

118TH CONGRESS
1ST SESSION

S. 3362

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 SENATE OF THE UNITED STATES

NOVEMBER 29, 2023

Mr. TILLIS (for himself, Mrs. BLACKBURN, Mr. BRAUN, Mr. CORNYN, Ms. ERNST, Mr. GRASSLEY, and Mr. SCHMITT) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 31 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) (or successor regulations)) by a foreign
15 source, the institution shall file a disclosure report
16 in accordance with subsection (b)(2) with the Sec-
17 retary on July 31 of each year.

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

23 “(b) CONTENTS OF REPORT.—

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

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

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

9 “(I) the name of the individual,
10 department, or benefactor at the insti-
11 tution receiving the gift or carrying
12 out the contract;

13 “(II) the intended purpose of
14 such gift or contract, as provided to
15 the institution by such foreign source,
16 or if no such purpose is provided by
17 such foreign source, the intended use
18 of such gift or contract, as provided
19 by the institution; and

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

24 “(ii) with respect to a gift—

1 “(I) the total fair market dollar
2 amount or dollar value of the gift, as
3 of the date of submission of such re-
4 port; and

5 “(II) the date on which the insti-
6 tution received such gift;

7 “(iii) with respect to a contract—

8 “(I) the date on which such con-
9 tract commences;

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

12 “(III) an assurance that the in-
13 stitution will—

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

17 “(AA) the date that is
18 4 years after the date on
19 which the contract com-
20 mences;

21 “(BB) the date on
22 which the contract termi-
23 nates; or

24 “(CC) the last day of
25 any period that applicable

1 State law requires a copy of
2 such contract to be main-
3 tained; and

4 “(bb) upon request of the
5 Secretary during an investigation
6 under section 117D(a)(1),
7 produce such an unredacted copy
8 of the contract; and

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

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

20 “(i) the name of such foreign govern-
21 ment;

22 “(ii) the department, agency, office,
23 or division of such foreign government that
24 approved such gift or contract, as applica-
25 ble; and

1 “(iii) the physical mailing address of
2 such department, agency, office, or divi-
3 sion.

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

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

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

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

24 “(iv) the physical mailing address of
25 such foreign source, or if such address is

1 not available, a statement certified by the
2 compliance officer in accordance with sub-
3 section (f)(2) that the institution has rea-
4 sonably attempted to obtain such address.

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

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

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

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

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

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

24 “(B) the date on which the foreign source
25 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 31 immediately
13 following 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 by—

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

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

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

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

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

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

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

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

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

9 “(2) NAME AND ADDRESS OF FOREIGN
10 SOURCE.—The Secretary shall not disclose the name
11 or address of a foreign source that is a natural per-
12 son (other than the attributable country of such for-
13 eign source) included in a disclosure report—

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

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

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

1 disclosed in such report) to the Director of the Federal
2 Bureau of Investigation, the Director of National Intel-
3 ligence, the Director of the Central Intelligence Agency,
4 the Secretary of State, the Secretary of Defense, the At-
5 torney General, the Secretary of Commerce, the Secretary
6 of Homeland Security, the Secretary of Energy, the Direc-
7 tor of the National Science Foundation, and the Director
8 of the National Institutes of Health.

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

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

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

19 “(g) DEFINITIONS.—In this section:

20 “(1) AFFILIATED ENTITY.—The term ‘affiliated
21 entity’, when used with respect to an institution,
22 means an entity or organization that operates pri-
23 marily for the benefit of, or under the auspices of,
24 such institution, including a foundation of the insti-

1 tution or a related entity (such as any educational,
2 cultural, or language entity).

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

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

9 “(B) the country of incorporation of a for-
10 eign source that is a legal entity, or, if such
11 country is unknown, the principal place of busi-
12 ness (as applicable) of such foreign source.

