AMENDMENT TO H.R. 5933, AS REPORTED
OFFERED BY MR. SCOTT OF VIRGINIA

Strike section 1 and all that follows and insert the following:

1 SECTION 1. SHORT TITLE.
This Act may be cited as the “DETERRENT Act of 2023”.

2 SEC. 2. DISCLOSURES OF FOREIGN GIFTS AND CONTRACTS.
Section 117 of the Higher Education Act of 1965 (20 U.S.C. 1011f) is amended to read as follows:

“SEC. 117. DISCLOSURES OF FOREIGN GIFTS AND CONTRACTS.

“(a) DISCLOSURE REPORTS.—

“(1) AGGREGATE GIFT AND CONTRACT DISCLOSURES.—An institution shall file a disclosure report described in subsection (b) with the Secretary not later than July 31 of the calendar year immediately following any calendar year in which—

“(A) the institution receives a gift from, or enters into a contract with, a foreign source, the value of which is $100,000 or more, considered alone or in combination with all other gifts
from, or contracts with, that foreign source
within the calendar year; or

“(B) the institution receives a gift from, or
enters into a contract with, a foreign source,
the value of which totals $250,000 or more,
considered alone or in combination with all
other gifts from, or contracts with, that foreign
source over the previous 3 calendar years.

“(2) FOREIGN SOURCE OWNERSHIP OR CON-
TROL DISCLOSURES.—In the case of an institution
that is substantially owned or controlled (as de-
scribed in section 668.174(c)(3) of title 34, Code of
Federal Regulations (or successor regulations)) by a
foreign source, the institution shall file a disclosure
report described in subsection (b) with the Secretary
not later than July 31 of every year.

“(b) CONTENTS OF REPORT.—Each report to the
Secretary required under subsection (a) shall contain the
following:

“(1)(A) In the case of gifts or contracts de-
scribed in subsection (a)(1)—

“(i) for gifts received from, or contracts
entered into with, a foreign government, the ag-
gregate amount of such gifts and contracts re-
ceived from or entered into with such foreign government;

“(ii) for gifts received from, or contracts entered into with, a foreign source other than a foreign government, the aggregate dollar amount of such gifts and contracts attributable to a particular country and the legal or formal name of the foreign source; and

“(iii) the intended purpose of such gift or contract, as provided to the institution by such foreign source, or if no such purpose is provided by such source, the intended use of such gift or contract, as provided by the institution.

“(B) For purposes of this paragraph, the country to which a gift is attributable is—

“(i) the country of citizenship or, if unknown, the principal residence, for a foreign source who is a natural person; or

“(ii) the country of incorporation or, if unknown, the principal place of business, for a foreign source that is a legal entity.

“(2) In the case of an institution required to file a report under subsection (a)(2)—
“(A) for gifts received from, or contracts entered into with, a foreign source, without regard to the value of such gift or contract, the information described in paragraph (1)(A);

“(B) the identity of the foreign source that owns or controls the institution;

“(C) the date on which the foreign source assumed ownership or control; and

“(D) any changes in program or structure resulting from such ownership or control.

“(3) An assurance that the institution will maintain a true copy of each gift or contract agreement subject to the disclosure requirements under this section, until the latest of—

“(A) the date that is 4 years after the date of the agreement;

“(B) the date on which the agreement terminates; or

“(C) the last day of any period of which applicable State public record law requires a true copy of such agreement to be maintained.

“(4) An assurance that the institution will—

“(A) produce true copies of gift and contract agreements subject to the disclosure requirements under this section upon request of
the Secretary during a compliance audit or
other institutional investigation; and

“(B) ensure that all contracts from the
foreign source are translated into English, as
applicable.

“(c) ADDITIONAL DISCLOSURES FOR RESTRICTED
AND CONDITIONAL GIFTS AND CONTRACTS.—Notwith-
standing subsection (b), whenever any institution receives
a restricted or conditional gift or contract from a foreign
source, the institution shall disclose the following to the
Secretary, translated into English:

“(1) For such gifts received from, or contracts
entered into with, a foreign source other than a for-
government, the amount, the date, and a de-
scription of such conditions or restrictions. The re-
port shall also disclose the country of citizenship, or
if unknown, the principal residence for a foreign
source which is a natural person, and the country of
incorporation, or if unknown, the principal place of
business for a foreign source which is a legal entity.

“(2) For gifts received from, or contracts en-
tered into with, a foreign government, the amount,
the date, a description of such conditions or restric-
tions, and the name of the foreign government.
“(d) DATABASE REQUIREMENT.—Beginning not later than 30 days before the July 31 immediately following the date of enactment of the DETERRENT Act of 2023, the Secretary shall—

“(1) establish and maintain a searchable database on a website of the Department, under which each report submitted under this section—

“(A) is, not later than 60 days after the date of the submission of such report, made publicly available (in electronic and downloadable format);

“(B) can be identified and compared to other such reports; and

“(C) is searchable and sortable by—

“(i) the date the institution filed such report;

“(ii) the date on which the institution received the gift, or entered into the contract, which is the subject of the report; and

“(iii) the attributable country of such gift or contract as described in subsection (b)(1)(B); and

“(2) indicate, as part of the public record of a report included in such database, whether the report
was submitted by the institution with respect to a gift received from, or a contract entered into with—

“(A) a foreign source that is a foreign government; or

“(B) a foreign source that is not a foreign government.

