

119TH CONGRESS
1ST SESSION

S. _____

To amend the Higher Education Act of 1965 to strengthen disclosure requirements relating to foreign gifts and contracts, to prohibit contracts between institutions of higher education and certain foreign entities and countries of concern, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. TILLIS introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Higher Education Act of 1965 to strengthen disclosure requirements relating to foreign gifts and contracts, to prohibit contracts between institutions of higher education and certain foreign entities and countries of concern, and for other purposes.

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 “Defending Education
5 Transparency and Ending Rogue Regimes Engaging in
6 Nefarious Transactions Act” or the “DETERRENT
7 Act”.

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

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

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

6 “(a) DISCLOSURE REPORTS.—

7 “(1) AGGREGATE GIFTS AND CONTRACT DIS-
8 CLOSURES.—An institution shall file with the Sec-
9 retary, in accordance with subsection (b)(1), a dis-
10 closure report on July 31 of the calendar year imme-
11 diately following any calendar year in which—

12 “(A) the institution receives a gift from, or
13 enters into a contract with, a foreign source
14 (other than a foreign country of concern or for-
15 eign entity of concern)—

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

21 “(ii) the value of which is indetermi-
22 nate; or

23 “(B) the institution—

24 “(i) receives a gift from a foreign
25 country of concern or foreign entity of con-

1 cern, without regard to the value of such
2 gift; or

3 “(ii) upon receiving a waiver under
4 section 117A to enter into a contract with
5 such a country or entity, enters into such
6 contract, without regard to the value of
7 such contract.

8 “(2) FOREIGN SOURCE OWNERSHIP OR CON-
9 TROL DISCLOSURES.—Notwithstanding paragraph
10 (1), in the case of an institution that is substantially
11 controlled (as described in section 668.174(e)(3) of
12 title 34, Code of Federal Regulations) (or successor
13 regulations)) by a foreign source, the institution
14 shall file with the Secretary, in accordance with sub-
15 section (b)(2), a disclosure report on July 31 of each
16 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 include 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 name of the individual, de-
5 partment, or other entity at the institution
6 receiving the gift or carrying out the con-
7 tract on behalf of the institution;

8 “(ii) any intended purpose of the gift
9 or contract communicated to the institu-
10 tion by the foreign source, and, as of the
11 date of filing such report, the manner in
12 which the institution intends to use such
13 gift or contract;

14 “(iii) in the case of a restricted or
15 conditional gift or contract, a description
16 of each restriction or condition that meets
17 the definition of the term ‘restricted or
18 conditional gift or contract’ in subsection
19 (f);

20 “(iv) with respect to such a gift—

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

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

3 “(v) with respect to such a contract—

4 “(I) the total fair market dollar
5 amount or dollar value of the con-
6 tract, as of the date of submission of
7 such report;

8 “(II) the date on which the insti-
9 tution enters into such contract;

10 “(III) the date on which such
11 contract first takes effect;

12 “(IV) if the contract has a termi-
13 nation date, such termination date;
14 and

15 “(V) an assurance that the insti-
16 tution will—

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

20 “(AA) the date that is
21 5 years after the date on
22 which such contract first
23 takes effect;

1 “(BB) the date on
2 which the contract termi-
3 nates; or

4 “(CC) the last day of
5 any period that applicable
6 State law requires a copy of
7 such contract to be main-
8 tained; and

9 “(bb) upon request of the
10 Secretary during an investigation
11 under section 117C(a)(1),
12 produce such an unredacted copy
13 of the contract.

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

18 “(i) the name of such foreign govern-
19 ment;

20 “(ii) the department, agency, office,
21 or division of such foreign government that
22 approved such gift or contract, as applica-
23 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)(I) the legal name of the foreign
9 source; or

10 “(II) in the case of a gift received
11 from a foreign source that awarded such
12 gift to the institution as an agent de-
13 scribed in subsection (f)(4)(G) on behalf of
14 another foreign source—

15 “(aa) the legal name of the for-
16 eign source that awarded such gift;
17 and

18 “(bb) the legal name of the for-
19 eign source on whose behalf the gift
20 was awarded, or a statement certified
21 by a compliance officer in accordance
22 with section 117C(e) that the institu-
23 tion has reasonably attempted to ob-
24 tain such name;

1 “(ii) in the case of a foreign source
2 that is a natural person, each country of
3 citizenship of such person, or, if no such
4 country is known, the principal country of
5 residence of such person;

6 “(iii) in the case of a foreign source
7 that is a legal entity, the country in which
8 such entity is incorporated, or, if such in-
9 formation is not available, the principal
10 place of business of such entity;

11 “(iv) the physical mailing address of
12 such foreign source, or, if such address is
13 not available, a statement certified by a
14 compliance officer in accordance with sec-
15 tion 117C(c) that the institution has rea-
16 sonably attempted to obtain such address;
17 and

18 “(v) any affiliation of the foreign
19 source to an organization that is des-
20 ignated as a foreign terrorist organization
21 pursuant to section 219 of the Immigra-
22 tion and Nationality Act (8 U.S.C. 1189).

