

118TH CONGRESS
1ST SESSION

H. R. 6165

To amend the Higher Education Act to require disclosure of certain foreign investments within endowments.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 1, 2023

Mr. OWENS (for himself and Ms. FOXX) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Higher Education Act to 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reporting on Invest-
5 ments in Foreign Adversaries Act” or the “RIFA Act”.

6 **SEC. 2. INVESTMENT DISCLOSURE REPORT.**

7 (a) IN GENERAL.—Part B of title I of the Higher
8 Education Act of 1965 (20 U.S.C. 1011 et seq.) is amend-
9 ed by inserting after section 117 the following:

1 **“SEC. 117A. 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; and

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

4 “(h) DATABASE REQUIREMENT.—Beginning not
5 later than 60 days before the July 1 immediately following
6 the date of the enactment of the RIFA Act, the Secretary
7 shall—

8 “(1) establish and maintain a searchable data-
9 base on a website of the Department, under which
10 all reports submitted under this section (including
11 any report submitted under this section before the
12 date of the enactment of the RIFA Act)—

13 “(A) are made publicly available (in elec-
14 tronic and downloadable format), including any
15 information provided in such reports;

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

18 “(C) are searchable and sortable; and

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

22 “(i) INTERAGENCY INFORMATION SHARING.—Not
23 later than 30 days after receiving a disclosure report from
24 an institution in compliance with this section, the Sec-
25 retary shall transmit an unredacted copy of such report

1 to the Director of the Federal Bureau of Investigation,
2 the Director of National Intelligence, the Assistant Attor-
3 ney General for National Security, the Director of the
4 Central Intelligence Agency, and the Director of the Na-
5 tional Science Foundation.

6 “(j) ENFORCEMENT.—

7 “(1) INVESTIGATION.—The Secretary (acting
8 through the General Counsel of the Department)
9 may conduct investigations of possible violations of
10 this section by institutions.

11 “(2) CIVIL ACTION.—Whenever it appears that
12 an institution has knowingly or willfully failed to
13 comply with a requirement of this section (including
14 any rule or regulation promulgated under this sec-
15 tion) based on such an investigation, a civil action
16 may be brought by the Attorney General, at the re-
17 quest of the Secretary, in an appropriate district
18 court of the United States, or the appropriate
19 United States court of any territory or other place
20 subject to the jurisdiction of the United States, to
21 request such court to compel compliance with the re-
22 quirement of this section.

23 “(3) COSTS AND OTHER FINES.—An institution
24 that is compelled to comply with a requirement of
25 this section pursuant to paragraph (2) shall—

1 “(A) pay to the Treasury of the United
2 States the full costs to the United States of ob-
3 taining compliance with the requirement of this
4 section, including all associated costs of inves-
5 tigation and enforcement; and

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

8 “(4) FINES FOR VIOLATIONS.—The Secretary
9 shall impose a fine on an institution that knowingly
10 or willfully fails to comply with a requirement of this
11 section as follows:

12 “(A) FIRST-TIME VIOLATIONS.—In the
13 case of a specified institution that knowingly or
14 willfully fails to comply with a requirement of
15 this section with respect to a calendar year, and
16 that has not previously knowingly or willfully
17 failed to comply with such a requirement, the
18 Secretary shall impose a fine on the institution
19 in an amount that is not less than 50 percent
20 and not more than 100 percent of the sum of—

21 “(i) the aggregate fair market value
22 of all investments of concern held by such
23 institution as of the close of such calendar
24 year; and

1 “(ii) the combined value of all invest-
2 ments of concern sold over the course of
3 such calendar year, as measured by the
4 fair market value of such investments at
5 the time of the sale.

6 “(B) SUBSEQUENT VIOLATIONS.—In the
7 case of a specified institution that has been
8 fined pursuant to clause (i) with respect to a
9 calendar year, and that knowingly or willfully
10 fails to comply with a requirement of this sec-
11 tion with respect to any additional calendar
12 year, the Secretary shall impose a fine on the
13 institution with respect to any such additional
14 calendar year in an amount that is not less
15 than 100 percent and not more than 200 per-
16 cent of the sum of—

17 “(i) the aggregate fair market value
18 of all investments of concern held by such
19 institution as of the close of such addi-
20 tional calendar year; and

21 “(ii) the combined value of all invest-
22 ments of concern sold over the course of
23 such additional calendar year, as measured
24 by the fair market value of such invest-
25 ments at the time of the sale.

1 “(k) DEFINITIONS.—In this section:

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

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

8 “(B) Any country that the Secretary, in
9 consultation with the Secretary of Defense, the
10 Secretary of State, and the Director of National
11 Intelligence, determines to be engaged in con-
12 duct that is detrimental to the national security
13 or foreign policy of the United States.

14 “(2) FOREIGN ENTITY OF CONCERN.—The
15 term ‘foreign entity of concern’ has the meaning
16 given such term in section 10612(a) of the Research
17 and Development, Competition, and Innovation Act
18 (42 U.S.C. 19221(a)) and includes a foreign entity
19 that is identified on the list published under section
20 1286(e)(8)(A) of the John S. McCain National De-
21 fense Authorization Act for Fiscal Year 2019 (10
22 U.S.C. 22 4001 note; Public Law 115–232).

23 “(3) INSTITUTION.—The term ‘institution’
24 means an institution of higher education (as such
25 term is defined in section 102, other than an institu-

1 tion described in subsection (a)(1)(c) of such sec-
2 tion).

3 “(4) INVESTMENT OF CONCERN.—

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

7 “(i) A foreign country of concern.

8 “(ii) A foreign entity of concern.

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

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

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

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

18 “(5) SPECIFIED INSTITUTION.—

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

22 “(i) such institution is not a public in-
23 stitution; and

24 “(ii) the aggregate fair market value
25 of—

1 “(I) the assets held by such insti-
2 tution at the end of such calendar
3 year (other than those assets which
4 are used directly in carrying out the
5 institution’s exempt purpose) is in ex-
6 cess of \$6,000,000,000; or

7 “(II) the investments of concern
8 held by such institution at the end of
9 such calendar year is in excess of
10 \$250,000,000.

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

20 (b) PROGRAM PARTICIPATION AGREEMENT.—Section
21 487(a) of the Higher Education Act of 1965 (20 U.S.C.
22 1094) is amended by adding at the end the following:

23 “(30)(A) An institution will comply with the re-
24 quirements of section 117A.

1 “(B) An institution that, for 3 consecutive in-
2 stitutional fiscal years, violates any requirement of
3 section 117A shall—

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

7 “(ii) in order to regain eligibility to partici-
8 pate in such programs, demonstrate compliance
9 with all requirements of such section for not
10 less than 2 institutional fiscal years after the
11 institutional fiscal year in which such institu-
12 tion became ineligible.”.

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