“(e) RELATION TO OTHER REPORTING REQUIREMENTS.—

“(1) STATE REQUIREMENTS.—If an institution that is required to file a disclosure report under subsection (a) is in a State that has enacted requirements for public disclosure of gifts from, or contracts with, a foreign source that includes all information required under this section for the same or an equivalent time period, the institution may file with the Secretary a copy of the disclosure report filed with the State in lieu of the report required under such subsection. The State in which the institution is located shall provide the Secretary such assurances as the Secretary may require to establish that the institution has met the requirements for public disclosure under State law if the State report is filed.

“(2) USE OF OTHER FEDERAL REPORTS.—If an institution receives a gift from, or enters into a con-
tract with, a foreign source, where any other depart-
ment, agency, or bureau of the executive branch re-
quires a report containing all the information re-
quired under this section for the same or an equiva-
 lent time period, a copy of the report may be filed
with the Secretary in lieu of a report required under
subsection (a).

“(f) MODIFICATION OF REPORTS.—The Secretary
shall incorporate a process permitting institutions to re-
vise and update previously filed disclosure reports under
this section to ensure accuracy, compliance, and ability to
cure.

“(g) SANCTIONS FOR NONCOMPLIANCE.—

“(1) IN GENERAL.—As a sanction for non-
compliance with the requirements under this section,
the Secretary may impose a fine on an institution
that in any year knowingly or willfully violates this
section, that is—

“(A) in the case of a failure to disclose a
gift or contract with a foreign source as re-
quired under this section, or to comply with the
requirements of subparagraphs (A) and (B) of
subsection (b)(4) pursuant to the assurances
made under such subsection, in an amount that
is not less than $250 but not more than 50 per-
cent of the amount of the gift or contract with
the foreign source; or

“(B) in the case of any violation of the re-
quirements of subsection (a)(2), in an amount
that is not more than 25 percent of the total
amount of funding received by the institution
under this Act (other than funds received under
title IV of this Act).

“(2) REPEATED FAILURES.—

“(A) KNOWING AND WILLFUL FAIL-
URES.—In addition to a fine for a violation in
any year under paragraph (1), the Secretary
may impose a fine on an institution that know-
ingly or willfully violates this section for 3 con-
secutive years, that is—

“(i) in the case of a failure to disclose
a gift or contract with a foreign source as
required under this section or to comply
with the requirements of subparagraphs
(A) and (B) of subsection (b)(4) pursuant
to the assurances made under such sub-
section, in an amount that is not less than
$100,000 but not more than the amount of
the gift or contract with the foreign source;
or
“(ii) in the case of any violation of the
requirements of subsection (a)(2), in an
amount that is not more than 25 percent
of the total amount of funding received by
the institution under this Act (other than
funds received under title IV of this Act).

“(B) ADMINISTRATIVE FAILURES.—The
Secretary may impose a fine on an institution
that fails to comply with the requirements of
this section due to administrative errors for 3
consecutive years, in an amount that is not less
than $250 but not more than 50 percent of the
amount of the gift or contract with the foreign
source.

“(C) COMPLIANCE PLAN REQUIREMENT.—
If an institution fails to file a disclosure report
for a receipt of a gift from or contract with a
foreign source for 2 consecutive years, the Sec-
retary may require the institution to submit a
compliance plan.

“(h) COMPLIANCE OFFICER.—Any institution that is
required to report a gift or contract under this section
shall designate and maintain a compliance officer who—

“(1) shall be a current employee (including
such an employee with another job title or duties
other than the duties described in paragraph (2)) or
legally authorized agent of such institution; and

“(2) shall be responsible, on behalf of the insti-
tution, for compliance with the foreign gift reporting
requirement under this section.