23 “(D) With respect to a contract entered
24 into with a foreign source that is a foreign

1 country of concern or a foreign entity of con-
2 cern—

3 “(i) a complete and unredacted copy
4 of the original contract, and if such origi-
5 nal contract is not in English, a translated
6 copy in accordance with subsection (c);

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

9 “(iii) the statement submitted by the
10 institution for purposes of receiving such a
11 waiver under section 117A(b)(2).

12 “(E) With respect to a gift received from
13 a foreign source that is a foreign country of
14 concern or a foreign entity of concern, an as-
15 surance that the institution will—

16 “(i) in a case in which the institution
17 received documentation relating to such
18 gift, maintain such documentation until
19 the later of—

20 “(I) the date that is 5 years after
21 the date such gift was received by the
22 institution; or

23 “(II) the last day of any period
24 that applicable State law requires a

1 copy of such documentation to be
2 maintained; and

3 “(ii) upon request of the Secretary
4 during an investigation under section
5 117C(a)(1), produce such documentation.

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

9 “(A) the information required under para-
10 graph (1);

11 “(B) the legal name and the mailing ad-
12 dress of the foreign source that substantially
13 controls the institution as described in such
14 subsection;

15 “(C) the date on which the foreign source
16 assumed such substantial control; and

17 “(D) any changes in program or structure
18 of the institution of higher education resulting
19 from such substantial control.

20 “(c) TRANSLATION REQUIREMENTS.—Any informa-
21 tion required to be disclosed under this section, or re-
22 quested by the Secretary pursuant to an investigation
23 under section 117C(a)(1), with respect to a gift or con-
24 tract that is not in English shall be translated into

1 English, for purposes of such disclosure or such investiga-
2 tion, by a person that is not—

3 “(1) a foreign source that awarded such gift or
4 entered into such contract; or

5 “(2) any other foreign source from an attrib-
6 utable country of a foreign source referred to in
7 paragraph (1).

8 “(d) PUBLIC INSPECTION.—

9 “(1) DATABASE REQUIREMENT.—Beginning not
10 later than May 31 of the calendar year following the
11 date of enactment of the DETERRENT Act, the
12 Secretary shall—

13 “(A) establish and maintain a searchable
14 database on a website of the Department, under
15 which all reports submitted under this section
16 (including, to the extent practicable, any report
17 submitted under this section before the date of
18 enactment of the DETERRENT Act)—

19 “(i) are made publicly available (in
20 electronic and downloadable format), in-
21 cluding any information provided in such
22 reports (other than the information prohib-
23 ited from being publicly disclosed pursuant
24 to paragraph (2));

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

3 “(iii) to the extent practicable, are
4 searchable and sortable—

5 “(I) by the institution that filed
6 such report;

7 “(II) by the date on which the in-
8 stitution filed such report;

9 “(III) by the date on which the
10 institution received the gift which is
11 the subject of the report;

12 “(IV) by the date on which the
13 institution enters into the contract
14 which is the subject of the report;

15 “(V) by the date on which such
16 contract first takes effect;

17 “(VI) by the attributable country
18 of such gift or contract;

19 “(VII) by the name of the foreign
20 source;

21 “(VIII) by the information de-
22 scribed in subparagraph (C)(i); and

23 “(IX) by the information de-
24 scribed in subparagraph (C)(ii);

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

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

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

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

12 “(D) with respect to a disclosure report
13 that does not include the name or address of a
14 foreign source, indicate, as part of the public
15 record of such report included in such database,
16 that such report did not include such informa-
17 tion.

18 “(2) APPLICATION OF FEDERAL PRIVACY LAW;
19 PROTECTIONS FOR NATURAL PERSONS.—

20 “(A) APPLICATION OF FEDERAL PRIVACY
21 LAW.—Except as provided in subparagraph (B),
22 a disclosure report filed pursuant to this section
23 is not subject to Federal privacy law (including
24 any exemption from disclosure described in sec-
25 tion 552(b) of title 5, United States Code)).

1 “(B) PROTECTIONS FOR NATURAL PER-
2 SONS.—

3 “(i) IN GENERAL.—Except as pro-
4 vided in clause (ii), with respect to a dis-
5 closure report filed under this section, the
6 name or address (other than the attrib-
7 utable country) of a foreign source that is
8 a natural person—

9 “(I) may not be publicly dis-
10 closed; and

11 “(II) is exempt from disclosure
12 under subsection (b)(3) of section 552
13 of title 5, United States Code (com-
14 monly referred to as the Freedom of
15 Information Act).

