attrib-
10 utable country of such foreign source) included in a
11 disclosure report—

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

14 “(B) in response to a request under sec-
15 tion 552 of title 5, United States Code (com-
16 monly known as the ‘Freedom of Information
17 Act’), pursuant to subsection (b)(3) of such sec-
18 tion.

19 “(e) INTERAGENCY INFORMATION SHARING.—Not
20 later than 30 days after receiving a disclosure report from
21 an institution in compliance with this section, the Sec-
22 retary shall transmit an unredacted copy of such report
23 (that includes the name and address of a foreign source
24 disclosed in such report) to the Director of the Federal
25 Bureau of Investigation, the Director of National Intel-

1 ligence, the Assistant Attorney General for National Secu-
2 rity, the Director of the Central Intelligence Agency, and
3 the Director of the National Science Foundation.

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

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

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

14 “(g) DEFINITIONS.—In this section:

15 “(1) AFFILIATED ENTITY.—The term ‘affiliated
16 entity’, when used with respect to an institution,
17 means an entity or organization that operates pri-
18 marily for the benefit of, or under the auspices of,
19 such institution, including a foundation of the insti-
20 tution or a related entity (such as any educational,
21 cultural, or language entity).

22 “(2) ATTRIBUTABLE COUNTRY.—The term ‘at-
23 tributable country’ means—

1 “(A) the country of citizenship or principal
2 residence (as applicable) of a foreign source
3 who is a natural person; or

4 “(B) the country of incorporation, or prin-
5 cipal place of business (as applicable) of a for-
6 eign source that is a legal entity.

7 “(3) CONTRACT.—The term ‘contract’—

8 “(A) means—

9 “(i) any agreement for the acquisition
10 by purchase, lease, or barter of property or
11 services by the foreign source, for the di-
12 rect benefit or use of either of the parties;

13 “(ii) any affiliation, agreement, or
14 similar transaction with a foreign source
15 that is based on the use or exchange of an
16 institution’s name, likeness, time, services,
17 or resources; and

18 “(iii) any agreement for the acquisi-
19 tion by purchase, lease, or barter, of prop-
20 erty or services from a foreign source
21 (other than an arms-length agreement for
22 such acquisition from a foreign source that
23 is not a foreign country of concern or a
24 foreign entity of concern); and

1 “(B) does not include an agreement made
2 between an institution and a foreign source re-
3 garding any payment of one or more elements
4 of a student’s cost of attendance (as such term
5 is defined in section 472), unless such an agree-
6 ment is made for more than 15 students or is
7 made under a restricted or conditional contract.

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

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

12 “(B) a legal entity, governmental or other-
13 wise, created under the laws of a foreign state
14 or states;

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

18 “(D) an agent, including—

19 “(i) a subsidiary or affiliate of a for-
20 eign legal entity, acting on behalf of a for-
21 eign source; and

22 “(ii) an entity or organization that op-
23 erates primarily for the benefit of, or
24 under the auspices of, a foreign legal enti-
25 ty, including a foundation or a related en-

1 tity (such as any educational, cultural, or
2 language entity).

3 “(5) GIFT.—The term ‘gift’—

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

6 “(B) does not include—

7 “(i) any payment of one or more ele-
8 ments of a student’s cost of attendance (as
9 such term is defined in section 472) to an
10 institution by, or scholarship from, a for-
11 eign source who is a natural person, acting
12 in their individual capacity and not as an
13 agent for, at the request or direction of, or
14 on behalf of, any person or entity (except
15 the student), made for not more than 15
16 students, and that is not made under a re-
17 stricted or conditional contract with such
18 foreign source;

19 “(ii) assignment or license of reg-
20 istered industrial and intellectual property
21 rights, such as patents, utility models,
22 trademarks, or copyrights, or technical as-
23 sistance, that are not identified as being
24 associated with a national security risk or
25 concern by the Federal Research Security

1 Council as described under section 7902 of
2 title 31, United States Code; or

3 “(iii) decorations (as such term is de-
4 fined in section 7342(a) of title 5, United
5 States Code).

