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(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R. _____

To amend the Higher Education Act of 1965 to strengthen oversight and disclosures relating to foreign support for institutions of higher education, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. BANKS introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Higher Education Act of 1965 to strengthen oversight and disclosures relating to foreign support for institutions of higher education, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. DISCLOSURES OF FOREIGN GIFTS AND CON-**
4 **TRACTS.**

5 (a) IN GENERAL.—Section 117 of the Higher Edu-
6 cation Act of 1965 (20 U.S.C. 1011f) is amended to read
7 as follows:

1 **“SEC. 117. DISCLOSURES OF FOREIGN GIFTS AND CON-**
2 **TRACTS.**

3 “(a) DISCLOSURES.—

4 “(1) AGGREGATE GIFTS AND CONTRACTS.—

5 “(A) DISCLOSURE REQUIRED.—Except as
6 provided in subsection (b), whenever an institu-
7 tion receives a gift from or enters into a con-
8 tract with a foreign source, the value of which
9 is \$50,000 or more, considered alone or in com-
10 bination with all other gifts from or contracts
11 with that foreign source within a calendar year
12 the institution shall file a disclosure report with
13 the Office for Foreign Gifts and Contracts
14 Oversight on January 31 or July 31, whichever
15 is sooner.

16 “(B) CONTENTS OF DISCLOSURE.—Each
17 report under subparagraph (A) shall include the
18 following:

19 “(i) For gifts received from or con-
20 tracts entered into with a foreign govern-
21 ment, the aggregate amount of such gifts
22 and contracts received from each foreign
23 government, including the content of each
24 such contract.

25 “(ii) For gifts received from or con-
26 tracts entered into with a foreign source

1 other than a foreign government, the ag-
2 gregate dollar amount of such gifts and
3 contracts attributable to a particular coun-
4 try, the legal or formal name of the foreign
5 sources, and the content of each such con-
6 tract.

7 “(C) **ATTRIBUTION.**—For purposes of sub-
8 paragraph (B)(ii), the country to which a gift
9 or contract is attributable is—

10 “(i) in the case of a gift from or con-
11 tract entered into with a foreign source
12 who is a natural person, that person’s
13 country of citizenship, or if unknown, that
14 person’s principal country residence; or

15 “(ii) in the case of a gift from or con-
16 tract entered into with a foreign source
17 which is a legal entity, the entity’s prin-
18 cipal place of business or, if unknown, the
19 entity’s country of incorporation.

20 “(2) **GIFTS OR CONTRACTS WITH UNDETER-**
21 **MINED MONETARY VALUE.**—

22 “(A) **DISCLOSURE REQUIRED.**—Except as
23 provided in subsection (b), whenever an institu-
24 tion receives a gift from or enters into a con-
25 tract with a foreign source the value of which

1 is not readily ascertainable, the institution shall
2 file a disclosure report with the Office for For-
3 eign Gifts and Contracts Oversight on January
4 31 or July 31, whichever is sooner.

5 “(B) CONTENTS OF DISCLOSURE.—Each
6 report under subparagraph (A) shall include the
7 information described in paragraph (1)(B).

8 “(3) OWNERSHIP OR CONTROL BY FOREIGN
9 SOURCE.—

10 “(A) DISCLOSURE REQUIRED.—Whenever
11 an institution is owned or controlled by a for-
12 eign source the institution shall file a disclosure
13 report with the Office for Foreign Gifts and
14 Contracts Oversight on January 31 or July 31,
15 whichever is sooner.

16 “(B) CONTENTS OF DISCLOSURE.—Each
17 report under subparagraph (A) shall include the
18 following:

19 “(i) the information described in para-
20 graph (1)(B) (without regard to any gift or
21 contract threshold described in paragraph
22 (1)(A));

23 “(ii) the identity of the foreign source
24 that owns or controls the institution,

1 “(iii) the date on which the foreign
2 source assumed ownership or control; and

3 “(iv) any changes in the programs or
4 organizational structure of the institution
5 resulting from the change in ownership or
6 control.