16 “(ii) EXCEPTIONS FOR CONTRACTS
17 WITH A FOREIGN COUNTRY OF CONCERN
18 OR FOREIGN ENTITY OF CONCERN.—
19 Clause (i) shall not apply to a disclosure
20 report filed pursuant to this section that
21 contains information with respect to a con-
22 tract described in subsection (a)(1)(B)(ii)
23 entered into with a foreign country of con-
24 cern or foreign entity of concern.

1 “(e) INTERAGENCY INFORMATION SHARING.—Not-
2 withstanding any other provision of law, not later than
3 30 days after receiving a disclosure report from an institu-
4 tion in compliance with this section, the Secretary shall
5 transmit an unredacted copy of such report (including the
6 name and address of a foreign source disclosed in such
7 report) to the Director of the Federal Bureau of Investiga-
8 tion, the Director of National Intelligence, the Director
9 of the Central Intelligence Agency, the Secretary of State,
10 the Secretary of Defense, the Attorney General, the Sec-
11 retary of Commerce, the Secretary of Homeland Security,
12 the Secretary of Energy, the Director of the National
13 Science Foundation, and the Director of the National In-
14 stitutes of Health.

15 “(f) DEFINITIONS.—In this section:

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

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

24 “(A) the country of citizenship of a foreign
25 source who is a natural person, or, if such

1 country is unknown, the principal residence of
2 such foreign source; or

3 “(B) the country of incorporation of a for-
4 eign source that is a legal entity, or, if such
5 country is unknown, the principal place of busi-
6 ness (as applicable) of such foreign source.

7 “(3) CONTRACT.—The term ‘contract’—

8 “(A) means—

9 “(i) any agreement for the acquisition
10 by purchase, lease, or barter of property
11 (including intellectual property) or services
12 by the foreign source;

13 “(ii) except as provided in subpara-
14 graph (B)(ii), any agreement for the acqui-
15 sition by purchase, lease, or barter of prop-
16 erty (including intellectual property) or
17 services from a foreign source; and

18 “(iii) 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 “(B) does not include—

24 “(i) an agreement made between an
25 institution and a foreign source regarding

1 any payment of one or more elements of a
2 student's cost of attendance (as such term
3 is defined in section 472), unless such an
4 agreement is made for more than 15 stu-
5 dents or is made under a restricted or con-
6 ditional contract;

7 “(ii) an arms-length agreement for
8 the acquisition by purchase, lease, or bar-
9 ter of property (including intellectual prop-
10 erty) or services from a foreign source that
11 is not a foreign country of concern or a
12 foreign entity of concern; or

13 “(iii) any assignment or license of a
14 granted intellectual property right (includ-
15 ing a patent, trademark, or copyright) that
16 is not associated with a category listed in
17 the Commerce Control List maintained by
18 the Bureau of Industry and Security of the
19 Department of Commerce and set forth in
20 Supplement No. 1 to part 774 of title 15,
21 Code of Federal Regulations (or successor
22 regulations).

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

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

3 “(B) a legal entity, governmental or other-
4 wise, created under the laws of a foreign state
5 or states;

6 “(C) a legal entity, governmental or other-
7 wise, substantially controlled (as described in
8 section 668.174(c)(3) of title 34, Code of Fed-
9 eral Regulations) (or successor regulations)) by
10 a foreign source;

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

14 “(E) an international organization (as
15 such term is defined in the International Orga-
16 nizations Immunities Act (22 U.S.C. 288));

17 “(F) a person who is an agent of a foreign
18 principal (as such term is defined in section 1
19 of the Foreign Agents Registration Act of 1938
20 (22 U.S.C. 611)); or

21 “(G) an agent of any of the entities de-
22 scribed in subparagraphs (A) through (F), in-
23 cluding—

1 “(i) a subsidiary or affiliate of a for-
2 eign legal entity, acting on behalf of such
3 an entity; and

4 “(ii) a person that operates primarily
5 for the benefit of, or under the auspices of,
6 such an entity, such as a foundation of
7 such entity, or an educational, cultural, or
8 language entity.

9 “(5) GIFT.—The term ‘gift’—

10 “(A) means any gift of money, property
11 (including intellectual property), resources,
12 staff, or services; and

13 “(B) does not include—

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

1 “(ii) any assignment or license of a
2 granted intellectual property right (includ-
3 ing a patent, trademark, or copyright) that
4 is not associated with a category listed in
5 the Commerce Control List maintained by
6 the Bureau of Industry and Security of the
7 Department of Commerce and set forth in
8 Supplement No. 1 to part 774 of title 15,
9 Code of Federal Regulations (or successor
10 regulations); or

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

14 “(6) RESTRICTED OR CONDITIONAL GIFT OR
15 CONTRACT.—The term ‘restricted or conditional gift
16 or contract’ means any endowment, gift, grant, con-
17 tract, award, present, or property (including intellec-
18 tual property) of any kind which includes provisions
19 regarding—

20 “(A) the employment, assignment, or ter-
21 mination of faculty;

22 “(B) the establishment of, or the provision
23 of funding for, departments, centers, institutes,
24 instructional programs, research or lecture pro-
25 grams, or new faculty positions;

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

3 “(D) the award of grants, loans, scholar-
4 ships, fellowships, or other forms of financial
5 aid restricted to students of a specified country,
6 religion, sex, ethnic origin, or political opin-
7 ion.”.

