

115TH CONGRESS
2D SESSION

H. R. 6821

To address foreign threats to higher education in the United States.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 2018

Mr. FRANCIS ROONEY of Florida (for himself, Mr. DUNN, Mr. RATCLIFFE, Mr. WEBSTER of Florida, Mr. GROTHMAN, and Mr. GAETZ) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To address foreign threats to higher education in the United States.

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 “Stop Higher Education
5 Espionage and Theft Act of 2018”.

1 **SEC. 2. DESIGNATION OF FOREIGN INTELLIGENCE**
2 **THREATS TO HIGHER EDUCATION.**

3 (a) IN GENERAL.—Chapter 33 of title 28, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 540D. Designation of foreign intelligence threats to**
7 **higher education**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘classified information’ has the
10 meaning given that term in section 1(a) of the Clas-
11 sified Information Procedures Act (18 U.S.C. App.);

12 “(2) the term ‘Director’ means the Director of
13 the Federal Bureau of Investigation, acting in con-
14 sultation with the Attorney General, Secretary of
15 Education, and the Director of National Intelligence;

16 “(3) the term ‘foreign actor’ means—

17 “(A) a foreign government or its auxiliary
18 territories, or any component thereof, whether
19 or not recognized by the United States;

20 “(B) a foreign-based political organization,
21 not substantially composed of United States
22 persons;

23 “(C) a faction of a foreign nation or na-
24 tions, not substantially composed of United
25 States persons;

1 “(D) an entity that is openly acknowledged
2 by a foreign government or governments to be
3 directed and controlled by such foreign govern-
4 ment or governments;

5 “(E) any partnership, association, corpora-
6 tion, organization, or other combination of per-
7 sons who acts as an agent, representative, em-
8 ployee, or servant of, or whose activities are di-
9 rectly or indirectly supervised, directed, con-
10 trolled, financed, or subsidized in whole or in
11 major part by a government, organization, fac-
12 tion, or entity described in subparagraph (A),
13 (B), (C), or (D); or

14 “(F) any individual who acts as an agent,
15 representative, employee, or servant of, or
16 whose activities are directly or indirectly super-
17 vised, directed, controlled, financed, or sub-
18 sidized in whole or in major part by a govern-
19 ment, organization, faction, or entity described
20 in subparagraph (A), (B), (C), or (D), unless
21 such individual is a citizen of and domiciled
22 within the United States;

23 “(4) the term ‘institution’ means any institu-
24 tion of higher education, as defined under section
25 101 of the Higher Education Act (20 U.S.C. 1001);

1 “(5) the term ‘national security’ means the na-
2 tional defense, foreign relations, or economic inter-
3 ests of the United States;

4 “(6) the term ‘relevant committees of Congress’
5 means—

6 “(A) the Committee on the Judiciary, the
7 Select Committee on Intelligence, the Com-
8 mittee on Homeland Security and Government
9 Affairs, and the Committee on Health, Edu-
10 cation, Labor, and Pensions of the Senate; and

11 “(B) the Committee on the Judiciary, the
12 Permanent Select Committee on Intelligence,
13 the Committee on Homeland Security, and the
14 Committee on Education and the Workforce of
15 the House of Representatives; and

16 “(7) the term ‘United States person’ has the
17 meaning given that term in section 101 of the For-
18 eign Intelligence Surveillance Act of 1978 (50
19 U.S.C. 1801).

20 “(b) DESIGNATION.—

21 “(1) IN GENERAL.—The Director shall des-
22 ignate a foreign actor as a foreign intelligence threat
23 to higher education, in accordance with this sub-
24 section, if the Director finds that the foreign actor
25 has committed, attempted to commit, or conspired to

1 commit, in connection with an institution, one or
2 more of the following:

3 “(A) Espionage, in violation of sections
4 791 through 799 of title 18.

5 “(B) Kidnapping, in violation of section
6 1201 of title 18.

