American Council on Education

Talking Points

Talking Points on FY27 National Defense Authorization Act (NDAA) (S.4784) Amendment 6448 DETERRENT Act

As of October 23, 2026

- We oppose the inclusion of the DETERRENT Act in the final Fiscal Year (FY) 2027 National Defense Authorization Act (NDAA), whether in the form of the House passed bill H.R.1048 or in the form of the filed amendment to the Senate's FY 27 NDAA.[1]

- While the bill passed the House in 2025, the Senate has never considered the bill in Committee or on the floor. Beyond the concerns expressed[2] in the House debate on H.R.1048 DETERRENT, we are concerned the Senate amendment makes changes to the House passed version without any markup or amendment opportunity. Below are specific concerns with the Senate amendment.

Sen. Amendment 6448, Section 117A: "Prohibition on Contracts with Certain Foreign Entities and Countries"

- The Senate amendment language includes Section 117A which bans institutions of higher education from entering into any contract with countries of concern (currently China, North Korea, Iran, and Russia) and entities of concern UNLESS the Secretary of Education issues a waiver for approval before a contract is entered into. If a waiver is granted, institutions would need to petition for continued approval on an annual basis.[3] Although the bill allows the Secretary to grant waivers, the provision starts with an assumption of denial, structuring it in a way that makes approval unlikely. This would effectively end all research collaborations with China in any field, regardless of their potential benefits to the United States, hindering American scientific progress.

- The amendment includes language that would allow institutions to maintain existing contracts with an entity/country of concern for one year while they wait to see if a waiver is issued. This creates uncertainty and significant instability for long-standing programs and institutional investments, including international campuses.

- We continue to be concerned that the Department of Education would be given the new authority, as the department does not have a national security office or personnel with research security, scientific, or technical expertise needed, and as there are ongoing efforts to move department activities to other federal agencies.

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[1] S. Amdt 6448, Sec. 117A Prohibition on Contracts with Certain Foreign Entities and Countries. https://www.congress.gov/amendment/119th-congress/senate-amendment/6448/text

[2] March 25, 2025 Higher Education letter to House leadership in opposition of DETERRENT: https://www.acenet.edu/Documents/Letter-House-DETERRENT%20Act-032525.pdf

[3] S. Amdt 6448, Sec. 117A Prohibition on Contracts with Certain Foreign Entities and Countries. https://www.congress.gov/amendment/119th-congress/senate-amendment/6448/text

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- The department would be tasked with assessing waivers for projects, many of which will likely focus on scientific research, not under the department's jurisdiction. Given the department's reduction in workforce, White House efforts to dissolve it, and an interagency agreement to move Section 117 oversight to the Department of State, it is unclear how this new authority would be carried out.

- Our institutions abide by the regulations and requirements maintained by the Department of Commerce, the Department of the Treasury, and the Department of State regarding U.S. partnerships, export controls, and purchases from foreign entities. There are no indications that expanded Department of Education approvals are necessary. No other industry or government entity, including states, localities, and other nonprofit organizations, must undertake this type of review and approval of an agreement before they can enter into a contract with a country or foreign entity.

Sen. Amendment 6448, Section 117B: "Institutional Policy Regarding Foreign Gifts and Contracts to Faculty and Staff"

- Revisions included in the Senate amendment make the new reporting requirements in Section 117B even more difficult for institutions to implement and comply with. Earlier versions of the DETERRENT Act required institutions to maintain a database of their faculty gifts and contracts on a publicly accessible webpage hosted by the institution. The updated text instead requires only "a link on the website of the institution to the database established under section117(d)(1)." As revised, it is not clear whether institutions would now be required to submit faculty gifts and contracts through the department's existing Section 117 database at ForeignFundingHigherEd.gov or how institutions are expected to use, maintain, or report the information they would now be required to collect from faculty.

- If Congress intends for this information to be reported to the department, the bill does not clearly state that requirement. Such an expansion of Section 117 would expose individuals' personal financial information unrelated to research projects, unreasonably expand liabilities to institutions, and further blur the distinction between institutional gift and contract reporting and individual faculty disclosures.

- Under Section 117B of S. Amendment 6448, an institution of higher education would need to collect information from faculty for any gift at or over $480 or contract at or over $5,000. If the gift is below $5,000 and from a personal source, the institution would then collect and store an attestation from the faculty that the gift was in a personal nature.[4] Institutions do NOT already capture this information for faculty (especially personal gifts). Creating this new process will be burdensome and expensive and will still create privacy concerns that faculty need to disclose these gifts to their employer, whether or not the institution or the Department of Education is required to keep that information private.

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[4] S. Amdt 6448, Sec. 117B, Page S3574, "(ii) the covered individual provides the institution a written attestation that the gift satisfies subclauses (I) through (IV) of clause (i) and the institution retains and makes available the written attestation for investigations under section 117C(a)(1)" https://www.congress.gov/amendment/119th-congress/senate-amendment/6448/text

Sen. Amendment 6448, Section 117C: "Enforcement; Single Point-of-Contact; Institutional Requirements"

- The Senate amendment does not include the House passed language of Section 117C- "Investment Disclosure Report" but does include a host of new fines for violations or misreporting under Section 117C.

- While the Senate amendment does NOT tie the fines to an institution's Title IV federal student aid funding (like the House passed bill), it does create a host of new fines for violations of the various new provisions in the DETERRENT Act, i.e. new fines for separate violations of Section 117, the new Section 117A, or the new Section 117B.

- Given the host of new and complicated reporting requirements in the DETERRENT Act, and the concerns expressed above with this major expansion, we are concerned about these substantial new fines being used by the department. We also remain concerned about how this new authority would be used given the transfer of Section 117 to the U.S. Department of State under the Interagency Agreement (IAA).