

AMENDMENT TO RULES COMMITTEE PRINT

119–33

OFFERED BY MR. BAUMGARTNER OF

WASHINGTON

Add at the end of title XVII the following:

1 **Subtitle C—Defending Education**
2 **Transparency and Ending**
3 **Rogue Regimes Engaging in Ne-**
4 **farious Transactions Act**

5 **SECTION 17____. SHORT TITLE.**

6 This subtitle may be cited as the “Defending Edu-
7 cation Transparency and Ending Rogue Regimes Engag-
8 ing in Nefarious Transactions Act” or the “DETER-
9 RENT Act”.

10 **SEC. 17____. DISCLOSURES OF FOREIGN GIFTS.**

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

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

15 **“(a) DISCLOSURE REPORTS.—**

16 **“(1) AGGREGATE GIFTS AND CONTRACT DIS-**
17 **CLOSURES.—**An institution shall file with the Sec-
18 retary, in accordance with subsection (b)(1), a dis-

1 closure report on July 31 of the calendar year imme-
2 diately following any calendar year in which—

3 “(A) the institution receives a gift from, or
4 enters into a contract with, a foreign source
5 (other than a foreign country of concern or for-
6 eign entity of concern)—

7 “(i) the value of which is \$50,000 or
8 more, considered alone or in combination
9 with all other gifts from, or contracts with,
10 that foreign source within the calendar
11 year; or

12 “(ii) the value of which is indetermi-
13 nate; or

14 “(B) the institution—

15 “(i) receives a gift from a foreign
16 country of concern or foreign entity of con-
17 cern, without regard to the value of such
18 gift; or

19 “(ii) upon receiving a waiver under
20 section 117A to enter into a contract with
21 such a country or entity, enters into such
22 contract, without regard to the value of
23 such contract.

24 “(2) FOREIGN SOURCE OWNERSHIP OR CON-
25 TROL DISCLOSURES.—Notwithstanding paragraph

1 (1), in the case of an institution that is substantially
2 controlled (as described in section 668.174(e)(3) of
3 title 34, Code of Federal Regulations) (or successor
4 regulations)) by a foreign source, the institution
5 shall file with the Secretary, in accordance with sub-
6 section (b)(2), a disclosure report on July 31 of each
7 year.

8 “(3) TREATMENT OF AFFILIATED ENTITIES.—
9 For purposes of this section, any gift to, or contract
10 with, an affiliated entity of an institution shall be
11 considered a gift to, or contract with, respectively,
12 such institution.

13 “(b) CONTENTS OF REPORT.—

14 “(1) GIFTS AND CONTRACTS.—Each report to
15 the Secretary required under subsection (a)(1) shall
16 include the following:

17 “(A) With respect to a gift received from,
18 or a contract entered into with, any foreign
19 source—

20 “(i) the name of the individual, de-
21 partment, or other entity at the institution,
22 or the affiliated entity of the institution,
23 receiving the gift or carrying out the con-
24 tract on behalf of the institution;

1 “(ii) any intended purpose of the gift
2 or contract communicated to the institu-
3 tion by the foreign source, and, as of the
4 date of filing such report, the manner in
5 which the institution intends to use such
6 gift or contract;

7 “(iii) in the case of a restricted or
8 conditional gift or contract, a description
9 of each restriction or condition that meets
10 the definition of the term ‘restricted or
11 conditional gift or contract’ in subsection
12 (f);

13 “(iv) with respect to such a gift—

14 “(I) the total fair market dollar
15 amount or dollar value of the gift, as
16 of the date of submission of such re-
17 port; and

18 “(II) the date on which the insti-
19 tution received such gift;

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

21 “(I) the total fair market dollar
22 amount or dollar value of the con-
23 tract, as of the date of submission of
24 such report;

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

3 “(III) the date on which such
4 contract first takes effect;

5 “(IV) if the contract has a termi-
6 nation date, such termination date;
7 and

8 “(V) an assurance that the insti-
9 tution will—

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

13 “(AA) the date that is
14 5 years after the date on
15 which such contract first
16 takes effect;

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

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

1 “(bb) upon request of the
2 Secretary during an investigation
3 under section 117D(a)(1),
4 produce such an unredacted copy
5 of the contract.

6 “(B) With respect to a gift received from,
7 or a contract entered into with, a foreign source
8 that is a foreign government (other than the
9 government of a foreign country of concern)—

10 “(i) the name of such foreign govern-
11 ment;

12 “(ii) the department, agency, office,
13 or division of such foreign government that
14 approved such gift or contract, as applica-
15 ble; and

16 “(iii) the physical address and mailing
17 address of such department, agency, office,
18 or division.