7 “(C) Fraud or misuse of visas, permits, or
8 other documents, in violation of section 1546 of
9 title 18.

10 “(D) Aggravated identity theft, in violation
11 of section 1028A of title 18.

12 “(E) Fraud or related activity in connec-
13 tion with access devices, in violation of section
14 1029 of title 18.

15 “(F) Fraud or related activity in connec-
16 tion with computers, in violation of section
17 1030 of title 18.

18 “(G) Economic espionage, in violation of
19 section 1831 of title 18.

20 “(H) Theft of trade secrets, in violation of
21 section 1832 of title 18.

22 “(I) Terrorism, in violation of sections
23 2331 through 2339D of title 18.

“(J) Interception or disclosure of wire, oral, or electronic communications, in violation of section 2511 of title 18.

“(2) PROCEDURE.—

“(A) NOTICE BEFORE DESIGNATION.—

“(i) TO CONGRESSIONAL LEADERS.—

Not later than 7 days before making a designation under this subsection, the Director shall submit to the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of Congress—

“(I) written notice of the intent of the Director to designate a foreign actor under this subsection; and

“(II) the findings made under paragraph (1) with respect to foreign actor and the factual basis therefor.

“(ii) TO THE ATTORNEY GENERAL.—

Not later than 7 days before making a designation under this subsection, the Director shall submit to the Attorney General, for the Attorney General to determine

1 whether further investigation or prosecu-
2 tion is warranted—

3 “(I) written notice of the intent
4 of the Director to designate a foreign
5 actor under this subsection; and

6 “(II) the findings made under
7 paragraph (1) with respect to the for-
8 eign actor and the factual basis there-
9 for.

10 “(iii) PROTECTION OF CLASSIFIED IN-
11 FORMATION.—The notice and findings sub-
12 mitted under clauses (i) and (ii) may be in
13 classified form.

14 “(B) PUBLICATION IN FEDERAL REG-
15 ISTER.—If the Director makes a designation
16 under this subsection, the Director shall publish
17 the designation in the Federal Register on the
18 date of the designation.

19 “(C) EFFECT OF DESIGNATION.—For pur-
20 poses of section 117 of the Higher Education
21 Act of 1965 (20 U.S.C. 1011f), a designation
22 under this subsection shall take effect upon
23 publication under subparagraph (B).

24 “(3) RECORD.—

1 “(A) IN GENERAL.—In making a designa-
2 tion under this subsection, the Director shall
3 create an administrative record.

4 “(B) CLASSIFIED INFORMATION.—The Di-
5 rector may consider classified information in
6 making a designation under this subsection.
7 Classified information shall not be subject to
8 disclosure for such time as it remains classified,
9 except that such information may be disclosed
10 to a court ex parte and in camera for purposes
11 of judicial review under subsection (d).

12 “(4) PERIOD OF DESIGNATION.—

13 “(A) IN GENERAL.—A designation under
14 this subsection shall be effective for all purposes
15 until revoked under paragraph (5) or (6) or set
16 aside under subsection (d).

17 “(B) REVIEW OF DESIGNATION UPON PE-
18 TITION.—

19 “(i) IN GENERAL.—The Director shall
20 review the designation of a foreign intel-
21 ligence threat to higher education under
22 the procedures set forth in clauses (iii) and
23 (iv) if the designated foreign actor files a
24 petition for revocation within the petition
25 period described in clause (ii).

1 “(ii) PETITION PERIOD.—For pur-
2 poses of clause (i)—

3 “(I) if the designated foreign
4 actor has not previously filed a peti-
5 tion for revocation under this sub-
6 paragraph, the petition period begins
7 2 years after the date on which the
8 designation was made; or

9 “(II) if the designated foreign
10 actor has previously filed a petition
11 for revocation under this subpara-
12 graph, the petition period begins 2
13 years after the date of the determina-
14 tion made under clause (iv) with re-
15 spect to that petition.

