

117TH CONGRESS
1ST SESSION

S. 2060

To amend disclosure requirements of foreign gifts and contracts under the
Higher Education Act of 1965.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2021

Mr. COTTON introduced the following bill; which was read twice and referred
to the Committee on Finance

A BILL

To amend disclosure requirements of foreign gifts and
contracts under the Higher Education Act of 1965.

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 “Foreign Funding Ac-
5 countability Act of 2021”.

6 **SEC. 2. AMENDMENTS TO DISCLOSURES OF FOREIGN GIFTS**
7 **AND CONTRACTS.**

8 Section 117 of the Higher Education Act of 1965 (20
9 U.S.C. 1011f) is amended—

1 (1) by striking subsections (a) and (b) and in-
2 serting the following:

3 “(a) DISCLOSURE REPORT.—

4 “(1) FILING.—An institution shall file a disclo-
5 sure report with the Department of Education on
6 January 31 or July 31, whichever is sooner, if the
7 institution—

8 “(A) is owned or controlled by a foreign
9 source; or

10 “(B) receives a gift or enters into a con-
11 tract with a foreign source, the value of which
12 is \$25,000 or more (including in-kind gifts,
13 gifts to institution foundations, and gifts to any
14 other legal entities that operate substantially
15 for the benefit or under the auspices of the in-
16 stitution), considered alone or in combination
17 with all other gifts from or contracts with that
18 foreign source within a calendar year.

19 “(2) TUITION.—A tuition payment to an insti-
20 tution on behalf of an enrolled student by a foreign
21 government or foundation shall be considered a gift
22 from or contract with a foreign source under this
23 subsection.

24 “(3) DESIGNATED INDIVIDUAL.—Each institu-
25 tion that is required to file a disclosure report under

1 this section shall designate an officer at the institu-
2 tion who shall be responsible for ensuring the verac-
3 ity of the disclosure report.

4 “(b) CONTENTS OF DISCLOSURE REPORT.—

5 “(1) OWNED OR CONTROLLED BY A FOREIGN
6 SOURCE.—An institution that is required to file a
7 disclosure report under subsection (a)(1)(A) shall in-
8 clude in the report:

9 “(A) The identity of the foreign source.

10 “(B) The date on which the foreign source
11 assumed ownership or control.

12 “(C) Any changes in program or structure
13 resulting from the change in ownership or con-
14 trol.

15 “(2) GIFTS OR CONTRACTS.—An institution
16 that is required to file a disclosure report under sub-
17 section (a)(1)(B) shall include in the report:

18 “(A) The amount of the gift or contract.

19 “(B) The country of origin of the gift or
20 contract.

21 “(C) A statement from the foreign source
22 providing the gift or entering into the contract,
23 including, in the case of a foreign source that
24 is—

25 “(i) an individual, the individual’s—

- 1 “(I) name;
- 2 “(II) nationality
- 3 “(III) principal business address;
- 4 and
- 5 “(IV) all business and residential
- 6 addresses in the United States or else-
- 7 where;
- 8 “(ii) a partnership—
- 9 “(I) the information described in
- 10 subclause (I) through (IV) of clause
- 11 (i) with respect to each member of the
- 12 partnership; and
- 13 “(II) a true and complete copy of
- 14 its articles of copartnership; or
- 15 “(iii) an association, corporation, or-
- 16 ganization, or any other combination of in-
- 17 dividuals—
- 18 “(I) the information described in
- 19 subclauses (I) through (IV) of clause
- 20 (i) with respect to each director, offi-
- 21 cer, and each individual performing
- 22 the functions of a director or officer
- 23 for that entity; and

1 “(II) a statement of the entity’s
2 ownership and control, and the pub-
3 licly listed name of the entity.

4 “(D) The explicit and intended purpose
5 and function of the gift or contract, including—

6 “(i) the name (and position if applica-
7 ble) of the recipient individual, depart-
8 ment, or benefactor at the institution re-
9 ceiving the gift or contract;

10 “(ii) any terms or conditions of the
11 gift or contract;

12 “(iii) copies of each written agreement
13 and the terms and conditions of each oral
14 agreement, including all modifications of
15 such agreements, relating to the gift or
16 contract; or

17 “(iv) where no written or oral agree-
18 ment exists, a full statement of all the cir-
19 cumstances relating to the gift or contract.