7 “(4) RESTRICTED AND CONDITIONAL GIFTS.—

8 “(A) DISCLOSURE REQUIRED.—Except as
9 provided in subsection (b), whenever any insti-
10 tution receives a restricted or conditional gift
11 from or enters into a restricted or conditional
12 contract with a foreign source (regardless of the
13 value of such gift or contract) the institution
14 shall file a disclosure report with the Office for
15 Foreign Gifts and Contracts Oversight on Jan-
16 uary 31 or July 31, whichever is sooner.

17 “(B) CONTENTS OF DISCLOSURE.—Each
18 report under subparagraph (A) shall include the
19 following:

20 “(i) NONGOVERNMENTAL SOURCES.—

21 For gifts received from or contracts en-
22 tered into with a foreign source other than
23 a foreign government, the amount, the
24 date, and a description of such conditions
25 or restrictions. The report shall also dis-

1 close the country of citizenship, or if un-
2 known, the principal residence for a for-
3 eign source who is a natural person, and
4 the country of incorporation, or if un-
5 known, the principal place of business for
6 a foreign source which is a legal entity.

7 “(ii) GOVERNMENTAL SOURCES.—For
8 gifts received from or contracts entered
9 into with a foreign government, the
10 amount, the date, a description of such
11 conditions or restrictions, and the name of
12 the foreign government.

13 “(b) LIMITATION ON ACCEPTANCE OF CERTAIN
14 GIFTS AND CONTRACTS.—

15 “(1) APPROVAL REQUIRED.—An institution
16 may not accept a gift or enter into a contract de-
17 scribed in paragraph (3) unless—

18 “(A) the institution files a disclosure re-
19 port with the Office for Foreign Gifts and Con-
20 tracts Oversight that includes—

21 “(i) the dollar amount of the intended
22 gift or contract;

23 “(ii) all terms and conditions of the
24 intended gift or contract;

1 “(iii) the legal or formal name of the
2 foreign source or associate of a foreign ad-
3 versary that intends to make the gift or
4 enter into the contract and—

5 “(I) in the case of a foreign
6 source or associate of a foreign adver-
7 sary who is a natural person, that
8 person’s country of citizenship, or if
9 unknown, that person’s principal
10 country of residence; or

11 “(II) in the case of a foreign
12 source or associate of a foreign adver-
13 sary which is a legal entity, the enti-
14 ty’s principal place of business, if un-
15 known, the entity’s country of incor-
16 poration;

17 “(B) an authorized official of the institu-
18 tion certifies to the Secretary that acceptance of
19 the gift or contract—

20 “(i) will not pose risks to the national
21 security interests of the United States;

22 “(ii) will not compromise the competi-
23 tiveness of the United States in the field to
24 which the gift or contract pertains; and

1 “(iii) will not result in any restrictions
2 on academic freedom or discourse, includ-
3 ing by influencing the hiring of faculty, the
4 acceptance of students, or the content of
5 instruction in a manner favorable to the
6 interests of the foreign source or associate
7 of a foreign adversary that intends to
8 make the gift or enter into the contract;
9 and

10 “(C) the Secretary, acting through the Of-
11 fice for Foreign Gifts and Contracts Over-
12 sight—

13 “(i) thoroughly reviews and verifies
14 the information submitted by the institu-
15 tion under subparagraphs (A) and (B);

16 “(ii) makes a determination, in writ-
17 ing, to approve the gift or contract; and

18 “(iii) transmits such approval to the
19 institution.

20 “(2) NOTICE OF DISAPPROVAL.—If the Sec-
21 retary disapproves a gift or contract under para-
22 graph (1)(C) the Secretary shall transmit notice of
23 such disapproval to the institution.

1 “(3) GIFTS AND CONTRACTS DESCRIBED.—The
2 gifts and contracts described in this paragraph are
3 the following:

4 “(A) Any gift from or contract with an as-
5 sociate of a foreign adversary the value of
6 which is \$10,000 or more, considered alone or
7 in combination with all other gifts from or con-
8 tracts with such person or entity.