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

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

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

18 “(b) WAIVERS.—

19 “(1) IN GENERAL.—A waiver issued under this
20 section to an institution with respect to a contract
21 shall only—

22 “(A) waive the prohibition under sub-
23 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 “(2) SUBMISSION.—

5 “(A) FIRST WAIVER REQUESTS.—

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

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

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

24 “(II) a statement that—

1 “(aa) is certified by a com-
2 pliance officer of the institution
3 designated in accordance with
4 section 117C(c); and

5 “(bb) includes information
6 that demonstrates that such con-
7 tract—

8 “(AA) is for the benefit
9 of the institution’s mission
10 and students; and

11 “(BB) will promote the
12 security, stability, and eco-
13 nomic vitality of the United
14 States.

15 “(B) RENEWAL WAIVER REQUESTS.—

16 “(i) IN GENERAL.—An institution
17 that, pursuant to a waiver issued under
18 this section, has entered into a contract,
19 the term of which is longer than the 1-year
20 waiver period and the terms and conditions
21 of which remain the same as the proposed
22 contract submitted as part of the request
23 for such waiver may submit, not later than
24 120 days before the expiration of such
25 waiver period, a request for a renewal of

1 such waiver for an additional 1-year period
2 (which shall include any information re-
3 quested by the Secretary).

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

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

11 “(A) not later than 60 days before an in-
12 stitution enters into a contract pursuant to a
13 waiver request under paragraph (2)(A), or be-
14 fore a contract described in paragraph (2)(B)(i)
15 is renewed pursuant to a renewal request under
16 such paragraph, shall notify the institution—

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

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

22 “(B) may only issue a waiver under this
23 section to an institution if the Secretary deter-
24 mines, in consultation with each individual list-

1 ed in section 117(e), that the contract for which
2 the waiver is being requested—

3 “(i) is for the benefit of the institu-
4 tion’s mission and students; and

5 “(ii) will promote the security, sta-
6 bility, and economic vitality of the United
7 States.

8 “(4) DISCLOSURE.—Not less than 2 weeks
9 prior to issuing a waiver under paragraph (2), the
10 Secretary shall notify the authorizing committees of
11 the intent to issue the waiver, including a justifica-
12 tion for the waiver.

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

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

22 “(1) IN GENERAL.—In the case of an institu-
23 tion that has entered into a contract with a foreign
24 country of concern or foreign entity of concern prior

1 to the date of enactment of the DETERRENT
2 Act—

3 “(A) the institution shall as soon as prac-
4 ticable, but not later than 30 days after such
5 date of enactment, submit to the Secretary a
6 waiver request in accordance with clause (ii) of
7 subsection (b)(2)(A); and

8 “(B) the Secretary shall, upon receipt of
9 the request submitted under such clause, issue
10 a waiver to the institution for a period begin-
11 ning on the date on which the waiver is issued
12 and ending on the sooner of—

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

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

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

1 issued under such paragraph in accordance with
2 subsection (b)(2)(B).

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

5 (c) INTERAGENCY INFORMATION SHARING.—Not-
6 withstanding any other provision of law, not later than
7 90 days after the date of enactment of this Act, the Sec-
8 retary of Education shall transmit to each individual listed
9 in section 117(e) of the Higher Education Act of 1965,
10 as amended by this Act—

11 (1) an unredacted copy of each report (includ-
12 ing the name and address of a foreign source dis-
13 closed in such 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 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 enactment
24 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 the preceding section, 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 enactment of the DETERRENT Act, each institu-
12 tion described in subsection (b) shall maintain—

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

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

1 “(B) any contract with a foreign source
2 (other than a foreign country of concern or for-
3 eign entity of concern) entered into or in effect
4 during the previous calendar year, the value of
5 which is \$5,000 or more, considered alone or in
6 combination with all other contracts with that
7 foreign source within the calendar year, and in-
8 cluding the date on which such contract is en-
9 tered into, the date on which the contract first
10 takes effect, and, as applicable, the date on
11 which such contract terminates;

12 “(C) any contract with a foreign source
13 (other than a foreign country of concern or for-
14 eign entity of concern) entered into or in effect
15 during the previous calendar year that has an
16 indeterminate monetary value, and including
17 the date on which such contract is entered into,
18 the date on which the contract first takes ef-
19 fect, and, as applicable, the date on which such
20 contract terminates; and

