

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 5933
OFFERED BY MR. SCOTT OF VIRGINIA**

Strike section 1 and all that follows and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “DETERRENT Act
3 of 2023”.

4 SEC. 2. DISCLOSURES OF FOREIGN GIFTS AND CONTRACTS.

5 Section 117 of the Higher Education Act of 1965 (20
6 U.S.C. 1011f) is amended to read as follows:

**7 “SEC. 117. DISCLOSURES OF FOREIGN GIFTS AND CON-
8 TRACTS.**

9 “(a) DISCLOSURE REPORTS.—

10 “(1) AGGREGATE GIFT AND CONTRACT DISCLO-
11 SURES.—An institution shall file a disclosure report
12 described in subsection (b) with the Secretary not
13 later than July 31 of the calendar year immediately
14 following any calendar year in which—

15 “(A) the institution receives a gift from, or
16 enters into a contract with, a foreign source,
17 the value of which is \$100,000 or more, consid-
18 ered alone or in combination with all other gifts

1 from, or contracts with, that foreign source
2 within the calendar year; or

3 “(B) the institution receives a gift from, or
4 enters into a contract with, a foreign source,
5 the value of which totals \$250,000 or more,
6 considered alone or in combination with all
7 other gifts from, or contracts with, that foreign
8 source over the previous 3 calendar years.

9 “(2) FOREIGN SOURCE OWNERSHIP OR CON-
10 TROL DISCLOSURES.—In the case of an institution
11 that is substantially owned or controlled (as de-
12 scribed in section 668.174(e)(3) of title 34, Code of
13 Federal Regulations (or successor regulations)) by a
14 foreign source, the institution shall file a disclosure
15 report described in subsection (b) with the Secretary
16 not later than July 31 of every year.

17 “(b) CONTENTS OF REPORT.—Each report to the
18 Secretary required under subsection (a) shall contain the
19 following:

20 “(1)(A) In the case of gifts or contracts de-
21 scribed in subsection (a)(1)—

22 “(i) for gifts received from, or contracts
23 entered into with, a foreign government, the ag-
24 gregate amount of such gifts and contracts re-

1 ceived from or entered into with such foreign
2 government;

3 “(ii) for gifts received from, or contracts
4 entered into with, a foreign source other than
5 a foreign government, the aggregate dollar
6 amount of such gifts and contracts attributable
7 to a particular country and the legal or formal
8 name of the foreign source; and

9 “(iii) the intended purpose of such gift or
10 contract, as provided to the institution by such
11 foreign source, or if no such purpose is provided
12 by such purpose is provided by such source, the
13 intended use of such gift or contract, as pro-
14 vided by the institution.

15 “(B) For purposes of this paragraph, the coun-
16 try to which a gift is attributable is—

17 “(i) the country of citizenship or, if un-
18 known, the principal residence, for a foreign
19 source who is a natural person; or

20 “(ii) the country of incorporation or, if un-
21 known, the principal place of business, for a
22 foreign source that is a legal entity.

23 “(2) In the case of an institution required to
24 file a report under subsection (a)(2)—

1 “(A) for gifts received from, or contracts
2 entered into with, a foreign source, without re-
3 gard to the value of such gift or contract, the
4 information described in paragraph (1)(A);

5 “(B) the identity of the foreign source that
6 owns or controls the institution;

7 “(C) the date on which the foreign source
8 assumed ownership or control; and

9 “(D) any changes in program or structure
10 resulting from such ownership or control.

11 “(3) An assurance that the institution will
12 maintain a true copy of each gift or contract agree-
13 ment subject to the disclosure requirements under
14 this section, until the latest of—

15 “(A) the date that is 4 years after the date
16 of the agreement;

17 “(B) the date on which the agreement ter-
18 minates; or

19 “(C) the last day of any period of which
20 applicable State public record law requires a
21 true copy of such agreement to be maintained.

22 “(4) An assurance that the institution will—

23 “(A) produce true copies of gift and con-
24 tract agreements subject to the disclosure re-
25 quirements under this section upon request of

1 the Secretary during a compliance audit or
2 other institutional investigation; and

3 “(B) ensure that all contracts from the
4 foreign source are translated into English, as
5 applicable.