9 “(B) Any gift from or contract with a for-
10 eign source (regardless of the value of such gift
11 or contract) that relates to the research, devel-
12 opment, or production of critical technologies
13 and, in consideration for which, a foreign
14 source would be granted access to material non-
15 public technical information held by an institu-
16 tion.

17 “(4) CRITERIA FOR HEIGHTENED SCRUTINY.—
18 In making a determination whether to approve or
19 disapprove a gift or contract under paragraph
20 (1)(C), the Secretary shall apply a heightened stand-
21 ard of scrutiny to any gift or contract that relates
22 to one or more of the following:

23 “(A) Critical technologies.

24 “(B) Biotechnology.

25 “(C) Pharmaceuticals.

1 “(D) Artificial intelligence.

2 “(E) Quantum computing.

3 “(F) Machine learning.

4 “(G) Technologies with military applica-
5 tions.

6 “(H) Any other area of science, tech-
7 nology, engineering, or mathematics.

8 “(d) AVAILABILITY OF DOCUMENTATION.—As part
9 of each disclosure required under this section, an institu-
10 tion shall provide to the Secretary an assurance that the
11 institution will, upon request of the Secretary, produce
12 true copies of any documentation relating to any gift, con-
13 tract, or change in ownership or control subject to such
14 disclosure requirements.

15 “(e) TRANSLATIONS.—Each report required to be
16 submitted under this section and any documentation made
17 available under subsection (d) shall be provided in the
18 English language. If any part of such report or docu-
19 mentation requires translation from another language into
20 English for purposes of meeting the requirements of this
21 subsection, the institution shall ensure that the translation
22 is performed by a third party unaffiliated with institution
23 or the foreign source concerned.

24 “(f) RELATION TO OTHER REPORTING REQUIRE-
25 MENTS.—

1 “(1) STATE REQUIREMENTS.—If an institution
2 subject to the disclosure requirements of subsection
3 (a) is within a State which has enacted requirements
4 for public disclosure of gifts from or contracts with
5 a foreign source that are substantially similar to the
6 requirements of this section, a copy of the disclosure
7 report filed with the State may be filed with the Sec-
8 retary in lieu of a report required under such sub-
9 section. The State in which the institution is located
10 shall provide to the Secretary such assurances as the
11 Secretary may require to establish that the institu-
12 tion has met the requirements for public disclosure
13 under State law if the State report is filed.

14 “(2) USE OF OTHER FEDERAL REPORTS.—If an
15 institution receives a gift from, or enters into a con-
16 tract with, a foreign source, where any other depart-
17 ment, agency, or bureau of the executive branch re-
18 quires a report containing requirements substantially
19 similar to those required under this section, a copy
20 of the report may be filed with the Secretary in lieu
21 of a report required under subsection (a).

22 “(g) PUBLIC DISCLOSURE AND MODIFICATION OF
23 REPORTS.—

24 “(1) IN GENERAL.—Not later than 30 days
25 after receiving a disclosure report under this section,

1 the Secretary shall make the full text of the report
2 publicly available on the database established under
3 paragraph (2).

4 “(2) DATABASE.—The Secretary of Education
5 shall establish a database of the reports submitted
6 to the Secretary under this section. The database
7 shall be hosted on a publicly accessible website of
8 the Department of Education and the reports posted
9 to the database shall be made available in an elec-
10 tronic format that—

11 “(A) includes the full text of each report
12 and any supporting documentation relating to
13 the report;

14 “(B) is downloadable, searchable, and sort-
15 able; and

16 “(C) allows a user of the database to com-
17 pare institutions based on the types and
18 amounts of foreign support received by such in-
19 stitutions.

20 “(h) MODIFICATIONS.—The Secretary shall establish
21 a process to enable institutions to revise and update pre-
22 viously filed disclosure reports under this section to ensure
23 accuracy, compliance, and ability to cure.

