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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

To amend the Higher Education Act of 1965 to restrict contracts with foreign countries of concern and foreign entities of concern.

IN THE HOUSE OF REPRESENTATIVES

Mr. HARRIS of North Carolina introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Higher Education Act of 1965 to restrict contracts with foreign countries of concern and foreign entities of concern.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''No Contracts with Foreign Adversaries Act''.

SEC. 2. PROHIBITION ON CONTRACTS WITH CERTAIN FOREIGN ENTITIES AND COUNTRIES.

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

"SEC. 117A. PROHIBITION ON CONTRACTS WITH CERTAIN FOREIGN ENTITIES AND COUNTRIES.

''(a) IN GENERAL.—An institution shall not enter into a contract with a foreign country of concern or a foreign entity of concern.

''(b) WAIVERS.—

''(1) IN GENERAL.—A waiver issued under this section to an institution with respect to a contract shall only—

''(A) waive the prohibition under subsection (a) for a 1-year period; and

''(B) apply to the terms and conditions of the proposed contract submitted as part of the request for such waiver.

''(2) SUBMISSION.—

''(A) FIRST WAIVER REQUESTS.—

''(i) IN GENERAL.—An institution that desires to enter into a contract with a foreign entity of concern or a foreign country of concern may submit to the Secretary, not later than 120 days before the

institution enters into such a contract, a request to waive the prohibition under subsection (a) with respect to such contract.

''(ii) CONTENTS OF WAIVER REQUEST.—A waiver request submitted by an institution under clause (i) shall include—

''(I) the complete and unredacted text of the proposed contract for which the waiver is being requested, and if such original contract is not in English, a translated copy of the text into English by a person that is not an affiliated entity or agent of the foreign source involved with such contract; and

''(II) a statement that—

''(aa) is certified by the compliance officer of the institution designated in accordance with subsection (e); and

''(bb) includes information that demonstrates that such contract—

''(AA) is for the benefit of the institution's mission and students; and

''(BB) will promote the security, stability, and economic vitality of the United States.

''(B) RENEWAL WAIVER REQUESTS.—

''(i) IN GENERAL.—An institution that, pursuant to a waiver issued under this section, has entered into a contract, the term of which is longer than the 1-year waiver period and the terms and conditions of which remain the same as the proposed contract submitted as part of the request for such waiver may submit, not later than 120 days before the expiration of such waiver period, a request for a renewal of such waiver for an additional 1-year period (which shall include any information requested by the Secretary).

''(ii) TERMINATION.—If the institution fails to submit a request under clause (i) or is not granted a renewal under such clause, such institution shall terminate

such contract on the last day of the original 1-year waiver period.

''(3) WAIVER ISSUANCE.—The Secretary—

''(A) not later than 60 days before an institution enters into a contract pursuant to a waiver request under paragraph (2)(A), or before a contract described in paragraph (2)(B)(i) is renewed pursuant to a renewal request under such paragraph, shall notify the institution—

''(i) if the waiver or renewal will be issued by the Secretary; and

''(ii) in a case in which the waiver or renewal will be issued, the date on which the 1-year waiver period starts; and

''(B) may only issue a waiver under this section to an institution if the Secretary determines, in consultation with the Director of the Federal Bureau of Investigation, the Director of National Intelligence, the Director of the Central Intelligence Agency, the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Secretary of Energy, the Director of the National Science Foundation, and the Director of the National

Institutes of Health, that the contract for which the waiver is being requested—

"(i) is for the benefit of the institution's mission and students; and

"(ii) will promote the security, stability, and economic vitality of the United States.

"(4) DISCLOSURE.—Not less than 2 weeks prior to issuing a waiver under paragraph (2), the Secretary shall notify the—

"(A) the Committee on Education and Workforce of the House of Representatives; and

"(B) the Committee on Health, Education, Labor, and Pensions of the Senate,

of the intent to issue the waiver, including a justification for the waiver.

"(c) DESIGNATION DURING CONTRACT TERM.—In the case of an institution that enters into a contract with a foreign source that is not a foreign country of concern or a foreign entity of concern but which, during the term of such contract, is designated as a foreign country of concern or foreign entity of concern, such institution shall terminate such contract not later than 60 days after the Secretary notifies the institution of such designation.

"(d) CONTRACTS PRIOR TO DATE OF ENACTMENT.—

''(1) IN GENERAL.—In the case of an institution that has entered into a contract with a foreign country of concern or foreign entity of concern prior to the date of enactment of the No Contracts with Foreign Adversaries Act—

''(A) the institution shall as soon as practicable, but not later than 30 days after such date of enactment, submit to the Secretary a waiver request in accordance with clause (ii) of subsection (b)(2)(A); and

''(B) the Secretary shall, upon receipt of the request submitted under such clause, issue a waiver to the institution for a period beginning on the date on which the waiver is issued and ending on the sooner of—

''(i) the date that is 1 year after the date of enactment of the No Contracts with Foreign Adversaries Act; or

''(ii) the date on which the contract terminates.