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

11 “(A) the employment, assignment, or ter-
12 mination of faculty;

13 “(B) the establishment of departments,
14 centers, institutes, instructional programs, re-
15 search or lecture programs, or new faculty posi-
16 tions;

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

19 “(D) the award of grants, loans, scholar-
20 ships, fellowships, or other forms of financial
21 aid restricted to students of a specified country,
22 religion, sex, ethnic origin, or political opinion;
23 or

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

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

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

8 “(a) IN GENERAL.—An institution shall not enter
9 into a contract with a foreign country of concern or a for-
10 eign entity of concern.

11 “(b) WAIVERS.—

12 “(1) SUBMISSION.—

13 “(A) FIRST WAIVER REQUESTS.—

14 “(i) IN GENERAL.—An institution
15 that desires to enter into a contract with
16 a foreign entity of concern or a foreign
17 country of concern may submit to the Sec-
18 retary, not later than 60 days before the
19 institution enters into such a contract, a
20 request to waive the prohibition under sub-
21 section (a) with respect to such contract.

22 “(ii) CONTENTS OF WAIVER RE-
23 QUEST.—A waiver request submitted by an
24 institution under clause (i) shall include—

1 “(I) the complete and unredacted
2 text of the proposed contract for
3 which the waiver is being requested,
4 and if such original contract is not in
5 English, a translated copy of the text
6 into English (in a manner that com-
7 plies with section 117(c)); and

8 “(II) a statement that—

9 “(aa) is signed by the point
10 of contact of the institution de-
11 scribed in section 117(h); and

12 “(bb) includes information
13 that demonstrates that such con-
14 tract is for the benefit of the in-
15 stitution’s mission and students
16 and will promote the security,
17 stability, and economic vitality of
18 the United States.

19 “(B) RENEWAL WAIVER REQUESTS.—

20 “(i) IN GENERAL.—An institution
21 that has entered into a contract pursuant
22 to a waiver issued under this section, the
23 term of which is longer than the 1-year
24 waiver period and the terms and conditions
25 of which remain the same as the proposed

1 contract submitted as part of the request
2 for such waiver may submit, not later than
3 60 days before the expiration of such waiv-
4 er period, a request for a renewal of such
5 waiver for an additional 1-year period
6 (which shall include any information re-
7 quested by the Secretary).

8 “(ii) TERMINATION.—If the institu-
9 tion fails to submit a request under clause
10 (i) or is not granted a renewal under such
11 clause, such institution shall terminate
12 such contract on the last day of the origi-
13 nal 1-year waiver period.

14 “(2) WAIVER ISSUANCE.—The Secretary—

15 “(A) not later than 60 days after receiving
16 a request for a waiver or renewal of a waiver
17 under this section from an institution, shall no-
18 tify the institution—

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

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

24 “(B) may only issue a waiver under this
25 section to an institution if the Secretary deter-

1 mines, in consultation with the Director of the
2 Federal Bureau of Investigation, the Director
3 of National Intelligence, the Assistant Attorney
4 General for National Security, the Director of
5 the Central Intelligence Agency, and the Direc-
6 tor of the National Science Foundation, that
7 the contract for which the waiver is being re-
8 quested is for the benefit of the institution’s
9 mission and students and will promote the secu-
10 rity, stability, and economic vitality of the
11 United States.

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

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

17 “(B) the Committee on Health, Education,
18 Labor, and Pensions of the Senate,

19 of the intent to issue the waiver, including a jus-
20 tification for the waiver.

21 “(4) APPLICATION OF WAIVERS.—A waiver
22 issued under this section to an institution with re-
23 spect to a contract shall only—

24 “(A) waive the prohibition under sub-
25 section (a) for a 1-year period; and

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

4 “(c) DESIGNATION DURING CONTRACT TERM.—In
5 the case of an institution that enters into a contract with
6 a foreign source that is not a foreign country of concern
7 or a foreign entity of concern but which, during the term
8 of such contract, is designated as a foreign country of con-
9 cern or foreign entity of concern, such institution shall ter-
10 minate such contract not later than 60 days after the Sec-
11 retary notifies the institution of such designation.