19 “(C) With respect to a gift received from,
20 or contract entered into with, a foreign source
21 other than a foreign government subject to the
22 requirements of subparagraph (B)—

23 “(i)(I) the legal name of the foreign
24 source; or

1 “(II) in the case of a gift received
2 from a foreign source that awarded such
3 gift to the institution as an agent de-
4 scribed in subsection (f)(4)(G) on behalf of
5 another foreign source—

6 “(aa) the legal name of the for-
7 eign source that awarded such gift;
8 and

9 “(bb) the legal name of the for-
10 eign source on whose behalf the gift
11 was awarded, or a statement certified
12 by a compliance officer in accordance
13 with section 117D(c) that the institu-
14 tion has reasonably attempted to ob-
15 tain such name;

16 “(ii) in the case of a foreign source
17 that is a natural person, each country of
18 citizenship of such person, or, if no such
19 country is known, the principal country of
20 residence of such person;

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

1 “(iv) the physical address and mailing
2 address of such foreign source, or, if either
3 or both of such addresses are not available,
4 a statement certified by a compliance offi-
5 cer in accordance with section 117D(c)
6 that the institution has reasonably at-
7 tempted to obtain the physical address or
8 mailing address, as applicable; and

9 “(v) any affiliation of the foreign
10 source to an organization that is des-
11 ignated as a foreign terrorist organization
12 pursuant to section 219 of the Immigra-
13 tion and Nationality Act (8 U.S.C. 1189).

14 “(D) With respect to a contract entered
15 into with a foreign source that is a foreign
16 country of concern or a foreign entity of con-
17 cern—

18 “(i) a complete and unredacted copy
19 of the original contract, and if such origi-
20 nal contract is not in English, a translated
21 copy in accordance with subsection (c);

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

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

4 “(E) With respect to a gift received from
5 a foreign source that is a foreign country of
6 concern or a foreign entity of concern, an as-
7 surance that the institution will—

8 “(i) in a case in which the institution
9 received documentation relating to such
10 gift, maintain such documentation until
11 the latest of—

12 “(I) the date that is 5 years after
13 the date such gift was received by the
14 institution; or

15 “(II) the last day of any period
16 that applicable State law requires a
17 copy of such documentation to be
18 maintained; and

19 “(ii) upon request of the Secretary
20 during an investigation under section
21 117D(a)(1), produce such documentation;

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

1 “(A) the information required under para-
2 graph (1) of this subsection;

3 “(B) the legal name, the physical address,
4 and the mailing address of the foreign source
5 that substantially controls the institution as de-
6 scribed in such subsection;

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

9 “(D) any changes in program or structure
10 of the institution of higher education resulting
11 from such substantial control.

12 “(c) TRANSLATION REQUIREMENTS.—Any informa-
13 tion required to be disclosed under this section, or re-
14 quested by the Secretary pursuant to an investigation
15 under section 117D(a)(1), with respect to a gift or con-
16 tract that is not in English shall be translated into
17 English, for purposes of such disclosure or such investiga-
18 tion, by a person that is not—

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

21 “(2) any other foreign source from an attrib-
22 utable country of a foreign source referred to in
23 paragraph (1).

24 “(d) PUBLIC INSPECTION.—

1 “(1) DATABASE REQUIREMENT.—Beginning not
2 later than May 31 of the calendar year following the
3 date of enactment of the DETERRENT Act, the
4 Secretary shall—

5 “(A) establish and maintain a searchable
6 database on a website of the Department, under
7 which—

8 “(i) all reports submitted under this
9 section (including any report submitted
10 under this section before the date of enact-
11 ment of the DETERRENT Act)—

12 “(I) are made publicly available
13 (in electronic and downloadable for-
14 mat), including any information pro-
15 vided in such reports (other than the
16 information prohibited from being
17 publicly disclosed pursuant to para-
18 graph (2));

19 “(II) can be individually identi-
20 fied and compared; and

21 “(III) are searchable and sort-
22 able—

23 “(aa) by the institution that
24 filed such report;

1 “(bb) by the date on which
2 the institution filed such report;

3 “(cc) by the date of the
4 most recent amendment made to
5 such report, as applicable;

6 “(dd) by the date on which
7 the institution received the gift
8 which is the subject of the report;

9 “(ee) by the date on which
10 the institution enters into the
11 contract which is the subject of
12 the report;

13 “(ff) by the date on which
14 such contract first takes effect;

15 “(gg) by the attributable
16 country of such gift or contract;

17 “(hh) by the name of the
18 foreign source;

19 “(ii) by the information de-
20 scribed in subparagraph (C)(i);
21 and

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

1 “(ii) all reports submitted under sec-
2 tion 117B(b)—

3 “(I) are made publicly available
4 (in electronic and downloadable for-
5 mat), including any information pro-
6 vided in such reports (other than the
7 information prohibited from being
8 publicly disclosed pursuant to para-
9 graph (2)); and

10 “(II) are searchable and sort-
11 able—

12 “(aa) if the subject of the
13 disclosure is a gift, by the date
14 on which the gift is received;

15 “(bb) if the subject of the
16 disclosure is a contract—

17 “(AA) by the date on
18 which such contract is en-
19 tered into; and

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

23 “(cc) by the attributable
24 country with respect to which in-
25 formation is being disclosed;

1 “(dd)(AA) if the covered in-
2 dividual at an institution is mak-
3 ing the disclosure, by the most
4 specific division of the institution
5 (such as the department, school,
6 or college) that the covered indi-
7 vidual is at; and

