

118TH CONGRESS  
1ST SESSION

# H. R. 5902

To amend the Higher Education Act of 1965 to require staff and faculty to report foreign gifts and contracts.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 2023

Mr. JAMES (for himself and Ms. FOXX) introduced the following bill

OCTOBER 25, 2023

Referred to the Committee on Education and the Workforce

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## A BILL

To amend the Higher Education Act of 1965 to require staff and faculty to report foreign gifts and contracts.

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. SHORT TITLE.**

4 This Act may be cited as the “Disclose Getting In-

5 volved in Foreign Transactions Act” or the “Disclose

6 GIFT Act”.

1 **SEC. 2. POLICY REGARDING CONFLICTS OF INTEREST**  
2 **FROM FOREIGN GIFTS AND CONTRACTS.**

3 (a) IN GENERAL.—Part B of title I of the Higher  
4 Education Act of 1965 (20 U.S.C. 1011 et seq.) is amend-  
5 ed by inserting after section 117 the following:

6 **“SEC. 117A. INSTITUTIONAL POLICY REGARDING FOREIGN**  
7 **GIFTS AND CONTRACTS TO FACULTY AND**  
8 **STAFF.**

9 “(a) REQUIREMENT TO MAINTAIN POLICY AND  
10 DATABASE.—Beginning not later than 90 days after the  
11 date of the enactment of the Disclose GIFT Act, each in-  
12 stitution described in subsection (b) shall maintain—

13 “(1) a policy requiring faculty, professional  
14 staff, and other staff engaged in research and devel-  
15 opment (as determined by the institution and meas-  
16 ured by the Higher Education Research and Devel-  
17 opment Survey of the National Center for Science  
18 and Engineering Statistics) employed at the institu-  
19 tion to disclose in a report to such institution on  
20 July 1 of each calendar year that begins after the  
21 year in which such enactment date occurs—

22 “(A) any gift received from a foreign  
23 source in the previous calendar year, the value  
24 of which is greater than the minimal value (as  
25 such term is defined in section 7342(a) of title  
26 5, United States Code) or is of undetermined

1 value, and including the date on which the gift  
2 was received;

3 “(B) any contract entered into with a for-  
4 eign source in the previous calendar year, the  
5 value of which is \$5,000 or more, considered  
6 alone or in combination with all other contracts  
7 with that foreign source within the calendar  
8 year, and including the date on which such con-  
9 tract commences and, as applicable, the date on  
10 which such contract terminates;

11 “(C) any contract with a foreign source in  
12 force during the previous calendar year that has  
13 an undetermined monetary value, and including  
14 the date on which such contract commences  
15 and, as applicable, the date on which such con-  
16 tract terminates; and

17 “(D) any contract entered into with a for-  
18 eign country of concern or foreign entity of con-  
19 cern in the previous calendar year, the value of  
20 which is \$0 or more, and including the begin-  
21 ning and ending dates of such contract and the  
22 full text of such contract and any addenda;

23 “(2) a publicly available and searchable data-  
24 base (in electronic and downloadable format), on a  
25 website of the institution, of the information re-

1       quired to be disclosed under paragraph (1), sortable  
2       and searchable by the date received (if a gift) or the  
3       date commenced (if a contract), the attributable  
4       country with respect to which information is being  
5       disclosed, and name of the individual making the  
6       disclosure, and until the latest of—

7               “(A) the date that is 4 years after the date  
8               on which—

9                       “(i) a gift referred to in paragraph  
10                      (1)(A) is received; or

11                     “(ii) a contract referred to in sub-  
12                     paragraph (B), (C) or (D) of paragraph  
13                     (1) begins; or

14               “(B) the date on which a contract referred  
15               to in subparagraph (B), (C) or (D) of para-  
16               graph (1) terminates; and

17               “(3) a plan effectively to identify and manage  
18               potential information gathering by foreign sources  
19               through espionage targeting faculty, professional  
20               staff, and other staff engaged in research and devel-  
21               opment (as determined by the institution and meas-  
22               ured by the Higher Education Research and Devel-  
23               opment Survey of the National Center for Science  
24               and Engineering Statistics) that may arise from

1 gifts received from, or contracts entered into with, a  
2 foreign source, including through the use of—

3 “(A) periodic communications;

4 “(B) accurate reporting under paragraph  
5 (2) of the information required to be disclosed  
6 under paragraph (1); and

7 “(C) enforcement of the policy described in  
8 paragraph (1).

