

June 7, 2024

The Honorable Michael Burgess
U.S. House of Representatives
Committee on Rules
H-312, The Capitol
Washington DC 20515

The Honorable Jim McGovern
U.S. House of Representatives
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Dear Chairman Burgess and Ranking Member McGovern,

On behalf of the undersigned higher education associations, we write to oppose efforts to include the Bipartisan Workforce Pell Act and the Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions (DETERRENT) Act as amendments to the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025 (H.R.8070). Having previously opposed these bills, we wish to communicate our opposition to consideration of these as amendments to H.R. 8070.

We oppose the inclusion of amendment #943 offered by Reps. Elise Stefanik (R-NY) and Bobby Scott (D-VA), which contains the text of H.R. 6585, the Bipartisan Workforce Pell Act. While we appreciate the objectives of the amendment to expand Pell Grant eligibility for high-quality, short-term training programs, we do not believe that it is appropriate to include this higher education bill as part of the National Defense Authorization Act and should therefore be ruled out of order. Under the offset contained within this legislation, institutions that are subject to the endowment tax would be required to submit a risk-sharing payment to the U.S. Department of Education, and these institutions would not be able to offer federal student aid to their students on their campuses through the Federal Supplemental Educational Opportunity Grant program unless certain conditions are met.

In a previous letter sent to the leadership of the House,¹ we shared our initial concerns with the proposed offset. Because no changes were made to the underlining text, we remain concerned that the offset language would (1) establish a harmful precedent of targeting certain institutions and subjecting them to unequal status in federal programs; (2) incentivize some institutions to consider withdrawing from the federal lending programs to mitigate the significant and unpredictable financial risk they would be exposed to, or to accept fewer low-income students; and (3) force low-income students looking to finance their education into far costlier options in the private sector if institutions were to withdraw from the federal lending programs. We also shared that the offset in this bill does not cover the discretionary cost of the bill, requiring appropriators to make up the difference. We do generally support establishing new Pell Grant eligibility and it was our hope that this bill would have been modified to address the issues we have outlined with this offset.

¹ Feb. 27, 2024, letter to Speaker Johnson and Leader Jeffries: <https://www.acenet.edu/Documents/Letter-House-Bipartisan-Workforce-Pell-022724.pdf>

The other amendment we strongly oppose is the addition of the DETERRENT Act, which is being offered as amendment #17 by Rep. Michelle Steel (R-CA). The higher education community opposed the legislation in committee² and on the House floor.³ The Senate has not yet considered this legislation. We believe this legislation will ultimately harm U.S. competitiveness by discouraging U.S. researchers from participating in important international collaborations. The complicated and expansive bill should not be attached to the National Defense Authorization Act, but rather should move deliberately through additional hearings and consideration by the Senate Health, Education, Labor and Pensions (HELP) Committee to ensure appropriate consideration of the merits and to allow for improvements.

The higher education community has consistently worked with the federal security agencies and the Department of Education to educate colleges and universities regarding the reporting obligations in Section 117 of the Higher Education Act, as well as on improving overall Section 117 reporting. Since 2018, when issues with foreign gift reporting were raised by Congress and policymakers, there has been a substantial increase in Section 117 reporting.⁴ In addition, our institutions continue to work with the federal research agencies to implement new reporting disclosure requirements for individual researchers and institutions under NSPM-33, which is targeted at improving research security and addressing concerns around federal funding. We are also engaged in implementing new requirements for institutions under the recently passed CHIPS and Science Act.⁵

While we support efforts to improve Section 117, we remain opposed to the massive and problematic expansion of Section 117 under the DETERRENT Act. Our opposition includes concerns with the addition of new requirements that impact the privacy of research faculty and staff; threaten productive international collaborations; and task the Department of Education with new authorities it is not equipped to implement. For further details on the concerns with Sections 117A through 117D of the bill, please see 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 a contract with a country of concern (currently the People’s Republic of China, Russia, North Korea, and Iran) or a foreign entity of concern. The Department of Education does not currently have the expertise to carry out the review of contracts, many of which will likely focus on scientific research not under the jurisdiction of the Department. The Department also lacks the technical expertise to assess risks associated with critical technologies. We are deeply skeptical the Department of Education can be successful in this role, which will lead to a decrease in educational and cultural exchange

² November 6, 2023 Higher education community letter to U.S. House Committee on Education and Workforce: <https://www.acenet.edu/Documents/Letter-House-Ed-Workforce-DETERRENT-Act-110623.pdf>

³ December 4, 2023 Higher education community letter to U.S. House of Representatives opposing DETERRENT: <https://www.acenet.edu/Documents/Letter-House-DETERRENT-Act-120423.pdf>

⁴ 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>.

⁵ See AAU list of “Action 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>

and positive research partnerships.

- Section 117B, “Institutional Policy Regarding Foreign Gifts and Contracts to Faculty and Staff,” would require some institutions of higher education (those with more than \$50 million in federal research and development funding or institutions receiving Title VI funding) to develop a policy to compel research faculty and staff to report foreign gifts from any country valued over \$480 and contracts over \$5,000, as well as requiring institutions to create and maintain publicly available, searchable databases with that information. While the bill was amended during House floor consideration to protect some private information, it still raises privacy concerns for researchers who may be required to report personal, private financial transactions that could be made public through the Freedom of Information Act or other efforts. In addition, this provision will result in the collection of an ocean of data, much of it trivial and inconsequential, while doing little to address the fundamental concerns regarding research security and foreign influence.
- 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). These institutions would need to report investments with a country of concern or a foreign entity of concern on an annual basis to the Department of Education. The reported investments would then be made public on a searchable database. Similar to our concerns with 117A and 117B, it is unclear what national security or foreign malign influence threat this provision is trying to address. In addition, the disclosure of this material on a searchable, public database raises concern about the disclosure of proprietary, investment information, which no other industry is currently required to make public. We do not believe Section 117C is helpful or workable as drafted.
- Section 117D establishes new fines regarding compliance with Section 117 reporting and the new subsections of Section 117. For the past several years, the Department of Education has linked program participation agreements to Section 117 compliance. However, this legislation goes further by tying new proposed fines to Title IV and would punish students for compliance issues at institutions. Such a provision has the likelihood of harming low-income students’ ability to access an education in the event of possible errors in foreign gift reporting, which is not a proportionate or reasonable policy outcome.

Given the concerns with these bills and that both of these amendments are non-germane to the National Defense Authorization Act, we believe they should move through the regular process, including consideration and hearings by the Senate HELP Committee. We have consistently opposed these amendments and urge you to vote against making them in order for the House floor. We thank you for your time and attention to our request.

Sincerely,



Ted Mitchell, President

Cc: Members of the House Committee on Rules
The Honorable Mike Rogers, Chairman of House Armed Services Committee
The Honorable Adam Smith, Ranking Member of House Armed Services Committee

On behalf of:

American Association of Colleges and Universities
American Association of Colleges of Nursing
American Association of Colleges of Osteopathic Medicine
American Association of Collegiate Registrars and Admissions Officers
American Association of State Colleges and Universities
American Council on Education
Association of American Medical Colleges
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
Council for Advancement and Support of Education
Council for Christian Colleges & Universities
Council of Graduate Schools
EDUCAUSE
NAFSA: Association of International Educators
NASPA - Student Affairs Administrators in Higher Education
National Association of College and University Business Officers
National Association of Diversity Officers in Higher Education
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
Thurgood Marshall College Fund