

Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions (DETERRENT) Act

Bill Summary as Introduced

American colleges and universities play a large role in educating our next generation of leaders. Foreign adversaries, particularly certain countries of concern, recognize the value of American education and research and continually seek to exert their influence on students and faculty.

Congress first required U.S. institutions of higher education (IHEs) to publicly report their foreign gifts and contracts to the Department of Education (ED) in 1986 through what is now known as section 117 of the *Higher Education Act* (HEA).

The *Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions* (DETERRENT) Act reforms section 117 to strengthen enforcement, particularly for countries of concern, close reporting loopholes, and clarify requirements for institutions. The goal of these reforms is to give much-needed transparency as a disinfectant to deter malicious foreign actors and rebuild trust in our institutions.

Section 117 – Disclosures of Foreign Gifts

The bill strikes and replaces the existing section 117, which requires biannual reports for gifts or contracts above \$250,000. The new section 117 created by the bill includes the following new requirements.

- An institution shall file a disclosure report annually on July 31 following a year when:
 - An institution received a gift from, or entered into a contract with, a foreign source (other than a foreign country of concern or foreign entity of concern) with a value of \$50,000 or more, or an undetermined value.
 - An institution receives a gift from a foreign country of concern or foreign entity of concern of any dollar amount.
 - An institution enters into a contract with a foreign country of concern or foreign entity of concern after receiving a waiver for such contract.
 - An institution is substantially controlled by a foreign source.
- A gift to, or contract with, an affiliated entity of an institution shall be considered a gift to or contract with such institution.
- All disclosure reports will contain the following:
 - the name of the individual, department, or entity at the institution receiving the gift or carrying out the contract;
 - the intended purpose of the gift or contract;
 - a description of any restrictions or conditions on the contract;
 - if a gift, the date received and the fair market dollar amount of the gift; and
 - if a contract, the date entered, the effective date, the fair market dollar amount of the gift, and the end date of the contract.
 - Institutions will also be required to maintain copies of contracts translated into English.

- In addition to other requirements, gifts from or contracts with foreign governments will also contain:
 - the name of the government;
 - the department, agency, office, or division of the foreign government that approved the gift or contract;
 - the physical mailing address of the relevant foreign government department, agency, office, or division.
- In addition to other requirements, gifts from or contracts with foreign sources that are not foreign governments or foreign entities of concern will also contain the following:
 - the legal name of the source, or if unavailable, a signed statement that the institution has reasonably attempted to obtain such a name;
 - if the source is a person, the country of citizenship or, if not known, the principal country of residence;
 - if the source is a legal entity, the country of incorporation or, if not known, the principal place of business; and
 - the physical mailing address of the source, or if unavailable, a signed statement that the institution has reasonably attempted to obtain such address.
 - any affiliation of the foreign source to an organization designated as a foreign terrorist organization.
- In addition to all other requirements, contracts with foreign governments of concern or foreign entities of concern will also contain the following:
 - a complete and unredacted text of the original contract translated into English; and
 - a copy of the waiver from the Secretary allowing such a contract;
 - the statement submitted by the institution to receive such a waiver.
- In addition to all other requirements, institutions substantially controlled by a foreign source must also report:
 - the legal name and address of the foreign source that owns or controls the institution;
 - the date on which the foreign source assumed ownership or control; and
 - any changes in program or structure resulting from the change in ownership or control.
- Any translations must be done by a person who is not affiliated with the foreign source.
- Not later than 60 days before the July 31 immediately following the date of enactment of the DETERRENT Act, the Secretary shall establish and maintain a searchable, public database on a website of the Department. This database shall:
 - contain all reports submitted, uploaded to the database by the Secretary no later than 30 days after submission;
 - include, in electronic and downloadable format, any information provided in such reports, excluding the names and addresses prohibited from being disclosed;
 - be searchable and sortable by date filed, date of the gift received or contract entered into, effective date of the contract, by attributable country of the gift or contract, and by institution;
 - indicate whether a gift is from a foreign government or from a foreign source that is not a foreign government; and
 - indicate when a report does not contain the name or address of a foreign source.