16 “(iii) PROCEDURES.—Any foreign
17 actor designated as a foreign intelligence
18 threat to higher education that submits a
19 petition for revocation under this subpara-
20 graph shall provide evidence in the petition
21 that the relevant circumstances described
22 in paragraph (1) are sufficiently different
23 from the circumstances that were the basis
24 for the designation such that a revocation

1 with respect to the foreign actor is war-
2 ranted.

3 “(iv) DETERMINATION.—

4 “(I) IN GENERAL.—Not later
5 than 180 days after receiving a peti-
6 tion for revocation submitted under
7 this subparagraph, the Director shall
8 make a determination as to such rev-
9 ocation.

10 “(II) CLASSIFIED INFORMA-
11 TION.—The Director may consider
12 classified information in making a de-
13 termination in response to a petition
14 for revocation. Classified information
15 shall not be subject to disclosure for
16 such time as it remains classified, ex-
17 cept that such information may be
18 disclosed to a court ex parte and in
19 camera for purposes of judicial review
20 under subsection (d).

21 “(III) PUBLICATION OF DETER-
22 MINATION.—A determination made by
23 the Director under this clause shall be
24 published in the Federal Register.

1 “(IV) PROCEDURES.—Any rev-
2 ocation of a designation by the Direc-
3 tor shall be made in accordance with
4 paragraph (6).

5 “(C) OTHER REVIEW OF DESIGNATION.—

6 “(i) IN GENERAL.—If no review has
7 taken place under subparagraph (B) dur-
8 ing any 5-year period, the Director shall
9 review the designation of a foreign actor as
10 a foreign intelligence threat to higher edu-
11 cation in order to determine whether such
12 designation should be revoked pursuant to
13 paragraph (6).

14 “(ii) PROCEDURES.—If a review does
15 not take place pursuant to subparagraph
16 (B) in response to a petition for revocation
17 that is filed in accordance with that sub-
18 paragraph, the review shall be conducted
19 pursuant to procedures established by the
20 Director. The results of such review and
21 the applicable procedures shall not be re-
22 viewable in any court.

23 “(iii) PUBLICATION OF RESULTS OF
24 REVIEW.—The Director shall publish any

1 determination made under this subpara-
2 graph in the Federal Register.

3 “(5) REVOCATION BY ACT OF CONGRESS.—Con-
4 gress, by an Act of Congress, may block or revoke
5 a designation made under paragraph (1).

6 “(6) REVOCATION BASED ON CHANGE IN CIR-
7 CUMSTANCES.—

8 “(A) IN GENERAL.—The Director may re-
9 voke a designation made under paragraph (1)
10 at any time, and shall revoke a designation
11 upon completion of a review conducted pursu-
12 ant to subparagraphs (B) and (C) of paragraph
13 (4) if the Director finds that—

14 “(i) the circumstances that were the
15 basis for the designation have changed in
16 such a manner as to warrant revocation; or

17 “(ii) the national security of the
18 United States warrants a revocation.

19 “(B) PROCEDURE.—The procedural re-
20 quirements of paragraphs (2) and (3) shall
21 apply to a revocation under this paragraph. Any
22 revocation shall take effect on the date specified
23 in the revocation or upon publication in the
24 Federal Register if no effective date is specified.

1 “(7) EFFECT OF REVOCATION.—The revocation
2 of a designation under paragraph (5) or (6) shall
3 not affect any action or proceeding based on conduct
4 committed prior to the effective date of such revoca-
5 tion.

6 “(c) AMENDMENTS TO A DESIGNATION.—

7 “(1) IN GENERAL.—The Director may amend a
8 designation under subsection (b) if the Director
9 finds that the foreign actor has changed its name,
10 adopted a new alias, dissolved and then reconsti-
11 tuted itself under a different name or names, or
12 merged with another foreign actor.

13 “(2) PROCEDURE.—Amendments made to a
14 designation in accordance with paragraph (1) shall
15 be effective upon publication in the Federal Register.
16 Subparagraphs (B) and (C) of subsection (b)(2)
17 shall apply to an amended designation upon such
18 publication. Paragraphs (2)(A)(i), (4), (5), (6), (7),
19 and (8) of subsection (b) shall also apply to an
20 amended designation.

