

THE DEFENDING EDUCATION TRANSPARENCY AND ENDING ROGUE REGIMES ENGAGING IN NEFARIOUS TRANSACTIONS (DETERRENT) ACT

[Section 117 of the Higher Education Act](#) requires institutions to submit disclosure reports containing information about gifts and/or contracts of at least \$250,000 received from or entered into with any foreign source. [The DETERRENT Act](#) would amend Section 117 and create four new subcategories: Prohibitions on Contracts with Certain Foreign Entities and Countries (Section 117a); Institutional Policy Regarding Foreign Gifts and Contracts to Faculty and Staff (Section 117b); Investment Disclosure Report” (Section 117c); and “Enforcement (Section 117d). The bill was approved by the House Education and the Workforce Committee on November 8, 2023. It is unclear when the full House will vote on the measure.

Before the committee markup, ACE and other higher education associations [sent a letter](#) outlining concerns with the legislation.

Section 117

- The bill would lower the reporting threshold for Section 117 from \$250,000 to \$50,000, except for gifts and contracts from a “foreign country of concern or foreign entity of concern” which would have a \$0 threshold.
- Section 117 reports would shift from a biannual to an annual submission, due on July 1 for the previous calendar year.
- Institutions would be required to report the name of the individual, department, or benefactor at the institution receiving the gift (currently, only the name of the institution is required); the intended purpose of the gift or contract; a description of any restrictions or conditions on the contract; fair market dollar amount of any gift; and for contracts, the start and end dates.
- Institutions would not have to submit “true copies” of contracts, but they would be required to maintain copies of the contract for at least four years and translate them into English if in another language. The translation cannot be provided by the foreign source of the gift or contract.
- If a gift or contract is from a foreign government, institutions must submit the name of the government, the department or division of the government, and the physical mailing address of the relevant foreign department or division.
- Gifts and contracts would need to include “the legal name of the source” and a physical mailing address. If that information is unavailable, the institution must submit a signed statement that they have tried reasonably to obtain that information.
- The Department of Education (ED) would be required to establish and maintain a public database that includes copies of the submitted reports. The database must be “searchable and sortable” by date filed, date of gift or contract received, country of gift or contract, and name of the institution receiving the gift or contract.

- While institutions would be required to report names and addresses of foreign sources, the bill states that the secretary of education “shall not disclose” the “name or address of a foreign source” as part of the public record or in response to a Freedom of Information Act request.
- Within 30 days of receiving the report, the secretary of education must transmit an unredacted copy to the Office of the Director of National Intelligence (ODNI), the FBI, the assistant attorney general for National Security, the CIA, and the director of the National Science Foundation (NSF).
- Institutions of higher education submitting Section 117 reports would be required to designate a compliance officer to certify compliance with Section 117.
- The legislation exempts tuition payments unless the agreement is for “more than 15 students or is made under a restricted or conditional contract.”
- The legislation also includes an exemption for contracts that include “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 association with a national security risk.”

Section 117a. Prohibition on Contracts with Certain Foreign Entities and Countries

- Creates a new requirement that institutions of higher education “shall not” enter into a contract with a foreign country or entity of concern.
- Allows institutions to apply to the secretary of education for a waiver for such a contract. The waiver application must be submitted 60 days before the institution enters into such a contract. Waivers would be eligible for a year. If the contract is beyond a year, institutions must reapply.
- An amendment agreed to at the November 8 markup would require institutions with existing contracts with countries of concern to submit applications for waivers to the secretary of education. The secretary would then issue waivers for at least one year for those contracts.
- Applications for waivers must include: the “complete and unredacted text” of the contract in English and a statement that includes information that “demonstrates that such contract is for the benefit of the institution’s mission and students and will promote the security, stability and economic vitality of the U.S.”
- If a waiver renewal is not granted, the institution must terminate the contract.
- The secretary of education would be required to notify an institution within 60 days of receiving the request if they will issue or renew the waiver.
- The secretary of education must consult with the FBI, ODNI, the assistant attorney general for National Security, the CIA, and the NSF Director in deciding to issue a waiver or a renewal.
- The secretary must also inform the House Committee on Education and the Workforce and the Senate Health, Education, Labor, and Pensions if a waiver is going to be issued (at least two weeks prior to issuance).