9 “(b) INSTITUTIONS.—An institution shall be subject  
10 to the requirements of this section if such institution—

11 “(1) is an eligible institution for the purposes  
12 of any program authorized under title IV; and

13 “(2)(A) received more than \$50,000,000 in  
14 Federal funds in any of the previous five calendar  
15 years to support (in whole or in part) research and  
16 development (as determined by the institution and  
17 measured by the Higher Education Research and  
18 Development Survey of the National Center for  
19 Science and Engineering Statistics); or

20 “(B) receives funds under title VI.

21 “(c) ENFORCEMENT.—

22 “(1) INVESTIGATION.—The Secretary (acting  
23 through the General Counsel of the Department)  
24 may conduct investigations of possible violations of  
25 this section by institutions.

1           “(2) CIVIL ACTION.—Whenever it appears that  
2           an institution has knowingly or willfully failed to  
3           comply with a requirement of this section (including  
4           any rule or regulation promulgated under this sec-  
5           tion) based on such an investigation, a civil action  
6           may be brought by the Attorney General, at the re-  
7           quest of the Secretary, in an appropriate district  
8           court of the United States, or the appropriate  
9           United States court of any territory or other place  
10          subject to the jurisdiction of the United States, to  
11          request such court to compel compliance with the re-  
12          quirement of this section that has been violated.

13           “(3) COSTS AND OTHER FINES.—An institution  
14          that is compelled to comply with a requirement of  
15          this section pursuant to paragraph (2) shall—

16                   “(A) pay to the Treasury of the United  
17                   States the full costs to the United States of ob-  
18                   taining compliance with the requirement of this  
19                   section, including all associated costs of inves-  
20                   tigation and enforcement; and

21                   “(B) be subject to the applicable fines de-  
22                   scribed in paragraph (4).

23           “(4) FINES FOR VIOLATIONS.—The Secretary  
24          shall impose a fine on an institution that knowingly

1 or willfully fails to comply with a requirement of this  
2 section as follows:

3 “(A) FIRST-TIME VIOLATIONS.—In the  
4 case of an institution that knowingly or willfully  
5 fails to comply with a requirement of this sec-  
6 tion with respect to a calendar year, and that  
7 has not previously knowingly or willfully failed  
8 to comply with such a requirement, the Sec-  
9 retary shall impose a fine on the institution of  
10 not less than \$250,000, but not more than the  
11 total amount of gifts or contracts reported by  
12 such institution in the database required under  
13 subsection (a)(2).

14 “(B) SUBSEQUENT VIOLATIONS.—In the  
15 case of an institution that has been fined pur-  
16 suant to clause (i) with respect to a calendar  
17 year, and that knowingly or willfully fails to  
18 comply with a requirement of this section with  
19 respect to any additional calendar year, the  
20 Secretary shall impose a fine on the institution  
21 with respect to any such additional calendar  
22 year in an amount that is not less than  
23 \$500,000, but not more than twice the total  
24 amount of gifts or contracts reported by such

1 institution in the database required under sub-  
2 section (a)(2).

3 “(d) DEFINITIONS.—In this section:

4 “(1) CONTRACT.—the term ‘contract’—

5 “(A) means any—

6 “(i) agreement for the acquisition, by  
7 purchase, lease, or barter, of property or  
8 services by a foreign source for the direct  
9 benefit or use of any of the parties to the  
10 agreement;

11 “(ii) affiliation, agreement, or similar  
12 transaction with a foreign source based on  
13 the use or exchange of the name, likeness,  
14 time, services, or resources of faculty, pro-  
15 fessional staff, or other staff engaged in  
16 research and development (as determined  
17 by the institution and measured by the  
18 Higher Education Research and Develop-  
19 ment Survey of the National Center for  
20 Science and Engineering Statistics) em-  
21 ployed at an institution described in sub-  
22 section (b); or

23 “(iii) purchase, lease, or barter of  
24 property or services from a foreign source



1           that is a foreign country of concern or a  
2           foreign entity of concern; and

3           “(B) does not include any fair-market,  
4           arms-length agreement made by faculty, profes-  
5           sional staff, and other staff engaged in research  
6           and development (as determined by the institu-  
7           tion and measured by the Higher Education  
8           Research and Development Survey of the Na-  
9           tional Center for Science and Engineering Sta-  
10          tistics) for the acquisition, by purchase, lease,  
11          or barter of property or services from a foreign  
12          source other than such a foreign source that is  
13          a foreign country of concern or a foreign entity  
14          of concern; and

15          “(2) FOREIGN COUNTRY OF CONCERN.—The  
16          term ‘foreign country of concern’ includes the fol-  
17          lowing:

18                 “(A) A country that is a covered nation (as  
19                 defined in section 4872(d) of title 10, United  
20                 States Code).