6 “(c) ADDITIONAL DISCLOSURES FOR RESTRICTED
7 AND CONDITIONAL GIFTS AND CONTRACTS.—Notwith-
8 standing subsection (b), whenever any institution receives
9 a restricted or conditional gift or contract from a foreign
10 source, the institution shall disclose the following to the
11 Secretary, translated into English:

12 “(1) For such gifts received from, or contracts
13 entered into with, a foreign source other than a for-
14 eign government, the amount, the date, and a de-
15 scription of such conditions or restrictions. The re-
16 port shall also disclose the country of citizenship, or
17 if unknown, the principal residence for a foreign
18 source which is a natural person, and the country of
19 incorporation, or if unknown, the principal place of
20 business for a foreign source which is a legal entity.

21 “(2) For gifts received from, or contracts en-
22 tered into with, a foreign government, the amount,
23 the date, a description of such conditions or restric-
24 tions, and the name of the foreign government.

1 “(d) DATABASE REQUIREMENT.—Beginning not
2 later than 30 days before the July 31 immediately fol-
3 lowing the date of enactment of the DETERRENT Act
4 of 2023, the Secretary shall—

5 “(1) establish and maintain a searchable data-
6 base on a website of the Department, under which
7 each report submitted under this section—

8 “(A) is, not later than 60 days after the
9 date of the submission of such report, made
10 publicly available (in electronic and
11 downloadable format);

12 “(B) can be identified and compared to
13 other such reports; and

14 “(C) is searchable and sortable by—

15 “(i) the date the institution filed such
16 report;

17 “(ii) the date on which the institution
18 received the gift, or entered into the con-
19 tract, which is the subject of the report;
20 and

21 “(iii) the attributable country of such
22 gift or contract as described in subsection
23 (b)(1)(B); and

24 “(2) indicate, as part of the public record of a
25 report included in such database, whether the report

1 was submitted by the institution with respect to a
2 gift received from, or a contract entered into with—

3 “(A) a foreign source that is a foreign gov-
4 ernment; or

5 “(B) a foreign source that is not a foreign
6 government.

7 “(e) RELATION TO OTHER REPORTING REQUIRE-
8 MENTS.—

9 “(1) STATE REQUIREMENTS.—If an institution
10 that is required to file a disclosure report under sub-
11 section (a) is in a State that has enacted require-
12 ments for public disclosure of gifts from, or con-
13 tracts with, a foreign source that includes all infor-
14 mation required under this section for the same or
15 an equivalent time period, the institution may file
16 with the Secretary a copy of the disclosure report
17 filed with the State in lieu of the report required
18 under such subsection. The State in which the insti-
19 tution is located shall provide the Secretary such as-
20 surances as the Secretary may require to establish
21 that the institution has met the requirements for
22 public disclosure under State law if the State report
23 is filed.

24 “(2) USE OF OTHER FEDERAL REPORTS.—If an
25 institution receives a gift from, or enters into a con-

1 tract with, a foreign source, where any other depart-
2 ment, agency, or bureau of the executive branch re-
3 quires a report containing all the information re-
4 quired under this section for the same or an equiva-
5 lent time period, a copy of the report may be filed
6 with the Secretary in lieu of a report required under
7 subsection (a).

8 “(f) MODIFICATION OF REPORTS.—The Secretary
9 shall incorporate a process permitting institutions to re-
10 vise and update previously filed disclosure reports under
11 this section to ensure accuracy, compliance, and ability to
12 cure.

13 “(g) SANCTIONS FOR NONCOMPLIANCE.—

14 “(1) IN GENERAL.—As a sanction for non-
15 compliance with the requirements under this section,
16 the Secretary may impose a fine on an institution
17 that in any year knowingly or willfully violates this
18 section, that is—

19 “(A) in the case of a failure to disclose a
20 gift or contract with a foreign source as re-
21 quired under this section, or to comply with the
22 requirements of subparagraphs (A) and (B) of
23 subsection (b)(4) pursuant to the assurances
24 made under such subsection, in an amount that
25 is not less than \$250 but not more than 50 per-

1 cent of the amount of the gift or contract with
2 the foreign source; or

3 “(B) in the case of any violation of the re-
4 quirements of subsection (a)(2), in an amount
5 that is not more than 25 percent of the total
6 amount of funding received by the institution
7 under this Act (other than funds received under
8 title IV of this Act).