13 “(3) CONTRACT.—The term ‘contract’—

14 “(A) means—

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

18 “(ii) any affiliation, agreement, or
19 similar transaction with a foreign source
20 that involves the use or exchange of an in-
21 stitution’s name, likeness, time, services, or
22 resources; and

23 “(iii) any agreement for the acquisi-
24 tion by purchase, lease, or barter, of prop-
25 erty or services from a foreign source

1 (other than an arms-length agreement for
2 such acquisition from a foreign source that
3 is not a foreign country of concern or a
4 foreign entity of concern); and

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

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

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

16 “(B) a legal entity, governmental or other-
17 wise, created under the laws of a foreign state
18 or states;

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

22 “(D) a legal entity, governmental or other-
23 wise, substantially controlled (as described in
24 section 668.174(e)(3) of title 34, Code of Fed-
25 eral Regulations) (or successor regulations)) by

1 a government, entity, or person described in
2 subparagraph (A), (B), or (C);

3 “(E) an agent of a government, entity, or
4 person described in subparagraph (A), (B), or
5 (C), including—

6 “(i) a subsidiary or affiliate of a for-
7 eign legal entity, acting on behalf of such
8 government, entity, or person;

9 “(ii) a person that operates primarily
10 for the benefit of, or under the auspices of,
11 such government, entity, or person, includ-
12 ing a foundation or a related entity (such
13 as any educational, cultural, or language
14 entity); and

15 “(iii) a person who is an agent of a
16 foreign principal (as such term is defined
17 in section 1 of the Foreign Agents Reg-
18 istration Act of 1938 (22 U.S.C. 611).

19 “(5) GIFT.—The term ‘gift’—

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

22 “(B) does not include—

23 “(i) any payment of one or more ele-
24 ments of a student’s cost of attendance (as
25 such term is defined in section 472) to an

1 institution by, or scholarship from, a for-
2 eign source who is a natural person, acting
3 in their individual capacity and not as an
4 agent for, at the request or direction of, or
5 on behalf of, any person or entity (except
6 the student), made for not more than 15
7 students, and that is not made under a re-
8 stricted or conditional contract with such
9 foreign source; or

10 “(ii) assignment or license of reg-
11 istered industrial and intellectual property
12 rights, such as patents, utility models,
13 trademarks, or copyrights, or technical as-
14 sistance, that are not identified as being
15 associated with a national security risk or
16 concern by the Federal Research Security
17 Council; or

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

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

1 “(b) WAIVERS.—

2 “(1) SUBMISSION.—

3 “(A) FIRST WAIVER REQUESTS.—

4 “(i) IN GENERAL.—An institution
5 that desires to enter into a contract with
6 a foreign entity of concern or a foreign
7 country of concern may submit to the Sec-
8 retary, not later than 120 days before the
9 institution enters into such a contract, a
10 request to waive the prohibition under sub-
11 section (a) with respect to such contract.

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

15 “(I) the complete and unredacted
16 text of the proposed contract for
17 which the waiver is being requested,
18 and if such original contract is not in
19 English, a translated copy of the text
20 into English (in a manner that com-
21 plies with section 117(c)); and

22 “(II) a statement that—

23 “(aa) is signed by the point
24 of contact of the institution de-
25 scribed in section 117(f); and

1 “(bb) includes information
2 that demonstrates that such con-
3 tract is for the benefit of the in-
4 stitution’s mission and students
5 and will promote the security,
6 stability, and economic vitality of
7 the United States.

8 “(B) RENEWAL WAIVER REQUESTS.—

9 “(i) IN GENERAL.—An institution
10 that has entered into a contract pursuant
11 to a waiver issued under this section, the
12 term of which is longer than the 1-year
13 waiver period and the terms and conditions
14 of which remain the same as the proposed
15 contract submitted as part of the request
16 for such waiver may submit, not later than
17 120 days before the expiration of such
18 waiver period, a request for a renewal of
19 such waiver for an additional 1-year period
20 (which shall include any information re-
21 quested by the Secretary).

22 “(ii) TERMINATION.—If the institu-
23 tion fails to submit a request under clause
24 (i) or is not granted a renewal under such
25 clause, such institution shall terminate

1 such contract on the last day of the origi-
2 nal 1-year waiver period.

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

4 “(A) not later than 60 days before an in-
5 stitution enters into a contract pursuant to a
6 waiver request under paragraph (1)(A), or be-
7 fore a contract described in paragraph (1)(B)(i)
8 is renewed pursuant to a renewal request under
9 such paragraph, shall notify the institution—

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

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

15 “(B) may only issue a waiver under this
16 section to an institution if the Secretary deter-
17 mines, in consultation with the heads of each
18 agency and department listed in section 117(e),
19 that the contract for which the waiver is being
20 requested is for the benefit of the institution’s
21 mission and students and will promote the secu-
22 rity, stability, and economic vitality of the
23 United States.