8 “(BB) if the covered indi-
9 vidual at the affiliated entity of
10 the institution is making the dis-
11 closure, by the name of such af-
12 filiated entity; and

13 “(ee) by the name of the
14 foreign source;

15 “(B) not later than 30 days after receipt
16 of a disclosure report under this section or a re-
17 port under section 117B(b), include such report
18 in such database;

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

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

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

3 “(D) with respect to a disclosure report
4 under this section or a report under section
5 117B(b) that does not include the name, phys-
6 ical address, or mailing address of a foreign
7 source, indicate, as part of the public record of
8 such report included in such database, that
9 such report did not include such name, physical
10 address, or mailing address, as applicable; and

11 “(E) provide access to such database, in
12 accordance with subsection (e), to the Director
13 of the Federal Bureau of Investigation, the Di-
14 rector of National Intelligence, the Director of
15 the Central Intelligence Agency, the Secretary
16 of State, the Secretary of Defense, the Attorney
17 General, the Secretary of Commerce, the Sec-
18 retary of Homeland Security, the Secretary of
19 Energy, the Director of the National Science
20 Foundation, and the Director of the National
21 Institutes of Health.

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

24 “(A) APPLICATION OF FEDERAL PRIVACY
25 LAW.—Except as provided in subparagraph (B),

1 a report filed pursuant to this section or sub-
2 mitted pursuant to section 117B is not subject
3 to Federal privacy law (including any exemption
4 from disclosure described in section 552(b) of
5 title 5, United States Code)).

6 “(B) PROTECTIONS FOR NATURAL PER-
7 SONS.—

8 “(i) IN GENERAL.—

9 “(I) EXEMPTION FROM DISCLO-
10 SURE.—Except as provided in clause
11 (ii), the information described in sub-
12 clause (II)—

13 “(aa) may not be publicly
14 disclosed; and

15 “(bb) is exempt from disclo-
16 sure under subsection (b)(3) of
17 section 552 of title 5, United
18 States Code (commonly referred
19 to as the Freedom of Information
20 Act).

21 “(II) PROTECTED INFORMA-
22 TION.—The information described in
23 this subclause is the following:

24 “(aa) With respect to a re-
25 port filed under this section or

1 submitted pursuant to section
2 117B(b), a name or address
3 (other than the attributable
4 country) of a foreign source that
5 is a natural person.

6 “(bb) With respect to a re-
7 port submitted pursuant to sec-
8 tion 117B(b), a name or any
9 other personally identifiable in-
10 formation of a covered individual
11 making a disclosure included in
12 such report.

13 “(ii) EXCEPTIONS FOR CONTRACTS
14 WITH A FOREIGN COUNTRY OF CONCERN
15 OR FOREIGN ENTITY OF CONCERN.—
16 Clause (i) shall not apply to—

17 “(I) information with respect to a
18 contract described in subsection
19 (a)(1)(B)(ii) entered into with a for-
20 eign country of concern or foreign en-
21 tity of concern that is contained in a
22 disclosure report filed pursuant to this
23 section; or

24 “(II) information with respect to
25 a contract described in section

1 117B(a)(1)(D) entered into with a
2 foreign country of concern or foreign
3 entity of concern that is contained in
4 a report submitted pursuant to sec-
5 tion 117B(b).

6 “(e) INFORMATION SHARING.—

7 “(1) DATABASE ACCESS.—

8 “(A) IN GENERAL.—Access to the data-
9 base established under paragraph (1) of sub-
10 section (d) by the individuals listed in subpara-
11 graph (E) of such paragraph—

12 “(i) includes access to an unredacted
13 copy of each report (including any name or
14 address of a foreign source disclosed in
15 such report) submitted to the Secretary
16 pursuant to this section and section 117B
17 and made available on such database; and

18 “(ii) does not include the ability to—

19 “(I) edit such a report; or

20 “(II) submit a report to such
21 database.

22 “(B) NOTICE.—By not later than the date
23 on which the database is established under
24 paragraph (1) of subsection (d), the Secretary
25 shall notify each individual listed in subpara-

1 graph (E) of such paragraph of their ability to
2 access the database.

3 “(2) INFORMATION RELATED TO AN INVESTIGA-
4 TION.—Notwithstanding any other provision of law,
5 not later than 90 days after the date of the enact-
6 ment of this section, the Secretary shall transmit to
7 each individual listed in subsection (d)(1)(E) any re-
8 port, document, or other record generated by the
9 Department in the course of an investigation of an
10 institution with respect to the compliance of such in-
11 stitution with this section that was initiated prior to
12 the date of enactment of this section.