“(i) SINGLE POINT OF CONTACT.—The Secretary
shall appoint and maintain a single point of contact to—

“(1) receive and respond to inquiries and re-
quests for technical assistance from institutions of
higher education regarding compliance with the re-
quirements of this section; and

“(2) coordinate and implement technical im-
provements to the database described in subsection
(d), including—

“(A) improving upload functionality by al-
lowing for batch reporting, including by allow-
ing institutions to upload to the database one
file with all required information;

“(B) publishing and maintaining, on an
annual basis, a database user guide that in-
cludes information on how to edit an entry and
how to report errors;

“(C) creating a user group (to which chap-
ter 10 of title 5, United States Code, shall not
apply) to discuss possible database improvements, which shall—

“(i) include at least—

“(I) 3 members representing public institutions with high or very high levels of research activity (as defined by the National Center for Education Statistics);

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

“(III) 2 members representing proprietary institutions of higher education (as defined in section 102(b)); and

“(IV) 2 members representing area career and technical education schools (as defined in subparagraph (C) or (D) of section 3(3) of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302(3)); and
“(ii) meet at least twice a year with officials from the Department to discuss possible database improvements; and
“(D) publishing, on a publicly available website—
“(i) following each meeting described in subparagraph (C)(ii), recommended database improvements; and
“(ii) with respect to each recommended improvement described in clause (i)—
“(I) the decision of the Department as to whether such recommended improvement will be implemented; and
“(II) the rationale for such decision.
“(j) TREATMENT OF CERTAIN PAYMENTS AND GIFTS.—
“(1) EXCLUSIONS.—The following shall not be considered a gift from, or contract with, a foreign source under this section:
“(A) Any payment of one or more elements of a student’s cost of attendance (as defined in section 472) to an institution by, or scholarship
from, a foreign source who is a natural person, acting in their individual capacity and not as an agent for, at the request or direction of, or on behalf of, any person or entity (except the student), made on behalf of students that is not made under contract with such foreign source, except for the agreement between the institution and such student covering one or more elements of such student’s cost of attendance.

“(B) Assignment or license of registered industrial and intellectual property rights, such as patents, utility models, trademarks, or copyrights, or technical assistance, that are not identified as being associated with a national security risk or concern.

“(C) Any payment from a foreign source that is solely for the purpose of conducting one or more clinical trials.

“(2) INCLUSIONS.—Any gift to, or contract with, an entity or organization, such as a research foundation, that operates substantially for the benefit or under the auspices of an institution shall be considered a gift to, or contract with, such institution.

“(k) DEFINITIONS.—In this section—
“(1) the term ‘clinical trial’ means a research study in which one or more human subjects are prospectively assigned to one or more interventions to evaluate the effects of those interventions on health-related biomedical or behavioral outcomes;

“(2) the term ‘contract’—

“(A) means any—

“(i) agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties, except as provided in subparagraph (B); or

“(ii) affiliation, agreement, or similar transaction with a foreign source that is based on the use or exchange of an institution’s name, likeness, time, services, or resources, except as provided in subparagraph (B); and

“(B) does not include any agreement made by an institution located in the United States for the acquisition, by purchase, lease, or barter, of property or services from a foreign source;

“(3) the term ‘foreign source’ means—
“(A) a foreign government, including an agency of a foreign government;

“(B) a legal entity, governmental or otherwise, created under the laws of a foreign state or states;

“(C) an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; and

“(D) an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source;

“(4) the term ‘gift’—

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

“(B) does not include anything described in section 487(e)(2)(B)(ii);

“(5) the term ‘institution’ means an institution of higher education, as defined in section 102, or, if a multicampus institution, any single campus of such institution, in any State; and

“(6) the term ‘restricted or conditional gift or contract’ means any endowment, gift, grant, contract, award, present, or property of any kind that includes provisions regarding—
“(A) the employment, assignment, or termination of faculty;

“(B) the establishment of departments, centers, institutes, instructional programs, research or lecture programs, or faculty positions;

“(C) the selection or admission of students; or

“(D) the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.”

SEC. 3. REGULATIONS.

(a) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Education shall begin the negotiated rulemaking process under section 492 of the Higher Education Act of 1965 (20 U.S.C. 1098a) to carry out the amendment made by section 2.

(b) ISSUES.—Regulations issued pursuant to subsection (a) to carry out the amendment made by section 2 shall, at a minimum, address the following issues:

(1) Instructions on reporting structured gifts and contracts.

(2) The inclusion in institutional reports of gifts received from, and contracts entered into with,
foreign sources by entities and organizations, such as research foundations, that operate substantially for the benefit or under the auspices of the institution.

(3) Procedures to protect confidential or proprietary information included in gifts and contracts.

(4) The alignment of such regulations with the reporting and disclosure of foreign gifts or contracts required by Federal agencies other than the Department of Education, including with respect to—

(A) the CHIPS Act of 2022 (Division A of Public Law 117–167; 15 U.S.C. 4651 note);

(B) the Research and Development, Competition, and Innovation Act (Division B of Public Law 117–167; 42 U.S.C. 18901 note);

and

(C) any guidance released by the White House Office of Science and Technology Policy, including the Guidance for Implementing National Security Presidential Memorandum 33 (NSPM–33) on National Security Strategy for United States Government-supported Research and Development published by the Subcommittee on Research Security and the Joint
Committee on the Research Environment in January 2022.

(5) The treatment of foreign gifts or contracts involving research or technologies identified as being associated with a national security risk or concern.

(c) EFFECTIVE DATE.—The amendment made by section 2 shall take effect on the date on which the regulations issued under subsection (a) take effect.