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

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

6 “(B) the Committee on Health, Education,
7 Labor, and Pensions of the Senate,
8 of the intent to issue the waiver, including a jus-
9 tification for the waiver.

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

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

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

18 “(c) DESIGNATION DURING CONTRACT TERM.—In
19 the case of an institution that enters into a contract with
20 a foreign source that is not a foreign country of concern
21 or a foreign entity of concern but which, during the term
22 of such contract, is designated as a foreign country of con-
23 cern or foreign entity of concern, such institution shall ter-
24 minate such contract not later than 60 days after the Sec-
25 retary notifies the institution of such designation.

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

2 “(1) IN GENERAL.—In the case of an institu-
3 tion that has entered into a contract with a foreign
4 country of concern or foreign entity of concern prior
5 to the date of enactment of the DETERRENT
6 Act—

7 “(A) the institution shall immediately sub-
8 mit to the Secretary a waiver request in accord-
9 ance with subsection (b)(1)(A)(ii); and

10 “(B) the Secretary shall, upon receipt of
11 the request submitted under subparagraph (A),
12 immediately issue a waiver to the institution for
13 a period beginning on the date on which the
14 waiver is issued and ending on the earlier of—

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

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

20 “(2) RENEWAL.—An institution that has en-
21 tered into a contract described in paragraph (1), the
22 term of which is longer than the waiver period de-
23 scribed in subparagraph (B) of such paragraph and
24 the terms and conditions of which remain the same
25 as the contract submitted as part of the request re-

1 quired under subparagraph (A) of such paragraph,
2 may submit a request for renewal of the waiver
3 issued under such paragraph in accordance with
4 subsection (b)(1)(B).

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

7 (c) INTERAGENCY INFORMATION SHARING.—Not
8 later than 90 days after the date of the enactment of this
9 Act, the Secretary of Education shall transmit to the
10 heads of each agency and department listed in section
11 117(e) of the Higher Education Act of 1965, as amended
12 by this Act—

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

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

20 (A) of an institution with respect to the
21 compliance of such institution with such sec-
22 tion; and

23 (B) initiated prior to the date of the enact-
24 ment of this Act.

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

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

6 **“SEC. 117B. INSTITUTIONAL POLICY REGARDING FOREIGN**
 7 **GIFTS AND CONTRACTS TO FACULTY AND**
 8 **STAFF.**

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

13 “(1) a policy requiring covered individuals em-
 14 ployed at the institution to disclose in a report to
 15 such institution on July 31 of each calendar year
 16 that begins after the year in which such enactment
 17 date occurs—

18 “(A) any gift received from a foreign
 19 source in the previous calendar year, the value
 20 of which is greater than the minimal value (as
 21 such term is defined in section 7342(a) of title
 22 5, United States Code) or is of undetermined
 23 value, and including the date on which the gift
 24 was received;

25 “(B) any contract entered into with a for-
 26 eign source in the previous calendar year, the

1 value of which is \$5,000 or more, considered
2 alone or in combination with all other contracts
3 with that foreign source within the calendar
4 year, and including the date on which such con-
5 tract commences and, as applicable, the date on
6 which such contract terminates;

7 “(C) any contract with a foreign source in
8 force during the previous calendar year that has
9 an undetermined monetary value, and including
10 the date on which such contract commences
11 and, as applicable, the date on which such con-
12 tract terminates; and

13 “(D) any contract entered into with a for-
14 eign country of concern or foreign entity of con-
15 cern in the previous calendar year, the value of
16 which is \$0 or more, and including the begin-
17 ning and ending dates of such contract and the
18 full text of such contract and any addenda;

19 “(2) a publicly available and searchable data-
20 base (in electronic and downloadable format), on a
21 website of the institution, of the information re-
22 quired to be disclosed under paragraph (1) that—

23 “(A) makes available the information dis-
24 closed under paragraph (1) beginning on the
25 date that is 30 days after receipt of the report

1 under such paragraph containing such informa-
2 tion and until the latest of—

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

5 “(I) a gift referred to in para-
6 graph (1)(A) is received; or

7 “(II) a contract referred to in
8 subparagraph (B), (C) or (D) of para-
9 graph (1) begins; or

10 “(ii) the date on which a contract re-
11 ferred to in subparagraph (B), (C) or (D)
12 of paragraph (1) terminates; and

13 “(B) is searchable and sortable by—

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

16 “(ii) the attributable country with re-
17 spect to which information is being dis-
18 closed;

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

21 “(iv) the name of the foreign source
22 (other than a foreign source who is a nat-
23 ural person);

24 “(3) a plan effectively to identify and manage
25 potential information gathering by foreign sources

1 through espionage targeting covered individuals that
2 may arise from gifts received from, or contracts en-
3 tered into with, a foreign source, including through
4 the use of—

5 “(A) periodic communications;

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

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

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

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

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

22 “(B) receives funds under title VI.

