



March 25, 2025

The Honorable Mike Johnson  
U.S. House of Representatives  
H-232, U.S. Capitol  
Washington D.C. 20515

The Honorable Hakeem Jeffries  
U.S. House of Representatives  
H-204, U.S. Capitol  
Washington D.C. 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 opposition to H.R.1048, the “Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions (DETERRENT)” Act. We appreciate and take very seriously the concerns raised around research security and foreign malign influence, at institutions of higher education. However, as currently proposed, the DETERRENT Act would significantly impede critical research activities; duplicate existing interagency efforts; and put in place a problematic expansion of data collection by the Department of Education without ensuring that actual national security or foreign malign influence threats, including those which espouse support for actions that run counter to American foreign policy, are addressed.

Over the past several years, we have worked with our members to encourage full compliance with reporting obligations in Section 117 of the Higher Education Act, 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. As a result, since issues with foreign gift reporting were raised by Congress and policymakers in 2018, there has been a substantial increase in Section 117 reporting.<sup>1</sup> Our associations and member institutions have continued to work with the federal research agencies to implement a range of new reporting requirements under NSPM-33, the CHIPS and Science Act, and numerous National Defense Authorization Act provisions.<sup>2</sup> Since 2023, when the DETERRENT Act was first marked up, federal research agencies have now fully implemented common disclosure forms that require more details on foreign affiliations, relationships, and financial interests; started implementing requirements for institutions to maintain research security programs; and created new processes for assessing and mitigating risks prior to award.

Proponents of this bill have also asserted that it may be helpful in deterring antisemitic activity linked to foreign actors on colleges campuses. To be very clear, our institutions take seriously

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<sup>1</sup> 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>.

<sup>2</sup> 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>

the rise of antisemitic activity across the country, and there is no question that more needs to be done to address it. We continue to work with major Jewish organizations and institutions with a shared conviction that Jewish students, staff, and faculty deserve to study and work without threat of harassment or discrimination. However, the DETERRENT Act is unlikely to solve the societal problem of antisemitism. Instead, it will result in more duplicative reporting, confusion on campuses and among faculty, and an increase in the overall costs of compliance.

We appreciate that the DETERRENT Act would make Section 117 an annual report, rather than the current biannual requirements, which would better align it with the National Science Foundation (NSF) foreign gift reporting requirement.<sup>3</sup> We also appreciate that the legislation exempts tuition payments and certain outgoing contracts from 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 and to \$0 for certain countries of concern and foreign entities of concern.

Additionally, we appreciate the alignment of definitions (i.e. “countries of concern” and “foreign entities of concern”) with definitions already in use at Department of Defense and NSF to help guide our institutions efforts to address research security concerns. We also support the language clarifying record retention and translations of gift and contract agreements, which provides important guidance to our institutions regarding retention of records.

However, we are concerned that the version of the bill being considered on the floor includes significant changes whose impact on institutions we have not had time to fully understand. This includes the addition of “intellectual property” to the definition of foreign gifts and contracts, as well as adding organizations such as the United Nations, to the definition of foreign sources.<sup>4</sup> We remain concerned regarding the expansion of Section 117 into areas where it is unclear how additional and often burdensome reporting will help to address national security concerns, beyond the new requirements created and implemented over the past few years. Additionally, the proposed expansion and creation of new reports under Section 117 could increase national security concerns by exposing information to malign foreign efforts.

The proposed bill includes several sections with detrimental impacts, and we urge you to strike these sections:

- The new **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 a contract with a country of concern or a foreign entity of concern.<sup>5</sup> This provision is particularly concerning because the

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<sup>3</sup> 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>

<sup>4</sup> See Comparative Print, Section 2, Sec 4 (E) “Foreign Source means....an international organization (as such term is defined in the International Organizations Immunities Act (22 U.S.C. 288))”: [https://rules.house.gov/sites/evo-subsites/rules.house.gov/files/documents/bill-to-bill\\_119hr1048rh\\_to\\_rcp\\_h1048\\_xml.pdf](https://rules.house.gov/sites/evo-subsites/rules.house.gov/files/documents/bill-to-bill_119hr1048rh_to_rcp_h1048_xml.pdf)

<sup>5</sup> 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>

definition of a “contract” 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. This is especially concerning, given the fact that the U.S. Department of State has paused federal efforts around exchange programs, such as Fulbright and Gilman Scholars, at a time when the United States needs more students to study the Chinese language.