20 “(3) ATTESTATION.—Each disclosure report
21 under this section shall include a written statement
22 from the individual designated under subsection
23 (a)(3) attesting that the disclosure report is true
24 and complete.”;

25 (2) by striking subsections (c) and (d);

1 (3) by redesignating subsections (e) through (h)
2 as subsections (c) through (f), respectively;

3 (4) in subsection (c), as redesignated by para-
4 graph (3), by adding at the end the following: “All
5 disclosure reports required by this section, including
6 copies of agreements required under subsection
7 (b)(2)(D)(iii), shall be publicly available, including
8 by electronic means.”;

9 (5) by striking subsection (d), as redesignated
10 by paragraph (3), and inserting the following:

11 “(d) ENFORCEMENT.—

12 “(1) CIVIL PENALTIES.—Upon determination,
13 after reasonable notice and opportunity for a hear-
14 ing, that an institution—

15 “(A) has violated or failed to carry out any
16 provision of this section or any regulation pre-
17 scribed under this section (including by submit-
18 ting a disclosure report with a material
19 misstatement or omission), the Secretary may
20 impose a civil penalty upon such institution of
21 not to exceed, the greater of—

22 “(i) \$250,000 for an initial violation
23 or failure; or

1 “(ii) the value of the unreported gift
 2 or contract for an initial violation or fail-
 3 ure;

4 “(B) commits a second violation or failure
 5 as described in subparagraph (A), the Secretary
 6 may impose a civil penalty upon such institu-
 7 tion of not to exceed, the greater of—

8 “(i) \$750,000; or

9 “(ii) the value of the unreported gift
 10 or contract;

11 “(C) commits 3 or more violations or fail-
 12 ures as described in subparagraph (A)—

13 “(i) the Secretary may impose a civil
 14 penalty upon such institution of not to ex-
 15 ceed, the greater of—

16 “(I) \$1,000,000; or

17 “(II) the value of the unreported
 18 gift or contract; and

19 “(ii) the institution may be subject to
 20 penalties relating to the Student and Ex-
 21 change Visitor Program and the institu-
 22 tion’s tax exempt status, as described in
 23 sections 4 and 5 of the Foreign Funding
 24 Accountability Act of 2021; or

1 “(D) commits 3 or more violations or fail-
2 ures as described in subparagraph (A) and has
3 demonstrated a pattern of willful violations, the
4 Secretary may determine that the institution is
5 no longer eligible to receive funds under this
6 Act.

7 “(2) COURT ORDERS.—Whenever it appears
8 that an institution has failed to comply with the re-
9 quirements of this section, including any rule or reg-
10 ulation promulgated under this section, a civil action
11 may be brought by the Attorney General, at the re-
12 quest of the Secretary, in an appropriate district
13 court of the United States, or the appropriate
14 United States court of any territory or other place
15 subject to the jurisdiction of the United States, to
16 request such court to compel compliance with the re-
17 quirements of this section (including for the collec-
18 tion of civil penalties under this subsection). In case
19 of contumacy by, or refusal to obey a subpoena
20 issued to, any person, the Secretary may request the
21 Attorney General to invoke the aid of any court of
22 the United States where such person resides or
23 transacts business for a court order for the enforce-
24 ment of this section.

1 “(3) COSTS.—For knowing or willful failure to
 2 comply with the requirements of this section, includ-
 3 ing any rule or regulation promulgated thereunder,
 4 an institution shall pay to the Treasury of the
 5 United States the full costs to the United States of
 6 obtaining compliance, including all associated costs
 7 of investigation and enforcement.

8 “(4) INVESTIGATION; SUBPOENA AUTHORITY.—
 9 The Secretary shall establish an investigative process
 10 to identify gifts or contracts with respect to which
 11 a disclosure report under this section is required and
 12 has not been submitted. To assist the Secretary in
 13 the conduct of investigations of possible violations of
 14 this section, the Secretary is authorized to require
 15 by subpoena the production of information, docu-
 16 ments, reports, answers, records, accounts, papers,
 17 and other documentary evidence pertaining to this
 18 section. The production of any such records may be
 19 required from any place in a State.”;

20 (6) in subsection (f)(2), as redesignated by
 21 paragraph (3)—

22 (A) in subparagraph (C), by striking
 23 “and” after the semicolon;

24 (B) in subparagraph (D), by adding “and”
 25 after the semicolon; and

1 (C) by adding at the end the following:

2 “(E) any person registered under the For-
 3 eign Agents Registration Act of 1938 (22
 4 U.S.C. 611 et seq.)”.

5 **SEC. 3. REPORT ON PAST YEARS REQUIRED.**

6 (a) IN GENERAL.—Not later than 1 year after the
 7 date of enactment of this Act, each institution shall pre-
 8 pare and submit to the Secretary of Education a disclo-
 9 sure report containing the information described in sub-
 10 section (b) of section 117 of the Higher Education Act
 11 of 1965 (20 U.S.C. 1011f(b)) (as amended by section 2
 12 of this Act) as required under subsection (a) of such sec-
 13 tion 117 (as amended by section 2 of this Act) for every
 14 qualifying event that has occurred on or after the date
 15 of enactment of the Higher Education Amendments of
 16 1998 (Public Law 105–244) and before the date of enact-
 17 ment of this Act.