24 “(i) SANCTIONS FOR NONCOMPLIANCE.—

1 “(1) IN GENERAL.—As a sanction for non-
2 compliance with the requirements of this section, the
3 Secretary of Education shall impose a fine on an in-
4 stitution that, in any year, knowingly or willfully vio-
5 lates this section, that is—

6 “(A) in an amount equal to at least 10
7 percent of the value of the gift or contract but
8 not more than the total amount of the gift or
9 contract with the foreign source in the case
10 of—

11 “(i) a failure to disclose a gift or con-
12 tract with a foreign source as required
13 under this section; or

14 “(ii) a failure comply with subsection
15 (d) or (e) with respect to such gift or con-
16 tract; or

17 “(B) in an amount that is not more than
18 25 percent of the total amount of funding re-
19 ceived by the institution under this Act, as de-
20 scribed in paragraph (3), for the year in which
21 the violation occurred in the case of—

22 “(i) a failure to disclose ownership or
23 control by a foreign source in violation of
24 the requirements of subsection (a)(3); or

1 “(ii) a failure to comply with sub-
2 sections (d) or (e) with respect to such dis-
3 closure; or

4 “(C) in the case of a failure to comply with
5 subsection (b)—

6 “(i) in an amount equal to the value
7 of the gift or contract; or

8 “(ii) not less than \$50,000 if the gift
9 or contract is of undetermined monetary
10 value.

11 “(2) REPEATED FAILURES.—

12 “(A) KNOWING AND WILLFUL FAIL-
13 URES.—In addition to a fine for a violation in
14 any year in accordance with paragraph (1), the
15 Secretary of Education shall impose a fine on
16 an institution that knowingly and willfully fails
17 in two consecutive years to comply with the re-
18 quirements of this section, that is—

19 “(i) in an amount that is not less
20 than \$100,000 but not more than twice
21 the amount of the gift or contract with the
22 foreign source, in the case of—

23 “(I) a failure to disclose a gift or
24 contract with a foreign source as re-
25 quired under this section; or

1 “(II) a failure to comply with
2 subsection (d) or (e) with respect to
3 such gift or contract; or

4 “(ii) in an amount that is not more
5 than 25 percent of the total amount of
6 funding received by the institution under
7 this Act for the year in which the violation
8 occurred in the case of—

9 “(I) a failure to disclose owner-
10 ship or control by a foreign source in
11 violation of the requirements of sub-
12 section (a)(3); or

13 “(II) a failure comply with sub-
14 sections (d) or (e) with respect to
15 such disclosure.

16 “(B) SANCTION FOR REPEATED VIOLATION
17 OF GIFT AND CONTRACT ACCEPTANCE
18 RULES.—If an institution knowingly and will-
19 fully violates a provision of subsection (b) more
20 than once in a period of two consecutive years,
21 as determined by the Secretary, the Secretary
22 shall declare the institution to be ineligible to
23 receive funds and participate in programs under
24 this Act for a period of up to five years.

1 “(3) CALCULATION OF PENALTY.—For pur-
2 poses of paragraphs (1)(B) and (2)(A)(ii), the total
3 amount of funding received by an institution under
4 this Act does not include any amounts received by
5 the institution from or on behalf of an individual
6 student that are derived from a grant or student
7 loan made under this Act.

8 “(j) AUTHORITY TO TERMINATE OR MODIFY TRANS-
9 ACTIONS.—As a condition of receiving a gift from or enter-
10 ing into a contract with a foreign source or an associate
11 of a foreign adversary, an institution and any other party
12 to such gift or contract shall agree that the Office for For-
13 eign Gifts and Contracts Oversight shall have the author-
14 ity—

15 “(1) to review such gift or contract at any time;
16 and

17 “(2) if the Office determines that such gift or
18 contract poses a risk to the national security inter-
19 ests of the United States, the Office may—

20 “(A) terminate or modify such gift or con-
21 tract; or

22 “(B) require the institution to pay to the
23 Secretary an amount equal to the value of such
24 gift or contract.

1 “(k) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed to require the disclosure or ap-
3 proval by the Department of Education of a tuition agree-
4 ment or other agreement entered into between an institu-
5 tion and an individual student in the regular course of
6 the student’s enrollment at the institution.

