

December 4, 2023

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Hakeem Jeffries
House Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

Dear Speaker Johnson and Minority Leader Jeffries,

On behalf of the American Council on Education and the undersigned higher education associations, I write in strong opposition to H.R. 5933, the “Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions (DETERRENT)” Act, which the House is scheduled to consider on the floor this week. While we understand the concern regarding foreign funding to U.S. institutions of higher education is bipartisan, we believe the DETERRENT Act is duplicative of existing interagency efforts, unnecessary, and puts in place a problematic expansion of the data collection by the U.S. Department of Education that will broadly curtail important needed international research collaboration and academic and cultural exchanges.

Institutions of higher education share a strong interest with the government in safeguarding the integrity of government-funded research and protecting academic freedom and free speech from foreign influence and/or interference. Our community takes the reporting requirements regarding foreign gifts and contracts under Section 117 of the Higher Education Act very seriously. Indeed, our community has worked tirelessly over the past several years to educate our members regarding these reporting obligations, as well as working with the national security agencies, research agencies, and the Department of Education to clarify and improve foreign gift and contract reporting. For example, our associations and our institutions continue to work with federal agencies to implement new reporting requirements under NSPM-33, which is targeted at improving research security and addressing concerns around federal funding. We are also engaged in implementing new requirements under the recently passed CHIPS and Science Act and ensuring compliance with statutory requirements enacted in previous National Defense Authorization Acts.¹

Since 2018, when issues with foreign gift reporting were raised by Congress and policymakers, there has been a substantial increase in Section 117 reporting. In response to questions before the House Education and the Workforce Committee earlier this year, Secretary Cardona stated that the Department has received over 34,000 filings in the past two years and is on track to receive the most Section 117 reports of any administration.² Just this month, ED announced

¹ See AAU list of “Actions Taken to Address Foreign Security Threats, Undue Foreign Interference, and Protect Research Integrity at U.S. Universities”: <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Science-Security/Actions-Taken-Research-Security.pdf>

² May 16, 2023 House Education and the Workforce full committee hearing “Examining the Policies and Priorities of the Department of Education”: <https://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=409132>.

that the most recent reporting dataset shows nearly 5,000 additional foreign gifts and contracts with transactions valued at nearly \$4 billion since ED's last data release, as of October 2023. This increase in Section 117 reporting demonstrates that our institutions are committed to transparency and the efforts to bring more attention to the issue of foreign funding to our institutions.

However, the new Sections 117A, 117B, 117C, and 117D greatly expand Section 117 in a way that will be very problematic for colleges and universities seeking to engage in important and advantageous partnerships with foreign countries and entities. We would also note that the recently released 2023 annual report to Congress by the U.S.-China Economic and Security Review Commission made several recommendations regarding Section 117 but did not recommend these overly expansive and problematic new reporting requirements.³ Our concerns regarding each new provision are listed below:

- Section 117A “Prohibition on Contracts with Certain Foreign Entities and Countries” would require institutions to receive a waiver from the Department of Education before beginning or continuing any contract with a country of concern (currently the People’s Republic of China, Russia, North Korea, and Iran) or a foreign entity of concern.⁴ This provision is particularly concerning because the definition of a “contract” in the bill is incredibly broad and therefore will likely capture not only *all* research agreements, but *also* student exchange programs and other joint cultural and education programs with Chinese institutions.

Our institutions currently abide by the regulations and requirements maintained by the U.S. Department of Commerce⁵ and the U.S. Department of the Treasury⁶ regarding U.S. partnerships, exports, and purchases from foreign entities and foreign countries. In addition, federal research agencies, such as the U.S. Department of Defense, National Science Foundation, and National Institutes of Health all have recently strengthened research security and foreign partnership reporting requirements. There are no indications that expanded Department of Education reviews are necessary, and it is unlikely the Department of Education has the expertise to carry out the review of contracts, many of which will likely focus on scientific research. The Department lacks the technical expertise to assess risks associated with scientific research and critical and emerging technologies. Additionally, in light of the extremely broad definition of a contract in the legislation, this review will likely overwhelm the Department, and we are concerned that very few waiver requests would ultimately be granted. No other industry or government entities, including states, localities and other nonprofit organizations, must undertake this type of review of agreement before they can enter into a contract