23 “(c) DEFINITIONS.—In this section—

1 “(1) the terms ‘foreign source’, ‘gift’, and ‘at-
2 tributable country’ have the meanings given such
3 terms in section 117(g);

4 “(2) the term ‘contract’—

5 “(A) means any—

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

9 “(ii) affiliation, agreement, or similar
10 transaction with a foreign source involving
11 the use or exchange of the name, likeness,
12 time, services, or resources of covered indi-
13 viduals employed at an institution de-
14 scribed in subsection (b); or

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

19 “(B) does not include any fair-market,
20 arms-length agreement made by covered indi-
21 viduals for the acquisition, by purchase, lease,
22 or barter of property or services from a foreign
23 source other than such a foreign source that is
24 a foreign country of concern or a foreign entity
25 of concern; and

1 “(3) the term ‘covered individual’—

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

6 “(B) shall be interpreted in accordance
7 with the Guidance for Implementing National
8 Security Presidential Memorandum 33 (NSPM–
9 33) on National Security Strategy for United
10 States Government-Supported Research and
11 Development published by the Subcommittee on
12 Research Security and the Joint Committee on
13 the Research Environment in January 2022.”.

14 **SEC. 4. INVESTMENT DISCLOSURE REPORT.**

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

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

19 “(a) INVESTMENT DISCLOSURE REPORT.—A speci-
20 fied institution shall file a disclosure report in accordance
21 with subsection (b) with the Secretary on July 31 imme-
22 diately following any calendar year in which the specified
23 institution purchases, sells, or holds (directly or indirectly
24 through any chain of ownership) one or more investments
25 of concern.

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

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

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

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

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

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

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

24 “(2) CERTIFICATIONS OF POOLED FUNDS.—
25 The Secretary, after consultation with the Secretary

1 of the Treasury, shall establish procedures under
2 which certain regulated investment companies, ex-
3 change traded funds, and other pooled invest-
4 ments—

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

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

9 “(d) TREATMENT OF RELATED ORGANIZATIONS.—
10 For purposes of this section, assets held by any related
11 organization (as defined in section 4968(d)(2) of the In-
12 ternal Revenue Code of 1986) with respect to a specified
13 institution shall be treated as held by such specified insti-
14 tution, except that—

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

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

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

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

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

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

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

21 “(3) certify the institution has, for purposes of
22 filing such report under subsection (a), followed an
23 established institutional policy and conducted good
24 faith efforts and reasonable due diligence to deter-

1 mine the accuracy and valuations of the assets re-
2 ported.

3 “(h) DATABASE REQUIREMENT.—

4 “(1) IN GENERAL.—Beginning not later than
5 60 days before the July 31 immediately following
6 the date of enactment of the DETERRENT Act, the
7 Secretary shall establish and maintain a searchable
8 database on a website of the Department, under
9 which all reports submitted under this section—

10 “(A) are made publicly available (in elec-
11 tronic and downloadable format), including any
12 information provided in such reports;

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

15 “(C) are searchable and sortable.

16 “(2) TIMELINE ON INCLUDING REPORTS.—Not
17 later than 30 days after receipt of a disclosure re-
18 port under this section, the Secretary shall include
19 such report in the database described in paragraph
20 (1).

21 “(i) DEFINITIONS.—In this section:

22 “(1) INVESTMENT OF CONCERN.—

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

1 “(i) A foreign country of concern.

2 “(ii) A foreign entity of concern.

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

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

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

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

12 “(2) SPECIFIED INSTITUTION.—

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

16 “(i) such institution is not a public in-
17 stitution; and

18 “(ii) the aggregate fair market value
19 of—

20 “(I) the assets held by such insti-
21 tution at the end of such calendar
22 year (other than those assets which
23 are used directly in carrying out the
24 institution’s exempt purpose) is in ex-
25 cess of \$6,000,000,000; or

1 “(II) the investments of concern
2 held by such institution at the end of
3 such calendar year is in excess of
4 \$250,000,000.