21 “(D) any contract entered into or in effect
22 with a foreign country of concern or foreign en-
23 tity of concern during the previous calendar
24 year, the value of which is \$0 or more or which

1 has an indeterminate monetary value, and in-
2 cluding—

3 “(i) the date on which such contract
4 is entered into;

5 “(ii) the date on which the contract
6 first takes effect;

7 “(iii) if the contract has a termination
8 date, such termination date; and

9 “(iv) the full text of such contract and
10 any addenda;

11 “(2) a publicly available and searchable data-
12 base (in electronic and downloadable format), on a
13 website of the institution, of the information re-
14 quired to be disclosed under paragraph (1) (other
15 than the information prohibited from public disclo-
16 sure pursuant to subsection (c)) that—

17 “(A) makes available the information dis-
18 closed under paragraph (1) (other than the in-
19 formation prohibited from public disclosure pur-
20 suant to subsection (c)) beginning on the date
21 that is 30 days after receipt of the report under
22 such paragraph containing such information
23 and until the latest of—

24 “(i) the date that is 5 years after the
25 date on which—

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

3 “(II) a contract referred to in
4 subparagraph (B), (C), or (D) of
5 paragraph (1) first takes effect;

6 “(ii) the date on which a contract re-
7 ferred to in subparagraph (B), (C), or (D)
8 of paragraph (1) terminates; or

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

12 “(B) is searchable and sortable—

13 “(i) if the subject of the disclosure is
14 a gift, by the date on which the gift is re-
15 ceived;

16 “(ii) if the subject of the disclosure is
17 a contract—

18 “(I) by the date on which such
19 contract is entered into; and

20 “(II) by the date on which such
21 contract first takes effect;

22 “(iii) by the attributable country with
23 respect to which information is being dis-
24 closed;

1 “(iv)(I) if the covered individual at an
2 institution is making the disclosure, by the
3 most specific division of the institution
4 (such as the department, school, or college)
5 that the covered individual is in; and

6 “(II) if the covered individual at the
7 affiliated entity of the institution is making
8 the disclosure, by the name of such affili-
9 ated entity;

10 “(v) by the name of the foreign
11 source; and

12 “(3) an effective plan to identify and manage
13 potential information gathering by foreign sources
14 through espionage targeting covered individuals that
15 may arise from gifts received from, or contracts en-
16 tered into with, a foreign source, including through
17 the use of—

18 “(A) periodic communications;

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

22 “(C) enforcement of the policy described in
23 paragraph (1); and

24 “(4) for purposes of investigations under sec-
25 tion 117C(a)(1), a record of the name of each indi-

1 vidual who makes a disclosure under paragraph (1)
2 and each report disclosed under such paragraph.

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

5 “(1) received more than \$50,000,000 in Fed-
6 eral funds in any of the previous five calendar years
7 to support (in whole or in part) research and devel-
8 opment (as determined by the institution and meas-
9 ured by the Higher Education Research and Devel-
10 opment Survey of the National Center for Science
11 and Engineering Statistics); or

12 “(2) receives funds under title VI.

13 “(c) APPLICATION OF FEDERAL PRIVACY LAW; PRO-
14 TECTIONS FOR NATURAL PERSONS.—

15 “(1) APPLICATION OF FEDERAL PRIVACY
16 LAW.—Except as provided in paragraph (2), a dis-
17 closure made pursuant to this section is not subject
18 to Federal privacy law.

19 “(2) PROTECTIONS FOR NATURAL PERSONS.—

20 “(A) IN GENERAL.—Except as provided in
21 subparagraph (B), with respect to a disclosure
22 made pursuant to this section, the following
23 may not be publicly disclosed:

1 “(i) The name or address (other than
2 the attributable country) of a foreign
3 source that is a natural person.

4 “(ii) The name or any other person-
5 ally identifiable information of a covered
6 individual making such disclosure.

7 “(B) EXCEPTIONS FOR CONTRACTS WITH
8 A FOREIGN COUNTRY OF CONCERN OR FOREIGN
9 ENTITY OF CONCERN.—Subparagraph (A) shall
10 not apply to a disclosure made pursuant to this
11 section that contains information with respect
12 to a contract entered into with a foreign coun-
13 try of concern or foreign entity of concern.