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

14 (c) INTERAGENCY INFORMATION SHARING.—Not
15 later than 90 days after the date of the enactment of this
16 Act, the Secretary of Education shall transmit to the Di-
17 rector of the Federal Bureau of Investigation, the Director
18 of National Intelligence, the Assistant Attorney General
19 for National Security, the Director of the Central Intel-
20 ligence Agency, and the Director of the National Science
21 Foundation—

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

1 (2) any report, document, or other record gen-
2 erated by the Department of Education in the
3 course of an investigation—

4 (A) of an institution with respect to the
5 compliance of such institution with such sec-
6 tion; and

7 (B) initiated prior to the date of the enact-
8 ment of this Act.

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

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

14 **“SEC. 117B. INSTITUTIONAL POLICY REGARDING FOREIGN**
15 **GIFTS AND CONTRACTS TO FACULTY AND**
16 **STAFF.**

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

21 “(1) a policy requiring faculty, professional
22 staff, and other staff engaged in research and devel-
23 opment (as determined by the institution and meas-
24 ured by the Higher Education Research and Devel-
25 opment Survey of the National Center for Science

1 and Engineering Statistics) employed at the institu-
2 tion to disclose in a report to such institution on
3 July 1 of each calendar year that begins after the
4 year in which such enactment date occurs—

5 “(A) any gift received from a foreign
6 source in the previous calendar year, the value
7 of which is greater than the minimal value (as
8 such term is defined in section 7342(a) of title
9 5, United States Code) or is of undetermined
10 value, and including the date on which the gift
11 was received;

12 “(B) any contract entered into with a for-
13 eign source in the previous calendar year, the
14 value of which is \$5,000 or more, considered
15 alone or in combination with all other contracts
16 with that foreign source within the calendar
17 year, and including the date on which such con-
18 tract commences and, as applicable, the date on
19 which such contract terminates;

20 “(C) any contract with a foreign source in
21 force during the previous calendar year that has
22 an undetermined monetary value, and including
23 the date on which such contract commences
24 and, as applicable, the date on which such con-
25 tract terminates; and

1 “(D) any contract entered into with a for-
2 eign country of concern or foreign entity of con-
3 cern in the previous calendar year, the value of
4 which is \$0 or more, and including the begin-
5 ning and ending dates of such contract and the
6 full text of such contract and any addenda;

7 “(2) a publicly available and searchable data-
8 base (in electronic and downloadable format), on a
9 website of the institution, of the information re-
10 quired to be disclosed under paragraph (1), sortable
11 and searchable by the date received (if a gift) or the
12 date commenced (if a contract), the attributable
13 country with respect to which information is being
14 disclosed, and name of the individual making the
15 disclosure, and until the latest of—

16 “(A) the date that is 4 years after the date
17 on which—

18 “(i) a gift referred to in paragraph
19 (1)(A) is received; or

20 “(ii) a contract referred to in sub-
21 paragraph (B), (C) or (D) of paragraph
22 (1) begins; or

23 “(B) the date on which a contract referred
24 to in subparagraph (B), (C) or (D) of para-
25 graph (1) terminates; and

1 “(3) a plan effectively to identify and manage
2 potential information gathering by foreign sources
3 through espionage targeting faculty, professional
4 staff, and other staff engaged in research and devel-
5 opment (as determined by the institution and meas-
6 ured by the Higher Education Research and Devel-
7 opment Survey of the National Center for Science
8 and Engineering Statistics) that may arise from
9 gifts received from, or contracts entered into with, a
10 foreign source, including through the use of—

11 “(A) periodic communications;

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

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

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

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

21 “(2)(A) received more than \$50,000,000 in
22 Federal funds in any of the previous five calendar
23 years to support (in whole or in part) research and
24 development (as determined by the institution and
25 measured by the Higher Education Research and

1 Development Survey of the National Center for
2 Science and Engineering Statistics); or

3 “(B) receives funds under title VI.