''(2) RENEWAL.—An institution that has entered into a contract described in paragraph (1), the term of which is longer than the waiver period described in subparagraph (B) of such paragraph and the terms and conditions of which remain the same

as the contract submitted as part of the request required under subparagraph (A) of such paragraph, may submit a request for renewal of the waiver issued under such paragraph in accordance with subsection (b)(2)(B).

''(e) COMPLIANCE OFFICER.—Any institution that submits a waiver under this section shall designate, before the submission of such waiver, and maintain, a compliance officer, who shall—

''(1) be a current employee or legally authorized agent of such institution; and

''(2) be responsible, on behalf of the institution, for personally certifying accurate compliance with the waiver requirements under this section.

''(f) ENFORCEMENT.—

''(1) INVESTIGATION.—The Secretary (acting through the General Counsel of the Department) shall conduct investigations of possible violations of this section by institutions and, whenever it appears that an institution has knowingly or willfully failed to comply with a requirement of this section (including any rule or regulation promulgated under this section), shall request that the Attorney General bring a civil action in accordance with paragraph (2).

''(2) CIVIL ACTION.—Whenever it appears that an institution has knowingly or willfully failed to comply with a requirement of this section (including any rule or regulation promulgated under this section) based on an investigation under such paragraph, a civil action shall be brought by the Attorney General, at the request of the Secretary, in an appropriate district court of the United States, or the appropriate United States court of any territory or other place subject to the jurisdiction of the United States, to request such court to compel compliance with the requirement of this section that has been violated.

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

''(A) pay to the Treasury of the United States the full costs to the United States of obtaining compliance with such requirement, including all associated costs of investigation and enforcement; and

''(B) be subject to the applicable fines described in paragraph (4).

''(4) FINES FOR VIOLATIONS.—The Secretary shall impose a fine on an institution that is com-

pelled to comply with a requirement of this section pursuant to paragraph (2) as follows:

"(A) FIRST-TIME VIOLATIONS.—In the case of an institution that knowingly or willfully fails to comply with a requirement of this section for the first time, the Secretary shall impose a fine on the institution in an amount that is not less than 5 percent and not more than 10 percent of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

"(B) SUBSEQUENT VIOLATIONS.—In the case of an institution that has been fined pursuant to subparagraph (A), the Secretary shall impose a fine on the institution for each subsequent time the institution knowingly or willfully fails to comply with a requirement of this section in an amount that is not less than 20 percent of the total amount of Federal funds received by the institution under this Act for the most recent fiscal year.

"(C) INELIGIBILTY FOR WAIVER.—In the case of an institution that has been fined pursuant to subparagraph (A) with respect to a calendar year, and that knowingly or willfully

fails to comply with a requirement of this section with respect to any 2 additional calendar years, the Secretary shall prohibit the institution from obtaining a waiver, or a renewal of a waiver, under this section.

''(g) DEFINITIONS.—In this section:

''(1) CONTRACT.—The term 'contract'—

''(A) means—

''(i) any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source;

''(ii) any affiliation, agreement, or similar transaction with a foreign source that involves the use or exchange of an institution's name, likeness, time, services, or resources; and

''(iii) any agreement for the acquisition by purchase, lease, or barter, of property or services from a foreign source (other than an arms-length agreement for such acquisition from a foreign source that is not a foreign country of concern or a foreign entity of concern); and

''(B) does not include an agreement made between an institution and a foreign source re-

garding any payment of one or more elements of a student's cost of attendance (as such term is defined in section 472), unless such an agreement is made for more than 15 students or is made under a restricted or conditional contract.

''(2) FOREIGN COUNTRY OF CONCERN.—The term 'foreign country of concern' means the following:

''(A) Any covered nation defined in section 4872 of title 10, United States Code.

''(B) Any country the Secretary, in consultation with the Secretary of Defense, the Secretary of State, and the Director of National Intelligence, determines, for purposes of section 117 or this section, to be engaged in conduct that is detrimental to the national security or foreign policy of the United States.

''(3) FOREIGN ENTITY OF CONCERN.—The term 'foreign entity of concern' has the meaning given such term in section 10612(a) of the Research and Development, Competition, and Innovation Act (42 U.S.C. 19221(a)) and includes a foreign entity that is identified on the list published under section 1286(c)(8)(A) of the John S. McCain National De-

fense Authorization Act for Fiscal Year 2019 (10 U.S.C. 22 4001 note; Public Law 115–232).

''(4) INSTITUTION.—The term 'institution' means an institution of higher education (as such term is defined in section 102, other than an institution described in subsection (a)(1)(C) of such section).''.

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

''(30)(A) An institution will comply with the requirements of section 117A.

''(B) An institution that, for 3 consecutive institutional fiscal years, violates any requirement of section 117A shall—

''(i) be ineligible to participate in the programs authorized by this title for a period of not less than 2 institutional fiscal years; and

''(ii) in order to regain eligibility to participate in such programs, demonstrate compliance with all requirements of each such section for not less than 2 institutional fiscal years after the institutional fiscal year in which such institution became ineligible.''.