14 “(d) DEFINITIONS.—In this section—

15 “(1) the terms ‘affiliated entity’, ‘attributable
16 country’, ‘foreign source’, and ‘gift’ have the mean-
17 ings given such terms in section 117(f);

18 “(2) the term ‘contract’—

19 “(A) means—

20 “(i) any agreement for the acquisition
21 by purchase, lease, or barter of property
22 (including intellectual property) or services
23 by the foreign source;

24 “(ii) except as provided in subpara-
25 graph (B), any agreement for the acquisi-

1 tion by purchase, lease, or barter of prop-
2 erty (including intellectual property) or
3 services from a foreign source; and

4 “(iii) any affiliation, agreement, or
5 similar transaction with a foreign source
6 that involves the use or exchange of a cov-
7 ered individual’s name, likeness, time, serv-
8 ices, or resources; and

9 “(B) does not include—

10 “(i) an arms-length agreement for the
11 acquisition by purchase, lease, or barter of
12 property (including intellectual property)
13 or services from a foreign source that is
14 not a foreign country of concern or a for-
15 eign entity of concern; and

16 “(ii) any assignment or license of a
17 granted intellectual property right (includ-
18 ing a patent, trademark, or copyright) that
19 is not associated with a category listed in
20 the Commerce Control List maintained by
21 the Bureau of Industry and Security of the
22 Department of Commerce and set forth in
23 Supplement No. 1 to part 774 of title 15,
24 Code of Federal Regulations (or successor
25 regulations); 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 (or
14 any successor guidance).”.

15 **SEC. 4. ENFORCEMENT AND OTHER GENERAL PROVISIONS.**

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

20 **“SEC. 117C. ENFORCEMENT; SINGLE POINT-OF-CONTACT;
21 INSTITUTIONAL REQUIREMENTS.**

22 “(a) ENFORCEMENT.—

23 “(1) INVESTIGATION.—The Secretary (acting
24 through the General Counsel of the Department)
25 shall conduct investigations of possible violations of

1 sections 117, 117A, 117B, and subsection (c) of this
2 section by institutions and, whenever it appears that
3 an institution has knowingly or willfully failed to
4 comply with a requirement of any of such provisions
5 (including any rule or regulation promulgated under
6 any such provision), shall request that the Attorney
7 General bring a civil action in accordance with para-
8 graph (2).

9 “(2) CIVIL ACTION.—Whenever it appears that
10 an institution has knowingly or willfully failed to
11 comply with a requirement of any of the provisions
12 listed in paragraph (1) (including any rule or regula-
13 tion promulgated under any such provision) based
14 on an investigation under such paragraph, a civil ac-
15 tion shall be brought by the Attorney General, at the
16 request of the Secretary, in an appropriate district
17 court of the United States, or the appropriate
18 United States court of any territory or other place
19 subject to the jurisdiction of the United States, to
20 request such court to compel compliance with the re-
21 quirement of the provision that has been violated.

22 “(3) COSTS AND OTHER FINES.—An institution
23 that is compelled to comply with a requirement of a
24 provision listed in paragraph (1) pursuant to para-
25 graph (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 such
4 provision, including all associated costs of inves-
5 tigation and enforcement; and

6 “(B) if applicable, be subject to the appli-
7 cable fines described in paragraph (4).

8 “(4) FINES FOR VIOLATIONS.—The Secretary
9 shall impose a fine on an institution that is com-
10 pelled to comply with a requirement of a section list-
11 ed in paragraph (1) pursuant to paragraph (2) as
12 follows:

13 “(A) SECTION 117.—

14 “(i) FIRST-TIME VIOLATIONS.—In the
15 case of an institution that is compelled to
16 comply with a requirement of section 117
17 pursuant to a civil action described in
18 paragraph (2), and that has not previously
19 been compelled to comply with any such
20 requirement pursuant to such a civil ac-
21 tion, the Secretary shall impose a fine on
22 the institution for such violation as follows:

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

1 under subsection (a)(1) of section
2 117, such fine shall be in an amount
3 that is—

4 “(aa) for each gift or con-
5 tract with determinable value
6 that is the subject of such a fail-
7 ure to comply, the greater of—

8 “(AA) \$50,000; or

9 “(BB) the monetary
10 value of such gift or con-
11 tract; or

12 “(bb) for each gift or con-
13 tract of no value or of indeter-
14 minable value, not less than 1
15 percent and not more than 10
16 percent of the total amount of
17 Federal funds received by the in-
18 stitution under this Act for the
19 most recent fiscal year.

20 “(II) In the case of an institution
21 that knowingly or willfully fails to
22 comply with the reporting requirement
23 under subsection (a)(2) of section
24 117, such fine shall be in an amount
25 that is not less than 10 percent of the

1 total amount of Federal funds re-
2 ceived by the institution under this
3 Act for the most recent fiscal year.

4 “(ii) SUBSEQUENT VIOLATIONS.—In
5 the case of an institution that has pre-
6 viously been compelled to comply with a re-
7 quirement of section 117 pursuant to a
8 civil action described in paragraph (2), and
9 is subsequently compelled to comply with
10 such a requirement pursuant to a subse-
11 quent civil action described in paragraph
12 (2), the Secretary shall impose a fine on
13 the institution as follows:

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

20 “(aa) for each gift or con-
21 tract with determinable value
22 that is the subject of such a fail-
23 ure to comply, the greater of—

24 “(AA) \$100,000; or

1 “(BB) twice the mone-
2 tary value of such gift or
3 contract; or

4 “(bb) for each gift or con-
5 tract of no value or of indeter-
6 minable value, not less than 5
7 percent and not more than 10
8 percent of the total amount of
9 Federal funds received by the in-
10 stitution under this Act for the
11 most recent fiscal year.

