

February 11, 2025

The Honorable Tim Walberg
Chair
Committee on Education & Workforce
U.S. House of Representatives
2176 Rayburn House Office Building
Washington D.C. 20515

The Honorable Bobby Scott
Ranking Member
Committee on Education & Workforce
U.S. House of Representatives
2101 Rayburn House Office Building
Washington D.C. 20515

Dear Chair Walberg and Ranking Member Scott,

On behalf of the American Council on Education and the undersigned higher education associations, I write to offer comments on H.R.1048, the “Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions (DETERRENT)” Act. We appreciate and take seriously the continuing concerns being raised around research security and foreign malign influence at U.S. institutions of higher education.¹ However, as currently proposed, the DETERRENT Act would add significant impediments to conducting critical research activities, duplicate existing interagency efforts, and put in place a problematic expansion of data collection by the U.S. Department of Education without ensuring these requirements address actual national security or foreign malign influence threats.

As you know, we have worked over the past several years to educate our members regarding the 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. Since 2018, when issues with foreign gift reporting were raised by Congress and policymakers, there has been a substantial increase in Section 117 reporting.² Our associations and our institutions have continued to work with the federal research agencies to implement new reporting requirements under NSPM-33, which is targeted at improving research security and addressing concerns around federal funding. 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, have started implementing requirements for institutions to maintain research security programs, and created new processes for assessing and mitigating risks prior to award.

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

¹ 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>

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>.

Foundation (NSF) foreign gift reporting requirement.³ We also appreciate that the legislation exempts tuition payments 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 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”), lists of Department of Defense (DOD) regulations (i.e. “entities of concern”), and lists that have only recently been published 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 have significant concerns about the overly burdensome expansion of Section 117 of the Higher Education Act proposed in the DETERRENT Act, including the lowering of the reporting threshold and the creation of new reporting within Section 117. 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. In addition, the proposed expansion and creation of new reports under Section 117 could increase national security concerns by exposing information to malign foreign efforts, as well as discourage important work that supports U.S. success in the global arms race around AI, quantum computing, and other scientific breakthroughs.

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 (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” 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. 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 lacks the technical expertise to assess risks associated with critical technologies. Our institutions abide by the regulations and requirements maintained by the U.S. Department of Commerce,⁵ the U.S. Department of the Treasury,⁶ and the U.S.

³ 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>

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>

Department of State⁷ regarding U.S. partnerships, exports controls, and purchases from foreign entities.

In addition, federal research agencies, such as the DOD, NSF, 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 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 receiving 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 to report 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.

This provision also raises both privacy and security concerns for research faculty and staff, whose private financial transactions of relatively small amounts will have to be made public, but will also provide our foreign adversaries with a roadmap for targeting our top-notch U.S. researchers. We appreciate that public disclosure would not include the names of individual faculty and staff, but this would still require private transactions, such as family gifts or inheritance, to be made public.

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 this bill is intended to enhance (i.e. faculty will be discouraged from working with foreign partners because their personal financial information will be made public).

Finally, reporting all partnerships with other countries would perpetuate a perception that common joint activities with all foreign partners are inherently problematic. This requirement would have a chilling effect on and discourage U.S. researchers from participating in important international scientific collaborations—including ones with

⁷ Department of State Directorate of Defense Trade Controls, including the International Traffic in Arms Regulations (ITAR): https://www.pmddtc.state.gov/ddtc_public/ddtc_public

entities based in countries that are strong U.S. allies like Canada, the United Kingdom, and Australia. Discouraging these partnerships will inhibit our nation's ability to advance innovation in AI and many other areas.

- **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 report those investments with a country of concern or a foreign entity of concern on an annual basis to the Department of Education. Those 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. 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 nonprofits, government grantees and private government contractors are not made public. 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 required to make public. We do not believe Section 117c is helpful or workable as drafted.
- **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 (PPA). For the past several years, the Department of Education has linked PPAs to Section 117 compliance. However, this legislation goes further by directly tying fines for non-compliance to percentages of funding through the Higher Education Act, which we interpret as connecting it to an institution's Title IV federal student aid funding. 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. The tie to an institution's PPA, as well as the investigatory efforts by the Department of Education, are sufficient tools for enforcing compliance of other portions of the Higher Education Act.

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. If the bill includes those problematic provisions as it moves forward, we will continue to oppose the legislation as drafted.

We look forward to working with you on this important legislation as it moves forward in Congress.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Mitchell", with a stylized flourish at the end.

Ted Mitchell, President

Cc: Solomon Chen, Policy Advisor, House Education and the Workforce Committee
Amaris Benavidaz, Professional Staff Member, House Education and the Workforce Committee

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