4 “(c) DEFINITIONS.—In this section—

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

7 “(2) the term ‘contract’—

8 “(A) means any—

9 “(i) agreement for the acquisition, by
10 purchase, lease, or barter, of property or
11 services by a foreign source for the direct
12 benefit or use of any of the parties to the
13 agreement;

14 “(ii) affiliation, agreement, or similar
15 transaction with a foreign source based on
16 the use or exchange of the name, likeness,
17 time, services, or resources of faculty, pro-
18 fessional staff, or other staff engaged in
19 research and development (as determined
20 by the institution and measured by the
21 Higher Education Research and Develop-
22 ment Survey of the National Center for
23 Science and Engineering Statistics) em-
24 ployed at an institution described in sub-
25 section (b); or

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

5 “(B) does not include any fair-market,
6 arms-length agreement made by faculty, profes-
7 sional staff, and other staff engaged in research
8 and development (as determined by the institu-
9 tion and measured by the Higher Education
10 Research and Development Survey of the Na-
11 tional Center for Science and Engineering Sta-
12 tistics) for the acquisition, by purchase, lease,
13 or barter of property or services from a foreign
14 source other than such a foreign source that is
15 a foreign country of concern or a foreign entity
16 of concern; and

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

20 **SEC. 4. INVESTMENT DISCLOSURE REPORT.**

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

1 **“SEC. 117C. INVESTMENT DISCLOSURE REPORT.**

2 “(a) INVESTMENT DISCLOSURE REPORT.—A speci-
3 fied institution shall file a disclosure report in accordance
4 with subsection (b) with the Secretary on July 1 imme-
5 diately following any calendar year in which the specified
6 institution purchases, sells, or holds (directly or indirectly
7 through any chain of ownership) one or more investments
8 of concern.

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

12 “(1) A list of the investments of concern pur-
13 chased, sold, or held during such calendar year.

14 “(2) The aggregate fair market value of all in-
15 vestments of concern held as of the close of such cal-
16 endar year.

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

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

23 “(c) INCLUSION OF CERTAIN POOLED FUNDS.—

24 “(1) IN GENERAL.—An investment of concern
25 acquired through a regulated investment company,
26 exchange traded fund, or any other pooled invest-

1 ment shall be treated as acquired through a chain of
 2 ownership referred to in subsection (a), unless such
 3 pooled investment is certified by the Secretary as
 4 not holding any listed investments in accordance
 5 with subparagraph (B) of paragraph (2).

6 “(2) CERTIFICATIONS OF POOLED FUNDS.—

7 The Secretary, after consultation with the Secretary
 8 of the Treasury, shall establish procedures under
 9 which certain regulated investment companies, ex-
 10 change traded funds, and other pooled invest-
 11 ments—

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

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

16 “(d) TREATMENT OF RELATED ORGANIZATIONS.—

17 For purposes of this section, assets held by any related
 18 organization (as defined in section 4968(d)(2) of the In-
 19 ternal Revenue Code of 1986) with respect to a specified
 20 institution shall be treated as held by such specified insti-
 21 tution, except that—

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

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

7 “(e) VALUATION OF DEBT.—For purposes of this
8 section, the fair market value of any debt shall be the prin-
9 cipal amount of such debt.

10 “(f) REGULATIONS.—The Secretary, after consulta-
11 tion with the Secretary of the Treasury, may issue such
12 regulations or other guidance as may be necessary or ap-
13 propriate to carry out the purposes of this section, includ-
14 ing regulations or other guidance providing for the proper
15 application of this section with respect to certain regulated
16 investment companies, exchange traded funds, and pooled
17 investments.

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

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

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

4 “(3) certify the institution has, for purposes of
 5 filing such report under subsection (a), followed an
 6 established institutional policy and conducted good
 7 faith efforts and reasonable due diligence to deter-
 8 mine the accuracy and valuations of the assets re-
 9 ported.