13 “(f) DEFINITIONS.—In this section:

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

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

22 “(A) the country of citizenship of a foreign
23 source who is a natural person, or, if such
24 country is unknown, the principal residence of
25 such foreign source; or

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

5 “(3) CONTRACT.—The term ‘contract’—

6 “(A) means—

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

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

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

21 “(B) does not include—

22 “(i) an agreement made between an
23 institution and a foreign source regarding
24 any payment of one or more elements of a
25 student’s cost of attendance (as such term

1 is defined in section 472), unless such an
2 agreement is made for more than 15 stu-
3 dents or is made under a restricted or con-
4 ditional contract;

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

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

21 “(4) FOREIGN SOURCE.—The term ‘foreign
22 source’ means—

23 “(A) a foreign government, including an
24 agency of a foreign government;

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

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

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

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

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

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

22 “(i) a subsidiary or affiliate of a for-
23 eign legal entity, acting on behalf of such
24 an entity; and

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

6 “(5) GIFT.—The term ‘gift’—

7 “(A) means any gift of money, property
8 (including intellectual property), resources,
9 staff, or services; and

10 “(B) does not include—

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

23 “(ii) any assignment or license of a
24 granted intellectual property right (includ-
25 ing a patent, trademark, or copyright) that

1 is not associated with a category listed in
2 the Commerce Control List maintained by
3 the Bureau of Industry and Security of the
4 Department of Commerce and set forth in
5 Supplement No. 1 to part 774 of title 15,
6 Code of Federal Regulations (or successor
7 regulations); or

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

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

17 “(A) the employment, assignment, or ter-
18 mination of faculty;

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

23 “(C) the selection, admission, or education
24 of students; or

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

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

11 **“SEC. 117A. PROHIBITION ON CONTRACTS WITH CERTAIN**
12 **FOREIGN ENTITIES AND COUNTRIES.**

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

16 “(b) WAIVERS.—

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

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

22 “(B) apply to the terms and conditions of
23 the proposed contract submitted as part of the
24 request for such waiver.

25 “(2) SUBMISSION.—

1 “(A) FIRST WAIVER REQUESTS.—

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

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

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

21 “(II) a statement that—

22 “(aa) is certified by a com-
23 pliance officer of the institution
24 designated in accordance with
25 section 117D(c); and

1 “(bb) includes information
2 that demonstrates that such con-
3 tract—

4 “(AA) is for the benefit
5 of the institution’s mission
6 and students; and

7 “(BB) will promote the
8 security, stability, and eco-
9 nomic vitality of the United
10 States.

11 “(B) RENEWAL WAIVER REQUESTS.—

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

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

7 “(3) WAIVER ISSUANCE.—The Secretary of De-
8 fense shall, in consultation with the Secretary of
9 Education—

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

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

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

21 “(B) may only issue a waiver under this
22 section to an institution if the Secretary of De-
23 fense and the Secretary of Education each de-
24 termine, after consultation with each individual

1 listed in section 117(d)(1)(E), that the contract
2 for which 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 of Defense shall notify the authorizing
11 committees and the Committees on Armed Services
12 of the House of Representatives and the Senate of
13 the intent to issue the waiver, including a justifica-
14 tion for the waiver.

15 “(c) TREATMENT OF CERTAIN CONTRACTS.—

16 “(1) IN GENERAL.—In the case of an institu-
17 tion that enters into, or has entered into, a covered
18 contract—

19 “(A) the institution shall—

20 “(i) terminate such contract; or

21 “(ii)(I) with respect to a covered con-
22 tract described in paragraph (3)(A), as
23 soon as practicable, but not later than 30
24 days after the date of enactment of the
25 DETERRENT Act, submit to the Sec-

1 retary of Defense a waiver request in ac-
2 cordance with clause (ii) of subsection
3 (b)(2)(A); and

4 “**(II)** with respect to a covered
5 contract described in paragraph
6 (3)(B), as soon as practicable, but not
7 later than 60 days after the date on
8 which the institution is notified by the
9 Secretary of Defense that the foreign
10 source has been designated as a for-
11 eign country of concern or foreign en-
12 tity of concern, submit to the Sec-
13 retary of Defense a waiver request in
14 accordance with clause (ii) of sub-
15 section (b)(2)(A); and

16 “**(B)** the Secretary of Defense shall, upon
17 receipt of a waiver request submitted pursuant
18 to clause (ii) of subparagraph (A), issue a waiv-
19 er to the institution for a period beginning on
20 the date on which the waiver is issued and end-
21 ing on the sooner of—

22 “(i) the date that is—

23 “**(I)** with respect to a covered
24 contract described in paragraph

1 (3)(A), 1 year after the date of enact-
2 ment of the DETERRENT Act; and

3 “(II) with respect to a covered
4 contract described in paragraph
5 (3)(B), 1 year after the date on which
6 the institution is notified by the Sec-
7 retary of Defense that the foreign
8 source has been designated as a for-
9 eign country of concern or foreign en-
10 tity of concern; and

11 “(ii) the date on which the contract
12 terminates.

13 “(2) RENEWAL.—An institution that enters
14 into, or has entered into, a covered contract, the
15 term of which is longer than the waiver period de-
16 scribed in paragraph (1)(B) and the terms and con-
17 ditions of which remain the same as the contract
18 submitted as part of the request submitted pursuant
19 to clause (ii) of paragraph (1)(A), may submit a re-
20 quest for renewal of the waiver issued under such
21 clause in accordance with subsection (b)(2)(B).