- Names and addresses of foreign sources that are natural persons shall not be disclosed under such public database or under FOIA requests.
- Within 30 days of receiving a disclosure report, the Secretary shall transmit an unredacted copy of such report (that includes the name and addresses) to the Director of the Federal Bureau of Investigation, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Secretary of Energy, the Director of the National Science Foundation, and the Director of the National Institutes of Health.
- The bill defines the following terms: affiliated entity; attributable country; contract; foreign country of concern; foreign entity of concern; foreign source; gift; institution; restricted or conditional gift or contract.

Section 117a – Prohibitions on Contracts with Certain Foreign Entities and Countries

- Prohibits an institution from entering into any contracts with foreign entities of concern or countries of concern.
- Waivers
 - Institutions may, not later than 120 days prior to entering into a contract, submit a waiver request to the Secretary.
 - Waivers shall last for one year. Institutions may apply for renewals of waivers for contracts that remain unchanged.
 - If an institution is not granted a waiver, it must not enter into the contract or terminate it.
 - The Secretary shall notify the institution not later than 60 days before the institution enters into the contract of the waiver approval or denial.
 - The Secretary shall consult with the Director of the Federal Bureau of Investigation, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Secretary of Energy, the Director of the National Science Foundation, and the Director of the National Institutes of Health regarding the waiver.
 - Not less than two weeks prior to issuing the waiver, the Secretary shall notify the authorizing committees regarding the intent and justification for the waiver.
 - Institutions that have three violations of any requirements in the DETERRENT Act will be ineligible for receiving waivers for future contracts.
- If an institution has a contract with an entity that is designated as an entity of concern during the contract, the institution has 60 days to withdraw from the contract.
- If an institution has a contract with an entity of concern prior to the enactment of the DETERRENT Act, the institution shall submit a waiver request and immediately be granted a waiver ending one year after the date of enactment of the Act or the date of the existing contract, whichever is sooner.
- All past reports and information shall be shared with the Director of the Federal Bureau of Investigation, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of State, the Secretary of Defense, the Attorney

General, the Secretary of Commerce, the Secretary of Homeland Security, the Secretary of Energy, the Director of the National Science Foundation, and the Director of the National Institutes of Health.

Section 117b – Institutional Policy Regarding Foreign Gifts and Contracts to Faculty and Staff

- Institutions receiving more than \$50,000,000 in federal funds in any given year in the last five years, or institutions receiving funds under Title VI of HEA, are required to maintain the following:
 - A policy requiring covered individuals (anyone contributing to a research and development project carried out with a federal research award) to report on July 31:
 - any gift from a foreign source greater than a minimal value (defined in section 7342(a) of title 5, United States Code) or of undetermined value, including the date received;
 - any contract with a foreign source with a value above \$5,000 or of undetermined value; and
 - any contract with a foreign source or country of concern of any value.
 - A publicly available and searchable database on the website of the institution, sortable and searchable by date received (if a gift); date entered and effective date (if a contract); the attributable country; the department, school, or college (whichever is narrowest) of the covered individual; and the name of the foreign source (excluding individuals). The database excludes personally identifiable information of covered individuals.
 - A plan to identify and manage potential information gathering by foreign sources through espionage. Such a plan shall include:
 - periodic communications;
 - accurate reporting; and
 - enforcement.

Section 117c – Investment Disclosure Report

- Private institutions with endowments above \$6 billion or with investments of concern above \$250 million shall report the following on July 31:
 - a list of the investments of concern purchased, sold, or held during such calendar year;
 - the aggregate fair market value of all investments of concern held as of the close of such calendar year;
 - the combined value of all investments of concern sold over the course of such calendar year, as measured by the fair market value of such investments at the time of the sale;
 - the combined value of all capital gains from such sales of investments of concern.
- Investments acquired through a regulated investment company, exchange traded fund, or any other pooled investment shall be treated as owned, unless otherwise noted.

- The Secretary, in consultation with the Department of the Treasury and the Securities and Exchange Commission, will establish procedures for the exclusion of a regulated investment company, exchange traded fund, or any other pooled investment.
- Not later than 60 days before the July 31 immediately following the date of enactment of the DETERRENT Act, the Secretary shall establish and maintain a searchable, public database on a website of the Department. This database shall:
 - contain all reports submitted, uploaded to the database by the Secretary no later than 30 days after submission;
 - include, in electronic and downloadable format, any information provided in such reports;
 - be searchable and sortable, and able to be individually identified and compared.
- Defines investment of concern and specified interest.