10 “(h) DATABASE.—Not later than 30 days after re-
 11 ceipt of a disclosure report under this section, the Sec-
 12 retary shall include such report in the database established
 13 under section 117(d)(1)(A).

14 “(i) DEFINITIONS.—In this section:

15 “(1) INVESTMENT OF CONCERN.—

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

19 “(i) A foreign country of concern.

20 “(ii) A foreign entity of concern.

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

24 “(i) stock or any other equity or prof-
 25 its interest of such entity;

1 “(ii) debt issued by such entity; and

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

5 “(2) SPECIFIED INSTITUTION.—

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

9 “(i) such institution is not a public in-
10 stitution; and

11 “(ii) the aggregate fair market value
12 of—

13 “(I) the assets held by such insti-
14 tution at the end of such calendar
15 year (other than those assets which
16 are used directly in carrying out the
17 institution’s exempt purpose) is in ex-
18 cess of \$6,000,000,000; or

19 “(II) the investments of concern
20 held by such institution at the end of
21 such calendar year is in excess of
22 \$250,000,000.

23 “(B) REFERENCES TO CERTAIN TERMS.—

24 For the purpose of applying the definition
25 under subparagraph (A), the terms ‘aggregate

1 fair market value’ and ‘assets which are used
 2 directly in carrying out the institution’s exempt
 3 purpose’ shall be applied in the same manner as
 4 such terms are applied for the purposes of sec-
 5 tion 4968(b)(1)(D) of the Internal Revenue
 6 Code of 1986.”.

7 **SEC. 5. ENFORCEMENT AND OTHER GENERAL PROVISIONS.**

8 (a) ENFORCEMENT AND OTHER GENERAL PROVI-
 9 SIONS.—The Higher Education Act of 1965 (20 U.S.C.
 10 1001 et seq.), as amended by section 4 of this Act, is fur-
 11 ther amended by inserting after section 117C the fol-
 12 lowing:

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

14 “(a) ENFORCEMENT.—

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

19 “(2) CIVIL ACTION.—Whenever it appears that
 20 an institution has knowingly or willfully failed to
 21 comply with a requirement of any of the sections
 22 listed in paragraph (1) (including any rule or regula-
 23 tion promulgated under any such section) based on
 24 such an investigation, a civil action may be brought
 25 by the Attorney General, at the request of the Sec-

1 retary, in an appropriate district court of the United
2 States, or the appropriate United States court of
3 any territory or other place subject to the jurisdic-
4 tion of the United States, to request such court to
5 compel compliance with the requirement of the sec-
6 tion that has been violated.

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

11 “(A) pay to the Treasury of the United
12 States the full costs to the United States of ob-
13 taining compliance with the requirement of such
14 section, including all associated costs of inves-
15 tigation and enforcement; and

16 “(B) be subject to the applicable fines de-
17 scribed in paragraph (4).

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

22 “(A) SECTION 117.—

23 “(i) FIRST-TIME VIOLATIONS.—In the
24 case of an institution that knowingly or
25 willfully fails to comply with a requirement

1 of section 117 with respect to a calendar
2 year, and that has not previously know-
3 ingly or willfully failed to comply with such
4 a requirement, the Secretary shall impose
5 a fine on the institution for such violation
6 as follows:

7 “(I) In the case of an institution
8 that knowingly or willfully fails to
9 comply with a reporting requirement
10 under subsection (a)(1) of section
11 117, such fine shall be in an amount
12 that is—

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

17 “(bb) in the case of a gift or
18 contract of no value or of inde-
19 terminable value, not less than 1
20 percent, and not more than 10
21 percent of the total amount of
22 Federal funds received by the in-
23 stitution under this Act for the
24 most recent fiscal year.

1 “(II) In the case of an institution
2 that knowingly or willfully fails to
3 comply with the reporting requirement
4 under subsection (a)(2) of section
5 117, such fine shall be in an amount
6 that is not less than 10 percent of the
7 total amount of Federal funds re-
8 ceived by the institution under this
9 Act for the most recent fiscal year.