22 “(3) COVERED CONTRACT.—In this subsection,
23 the term ‘covered contract’ means—

24 “(A) a contract with a foreign country of
25 concern or foreign entity of concern entered

1 into prior to the date of enactment of the DE-
2 TERRENT Act; and

3 “(B) a contract with a foreign source that
4 is not a foreign country of concern or a foreign
5 entity of concern but which, during the term of
6 such contract, is designated as a foreign coun-
7 try of concern or foreign entity of concern,
8 without regard to whether such contract was
9 entered into prior to the date of enactment of
10 the DETERRENT Act.

11 “(d) CONTRACT DEFINED.—In this section, the term
12 ‘contract’ has the meaning given such term in section
13 117(f).”.

14 **SEC. 17____. POLICY REGARDING CONFLICTS OF INTEREST**
15 **FROM FOREIGN GIFTS AND CONTRACTS.**

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

19 **“SEC. 117B. INSTITUTIONAL POLICY REGARDING FOREIGN**
20 **GIFTS AND CONTRACTS TO FACULTY AND**
21 **STAFF.**

22 “(a) REQUIREMENT TO MAINTAIN POLICY.—Begin-
23 ning not later than 90 days after the date of enactment
24 of the DETERRENT Act, each institution described in
25 subsection (c) shall maintain—

1 “(1) a policy requiring covered individuals at
2 the institution and covered individuals at affiliated
3 entities of the institution to disclose in a report to
4 such institution by July 31 of each calendar year
5 that begins after the year in which such enactment
6 date occurs—

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

14 “(B) any contract with a foreign source
15 (other than a foreign country of concern or for-
16 eign entity of concern) entered into or in effect
17 during the previous calendar year, the value of
18 which is \$5,000 or more, considered alone or in
19 combination with all other contracts with that
20 foreign source within the calendar year, and in-
21 cluding the date on which such contract is en-
22 tered into, the date on which the contract first
23 takes effect, and, as applicable, the date on
24 which such contract terminates;

1 “(C) 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 that has an
5 indeterminate monetary value, and including
6 the date on which such contract is entered into,
7 the date on which the contract first takes ef-
8 fect, and, as applicable, the date on which such
9 contract terminates;

10 “(D) any contract entered into or in effect
11 with a foreign country of concern or foreign en-
12 tity of concern during the previous calendar
13 year, the value of which is \$0 or more or which
14 has an indeterminate monetary value, and in-
15 cluding—

16 “(i) the date on which such contract
17 is entered into;

18 “(ii) the date on which the contract
19 first takes effect;

20 “(iii) if the contract has a termination
21 date, such termination date; and

22 “(iv) the full text of such contract and
23 any addenda; and

24 “(E) with respect to subparagraphs (A)
25 through (D), the name and addresses of the ap-

1 plicable foreign source in the same manner as
2 the disclosure of the name and addresses of
3 such foreign source would be required under
4 section 117;

5 “(2) on a publicly available website of the insti-
6 tution, a link to the database established under sec-
7 tion 117(a)(1);

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

14 “(A) periodic communications;

15 “(B) accurate reporting under subsection
16 (b) of the information required to be disclosed
17 under paragraph (1); and

18 “(C) enforcement of the policy described in
19 paragraph (1); and

20 “(4) for purposes of investigations under sec-
21 tion 117D(a)(1), a record of the name of each indi-
22 vidual who makes a disclosure under paragraph (1)
23 and each report disclosed under such paragraph.

24 “(b) SUBMISSION TO SECRETARY.—An institution
25 shall file with the Secretary a report for each calendar

1 year in which the institution is subject to the requirements
2 of this section (as determined under subsection (c)) that
3 includes the information reported to the institution under
4 paragraph (1) of subsection (a).

5 “(c) INSTITUTIONS.—An institution shall be subject
6 to the requirements of this section if such institution—

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

14 “(2) receives funds under title VI.

15 “(d) DEFINITIONS.—In this section—

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

19 “(2) the term ‘contract’—

20 “(A) means—

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

1 “(ii) except as provided in subpara-
2 graph (B), any agreement for the acquisi-
3 tion by purchase, lease, or barter of prop-
4 erty (including intellectual property) or
5 services from a foreign source; and

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

11 “(B) does not include—

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

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

1 Code of Federal Regulations (or successor
2 regulations); and

3 “(3) the term ‘covered individual’—

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

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

17 **SEC. 17____. INVESTMENT DISCLOSURE REPORT.**

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

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

22 “(a) INVESTMENT DISCLOSURE REPORT.—A speci-
23 fied institution shall file a disclosure report in accordance
24 with subsection (b) with the Secretary on each July 31
25 immediately following any calendar year in which the spec-

1 ified institution purchases, sells, or holds (directly or indi-
2 rectly through any chain of ownership) one or more invest-
3 ments of concern.

4 “(b) CONTENTS OF REPORT.—Each report to the
5 Secretary required by subsection (a) shall contain, with
6 respect to the calendar year preceding the calendar year
7 in which such report is filed, the following information:

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

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

13 “(3) The combined value of all investments of
14 concern sold over the course of such calendar year,
15 as measured by the fair market value of such invest-
16 ments at the time of the sale.