21                 “(B) Any country that the Secretary, in  
22                 consultation with the Secretary of Defense, the  
23                 Secretary of State, and the Director of National  
24                 Intelligence, determines to be engaged in con-

1 duct that is detrimental to the national security  
2 or foreign policy of the United States.

3 “(3) FOREIGN ENTITY OF CONCERN.—The  
4 term ‘foreign entity of concern’ has the meaning  
5 given such term in section 10612(a) of the Research  
6 and Development, Competition, and Innovation Act  
7 (42 U.S.C. 19221(a)) and includes a foreign entity  
8 that is identified on the list published under section  
9 1286(e)(8)(A) of the John S. McCain National De-  
10 fense Authorization Act for Fiscal Year 2019 (10  
11 U.S.C. 22 4001 note; Public Law 115–232).

12 “(4) FOREIGN SOURCE.—The term ‘foreign  
13 source’ means—

14 “(A) a foreign government, including an  
15 agency of a foreign government;

16 “(B) a legal entity, governmental or other-  
17 wise, created under the laws of a foreign state  
18 or states;

19 “(C) a natural person who is not a citizen  
20 or a national of the United States or a trust  
21 territory or protectorate thereof; and

22 “(D) an agent, including—

23 “(i) a subsidiary or affiliate of a for-  
24 eign legal entity, acting on behalf of a for-  
25 eign source; and

1           “(ii) an entity or organization that op-  
2           erates primarily for the benefit of, or  
3           under the auspices of, a foreign legal enti-  
4           ty, including a foundation or a related en-  
5           tity (such as any educational, cultural, or  
6           language entity).

7           “(5) GIFT.—The term ‘gift’—

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

10          “(B) does not include—

11           “(i) any payment of one or more ele-  
12           ments of a student’s cost of attendance (as  
13           such term is defined in section 472) to an  
14           institution by, or scholarship from, a for-  
15           eign source who is a natural person, acting  
16           in their individual capacity and not as an  
17           agent for, at the request or direction of, or  
18           on behalf of, any person or entity (except  
19           the student), made for not more than 15  
20           students, and that is not made under a re-  
21           stricted or conditional contract with such  
22           foreign source; or

23           “(ii) assignment or license of reg-  
24           istered industrial and intellectual property  
25           rights, such as patents, utility models,

1 trademarks, or copyrights, or technical as-  
2 sistance, that are not identified as being  
3 associated with a national security risk or  
4 concern by the Federal Research Security  
5 Council as described under section 7902 of  
6 title 31, United States Code; or

7 “(iii) decorations (as such term is de-  
8 fined in section 7342(a) of title 5, United  
9 States Code).

10 “(6) INSTITUTION.—The term ‘institution’  
11 means an institution of higher education (as such  
12 term is defined in section 102, other than an institu-  
13 tion described in subsection (a)(1)(c) of such sec-  
14 tion).

15 “(7) PROFESSIONAL STAFF.—the term ‘profes-  
16 sional staff’ means professional employees, as de-  
17 fined in section 3 of the Fair Labor Standards Act  
18 of 1938 (29 U.S.C. 203).”.

19 (b) PROGRAM PARTICIPATION AGREEMENT.—Section  
20 487(a) of the Higher Education Act of 1965 (20 U.S.C.  
21 1094) is amended by adding at the end the following:

22 “(30)(A) An institution will comply with the re-  
23 quirements of section 117A.

1           “(B) An institution that, for 3 consecutive in-  
2           stitutional fiscal years, violates any requirement of  
3           section 117A shall—

4                   “(i) be ineligible to participate in the pro-  
5                   grams authorized by this title for a period of  
6                   not less than 2 institutional fiscal years; and

7                   “(ii) in order to regain eligibility to partici-  
8                   pate in such programs, demonstrate compliance  
9                   with all requirements of such section for not  
10                  less than 2 institutional fiscal years after the  
11                  institutional fiscal year in which such institu-  
12                  tion became ineligible.”.

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