10 “(ii) SUBSEQUENT VIOLATIONS.—In
11 the case of an institution that has been
12 fined pursuant to clause (i) with respect to
13 a calendar year, and that knowingly or
14 willfully fails to comply with a requirement
15 of section 117 with respect to any addi-
16 tional calendar year, the Secretary shall
17 impose a fine on the institution with re-
18 spect to any such additional calendar year
19 as follows:

20 “(I) In the case of an institution
21 that knowingly or willfully fails to
22 comply with a reporting requirement
23 under subsection (a)(1) of section 117
24 with respect to an additional calendar

1 year, such fine shall be in an amount
2 that is—

3 “(aa) not less than
4 \$100,000 but not more than
5 twice the monetary value of the
6 gift from, or contract with, the
7 foreign source; or

8 “(bb) in the case of a gift or
9 contract of no value or of inde-
10 terminable value, not less than 1
11 percent, but not more than 10
12 percent, of the total amount of
13 Federal funds received by the in-
14 stitution under this Act for the
15 most recent fiscal year.

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

1 “(B) SECTION 117A.—

2 “(i) FIRST-TIME VIOLATIONS.—In the
3 case of an institution that knowingly or
4 willfully fails to comply with a requirement
5 of section 117A for the first time, the Sec-
6 retary shall impose a fine on the institu-
7 tion in an amount that is not less than 5
8 percent, but not more than 10 percent, of
9 the total amount of Federal funds received
10 by the institution under this Act for the
11 most recent fiscal year.

12 “(ii) SUBSEQUENT VIOLATIONS.—In
13 the case of an institution that has been
14 fined pursuant to clause (i), the Secretary
15 shall impose a fine on the institution for
16 each subsequent time the institution know-
17 ingly or willfully fails to comply with a re-
18 quirement of section 117A in an amount
19 that is not less than 20 percent of the total
20 amount of Federal funds received by the
21 institution under this Act for the most re-
22 cent fiscal year.

23 “(C) SECTION 117B.—

24 “(i) FIRST-TIME VIOLATIONS.—In the
25 case of an institution that knowingly or

1 willfully fails to comply with a requirement
2 of section 117B with respect to a calendar
3 year, and that has not previously know-
4 ingly or willfully failed to comply with such
5 a requirement, the Secretary shall impose
6 a fine on the institution of not less than
7 \$250,000, but not more than the total
8 amount of gifts or contracts reported by
9 such institution in the database required
10 under section 117B(a)(2).

11 “(ii) SUBSEQUENT VIOLATIONS.—In
12 the case of an institution that has been
13 fined pursuant to clause (i) with respect to
14 a calendar year, and that knowingly or
15 willfully fails to comply with a requirement
16 of section 117B with respect to any addi-
17 tional calendar year, the Secretary shall
18 impose a fine on the institution with re-
19 spect to any such additional calendar year
20 in an amount that is not less than
21 \$500,000, but not more than twice the
22 total amount of gifts or contracts reported
23 by such institution in the database re-
24 quired under section 117B(a)(2).

25 “(D) SECTION 117C.—

1 “(i) FIRST-TIME VIOLATIONS.—In the
2 case of a specified institution that know-
3 ingly or willfully fails to comply with a re-
4 quirement of section 117C with respect to
5 a calendar year, and that has not pre-
6 viously knowingly or willfully failed to com-
7 ply with such a requirement, the Secretary
8 shall impose a fine on the institution in an
9 amount that is not less than 50 percent
10 and not more than 100 percent of the sum
11 of—

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

16 “(II) the combined value of all
17 investments of concern sold over the
18 course of such calendar year, as meas-
19 ured by the fair market value of such
20 investments at the time of the sale.