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

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

15 (a) ENFORCEMENT AND OTHER GENERAL PROVI-
16 SIONS.—The Higher Education Act of 1965 (20 U.S.C.
17 1001 et seq.), as amended by section 4 of this Act, is fur-
18 ther amended by inserting after section 117C the fol-
19 lowing:

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

21 “(a) ENFORCEMENT.—

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

1 “(2) CIVIL ACTION.—Whenever it appears that
2 an institution has knowingly or willfully failed to
3 comply with a requirement of any of the sections
4 listed in paragraph (1) (including any rule or regula-
5 tion promulgated under any such section) based on
6 such an investigation, a civil action shall be brought
7 by the Attorney General, at the request of the Sec-
8 retary, in an appropriate district court of the United
9 States, or the appropriate United States court of
10 any territory or other place subject to the jurisdic-
11 tion of the United States, to request such court to
12 compel compliance with the requirement of the sec-
13 tion that has been violated.

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

18 “(A) pay to the Treasury of the United
19 States the full costs to the United States of ob-
20 taining compliance with the requirement of such
21 section, including all associated costs of inves-
22 tigation and enforcement; and

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

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

5 “(A) SECTION 117.—

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

15 “(I) In the case of an institution
16 that knowingly or willfully fails to
17 comply with a reporting requirement
18 under subsection (a)(1) of section
19 117, such fine shall be in an amount
20 that is—

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

1 “(bb) in the case of a gift or
2 contract of no value or of inde-
3 terminable value, not less than 1
4 percent, and not more than 10
5 percent of the total amount of
6 Federal funds received by the in-
7 stitution under this Act for the
8 most recent fiscal year.

9 “(II) In the case of an institution
10 that knowingly or willfully fails to
11 comply with the reporting requirement
12 under subsection (a)(2) of section
13 117, such fine shall be in an amount
14 that is not less than 10 percent of the
15 total amount of Federal funds re-
16 ceived by the institution under this
17 Act for the most recent fiscal year.

18 “(ii) SUBSEQUENT VIOLATIONS.—In
19 the case of an institution that has been
20 fined pursuant to clause (i) with respect to
21 a calendar year, and that knowingly or
22 willfully fails to comply with a requirement
23 of section 117 with respect to any addi-
24 tional calendar year, the Secretary shall
25 impose a fine on the institution with re-

1 spect to any such additional calendar year
2 as follows:

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

10 “(aa) not less than
11 \$100,000 but not more than
12 twice the monetary value of the
13 gift from, or contract with, the
14 foreign source; or

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

23 “(II) In the case of an institution
24 that knowingly or willfully fails to
25 comply with a reporting requirement

1 under subsection (a)(2) of section 117
2 with respect to an additional calendar
3 year, such fine shall be in an amount
4 that is not less than 20 percent of the
5 total amount of Federal funds re-
6 ceived by the institution under this
7 Act for the most recent fiscal year.

8 “(B) SECTION 117A.—

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

19 “(ii) SUBSEQUENT VIOLATIONS.—In
20 the case of an institution that has been
21 fined pursuant to clause (i), the Secretary
22 shall impose a fine on the institution for
23 each subsequent time the institution know-
24 ingly or willfully fails to comply with a re-
25 quirement of section 117A in an amount

1 that is not less than 20 percent of the total
2 amount of Federal funds received by the
3 institution under this Act for the most re-
4 cent fiscal year.

5 “(C) SECTION 117B.—

6 “(i) FIRST-TIME VIOLATIONS.—In the
7 case of an institution that knowingly or
8 willfully fails to comply with a requirement
9 of section 117B with respect to a calendar
10 year, and that has not previously know-
11 ingly or willfully failed to comply with such
12 a requirement, the Secretary shall impose
13 a fine on the institution of not less than
14 \$250,000, but not more than the total
15 amount of gifts or contracts reported by
16 such institution in the database required
17 under section 117B(a)(2).

18 “(ii) SUBSEQUENT VIOLATIONS.—In
19 the case of an institution that has been
20 fined pursuant to clause (i) with respect to
21 a calendar year, and that knowingly or
22 willfully fails to comply with a requirement
23 of section 117B with respect to any addi-
24 tional calendar year, the Secretary shall
25 impose a fine on the institution with re-

1 spect to any such additional calendar year
2 in an amount that is not less than
3 \$500,000, but not more than twice the
4 total amount of gifts or contracts reported
5 by such institution in the database re-
6 quired under section 117B(a)(2).

