



AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: To require the review by the Committee on Foreign Investment in the United States of certain foreign gifts to and contracts with institutions of higher education.

**IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.**

**H. R. 4350**

To a	<b>AMENDMENT N<sup>o</sup> 4501</b>	ilitary
By	<i>Risch</i>	ilitary
To:	<i>Amdt. No. 3867</i>	epart-
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		poses.
		and
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	<b>Page(s)</b>	
	<small>GPO: 2018 33-682 (mac)</small>	

AMENDMENT intended to be proposed by Mr. RISCH to the amendment (No. 3867) proposed by Mr. REED

Viz:

- 1 At the end of subtitle G of title XII, add the fol-
- 2 lowing:
- 3 **SEC. 1283. REVIEW BY COMMITTEE ON FOREIGN INVEST-**
- 4 **MENT IN THE UNITED STATES OF CERTAIN**
- 5 **FOREIGN GIFTS TO AND CONTRACTS WITH**
- 6 **INSTITUTIONS OF HIGHER EDUCATION.**
- 7 (a) AMENDMENTS TO DEFENSE PRODUCTION ACT
- 8 OF 1950.—

1 (1) DEFINITION OF COVERED TRANSACTION.—

2 Subsection (a)(4) of section 721 of the Defense Pro-  
3 duction Act of 1950 (50 U.S.C. 4565) is amended—

4 (A) in subparagraph (A)—

5 (i) in clause (i), by striking “; and”  
6 and inserting a semicolon;

7 (ii) in clause (ii), by striking the pe-  
8 riod at the end and inserting “; and”; and

9 (iii) by adding at the end the fol-  
10 lowing:

11 “(iii) any transaction described in  
12 subparagraph (B)(vi) proposed or pending  
13 after the date of the enactment of the Na-  
14 tional Defense Authorization Act for Fiscal  
15 Year 2022.”;

16 (B) in subparagraph (B), by adding at the  
17 end the following:

18 “(vi) Any gift to an institution of  
19 higher education from a foreign person, or  
20 the entry into a contract by such an insti-  
21 tution with a foreign person, if—

22 “(I)(aa) the value of the gift or  
23 contract equals or exceeds  
24 \$1,000,000; or



1                   “(G) FOREIGN GIFTS TO AND CONTRACTS  
2 WITH INSTITUTIONS OF HIGHER EDUCATION.—  
3 For purposes of subparagraph (B)(vi):

4                   “(i) CONTRACT.—The term ‘contract’  
5 means any agreement for the acquisition  
6 by purchase, lease, or barter of property or  
7 services by a foreign person, for the direct  
8 benefit or use of either of the parties.

9                   “(ii) GIFT.—The term ‘gift’ means  
10 any gift of money or property.

11                   “(iii) INSTITUTION OF HIGHER EDU-  
12 CATION.—The term ‘institution of higher  
13 education’ means any institution, public or  
14 private, or, if a multicampus institution,  
15 any single campus of such institution, in  
16 any State—

17                   “(I) that is legally authorized  
18 within such State to provide a pro-  
19 gram of education beyond secondary  
20 school;

21                   “(II) that provides a program for  
22 which the institution awards a bach-  
23 elor’s degree (or provides not less  
24 than a 2-year program which is ac-

1                   ceptable for full credit toward such a  
2                   degree) or a more advanced degree;

3                   “(III) that is accredited by a na-  
4                   tionally recognized accrediting agency  
5                   or association; and

6                   “(IV) to which the Federal Gov-  
7                   ernment extends Federal financial as-  
8                   sistance (directly or indirectly through  
9                   another entity or person), or that re-  
10                  ceives support from the extension of  
11                  Federal financial assistance to any of  
12                  the institution’s subunits.”.

13                  (2) MANDATORY DECLARATIONS.—Subsection  
14                  (b)(1)(C)(v)(IV)(aa) of such section is amended by  
15                  adding at the end the following: “Such regulations  
16                  shall require a declaration under this subclause with  
17                  respect to a covered transaction described in sub-  
18                  section (a)(4)(B)(vi)(II)(aa).”.