21 “(3) ADMINISTRATIVE RECORD.—The adminis-
22 trative record shall be corrected to include the
23 amendments as well as any additional relevant infor-
24 mation that supports those amendments.

1 “(4) CLASSIFIED INFORMATION.—The Director
2 may consider classified information in amending a
3 designation in accordance with this subsection. Clas-
4 sified information shall not be subject to disclosure
5 for such time as it remains classified, except that
6 such information may be disclosed to a court ex
7 parte and in camera for purposes of judicial review
8 under subsection (d).

9 “(d) JUDICIAL REVIEW OF DESIGNATION.—

10 “(1) IN GENERAL.—Not later than 30 days
11 after publication in the Federal Register of a des-
12 ignation, an amended designation, or a determina-
13 tion in response to a petition for revocation, the for-
14 eign actor designated as a foreign intelligence threat
15 to higher education may seek judicial review in the
16 United States Court of Appeals for the District of
17 Columbia Circuit.

18 “(2) BASIS OF REVIEW.—Review under this
19 subsection shall be based solely upon the administra-
20 tive record, except that the Government may submit,
21 for ex parte and in camera review, classified infor-
22 mation used in making the designation, amended
23 designation, or determination in response to a peti-
24 tion for revocation, in a manner consistent with the

1 Classified Information Procedures Act (18 U.S.C.
2 App.).

3 “(3) SCOPE OF REVIEW.—The Court shall hold
4 unlawful and set aside a designation, amended des-
5 ignation, or determination in response to a petition
6 for revocation the court finds to be—

7 “(A) arbitrary, capricious, an abuse of dis-
8 cretion, or otherwise not in accordance with
9 law;

10 “(B) contrary to constitutional right,
11 power, privilege, or immunity;

12 “(C) in excess of statutory jurisdiction, au-
13 thority, or limitation, or short of statutory
14 right;

15 “(D) lacking substantial support in the ad-
16 ministrative record taken as a whole or in clas-
17 sified information submitted to the court under
18 paragraph (2); or

19 “(E) not in accord with the procedures re-
20 quired by law.

21 “(4) JUDICIAL REVIEW INVOKED.—The pend-
22 ency of an action for judicial review of a designation,
23 amended designation, or determination in response
24 to a petition for revocation shall not affect the appli-
25 cation of this section, unless the court issues a final

1 order setting aside the designation, amended des-
2 ignation, or determination in response to a petition
3 for revocation.

4 “(e) REPORTS.—

5 “(1) IN GENERAL.—Not later than 180 days
6 after the date of enactment of this section, and every
7 year thereafter, the Director shall submit to the rel-
8 evant committees of Congress a detailed report con-
9 taining the following:

10 “(A) A description and assessment of for-
11 eign actors who engage in activities listed in
12 subsection (b)(1).

13 “(B) An assessment of the impact of for-
14 eign actors who engage in activities listed in
15 subsection (b)(1) on scholarship and research
16 and development in connection with institu-
17 tions.

18 “(C) An assessment of the implementation
19 and operation of the designation process for
20 foreign intelligence threats to higher education
21 established under this section.

22 “(D) An assessment of the likely effects of
23 the designation of foreign intelligence threats to
24 higher education on activities listed in sub-
25 section (b)(1) in connection with institutions.

1 “(2) FORM OF REPORTS.—The reports required
2 under paragraph (1) shall be submitted in an un-
3 classified form, but may contain a classified annex.”.

4 (b) TECHNICAL AND CONFORMING AMENDMENT.—
5 The table of sections for chapter 33 of title 28, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

 “540D. Designation of foreign intelligence threats to higher education.”.