7 “(D) SECTION 117C.—

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

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

23 “(II) the combined value of all
24 investments of concern sold over the
25 course of such calendar year, as meas-

1 ured by the fair market value of such
2 investments at the time of the sale.

3 “(ii) SUBSEQUENT VIOLATIONS.—In
4 the case of a specified institution that has
5 been fined pursuant to clause (i) with re-
6 spect to a calendar year, and that know-
7 ingly or willfully fails to comply with a re-
8 quirement of section 117C with respect to
9 any additional calendar year, the Secretary
10 shall impose a fine on the institution with
11 respect to any such additional calendar
12 year in an amount that is not less than
13 100 percent and not more than 200 per-
14 cent of the sum of—

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

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

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

4 “(1) receive and respond to inquiries and re-
5 quests for technical assistance from institutions re-
6 garding compliance with the requirements of sec-
7 tions 117, 117A, 117B, and 117C;

8 “(2) coordinate and implement technical im-
9 provements to the database described in section
10 117(d)(1), including—

11 “(A) improving upload functionality by al-
12 lowing for batch reporting, including by allow-
13 ing institutions to upload one file with all re-
14 quired information into the database;

15 “(B) publishing and maintaining a data-
16 base users guide annually, including informa-
17 tion on how to edit an entry and how to report
18 errors;

19 “(C) creating a standing user group (to
20 which chapter 10 of title 5, United States Code,
21 shall not apply) to discuss possible database im-
22 provements, which group shall—

23 “(i) include at least—

24 “(I) 3 members representing
25 public institutions with high or very

1 high levels of research activity (as de-
2 fined by the National Center for Edu-
3 cation Statistics);

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

8 “(III) 2 members representing
9 proprietary institutions of higher edu-
10 cation (as defined in section 102(b));
11 and

12 “(IV) 2 members representing
13 area career and technical education
14 schools (as defined in subparagraph
15 (C) or (D) of section 3(3) of the Carl
16 D. Perkins Career and Technical
17 Education Act of 2006); and

18 “(ii) meet at least twice a year with
19 officials from the Department to discuss
20 possible database improvements;

21 “(D) publishing, on a publicly available
22 website, recommended database improvements
23 following each meeting described in subpara-
24 graph (C)(ii); and

1 “(E) responding, on a publicly available
2 website, to each recommendation published
3 under subparagraph (D) as to whether or not
4 the Department will implement the rec-
5 ommendation, including the rationale for either
6 approving or rejecting the recommendation;

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

11 “(A) the authorizing committees; and

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

14 “(4) maintain, on a publicly accessible
15 website—

16 “(A) a full comprehensive list of all foreign
17 countries of concern and foreign entities of con-
18 cern; and

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

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

1 “(c) DEFINITIONS.—For purposes of sections 117,
2 117A, 117B, 117C, and this section:

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

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

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

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

24 “(3) INSTITUTION.—The term ‘institution’
25 means an institution of higher education (as such

1 term is defined in section 102, other than an institu-
2 tion described in subsection (a)(1)(c) of such sec-
3 tion).”.

4 (b) PROGRAM PARTICIPATION AGREEMENT.—Section
5 487(a) of the Higher Education Act of 1965 (20 U.S.C.
6 1094) is amended by adding at the end the following:

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

9 “(B) An institution that, for 3 consecutive in-
10 stitutional fiscal years, violates any requirement of
11 any of the sections listed in subparagraph (A),
12 shall—

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

16 “(ii) in order to regain eligibility to partici-
17 pate in such programs, demonstrate compliance
18 with all requirements of each such section for
19 not less than 2 institutional fiscal years after
20 the institutional fiscal year in which such insti-
21 tution became ineligible.”.

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

1 (1) shall conduct a study to identify ways to
2 improve intergovernmental agency coordination re-
3 garding implementation and enforcement of sections
4 117, 117A, 117B, and 117C of the Higher Edu-
5 cation Act of 1965 (20 U.S.C. 1011f), as amended
6 or added by this Act, including increasing informa-
7 tion sharing, increasing compliance rates, and estab-
8 lishing processes for enforcement; and
9 (2) shall submit to the Congress, and make
10 public, a report containing the results of such study.

○