7 “(l) DEFINITIONS.—In this section:

8 “(1) The term ‘associate of a foreign adversary’
9 means—

10 “(A) a natural person (regardless of the
11 person’s citizenship, nationality, or principal
12 place of residence) who derives a substantial
13 amount of income from business activities with
14 a foreign adversary; and

15 “(B) a legal entity (regardless of entity’s
16 country of incorporation or principal place of
17 business) that derives a substantial amount of
18 revenue or income from business activities with
19 a foreign adversary.

20 “(2) The term ‘contract’ means any legally
21 binding agreement, including any agreement for the
22 acquisition by purchase, lease, or barter of property
23 or services by the foreign source, for the direct ben-
24 efit or use of either of the parties.

1 “(3) The term ‘critical technologies’ has the
2 meaning given that term section 801.204 of title 31,
3 Code of Federal Regulations (or any successor to
4 such regulation).

5 “(4) The term ‘foreign adversary’ means—

6 “(A) Cuba;

7 “(B) the Democratic People’s Republic of
8 North Korea;

9 “(C) the Islamic Republic of Iran;

10 “(D) the People’s Republic of China (in-
11 cluding the Hong Kong Special Administrative
12 Region and the Macau Special Administrative
13 Region);

14 “(E) the Russian Federation; and

15 “(F) any other nation designated as a for-
16 eign adversary by the Department of Commerce
17 for purposes of the implementation of Executive
18 Order 13873 (84 Fed. Reg. 22689), titled ‘Se-
19 curing the Information and Communications
20 Technology and Services Supply Chain’, and
21 dated May 15, 2019.

22 “(5) The term ‘foreign source’ means—

23 “(A) a foreign government, including an
24 agency of a foreign government;

1 “(B) a legal entity, governmental or other-
2 wise, created solely under the laws of a foreign
3 state or states;

4 “(C) an individual who is not a citizen or
5 a national of the United States or a trust terri-
6 tory or protectorate thereof;

7 “(D) an agent, including a subsidiary or
8 affiliate of a foreign legal entity, acting on be-
9 half of a foreign source;

10 “(E) any individual or legal entity that, in
11 the period of one year preceding the date on
12 which the individual or entity made a gift to or
13 entered into a contract with an institution—

14 “(i) received a total of \$100,000 or
15 more in funds or subsidies from a foreign
16 government; or

17 “(ii) generated at least 40 percent of
18 the individual or entity’s income or revenue
19 in a foreign country and the principal
20 place of residence or business of such indi-
21 vidual or entity is in that foreign country;

22 “(6) The term ‘gift’ means any gift of money,
23 property, or services.

24 “(7) The term ‘institution’ means—

1 “(A) any institution, public or private, or,
2 if a multicampus institution, any single campus
3 of such institution, in any State, that—

4 “(i) is legally authorized within such
5 State to provide a program of education
6 beyond secondary school;

7 “(ii) provides a program for which the
8 institution awards a bachelor’s degree (or
9 provides not less than a 2-year program
10 which is acceptable for full credit toward
11 such a degree) or more advanced degrees;
12 and

13 “(iii) is accredited by a nationally rec-
14 ognized accrediting agency or association
15 and to which institution Federal financial
16 assistance is extended (directly or indi-
17 rectly through another entity or person), or
18 which institution receives support from the
19 extension of Federal financial assistance to
20 any of the institution’s subunits; and

21 “(B) any organization associated with or
22 otherwise connected to an institution described
23 in subparagraph (A), including a university
24 foundation (as described in section 509(a)(3) of
25 the Internal Revenue Code of 1986) or a non-

1 profit organization (as described in section
2 501(c)(3) of the Internal Revenue Code of
3 1986).

4 “(8) The term ‘restricted or conditional gift or
5 contract’ means any endowment, gift, grant, con-
6 tract, award, present, or property of any kind which
7 includes provisions regarding—

8 “(A) the employment, assignment, or ter-
9 mination of faculty;

10 “(B) the establishment of departments,
11 centers, research or lecture programs, or new
12 faculty positions;

13 “(C) the selection or admission of stu-
14 dents; or

15 “(D) the award of grants, loans, scholar-
16 ships, fellowships, or other forms of financial
17 aid restricted to students of a specified country,
18 religion, sex, ethnic origin, or political opin-
19 ion.”.