8 **SEC. 3. DISCLOSURE OF FOREIGN GIFTS OR CONTRACTS.**

9 Section 117 of the Higher Education Act of 1965 (20
10 U.S.C. 1011f) is amended—

11 (1) by striking subsection (a) and inserting the
12 following:

13 “(a) DISCLOSURE REPORT.—

14 “(1) IN GENERAL.—An institution described in
15 paragraph (2) for a calendar year shall file a disclo-
16 sure report under subsection (b) with the Secretary
17 by January 31 or July 31, whichever is sooner.

18 “(2) TYPES OF INSTITUTIONS.—An institution
19 described in this paragraph is an institution that—

20 “(A) is owned or controlled by a foreign
21 source;

22 “(B) receives a gift from or enters into a
23 contract with a foreign source, the value of
24 which is \$250,000 or more, considered alone or
25 in combination with all other gifts from or con-

1 tracts with that foreign source within a cal-
2 endar year; or

3 “(C) receives a gift from or enters into a
4 contract with a foreign intelligence threat to
5 higher education, or any agent thereof, the
6 value of which is \$50,000 or more, considered
7 alone or in combination with all other gifts
8 from or contracts with that foreign intelligence
9 threat to higher education within a calendar
10 year.”;

11 (2) in subsection (b)—

12 (A) by redesignating paragraphs (1)
13 through (3) as subparagraphs (A) through (C),
14 respectively, and adjusting the margins appro-
15 priately;

16 (B) by striking “REPORT.—Each” and in-
17 serting the following: “REPORT.—

18 “(1) IN GENERAL.—Each”;

19 (C) in subparagraph (A) (as so redesign-
20 ated), by inserting “, as measured by the fair
21 market value of such gifts and contracts” after
22 “particular country”;

23 (D) in subparagraph (B), as so redesign-
24 nated—

(i) by inserting “the identity of the foreign government and, if applicable, the foreign government agency, and” after “with a foreign government,”; and

(ii) by inserting “, as measured by the fair market value of such gifts and contracts” before the period at the end; and

(E) by adding at the end the following:

“(2) REQUIREMENTS RELATING TO FOREIGN INTELLIGENCE THREATS.—For any institution described in subsection (a)(2)(C), the report required under this section shall contain, in addition to any applicable information required under paragraph (1)—

“(A) the identity of the foreign intelligence threat to higher education involved; and

“(B) the aggregate dollar amount of such gifts and contracts attributable to the foreign intelligence threat to higher education, as measured by the fair market value of such gifts and contracts.”;

(3) in subsection (c), by adding at the end the following:

“(3) For any such gift received from, or contract entered into with, a foreign intelligence threat

1 to higher education, the fair market value of the gift
2 or contract, the date of the gift or contract, and a
3 description of any such conditions or restrictions on
4 the gift or contract.”;

5 (4) in subsection (e), by inserting “, and shall
6 also be accessible to the public through electronic
7 means” before the period at the end; and

8 (5) in subsection (h)—

9 (A) by redesignating paragraphs (2)
10 through (5) as paragraphs (3) through (6), re-
11 spectively;

12 (B) by inserting after paragraph (1) the
13 following:

14 “(2) the term ‘foreign intelligence threat to
15 higher education’ means any foreign source that is
16 designated as a foreign intelligence threat to higher
17 education in accordance with section 540D of title
18 28, United States Code;”;

19 (C) in paragraph (4) (as so redesignated),
20 by striking “or property” and inserting “, prop-
21 erty, services, or payment to the staff of an in-
22 stitution”;

23 (D) by striking paragraph (5) (as so redesi-
24 gnated) and inserting the following:

1 “(5) the term ‘institution’ means an institution
2 of higher education—

3 “(A) to which Federal financial assistance
4 is extended (directly or indirectly through an-
5 other entity or person); or

6 “(B) that receives support from the exten-
7 sion of Federal financial assistance to any of
8 the institution’s subunits”; and

9 (E) in paragraph (6)(B) (as so redesign-
10 nated), by inserting “institutes, instructional
11 programs,” before “research or lecture”.

○