9 “(2) REPEATED FAILURES.—

10 “(A) KNOWING AND WILLFUL FAIL-
11 URES.—In addition to a fine for a violation in
12 any year under paragraph (1), the Secretary
13 may impose a fine on an institution that know-
14 ingly or willfully violates this section for 3 con-
15 secutive years, that is—

16 “(i) in the case of a failure to disclose
17 a gift or contract with a foreign source as
18 required under this section or to comply
19 with the requirements of subparagraphs
20 (A) and (B) of subsection (b)(4) pursuant
21 to the assurances made under such sub-
22 section, in an amount that is not less than
23 \$100,000 but not more than the amount of
24 the gift or contract with the foreign source;
25 or

1 “(ii) in the case of any violation of the
2 requirements of subsection (a)(2), in an
3 amount that is not more than 25 percent
4 of the total amount of funding received by
5 the institution under this Act (other than
6 funds received under title IV of this Act).

7 “(B) ADMINISTRATIVE FAILURES.—The
8 Secretary may impose a fine on an institution
9 that fails to comply with the requirements of
10 this section due to administrative errors for 3
11 consecutive years, in an amount that is not less
12 than \$250 but not more than 50 percent of the
13 amount of the gift or contract with the foreign
14 source.

15 “(C) COMPLIANCE PLAN REQUIREMENT.—
16 If an institution fails to file a disclosure report
17 for a receipt of a gift from or contract with a
18 foreign source for 2 consecutive years, the Sec-
19 retary may require the institution to submit a
20 compliance plan.

21 “(h) COMPLIANCE OFFICER.—Any institution that is
22 required to report a gift or contract under this section
23 shall designate and maintain a compliance officer who—

24 “(1) shall be a current employee (including
25 such an employee with another job title or duties

1 other than the duties described in paragraph (2)) or
2 legally authorized agent of such institution; and

3 “(2) shall be responsible, on behalf of the insti-
4 tution, for compliance with the foreign gift reporting
5 requirement under this section.

6 “(i) SINGLE POINT OF CONTACT.—The Secretary
7 shall appoint and maintain a single point of contact to—

8 “(1) receive and respond to inquiries and re-
9 quests for technical assistance from institutions of
10 higher education regarding compliance with the re-
11 quirements of this section; and

12 “(2) coordinate and implement technical im-
13 provements to the database described in subsection
14 (d), including—

15 “(A) improving upload functionality by al-
16 lowing for batch reporting;

17 “(B) publishing and maintaining a data
18 base user guide, including areas such as how to
19 edit an entry and how to report errors; and

20 “(C) creating a user group to discuss pos-
21 sible database improvements.

22 “(j) TREATMENT OF CERTAIN PAYMENTS AND
23 GIFTS.—

1 “(1) EXCLUSIONS.—The following shall not be
2 considered a gift from, or contract with, a foreign
3 source under this section:

4 “(A) Any payment of one or more elements
5 of a student’s cost of attendance (as defined in
6 section 472) to an institution by, or scholarship
7 from, a foreign source who is a natural person,
8 acting in their individual capacity and not as an
9 agent for, at the request or direction of, or on
10 behalf of, any person or entity (except the stu-
11 dent), made on behalf of students that is not
12 made under contract with such foreign source,
13 except for the agreement between the institu-
14 tion and such student covering one or more ele-
15 ments of such student’s cost of attendance.

16 “(B) Assignment or license of registered
17 industrial and intellectual property rights, such
18 as patents, utility models, trademarks, or copy-
19 rights, or technical assistance, that are not
20 identified as being associated with a national
21 security risk or concern.

22 “(C) Any payment from a foreign source
23 that is solely for the purpose of conducting one
24 or more clinical trials.

1 “(2) INCLUSIONS.—Any gift to, or contract
2 with, an entity or organization, such as a research
3 foundation, that operates substantially for the ben-
4 efit or under the auspices of an institution shall be
5 considered a gift to, or contract with, such institu-
6 tion.