Section 117d – Enforcement; Single Point-of-Contact; Institutional Requirements

- Requires the Secretary (acting through the General Counsel of the Department) to conduct investigations of possible violations.
- Whenever it appears that an institution has knowingly or willfully failed to comply, a civil action shall be brought by the Attorney General, at the request of the Secretary, in an appropriate district court of the United States, or the appropriate United States court of any territory or other place subject to the jurisdiction of the United States, to request such court to compel compliance.
- Maintains the current law requirement that an institution that is compelled to comply shall pay the full costs to the United States of obtaining compliance with the requirement of such section, including all associated costs of investigation and enforcement.
- In addition to paying the cost of enforcement, an institution shall also be subject to the following fines from the Secretary:
 - Violations of Section 117
 - First time violations shall be the greater of \$50,000 or the monetary value of the gift from, or contract with, the foreign source.
 - In the case of a gift or contract of no value or of indeterminable value, the fine shall be not less than 1 percent and not more than 10 percent of the total amount of federal funds received.
 - Violations from institutions substantially controlled by a foreign source shall be no less than 10 percent of the total amount of federal funds received.
 - Subsequent violations shall be the greater of \$100,000 or twice the monetary value of the gift from, or contract with, the foreign source.
 - In the case of a gift or contract of no value or of indeterminable value, the subsequent fine shall be not less than 5 percent and not more than 10 percent of the total amount of federal funds received.
 - Subsequent violations from institutions substantially controlled by a foreign source shall be no less than 20 percent of the total amount of federal funds received.
 - Violations of Section 117A
 - First time violations shall be not less than 5 percent and not more than 10 percent of the total amount of federal funds received by the institution.

- Subsequent violations shall be not less than 20 percent of the total amount of federal funds received.
 - Violations of Section 117B
 - First time violations shall be the greater of \$250,000 or the total amount of gifts and contracts by faculty and staff that was compelled to be reported.
 - Subsequent violations shall be the greater of \$500,000 or twice the total amount of gifts and contracts by faculty and staff that was compelled to be reported.
 - Violations of Section 117C
 - First time violations shall be not less than 50 percent and not more than 100 percent of the sum of the aggregate fair value market value of all investments of concern held and sold by such institution during the calendar years correlated with the civil action.
 - Subsequent violations shall be not less than 100 percent and not more than 200 percent of the sum of the aggregate fair value market value of all investments of concern held and sold by such institution during the calendar years correlated with the civil action.
 - Ineligibility for Section 117A waivers
 - An institution that is fined for any subsequent violations is ineligible from obtaining a waiver, or a renewal of a waiver, under Section 117A.
- ED shall maintain a single point of contact to:
 - receive and respond to inquiries and requests for technical assistance from IHEs regarding compliance;
 - coordinate and implement technical improvements to the database, including:
 - improving upload functionality by allowing for batch reporting;
 - publishing and maintaining a database users guide annually, including areas such as how to edit an entry and how to report errors; and
 - creating a standing user group, meeting biannually, to discuss possible database improvements, which will include members from a range of institutions and issue recommendations for technical improvements.
 - provide, every 90 days, updates on active and pending investigations to authorizing committees and the institution being investigated; and
 - maintain a publicly accessible list of all foreign countries and entities of concern and notify all schools of any changes within seven days.
- Institutions shall:
 - establish an institutional policy to meet the requirements of sections 117, 117A, 117B, and 117C;
 - designate and maintain a current employee or legally authorized agent to serve as a compliance officer, who shall personally certify:
 - the institution's accurate compliance with the reporting requirements;
 - the institution has conducted good faith efforts and reasonable due diligence to ensure accurate reporting; and
 - any statements by the institution required to be certified under section 117B.

- Institutions with three separate violations of any section requirements (one of which includes a repeated violation of a requirement) shall be considered in violation of the Program Participation Agreement.
 - Such violation will result in the loss of eligibility to participate in Title IV programs for two institutional years.
 - Institutions must demonstrate compliance in two subsequent institutional years to regain eligibility.
- The Government Accountability Office shall conduct a study identifying ways to improve intergovernmental agency coordination regarding implementation and enforcement.