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

21 “(B) SECTION 117A.—

22 “(i) FIRST-TIME VIOLATIONS.—In the
23 case of an institution that is compelled to
24 comply with a requirement of section 117A
25 pursuant to a civil action described in

1 paragraph (2), and that has not previously
2 been compelled to comply with any such
3 requirement pursuant to such a civil ac-
4 tion, the Secretary shall impose a fine on
5 the institution in an amount that is not
6 less than 5 percent and not more than 10
7 percent of the total amount of Federal
8 funds received 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 pre-
12 viously been compelled to comply with a re-
13 quirement of section 117A pursuant to a
14 civil action described in paragraph (2), and
15 is subsequently compelled to comply with
16 such a requirement pursuant to a subse-
17 quent civil action described in paragraph
18 (2), the Secretary shall impose a fine on
19 the institution in an amount that is not
20 less than 20 percent of the total amount of
21 Federal funds received by the institution
22 under this Act for the most recent fiscal
23 year.

24 “(C) SECTION 117B.—

1 “(i) FIRST-TIME VIOLATIONS.—In the
2 case of an institution that is compelled to
3 comply with a requirement of section 117B
4 pursuant to a civil action described in
5 paragraph (2), and that has not previously
6 been compelled to comply with any such
7 requirement pursuant to such a civil ac-
8 tion, the Secretary shall impose a fine on
9 the institution for such violation in an
10 amount that is the greater of—

11 “(I) \$250,000; or

12 “(II) the total amount of gifts or
13 contracts that the institution is com-
14 pelled to report pursuant to such civil
15 action.

16 “(ii) SUBSEQUENT VIOLATIONS.—In
17 the case of an institution that has pre-
18 viously been compelled to comply with a re-
19 quirement of section 117B pursuant to a
20 civil action described in paragraph (2), and
21 is subsequently compelled to comply with
22 such a requirement pursuant to a subse-
23 quent civil action described in paragraph
24 (2), the Secretary shall impose a fine on

1 the institution in an amount that is the
2 greater of—

3 “(I) \$500,000; or

4 “(II) twice the total amount of
5 gifts or contracts that the institution
6 is compelled to report pursuant to
7 such civil action.

8 “(D) INELIGIBILITY FOR WAIVER.—In the
9 case of an institution that is fined pursuant to
10 subparagraph (A)(ii), (B)(ii), or (C)(ii), the
11 Secretary shall prohibit the institution from ob-
12 taining a waiver, or a renewal of a waiver,
13 under section 117A.

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

17 “(1) receive and respond to inquiries and re-
18 quests for technical assistance from institutions re-
19 garding compliance with the requirements of sec-
20 tions 117, 117A, 117B, and subsection (c) of this
21 section;

22 “(2) coordinate and implement technical im-
23 provements to the database described in section
24 117(d)(1), including—

1 cation (as defined in section 102(b));
2 and

3 “(IV) 2 members representing
4 area career and technical education
5 schools (as defined in subparagraph
6 (C) or (D) of section 3(3) of the Carl
7 D. Perkins Career and Technical
8 Education Act of 2006 (20 U.S.C.
9 2302(3))); and

10 “(ii) meet at least twice a year with
11 officials from the Department to discuss
12 possible database improvements;

13 “(D) publishing, on a publicly available
14 website, recommended database improvements
15 following each meeting described in subpara-
16 graph (C)(ii); and

17 “(E) responding, on a publicly available
18 website, to each recommendation published
19 under subparagraph (D) as to whether or not
20 the Department will implement the rec-
21 ommendation, including the rationale for either
22 approving or rejecting the recommendation;

23 “(3) provide, every 90 days after the date of en-
24 actment of the DETERRENT Act, status updates

1 on any pending or completed investigations and civil
2 actions under subsection (a)(1) to—

3 “(A) the authorizing committees; and

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

6 “(4) maintain, on a publicly accessible
7 website—

8 “(A) a full comprehensive list of all foreign
9 countries of concern and foreign entities of con-
10 cern; and

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

13 “(5) not later than 7 days after making an up-
14 date to the list maintained under paragraph (4)(A),
15 notify each institution required to comply with the
16 sections listed in paragraph (1) of such update.