20 (b) EFFECTIVE DATE AND APPLICABILITY.—The
21 amendments made by subsection (a) shall take effect 90
22 days after the date of enactment of this Act and shall
23 apply with respect to gifts, contracts, and changes in the
24 ownership or control of an institution occurring on or after
25 such effective date.

1 (c) REGULATIONS.—Not later than the effective date
2 specified in subsection (b), the President shall promulgate
3 regulations implementing section 117 Higher Education
4 Act of 1965 (20 U.S.C. 1011f), as amended by subsection
5 (a).

6 **SEC. 2. OFFICE FOR FOREIGN GIFTS AND CONTRACTS**
7 **OVERSIGHT.**

8 (a) ESTABLISHMENT.—Part B of title I of the Higher
9 Education Act of 1965 (20 U.S.C. 1011 et seq.) is amend-
10 ed by inserting after section 117 the following:

11 **“SEC. 117a. OFFICE FOR FOREIGN GIFTS AND CONTRACTS**
12 **OVERSIGHT.**

13 “(a) ESTABLISHMENT.—There is established within
14 the Office of the Secretary of Education an Office for For-
15 eign Gifts and Contracts Oversight (referred to in this sec-
16 tion as the ‘Office’).

17 “(b) HEAD OF OFFICE.—The head of the Office shall
18 be the designee of the Secretary.

19 “(c) RESPONSIBILITIES.—The responsibilities of the
20 Office shall be—

21 “(1) to monitor the compliance of institutions
22 with section 117;

23 “(2) to enforce the requirements of such section
24 with respect to such institutions;

1 (1) by redesignating subparagraph (J) as sub-
2 paragraph (K); and

3 (2) by inserting after subparagraph (I) the fol-
4 lowing new subparagraph:

5 “(J) The head of the Office for Foreign
6 Gifts and Contracts Oversight of the Depart-
7 ment of Education (as described in section
8 117a of the Higher Education Act of 1965).”.

9 (b) COVERED TRANSACTIONS AND LEAD AGENCY.—

10 (1) COVERED TRANSACTIONS.—Section
11 721(a)(4) of the Defense Production Act of 1950
12 (50 U.S.C. 4565(a)(4)) is amended—

13 (A) in subparagraph (A)(i), by striking
14 “subparagraph (B)(i)” and inserting “clauses
15 (i) or (vi) of subparagraph (B)”; and

16 (B) in subparagraph (B), by inserting
17 after clause (v) the following new clause:

18 “(vi) Any gift or contract described in
19 section 117(a)(1)(A) of the Higher Edu-
20 cation Act of 1965.”.

21 (2) LEAD AGENCY.—Section 721(k)(5) of the
22 Defense Production Act of 1950 (50 U.S.C.
23 4565(k)(5)) is amended—

24 (A) by redesignating subparagraphs (A)
25 and (B) as clauses (i) and (ii), respectively;

1 (B) by striking “The Secretary” and in-
2 serting the following:

3 “(A) IN GENERAL.—The Secretary”; and

4 (C) by adding at the end the following new
5 subparagraph:

6 “(B) CERTAIN GIFTS AND CONTRACTS.—

7 With respect to a covered transaction described
8 in subsection (a)(4)(B)(v), the Secretary of the
9 Treasury shall designate the head of the Office
10 for Foreign Gifts and Contracts Oversight of
11 the Department of Education (as described in
12 section 117a of the Higher Education Act of
13 1965) as the lead agency on behalf of the Com-
14 mittee.”.

15 (3) APPLICABILITY.—This subsection and the
16 amendments made by this subsection shall apply
17 with respect to any covered transaction described in
18 clause (v) of section 721(a)(4)(B) of the Defense
19 Production Act of 1950 (50 U.S.C. 4565(a)(4)(B)),
20 the review or investigation of which is initiated
21 under section 721 of such Act on or after the date
22 of the enactment of this section.