- If a foreign country of concern is designated during the period of a contract, the institution must terminate that contract within 60 days. The secretary of education would inform institutions of new designation of countries of concern.

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

- Requires institutions that receive more than \$50 million in federal research and development (R&D) funding or receive funds under Title VI of the Higher Education Act to maintain a policy and database regarding foreign gifts and contracts to individual faculty and staff.
- Requires faculty and certain staff engaged in R&D to annually report gifts at or over the amount included in the “Foreign Gifts and Decorations Act” (currently set at \$480), the same amount applied to federal employees in restriction of gifts from foreign government or international organization, or is of “undetermined value.”
- Instructs covered faculty and staff to report contracts with a foreign source at \$5,000 or more; contracts of “undetermined value;” or contracts of any value with a country of concern. For countries of concern, the full text of the contract must also be submitted.
- Requires institutions to share the information publicly and in a searchable database, with reports due each year on July 31. Institutions would be required to publish the faculty disclosures within 30 days of submission.

Section 117c. Investment Disclosure Report

- Requires private institutions with assets over \$6 billion or with “investments of concern” over \$250 million to file a report with the secretary of education on July 1 if they purchase, sell, or hold (directly or indirectly through any chain of ownership such as in pooled investment funds) “one or more investments of concern.”
 - Investments of concern include investments (e.g., stock or other equity, debt, or any related contract or derivative) from a foreign country of concern or foreign entity of concern. Covered institutions would have to report a list of such investments of concern; the aggregate fair market value of such investments; the combined value of all such investments sold during the year; and the combined value of all capital gains from sales of such investments.
- Investments of concern held by “any related organization” to the covered institution would be covered and reportable as if held by such institution, with some limiting exceptions.
- Directs covered institutions to designate and maintain a compliance officer that can certify that the institution has “followed an established institutional policy and conducted good faith efforts and reasonable due diligence to determine the accuracy and valuations of the assets reported.”
- Requires the secretary of education to include such reports in the searchable, public database required in Section 117.

Section 117d. Enforcement; Single Point of Contact

- Allows the secretary of education to conduct investigations regarding possible violations of any of these sections.
- Outlines the “civil action” the U.S. attorney general can take, at the request of the secretary of education.

- Requires institutions “compelled to comply” to pay the Department of the Treasury the costs of obtaining compliance, including the costs of the investigation and enforcement.
- Creates fines for violations for institutions that “knowingly or willfully” fail to comply with the various Section 117 provisions, including fines for first-time violations and subsequent violations.
 - The fine for first-time violations of Section 117 would be “not less than \$50,000 but not more than” the gift or contract from a foreign source. If the gift or contract is of “no value or of indeterminable value” then the fine will be not less than 1 percent but no more than 10 percent of the federal funds received under the Higher Education Act. For subsequent violations, the fine would be not less than 20 percent of the total amount of federal funding received under the Higher Education Act.
 - There are additional fines for violations of Section 117a, Section 117b, and Section 117c, some of which are tied to an institution’s overall Title IV funding.
- Requires ED to maintain a “single point of contact” for Section 117.
- Under an agreed-to amendment included at the markup, ED must allow for “batch reporting” of Section 117 by allowing institutions to upload one file with all the required information to the database.
- ED must publish and maintain a database users guide annually, including information on how to edit an entry and how to report errors.
- ED must create a standing user group of stakeholders to consider possible database improvements.
- Requires GAO to conduct a study on ways to improve intergovernmental coordination on implementation and enforcement of this legislation.