³ 2023 U.S.-China Economic and Security Review Commission annual report to Congress, “Comprehensive List of Recommendations to Congress”: [https://www.uscc.gov/sites/default/files/2023-11/2023 Comprehensive List of Recommendations.pdf](https://www.uscc.gov/sites/default/files/2023-11/2023%20Comprehensive%20List%20of%20Recommendations.pdf)

⁴ Foreign entity of concern currently included in DOD June 2023 guidance: <https://media.defense.gov/2023/Jun/29/2003251160/-1/-1/1/COUNTERING-UNWANTED-INFLUENCE-IN-DEPARTMENT-FUNDED-RESEARCH-AT-INSTITUTIONS-OF-HIGHER-EDUCATION.PDF>

⁵ Department of Commerce, Bureau of Industry and Security Entity List: <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list>

⁶ Department of Treasury, Office of Foreign Assets Control, Sanctions Lists: <https://ofac.treasury.gov/about-ofac>

with a country or foreign entity.

- Section 117B “Institutional Policy Regarding Foreign Gifts and Contracts to Faculty and Staff” would require institutions of higher education (those with more than \$50 million in federal research and development funding or any institution receiving Title VI international education funding) to develop a policy to compel research faculty and staff to report foreign gifts and contracts over \$480, as well as creating and maintaining a searchable, public database with that information. This requirement is unnecessary given other existing federal statutory mandates that require researchers to disclose all sources of foreign, domestic, current, and pending support for their research to federal research agencies as they apply for research awards and contracts.⁷ To effectively implement this requirement, the Office of Management and Budget recently approved common disclosure forms to be used by all federal agencies.⁸

This provision also raises serious privacy concerns for research faculty and staff, whose private financial transactions of relatively small amounts will have to be made public. Not only will this information be available to the U.S. public, but it will also provide our foreign adversaries with a roadmap for targeting our top-notch U.S. researchers.

Section 117B will result in the collection of an ocean of data, much of it trivial and inconsequential, and do little to address the fundamental concerns regarding research security and foreign influence. In addition, this could inadvertently undermine the U.S. economic competitiveness and national security objectives these bills are intended to enhance (i.e., faculty will be discouraged from working with foreign partners because their personal financial information will be made public).

- Section 117C would create new “Investment Disclosure Reports” for certain institutions of higher education (private institutions with endowments over \$6 billion or with “investments of concern” above \$250 million). Those institutions would need to report those investments with a country of concern or a foreign entity of concern, on an annual basis, to the U.S. Department of Education. Those investments would then be made public on a searchable database. As written, this would likely capture a small number of private institutions of higher education and does not serve to achieve any significant national interests, especially given that all U.S. institutions of higher education already comply with Treasury rules regulating their investments, including the recent Executive Order 14105⁹ regarding outbound investments in certain sensitive technologies in countries of concern. It is also unclear how this will address issues of national security beyond existing federal requirements.
- Section 117D would establish new fines regarding compliance with Section 117 and the new subsections of Section 117. The legislation would put into statute the tie between

⁷ See Section 223 of the FY 2021 National Defense Authorization Act: <https://www.aau.edu/key-issues/section-223-fy-2021-national-defense-authorization-act>

⁸ NSTC Research Security Subcommittee NSPM-33 Implementation Guidance Disclosure Requirements and Standardization: https://www.nsf.gov/bfa/dias/policy/nstc_disclosure.jsp

⁹ Executive Order 14105 “Addressing U.S. Investments in Certain National Security Technologies and Products in Countries of Concern”: <https://www.govinfo.gov/content/pkg/FR-2023-08-11/pdf/2023-17449.pdf>

Section 117 and an institution's Program Participation Agreement (PPA), which governs an institution's ability to access Title IV federal student aid. For the past several years, the Department of Education has tied PPAs to Section 117 compliance. However, this legislation goes further by creating additional fines for each new reporting requirement, and in some cases tying those fines to an institution's Title IV funding. As you know, those funds are awarded to the students who then choose to use that funding at institutions of higher education. By tying the new proposed fines to a school's Title IV funding, this would punish students for compliance issues at institutions, specifically compliance with foreign gift reporting, which is not likely impacting individual students. We do not believe these additional fines are necessary, given that Section 117 is already tied to an institution's PPA.