19                  (3) FACTORS TO BE CONSIDERED.—Subsection  
20                  (f) of such section is amended—

21                         (A) in paragraph (10), by striking “; and”  
22                         and inserting a semicolon;

23                         (B) by redesignating paragraph (11) as  
24                         paragraph (12); and

1 (C) by inserting after paragraph (10) the  
2 following:

3 “(11) as appropriate, and particularly with re-  
4 spect to covered transactions described in subsection  
5 (a)(4)(B)(vi), the importance of academic freedom at  
6 institutions of higher education in the United States;  
7 and”.

8 (4) MEMBERSHIP OF CFIUS.—Subsection (k) of  
9 such section is amended—

10 (A) in paragraph (2)—

11 (i) by redesignating subparagraphs  
12 (H), (I), and (J) as subparagraphs (I),  
13 (J), and (K), respectively; and

14 (ii) by inserting after subparagraph  
15 (G) the following:

16 “(H) In the case of a covered transaction  
17 involving an institution of higher education (as  
18 defined in subsection (a)(4)(G)), the Secretary  
19 of Education.”; and

20 (B) by adding at the end the following:

21 “(8) INCLUSION OF OTHER AGENCIES ON COM-  
22 MITTEE.—In considering including on the Com-  
23 mittee under paragraph (2)(K) the heads of other  
24 executive departments, agencies, or offices, the  
25 President shall give due consideration to the heads

1 of relevant research and science agencies, depart-  
2 ments, and offices, including the Secretary of Health  
3 and Human Services, the Director of the National  
4 Institutes of Health, and the Director of the Na-  
5 tional Science Foundation.”.

6 (5) CONTENTS OF ANNUAL REPORT RELATING  
7 TO CRITICAL TECHNOLOGIES.—Subsection (m)(3) of  
8 such section is amended—

9 (A) in subparagraph (B), by striking “;  
10 and” and inserting a semicolon;

11 (B) in subparagraph (C), by striking the  
12 period at the end and inserting a semicolon;  
13 and

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

15 “(D) an evaluation of whether there are  
16 foreign malign influence or espionage activities  
17 directed or directly assisted by foreign govern-  
18 ments against institutions of higher education  
19 (as defined in subsection (a)(4)(G)) aimed at  
20 obtaining research and development methods or  
21 secrets related to critical technologies; and

22 “(E) an evaluation of, and recommenda-  
23 tion for any changes to, reviews conducted  
24 under this section that relate to institutions of  
25 higher education, based on an analysis of disclo-

1           sure reports submitted to the chairperson under  
2           section 117(a) of the Higher Education Act of  
3           1965 (20 U.S.C. 1011f(a)).”.

4           (b) INCLUSION OF CFIUS IN REPORTING ON FOR-  
5 EIGN GIFTS UNDER HIGHER EDUCATION ACT OF 1965.—  
6 Section 117 of the Higher Education Act of 1965 (20  
7 U.S.C. 1011f) is amended—

8           (1) in subsection (a), by inserting after “the  
9           Secretary” the following: “and the Secretary of the  
10          Treasury (in the capacity of the Secretary as the  
11          chairperson of the Committee on Foreign Investment  
12          in the United States under section 721(k)(3) of the  
13          Defense Production Act of 1950 (50 U.S.C.  
14          4565(k)(3)))”; and

15          (2) in subsection (d)—

16                (A) in paragraph (1)—

17                   (i) by striking “with the Secretary”  
18                   and inserting “with the Secretary and the  
19                   Secretary of the Treasury”; and

20                   (ii) by striking “to the Secretary” and  
21                   inserting “to each such Secretary”; and

22                (B) in paragraph (2), by striking “with the  
23                Secretary” and inserting “with the Secretary  
24                and the Secretary of the Treasury”.



1 (c) EFFECTIVE DATE; APPLICABILITY.—The amend-  
2 ments made by subsection (a) shall—

3 (1) take effect on the date of the enactment of  
4 this Act, subject to the requirements of subsections  
5 (d) and (e); and

6 (2) apply with respect to any covered trans-  
7 action the review or investigation of which is initi-  
8 ated under section 721 of the Defense Production  
9 Act of 1950 on or after the date that is 30 days  
10 after the publication in the Federal Register of the  
11 notice required under subsection (e)(2).