18 (b) INSTITUTIONS UNABLE TO COMPLY.—In the
 19 case of an institution that is unable to comply with the
 20 requirements of subsection (a) with respect to a qualifying
 21 event, that institution shall submit a statement to the Sec-
 22 retary of Education, for each such qualifying event, de-
 23 scribing in detail in detail why the institution cannot com-
 24 ply with respect to that qualifying event.

1 (c) WAIVER.—An institution may request, and the
2 Secretary of Education may grant, a waiver with respect
3 to the report required under this section if the institution
4 demonstrates good cause for requiring such a waiver.

5 (d) ENFORCEMENT.—

6 (1) IN GENERAL.—Upon determination, after
7 reasonable notice and opportunity for a hearing, that
8 an institution has violated or failed to carry out any
9 provision of this section or any regulation prescribed
10 under this section (including by submitting a disclo-
11 sure report with a material misstatement or omis-
12 sion), the Secretary of Education may impose a civil
13 penalty upon such institution not to exceed \$25,000
14 for each qualifying event that the institution has
15 failed to report in accordance with this section.

16 (2) COURT ORDERS.—Whenever it appears that
17 an institution has failed to comply with the require-
18 ments of this section, including any rule or regula-
19 tion promulgated under this section, a civil action
20 may be brought by the Attorney General, at the re-
21 quest of the Secretary of Education, in an appro-
22 priate district court of the United States, or the ap-
23 propriate United States court of any territory or
24 other place subject to the jurisdiction of the United
25 States, to request such court to compel compliance

1 with the requirements of this section (including for
 2 the collection of civil penalties under this sub-
 3 section).

4 (3) COSTS.—For knowing or willful failure to
 5 comply with the requirements of this section, includ-
 6 ing any rule or regulation promulgated thereunder,
 7 an institution shall pay to the Treasury of the
 8 United States the full costs to the United States of
 9 obtaining compliance, including all associated costs
 10 of investigation and enforcement.

11 (4) INVESTIGATION; SUBPOENA AUTHORITY.—
 12 The Secretary of Education shall establish an inves-
 13 tigative process to identify gifts or contracts with re-
 14 spect to which a disclosure under this section is re-
 15 quired and has not been submitted. The Secretary of
 16 Education may use administrative subpoena author-
 17 ity as authorized under law to conduct such inves-
 18 tigations.

19 (e) DEFINITIONS.—In this section:

20 (1) INSTITUTION.—The term “institution” has
 21 the meaning given that term in section 117 of the
 22 Higher Education Act of 1965 (20 U.S.C. 1011f).

23 (2) QUALIFYING EVENT.—In this section the
 24 term “qualifying event” means an institution—

1 (A) being owned or controlled by a foreign
2 source; or

3 (B) receiving a gift or entering into a con-
4 tract with a foreign source, the value of which
5 is \$25,000 or more (including in-kind gifts, or
6 gifts to university or college foundations), con-
7 sidered alone or in combination with all other
8 gifts from or contracts with that foreign source
9 within a calendar year.

10 **SEC. 4. DISQUALIFICATION FROM THE STUDENT AND EX-**
11 **CHANGE VISITOR PROGRAM.**

12 Any institution of higher education that is found to
13 have violated the disclosure requirements set forth in sec-
14 tion 117 of the Higher Education Act of 1965 (20 U.S.C.
15 1011f) on 3 or more occasions shall be ineligible to enroll
16 foreign students under the Student and Exchange Visitor
17 Program.

18 **SEC. 5. LOSS OF TAX-EXEMPT STATUS.**

19 Section 501 of the Internal Revenue Code of 1986
20 is amended by adding at the end the following new sub-
21 section:

22 “(s) LOSS OF EXEMPT STATUS FOR CERTAIN INSTI-
23 TUTIONS OF HIGHER EDUCATION.—An organization
24 which is described in section 501(c)(3) and which is an
25 institution (as defined in section 117 of the Higher Edu-

1 cation Act of 1965 (20 U.S.C. 1011f)) shall not be exempt
2 from taxation under section 501(a) if there has been a
3 determination under section 117(d) of the Higher Edu-
4 cation Act of 1965 that such institution has committed,
5 after the date of the enactment of this section, 3 or more
6 violations or failures described in section 117(d) of the
7 Higher Education Act of 1965.”.