21 “(ii) SUBSEQUENT VIOLATIONS.—In
22 the case of a specified institution that has
23 been fined pursuant to clause (i) with re-
24 spect to a calendar year, and that know-
25 ingly or willfully fails to comply with a re-

1 quirement of section 117C with respect to
2 any additional calendar year, the Secretary
3 shall impose a fine on the institution with
4 respect to any such additional calendar
5 year in an amount that is not less than
6 100 percent and not more than 200 per-
7 cent of the sum of—

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

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

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

21 “(1) receive and respond to inquiries and re-
22 quests for technical assistance from institutions re-
23 garding compliance with the requirements of sec-
24 tions 117, 117A, 117B, and 117C;

1 “(2) coordinate and implement technical im-
2 provements to the database described in section
3 117(d)(1), including—

4 “(A) improving upload functionality by al-
5 lowing for batch reporting;

6 “(B) publishing and maintaining a data-
7 base users guide annually, including areas such
8 as how to edit an entry and how to report er-
9 rors; and

10 “(C) creating a user group (to which chap-
11 ter 10 of title 5, United States Code, shall not
12 apply) to discuss possible database improve-
13 ments;

14 “(3) provide, every 90 days after the date of en-
15 actment of the DETERRENT Act, status updates
16 on any pending or completed investigations and civil
17 actions under subsection (a)(1) to—

18 “(A) the authorizing committees; and

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

21 “(4) maintain, on a publicly accessible
22 website—

23 “(A) a full comprehensive list of all foreign
24 countries of concern and foreign entities of con-
25 cern; and

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

3 “(5) not later than 7 days after making an up-
4 date to the list maintained in paragraph (4)(A), no-
5 tify each institution required to comply with the sec-
6 tions listed in paragraph (1) of such update.

7 “(c) DEFINITIONS.—For purposes of sections 117,
8 117A, 117B, 117C, and this section:

9 “(1) FOREIGN COUNTRY OF CONCERN.—The
10 term ‘foreign country of concern’ includes the fol-
11 lowing:

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

15 “(B) Any country that the Secretary, in
16 consultation with the Secretary of Defense, the
17 Secretary of State, and the Director of National
18 Intelligence, determines to be engaged in con-
19 duct that is detrimental to the national security
20 or foreign policy of the United States.

21 “(2) FOREIGN ENTITY OF CONCERN.—The
22 term ‘foreign entity of concern’ has the meaning
23 given such term in section 10612(a) of the Research
24 and Development, Competition, and Innovation Act
25 (42 U.S.C. 19221(a)) and includes a foreign entity

1 that is identified on the list published under section
2 1286(c)(8)(A) of the John S. McCain National De-
3 fense Authorization Act for Fiscal Year 2019 (10
4 U.S.C. 22 4001 note; Public Law 115–232).

5 “(3) INSTITUTION.—The term ‘institution’
6 means an institution of higher education (as such
7 term is defined in section 102, other than an institu-
8 tion described in subsection (a)(1)(c) of such sec-
9 tion).”.

10 (b) PROGRAM PARTICIPATION AGREEMENT.—Section
11 487(a) of the Higher Education Act of 1965 (20 U.S.C.
12 1094) is amended by adding at the end the following:

13 “(30)(A) An institution will comply with the re-
14 quirements of sections 117, 117A, 117B, and 117C.

15 “(B) An institution that, for 3 consecutive in-
16 stitutional fiscal years, violates any requirement of
17 any of the sections listed in subparagraph (A),
18 shall—

19 “(i) be ineligible to participate in the pro-
20 grams authorized by this title for a period of
21 not less than 2 institutional fiscal years; and

22 “(ii) in order to regain eligibility to partici-
23 pate in such programs, demonstrate compliance
24 with all requirements of each such section for
25 not less than 2 institutional fiscal years after

1 the institutional fiscal year in which such insti-
2 tution became ineligible.”.

3 (c) GAO STUDY.—Not later than one year after the
4 date of the enactment of this Act, the Comptroller General
5 of the United States—

6 (1) shall conduct a study to identify ways to
7 improve intergovernmental agency coordination re-
8 garding implementation and enforcement of sections
9 117, 117A, 117B, and 117C of the Higher Edu-
10 cation Act of 1965 (20 U.S.C. 1011f), as amended
11 or added by this Act, including increasing informa-
12 tion sharing and establishing processes for enforce-
13 ment; and

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

○