We appreciate that the DETERRENT Act would make Section 117 an annual report, rather than the current biannual requirements, in order to better align it with the new National Science Foundation foreign gift reporting requirement.¹⁰ We also appreciate that the legislation would exempt tuition and certain outgoing contracts from our institutions used to purchase goods from foreign companies. Exempting tuition is especially important since the DETERRENT Act would lower the reporting threshold from \$250,000 to \$50,000 for some gifts and contracts but \$0 for certain countries of concern and foreign entities of concern.

Congress should examine the research security provisions in the CHIPS and Science Act, recent National Defense Authorization Acts, and NSPM-33 that are currently being implemented and not simply add duplicative and confusing regulations. A recent survey from the Council on Governmental Relations found that over the past four years, universities have spent considerable funds to comply with expanding federal requirements to address inappropriate foreign influence on research. The survey found: "The projected year one average total cost per institution for compliance with the Disclosure Requirements, regardless of institutional size, is significant and concerning. The figure ranges from an average of over \$100,000 for smaller institutions to over \$400,000 for mid-size and large institutions. Although some of these expenses are onetime costs, a sizeable portion will be annual recurring compliance costs. Overall, the cost impact to research institutions in year one is expected to exceed \$50 million. Further, all research institutions will experience significant cost burden and administrative stress, and smaller research institutions with less developed compliance infrastructure may be disproportionately affected."¹¹ The DETERRENT Act would greatly increase these costs to our institutions, while also duplicating reporting requirements and provisions already being implemented.

We also urge Congress to examine the language included in the 2021 Senate-passed U.S. Innovation and Competition Act (USICA) (S. 1260) and 2022 House-passed America COMPETES Act (H.R. 4521), which proposed bipartisan fixes and improvements to Section 117. We urge Congress to reexamine that language, incorporated as an amendment in the nature of a substitute offered by Education and the Workforce Ranking Member Bobby Scott to

¹⁰ See June 23 comments on NSF Proposal and Award Policies and Procedure Guide (PAPPG): <https://www.acenet.edu/Documents/Comments-NSF-PAPPG-Foreign-Gifts-061223.pdf>

¹¹ COGR: Research Security Costing Model Survey - Phase I Report, November 2022: <https://www.cogr.edu/sites/default/files/Version%20Dec%205%202022%20research%20security%20costs%20survey%20FINAL.pdf>

the House Rules Committee,¹² and work together in a bipartisan manner to improve Section 117 in a way that addresses national security concerns while also protecting the important work at our U.S. institutions of higher education.

We understand that Congress and policymakers are concerned with research security, as well as foreign malign influence, at our institutions. However, the DETERRENT Act is the wrong action to take to address these issues and we urge you to vote against the legislation.

Sincerely,



Ted Mitchell, President

Cc: The Honorable Virginia Foxx, Chairwoman, House Education and the Workforce Committee
The Honorable Bobby Scott, Ranking Member, House Education and the Workforce Committee

On behalf of:

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
APPA, "Leadership in Educational Facilities"
Association of American Universities
Association of Catholic Colleges and Universities
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Association of Research Libraries
Council for Advancement and Support of Education
Council of Graduate Schools
EDUCAUSE
NAFSA: Association of International Educators
National Association of College and University Business Officers
National Association of Diversity Officers in Higher Education
National Association of Independent Colleges and Universities

¹² See amendment #6 submitted to the House Rules Committee by Ranking Member Scott to H.R.5933
https://amendments-rules.house.gov/amendments/SCOTVA_024_xml231130102846057.pdf?_gl=1*_1g2ksb3*_ga*ODYxNTg3NTQwLjE2Njg0MzkwNzA.*_ga_N4RTJ5Do8B*MTcwMTQoMTk1NS4xMC4wLjE3MDEoNDE5NTUuMC4wLjA.