12 (d) REGULATIONS.—

13 (1) IN GENERAL.—The Committee on Foreign  
14 Investment in the United States (in this section re-  
15 ferred to as the “Committee”), which shall include  
16 the Secretary of Education for purposes of this sub-  
17 section, shall prescribe regulations as necessary and  
18 appropriate to implement the amendments made by  
19 subsection (a).

20 (2) ELEMENTS.—The regulations prescribed  
21 under paragraph (1) shall include—

22 (A) regulations accounting for the burden  
23 on institutions of higher education likely to re-  
24 sult from compliance with the amendments  
25 made by subsection (a), including structuring

1 penalties and filing fees to reduce such burdens,  
2 shortening timelines for reviews and investiga-  
3 tions, allowing for simplified and streamlined  
4 declaration and notice requirements, and imple-  
5 menting any procedures necessary to protect  
6 academic freedom; and

7 (B) guidance with respect to—

8 (i) which gifts and contracts described  
9 in described in clause (vi)(II)(aa) of sub-  
10 section (a)(4)(B) of section 721 of the De-  
11 fense Production Act of 1950, as added by  
12 subsection (a)(1), would be subject to filing  
13 mandatory declarations under subsection  
14 (b)(1)(C)(v)(IV) of that section; and

15 (ii) the meaning of “control”, as de-  
16 fined in subsection (a) of that section, as  
17 that term applies to covered transactions  
18 described in clause (vi) of paragraph  
19 (4)(B) of that section, as added by sub-  
20 section (a)(1).

21 (3) ISSUANCE OF FINAL RULE.—The Com-  
22 mittee shall issue a final rule to carry out the  
23 amendments made by subsection (a) after assessing  
24 the findings of the pilot program required by sub-  
25 section (e).

1 (e) PILOT PROGRAM.—

2 (1) IN GENERAL.—Beginning on the date that  
3 is 30 days after the publication in the Federal Reg-  
4 ister of the matter required by paragraph (2) and  
5 ending on the date that is 570 days thereafter, the  
6 Committee shall conduct a pilot program to assess  
7 methods for implementing the review of covered  
8 transactions described in clause (vi) of section  
9 721(a)(4)(B) of the Defense Production Act of  
10 1950, as added by subsection (a)(1).

11 (2) PROPOSED DETERMINATION.—Not later  
12 than 270 days after the date of the enactment of  
13 this Act, the Committee shall, in consultation with  
14 the Secretary of Education, publish in the Federal  
15 Register—

16 (A) a proposed determination of the scope  
17 of and procedures for the pilot program re-  
18 quired by paragraph (1);

19 (B) an assessment of the burden on insti-  
20 tutions of higher education likely to result from  
21 compliance with the pilot program;

22 (C) recommendations for addressing any  
23 such burdens, including shortening timelines for  
24 reviews and investigations, structuring penalties  
25 and filing fees, and simplifying and stream-

1 lining declaration and notice requirements to  
2 reduce such burdens; and

3 (D) any procedures necessary to ensure  
4 that the pilot program does not infringe upon  
5 academic freedom.

6 (3) REPORT ON FINDINGS.—Upon conclusion of  
7 the pilot program required by paragraph (1), the  
8 Committee shall submit to Congress a report on the  
9 findings of that pilot program that includes—

10 (A) a summary of the reviews conducted  
11 by the Committee under the pilot program and  
12 the outcome of such reviews;

13 (B) an assessment of any additional re-  
14 sources required by the Committee to carry out  
15 this section or the amendments made by sub-  
16 section (a);

17 (C) findings regarding the additional bur-  
18 den on institutions of higher education likely to  
19 result from compliance with the amendments  
20 made by subsection (a) and any additional rec-  
21 ommended steps to reduce those burdens; and

22 (D) any recommendations for Congress to  
23 consider regarding the scope or procedures de-  
24 scribed in this section or the amendments made  
25 by subsection (a).