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

19 “(c) TREATMENT OF CERTAIN POOLED INVEST-
20 MENTS.—

21 “(1) POOLED INVESTMENT CLASSIFICATION.—

22 “(A) IN GENERAL.—For purposes of this
23 section, except as provided in subparagraph
24 (B), a specified interest acquired by a specified
25 institution in a regulated investment company,

1 exchange traded fund, or any other pooled in-
2 vestment that holds an investment of concern
3 shall be treated as an investment of concern
4 and shall be reported pursuant to paragraph
5 (2)(A).

6 “(B) CERTIFICATION OF POOLED INVEST-
7 MENT.—Notwithstanding subparagraph (A),
8 such specified interest shall not be subject to
9 subparagraph (A) if the Secretary certifies, pur-
10 suant to paragraph (2)(B), that such pooled in-
11 vestment is not holding an investment of con-
12 cern.

13 “(2) PROCEDURES.—The Secretary, after con-
14 sultation with the Secretary of the Treasury and the
15 Securities and Exchange Commission, shall establish
16 procedures under which a pooled investment de-
17 scribed in paragraph (1)—

18 “(A) shall be reported in accordance with
19 the requirements of subsection (b); and

20 “(B) may be certified under paragraph
21 (1)(B) as not holding an investment of concern.

22 “(d) TREATMENT OF RELATED ORGANIZATIONS.—
23 For purposes of this section, assets held by any related
24 organization (as defined in section 4968(d)(2) of the In-
25 ternal Revenue Code of 1986) with respect to a specified

1 institution shall be treated as held by such specified insti-
2 tution, except that—

3 “(1) such assets shall not be taken into account
4 with respect to more than 1 specified institution;
5 and

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

12 “(e) VALUATION OF DEBT.—For purposes of this
13 section, the fair market value of any debt shall be the out-
14 standing principal amount of such debt.

15 “(f) REGULATIONS.—The Secretary, after consulta-
16 tion with the Secretary of the Treasury and the Securities
17 and Exchange Commission, may issue such regulations or
18 other guidance as may be necessary or appropriate to
19 carry out the purposes of this section, including regula-
20 tions or other guidance providing for the proper applica-
21 tion of this section with respect to certain regulated invest-
22 ment companies, exchange traded funds, and pooled in-
23 vestments.

24 “(g) DATABASE REQUIREMENT.—Beginning not
25 later than May 31 of the calendar year following the date

1 of enactment of the DETERRENT Act, the Secretary
2 shall—

3 “(1) establish and maintain a searchable data-
4 base on a website of the Department, under which
5 all reports submitted under this section—

6 “(A) are made publicly available (in elec-
7 tronic and downloadable format), including any
8 information provided in such reports;

9 “(B) can be individually identified and
10 compared; and

11 “(C) are searchable and sortable; and

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

15 “(h) DEFINITIONS.—In this section:

16 “(1) INVESTMENT OF CONCERN.—

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

20 “(i) A foreign country of concern.

21 “(ii) A foreign entity of concern.

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

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

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

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

7 “(2) SPECIFIED INSTITUTION.—

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

11 “(i) is not a public institution; and

12 “(ii) at the close of such calendar
13 year, holds—

14 “(I) assets (other than those as-
15 sets which are used directly in car-
16 rying out the institution’s exempt pur-
17 pose) the aggregate fair market value
18 of which is in excess of
19 \$6,000,000,000; and

20 “(II) investments of concern the
21 aggregate fair market value of which
22 is in excess of \$250,000,000.

23 “(B) REFERENCES TO CERTAIN TERMS.—

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

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

7 **SEC. 17___. ENFORCEMENT AND OTHER GENERAL PROVI-**
8 **SIONS.**

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

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

15 “(a) ENFORCEMENT.—

16 “(1) INVESTIGATION.—The Secretary (acting
17 through the General Counsel of the Department)
18 shall conduct investigations of possible violations of
19 sections 117, 117A, 117B, 117C, and subsection (c)
20 of this section by institutions and, whenever it ap-
21 pears that an institution has knowingly or willfully
22 failed to comply with a requirement of any of such
23 provisions (including any rule or regulation promul-
24 gated under any such provision), shall request that

1 the Attorney General bring a civil action in accord-
2 ance with paragraph (2).

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

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

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

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

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

8 “(A) SECTION 117.—

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

18 “(I) In the case of an institution
19 that knowingly or willfully fails to
20 comply with a reporting requirement
21 under subsection (a)(1) of section
22 117, such fine shall be in an amount
23 that is—

24 “(aa) for each gift or con-
25 tract with determinable value

1 that is the subject of such a fail-
2 ure to comply, the greater of—

3 “(AA) \$50,000 (ad-
4 justed annually for inflation
5 beginning 1 year after the
6 date of the enactment of
7 this section based on the
8 Consumer Price Index for
9 all Urban Consumers for the
10 previous calendar year); or

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

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

22 “(II) In the case of an institution
23 that knowingly or willfully fails to
24 comply with the reporting requirement
25 under subsection (a)(2) of section

1 117, such fine shall be in an amount
2 that is not less than 10 percent of the
3 total amount of Federal funds re-
4 ceived by the institution under this
5 Act for the most recent fiscal year.