7 “(k) DEFINITIONS.—In this section—

8 “(1) the term ‘clinical trial’ means a research
9 study in which one or more human subjects are pro-
10 spectively assigned to one or more interventions to
11 evaluate the effects of those interventions on health-
12 related biomedical or behavioral outcomes;

13 “(2) the term ‘contract’—

14 “(A) means any—

15 “(i) agreement for the acquisition by
16 purchase, lease, or barter of property or
17 services by the foreign source, for the di-
18 rect benefit or use of either of the parties,
19 except as provided in subparagraph (B); or

20 “(ii) affiliation, agreement, or similar
21 transaction with a foreign source that is
22 based on the use or exchange of an institu-
23 tion’s name, likeness, time, services, or re-
24 sources, except as provided in subpara-
25 graph (B); and

1 “(B) does not include any agreement made
2 by an institution located in the United States
3 for the acquisition, by purchase, lease, or bar-
4 ter, of property or services from a foreign
5 source;

6 “(3) the term ‘foreign source’ means—

7 “(A) a foreign government, including an
8 agency of a foreign government;

9 “(B) a legal entity, governmental or other-
10 wise, created under the laws of a foreign state
11 or states;

12 “(C) an individual who is not a citizen or
13 a national of the United States or a trust terri-
14 tory or protectorate thereof; and

15 “(D) an agent, including a subsidiary or
16 affiliate of a foreign legal entity, acting on be-
17 half of a foreign source;

18 “(4) the term ‘gift’—

19 “(A) means any gift of money, property,
20 resources, staff, or services; and

21 “(B) does not include anything described
22 in section 487(e)(2)(B)(ii);

23 “(5) the term ‘institution’ means an institution
24 of higher education, as defined in section 102, or, if

1 a multicampus institution, any single campus of
2 such institution, in any State; and

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

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

9 “(B) the establishment of departments,
10 centers, institutes, instructional programs, re-
11 search or lecture programs, or faculty positions;

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

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

19 **SEC. 3. REGULATIONS.**

20 (a) REGULATIONS.—Not later than 1 year after the
21 date of enactment of this Act, the Secretary of Education
22 shall begin the negotiated rulemaking process under sec-
23 tion 492 of the Higher Education Act of 1965 (20 U.S.C.
24 1098a) to carry out the amendment made by section 2.

1 (b) ISSUES.—Regulations issued pursuant to sub-
2 section (a) to carry out the amendment made by section
3 2 shall, at a minimum, address the following issues:

4 (1) Instructions on reporting structured gifts
5 and contracts.

6 (2) The inclusion in institutional reports of
7 gifts received from, and contracts entered into with,
8 foreign sources by entities and organizations, such
9 as research foundations, that operate substantially
10 for the benefit or under the auspices of the institu-
11 tion.

12 (3) Procedures to protect confidential or propri-
13 etary information included in gifts and contracts.

14 (4) The alignment of such regulations with the
15 reporting and disclosure of foreign gifts or contracts
16 required by Federal agencies other than the Depart-
17 ment of Education, including with respect to—

18 (A) the CHIPS Act of 2022 (Division A of
19 Public Law 117–167; 15 U.S.C. 4651 note);

20 (B) the Research and Development, Com-
21 petition, and Innovation Act (Division B of
22 Public Law 117–167; 42 U.S.C. 18901 note);
23 and

24 (C) any guidance released by the White
25 House Office of Science and Technology Policy,

1 including the Guidance for Implementing Na-
2 tional Security Presidential Memorandum 33
3 (NSPM-33) on National Security Strategy for
4 United States Government-supported Research
5 and Development published by the Sub-
6 committee on Research Security and the Joint
7 Committee on the Research Environment in
8 January 2022.

9 (5) The treatment of foreign gifts or contracts
10 involving research or technologies identified as being
11 associated with a national security risk or concern.

12 (c) EFFECTIVE DATE.—The amendment made by
13 section 2 shall take effect on the date on which the regula-
14 tions issued under subsection (a) take effect.

Amend the title so as to read: “A bill to amend the
Higher Education Act of 1965 to require additional in-
formation in disclosures of foreign gifts and contracts
from foreign sources”.