17 “(c) INSTITUTIONAL REQUIREMENTS FOR COMPLI-
18 ANCE OFFICERS AND INSTITUTIONAL POLICY REQUIRE-
19 MENTS.—

20 “(1) IN GENERAL.—An institution that is re-
21 quired to file a report under section 117, that is
22 seeking a waiver under section 117A, or that is sub-
23 ject to the requirements of section 117B, shall, not
24 later than the earlier of the date on which the insti-
25 tution files the first report under section 117, re-

1 quests the institution’s first waiver under section
2 117A, or first fulfills the requirements of section
3 117B—

4 “(A) establish an institutional policy that
5 the institution shall follow in meeting the re-
6 quirements of sections 117, 117A, and 117B;
7 and

8 “(B) designate and maintain at least one,
9 but not more than three, current employees or
10 legally authorized agents of such institution to
11 serve as compliance officers to carry out the re-
12 quirements listed in paragraph (2).

13 “(2) DUTIES OF COMPLIANCE OFFICERS.—A
14 compliance officer designated by an institution under
15 paragraph (1)(B) shall certify—

16 “(A) whenever the institution is required
17 to file a report under section 117—

18 “(i) the institution’s accurate compli-
19 ance with the reporting requirements
20 under such section;

21 “(ii) that the institution, in filing such
22 report under section 117—

23 “(I) followed the institutional
24 policy established under paragraph
25 (1)(A) applicable to such section; and

1 “(II) conducted good faith efforts
2 and reasonable due diligence to ensure
3 that accurate information is provided
4 in such report; and

5 “(iii) in the case of a report under
6 section 117, any statements by the institu-
7 tion required to be certified by such an of-
8 ficer under clause (i) or (iv) of section
9 117(b)(1)(C); and

10 “(B) whenever the institution requests a
11 waiver under section 117A—

12 “(i) that the institution—

13 “(I) is in compliance with the re-
14 quirements of such section; and

15 “(II) followed the institutional
16 policy established under paragraph
17 (1)(A) applicable to such section; and

18 “(ii) the statement by the institution
19 required to be certified by such an officer
20 under section 117A(b)(2)(A)(ii)(II); and

21 “(C) whenever the institution is subject to
22 the requirements of section 117B, that the in-
23 stitution—

24 “(i) is in compliance with the require-
25 ments of such section; and

1 “(ii) followed the institutional policy
2 established under paragraph (1)(A) appli-
3 cable to such section.

4 “(d) DEFINITIONS.—For purposes of sections 117,
5 117A, 117B, and this section:

6 “(1) FOREIGN COUNTRY OF CONCERN.—The
7 term ‘foreign country of concern’ means the fol-
8 lowing:

9 “(A) Any covered nation defined in section
10 4872 of title 10, United States Code.

11 “(B) Any country the Secretary, in con-
12 sultation with the Secretary of Defense, the
13 Secretary of State, and the Director of National
14 Intelligence, determines, for purposes of sec-
15 tions 117, 117A, 117B, or this section, to be
16 engaged in conduct that is detrimental to the
17 national security or foreign policy of the United
18 States.

19 “(2) FOREIGN ENTITY OF CONCERN.—The
20 term ‘foreign entity of concern’ has the meaning
21 given such term in section 10612(a) of the Research
22 and Development, Competition, and Innovation Act
23 (42 U.S.C. 19221(a)) and includes a foreign entity
24 that is identified on the list published under section
25 1286(e)(9)(A) of the John S. McCain National De-

1 fense Authorization Act for Fiscal Year 2019 (10
2 U.S.C. 4001 note; Public Law 115–232).

3 “(3) INSTITUTION.—The term ‘institution’
4 means an institution of higher education (as such
5 term is defined in section 102, other than an institu-
6 tion described in subsection (a)(1)(C) of such sec-
7 tion) with a program participation agreement under
8 section 487.”.

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

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

15 “(B) In the case of an institution described in
16 subparagraph (C), the institution will—

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

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

1 “(C) An institution described in this subpara-
2 graph is an institution—

3 “(i) against which judgment has been
4 granted in 3 separate civil actions described in
5 section 117C(a)(2) that have each resulted in
6 the institution being compelled to comply with
7 one or more requirements of section 117, 117A,
8 117B, or 117C(e); and

9 “(ii) that pursuant to section
10 117C(a)(4)(E), is prohibited from obtaining a
11 waiver, or a renewal of a waiver, under section
12 117A.”.

13 (c) GAO STUDY AND REPORT.—

14 (1) STUDY.—Not later than January 31 of the
15 second calendar year that begins after the date of
16 enactment of this Act, the Comptroller General of
17 the United States shall initiate a study to identify
18 ways to improve intergovernmental agency coordina-
19 tion regarding implementation and enforcement of
20 sections 117, 117A, 117B, and 117C(e) of the High-
21 er Education Act of 1965 (20 U.S.C. 1011f), as
22 amended or added by this Act, including increasing
23 information sharing, increasing compliance rates,
24 and establishing processes for enforcement.

1 (2) REPORT.—Not later than 3 years after the
2 date of the initiation of the study under paragraph
3 (1), the Comptroller General of the United States
4 shall submit to Congress, and make public, a report
5 containing the results of the study described in para-
6 graph (1).