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

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

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

1 “(AA) \$100,000 (ad-
2 justed annually for inflation
3 beginning 1 year after the
4 date of the enactment of
5 this section based on the
6 Consumer Price Index for
7 all Urban Consumers for the
8 previous calendar year); or

9 “(BB) twice the mone-
10 tary value of such gift or
11 contract; or

12 “(bb) for each gift or con-
13 tract of no value or of indeter-
14 minable value, not less than 5
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 a reporting requirement
23 under subsection (a)(2) of section
24 117, such fine shall be in an amount
25 that is not less than 20 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 “(B) SECTION 117A.—

5 “(i) FIRST-TIME VIOLATIONS.—In the
6 case of an institution that is compelled to
7 comply with a requirement of section 117A
8 pursuant to a civil action described in
9 paragraph (2), and that has not previously
10 been compelled to comply with any such
11 requirement pursuant to such a civil ac-
12 tion, the Secretary shall impose a fine on
13 the institution in an amount that is not
14 less than 5 percent and not more than 10
15 percent of the total amount of Federal
16 funds received 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 pre-
20 viously been compelled to comply with a re-
21 quirement of section 117A pursuant to a
22 civil action described in paragraph (2), and
23 is subsequently compelled to comply with
24 such a requirement pursuant to a subse-
25 quent civil action described in paragraph

1 (2), the Secretary shall impose a fine on
2 the institution in an amount that is not
3 less than 20 percent of the total amount of
4 Federal funds received by the institution
5 under this Act for the most recent fiscal
6 year.

7 “(C) SECTION 117B.—

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

18 “(I) \$250,000 (adjusted annually
19 for inflation beginning 1 year after
20 the date of the enactment of this sec-
21 tion based on the Consumer Price
22 Index for all Urban Consumers for
23 the previous calendar year); or

24 “(II) the total amount of gifts or
25 contracts that the institution is com-

1 pelled to report pursuant to such civil
2 action.

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

14 “(I) \$500,000 (adjusted annually
15 for inflation beginning 1 year after
16 the date of the enactment of this sec-
17 tion based on the Consumer Price
18 Index for all Urban Consumers for
19 the previous calendar year); or

20 “(II) twice the total amount of
21 gifts or contracts that the institution
22 is compelled to report pursuant to
23 such civil action.

24 “(D) SECTION 117C.—

1 “(i) FIRST-TIME VIOLATIONS.—In the
2 case of an institution that is compelled to
3 comply with a requirement of section 117C
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 in an amount that is not
10 less than 50 percent and not more than
11 100 percent of the sum of—

12 “(I) the aggregate fair market
13 value of all investments of concern
14 held by such institution as of the close
15 of the final calendar year for which
16 the institution is compelled to comply
17 with such requirement pursuant to
18 such civil action; and

19 “(II) the combined value of all
20 investments of concern sold over the
21 course of all the calendar years for
22 which the institution is compelled to
23 comply with such requirement pursu-
24 ant to such civil action, as measured

1 by the fair market value of such in-
2 vestments at the time of the sale.

3 “(ii) SUBSEQUENT VIOLATIONS.—In
4 the case of an institution that has pre-
5 viously been compelled to comply with a re-
6 quirement of section 117C pursuant to a
7 civil action described in paragraph (2), and
8 is subsequently compelled to comply with
9 such a requirement pursuant to a subse-
10 quent civil action described in paragraph
11 (2), the Secretary shall impose a fine on
12 the institution in an amount that is not
13 less than 100 percent and not more than
14 200 percent 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 the final calendar year for which
19 the institution is compelled to comply
20 with such requirement pursuant to
21 such subsequent civil action; and

22 “(II) the combined value of all
23 investments of concern over the course
24 of all the calendar years for which the
25 institution is compelled to comply with

1 such requirement pursuant to such
2 subsequent civil action, as measured
3 by the fair market value of such in-
4 vestments at the time of the sale.

5 “(E) INELIGIBILITY FOR WAIVER.—In the
6 case of an institution that is fined pursuant to
7 subparagraph (A)(ii), (B)(ii), (C)(ii), or (D)(ii),
8 the Secretary shall prohibit the institution from
9 obtaining a waiver, or a renewal of a waiver,
10 under section 117A.

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

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

19 “(2) coordinate and implement technical im-
20 provements to the database described in section
21 117(d)(1), including—

22 “(A) improving upload functionality by al-
23 lowing for batch reporting, including by allow-
24 ing institutions to upload one file with all re-
25 quired information into the database;

1 “(B) publishing and maintaining a data-
2 base users guide, which shall be reviewed and
3 updated as practicable but not less than annu-
4 ally, including information on how to edit an
5 entry and how to report errors;

6 “(C) creating a standing user group (to
7 which chapter 10 of title 5, United States Code,
8 shall not apply) to discuss possible database im-
9 provements, which group shall—

10 “(i) include at least—

11 “(I) 3 members representing
12 public institutions with high or very
13 high levels of research activity (as de-
14 fined by the National Center for Edu-
15 cation Statistics);

16 “(II) 2 members representing
17 private, nonprofit institutions with
18 high or very high levels of research
19 activity (as so defined);