In addition, 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. And given the recent reduction in force actions, which greatly reduced staff including at Federal Student Aid, it is unclear how this additional work would be carried out in a timely manner by the Department. Our institutions abide by the regulations and requirements maintained by the U.S. Department of Commerce,<sup>6</sup> the U.S. Department of the Treasury,<sup>7</sup> and the U.S. Department of State<sup>8</sup> regarding U.S. partnerships, export controls, and purchases from foreign entities. There are no indications that expanded Department of Education reviews are necessary; no other industry or government entity, including states, localities, and other nonprofit organizations, must undertake this type of review of an agreement before they can enter into a contract 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 that receive more than \$50 million in federal research and development funding or any Title VI funding to develop a policy to compel research faculty and staff, including those at “affiliated entities” to report any foreign gifts valued over \$480 and contracts over \$5,000, 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.

While the bill attempts to make the names of the reporting faculty and staff private, this provision raises both privacy and security concerns regarding personal financial transactions of relatively small amounts, including for example an inheritance from a foreign family member. This could also provide our foreign adversaries with a roadmap for targeting our top-notch U.S. researchers. Section 117b will likely 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.

- **Section 117c**, “Investment Disclosure Report,” would create new 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

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<sup>6</sup> 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>

<sup>7</sup> Department of Treasury, Office of Foreign Assets Control, Sanctions Lists: <https://ofac.treasury.gov/about-ofac>

<sup>8</sup> Department of State Directorate of Defense Trade Controls, including the International Traffic in Arms Regulations (ITAR): [https://www.pmdtdc.state.gov/ddtc\\_public/ddtc\\_public](https://www.pmdtdc.state.gov/ddtc_public/ddtc_public)

report those investments with a country of concern or a foreign entity of concern on an annual basis to the Department of Education, which 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. Our institutions are in compliance with Treasury rules regulating our investments, regarding outbound investments in certain sensitive technologies in countries of concern. It is unclear how this will address additional issues of national security, beyond existing federal requirements. It is also unclear why endowments at certain private institutions of higher education would be specifically called out as a national security concern when investments made by other entities that are not institutions of higher education, such as other nonprofits, government grantees and private government contractors are not made public.

- **Section 117d**, “Enforcement; Single Point of Contract; Institutional Requirements,” establishes new fines regarding compliance with Section 117 reporting and the new subsections of Section 117. The legislation would put into statute the tie between Section 117 and an institution’s program participation agreement. By tying the new proposed fines to Title IV, this would punish students for compliance issues at institutions, specifically compliance with foreign gift reporting, which is not likely impacting individual students.

In addition to these recommendations, we strongly encourage the final bill to also include language that requires the Department of Education to carry out negotiated rulemaking on Section 117, in order to ensure that the Department engages fully with the stakeholder community and clarifies important questions around definitions to ensure the reports are completed in the most useful way possible for policymakers, interested public parties, and the national security agencies.

We appreciate the efforts in the DETERRENT Act to clarify Section 117 and codify compliance rules the Department of Education has previously used sub-regulatory guidance to explain. However, we urge you to consider the potentially detrimental impacts of Sections 117a, 117b, 117c, and 117d, and strike those sections. This significant expansion of Department authority and responsibility is especially problematic given the recent reduction in force implemented at the Department of Education, as well as the Administration’s efforts to dismantle the Department. We look forward to working with you on this important legislation as it moves forward in Congress. However, if the bill includes those problematic provisions as it moves forward, we will continue to oppose the legislation as drafted. There are better approaches to address the concerns of policymakers and we welcome the opportunity to work with lawmakers on the right solutions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Mitchell".

Ted Mitchell, President

Cc: Cyrus Artz, Senior Policy Advisor for Speaker Johnson  
Tonia Wu, Policy Advisor for Minority Leader Jeffries

On behalf of:

American Association of Community Colleges  
American Association of State Colleges and Universities  
American Council on Education  
Association of American Universities  
Association of Public and Land-grant Universities  
National Association of Independent Colleges and Universities