20 “(III) 2 members representing
21 proprietary institutions of higher edu-
22 cation (as defined in section 102(b));
23 and

24 “(IV) 2 members representing
25 area career and technical education

1 schools (as defined in subparagraph
2 (C) or (D) of section 3(3) of the Carl
3 D. Perkins Career and Technical
4 Education Act of 2006 (20 U.S.C.
5 2302(3))); and

6 “(ii) meet at least twice a year with
7 officials from the Department to discuss
8 possible database improvements;

9 “(D) publishing, on a publicly available
10 website, recommended database improvements
11 following each meeting described in subpara-
12 graph (C)(ii); and

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

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

23 “(A) the authorizing committees; and

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

1 “(4) maintain, on a publicly accessible
2 website—

3 “(A) a full comprehensive list of all foreign
4 countries of concern and foreign entities of con-
5 cern; and

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

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

12 “(c) INSTITUTIONAL REQUIREMENTS FOR COMPLI-
13 ANCE OFFICERS AND INSTITUTIONAL POLICY REQUIRE-
14 MENTS.—

15 “(1) IN GENERAL.—An institution that is re-
16 quired to file a report under section 117 or 117C,
17 that is seeking a waiver under section 117A, or that
18 is subject to the requirements of section 117B, shall,
19 not later than the earlier of the date on which the
20 institution files the first report under section 117 or
21 117C, requests the institution’s first waiver under
22 section 117A, or first fulfills the requirements of
23 section 117B—

24 “(A) establish an institutional policy that
25 the institution shall follow in meeting the re-

1 requirements of sections 117, 117A, 117B, and
2 117C; and

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

8 “(2) DUTIES OF COMPLIANCE OFFICERS.—A
9 compliance officer designated by an institution under
10 paragraph (1)(B) shall certify—

11 “(A) whenever the institution is required
12 to file a report under section 117, 117B, or
13 117C—

14 “(i) the institution’s compliance with
15 the requirements under such section;

16 “(ii) that the institution, in filing such
17 report under section 117, 117B, or
18 117C—

19 “(I) followed the institutional
20 policy established under paragraph
21 (1)(A) applicable to such section; and

22 “(II) conducted good faith efforts
23 and reasonable due diligence to ensure
24 that complete and accurate informa-
25 tion is provided in such report, includ-

1 ing with respect to the valuations of
2 any assets that are disclosed in a re-
3 port submitted under section 117C;
4 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).

21 “(d) DEFINITIONS.—For purposes of sections 117,
22 117A, 117B, 117C, and this section:

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

1 “(A) Any covered nation (as defined in sec-
2 tion 4872 of title 10, United States Code).

3 “(B) Any country the Secretary, in con-
4 sultation with the Secretary of Defense, the
5 Secretary of State, and the Director of National
6 Intelligence, determines, for purposes of sec-
7 tions 117, 117A, 117B, 117C, or this section,
8 to be engaged in conduct that is detrimental to
9 the national security or foreign policy of the
10 United States.

11 “(2) FOREIGN ENTITY OF CONCERN.—The
12 term ‘foreign entity of concern’ has the meaning
13 given such term in section 10612(a) of the Research
14 and Development, Competition, and Innovation Act
15 (42 U.S.C. 19221(a)) and includes—

16 “(A) a foreign entity that is identified on
17 the list published under section 1286(c)(9)(A)
18 of the John S. McCain National Defense Au-
19 thorization Act for Fiscal Year 2019 (10 U.S.C.
20 4001 note; Public Law 115–232); and

21 “(B) a Chinese military company that is
22 identified on the list required by section 1260H
23 of the William M. (Mac) Thornberry National
24 Defense Authorization Act for Fiscal Year 2021
25 (10 U.S.C. 113 note; Public Law 116–283).

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

7 (b) PROGRAM PARTICIPATION AGREEMENT.—Section
8 487(a) of the Higher Education Act of 1965 (20 U.S.C.
9 1094(a)) is amended by adding at the end the following:

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

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

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

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

24 “(C) An institution described in this subpara-
25 graph is an institution—

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

7 “(ii) that pursuant to section
8 117D(a)(4)(E), is prohibited from obtaining a
9 waiver, or a renewal of a waiver, under section
10 117A.”.

11 (c) GAO STUDY AND REPORT.—

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

24 (2) REPORT.—Not later than 3 years after the
25 date of the initiation of the study under paragraph

1 (1), the Comptroller General of the United States
2 shall submit to Congress, and make public, a report
3 containing the results of the study described in para-
4 graph (1).

5 (d) DEFINITION OF COVERED NATION.—Section
6 4872(f)(2) of title 10, United States Code, is amended—

7 (1) in subparagraph (C), by striking “and” at
8 the end;

9 (2) in subparagraph (D), by striking the period
10 at the end and inserting “; and”; and

11 (3) by adding at the end the following new sub-
12 paragraph:

13 “(E) any special administrative region des-
14 ignated by the Secretary of Defense within a
15 nation specified in any of subparagraphs (A)
16 through (D) or any other territory that the Sec-
17 retary recognizes as being under the control of
18 such a nation.”.

