

Proposed Changes to Higher Education Financial and Tax Policy: What Colleges and Universities Need to Know

The First 100 Days: Higher Education

Client Alerts

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Both Congress and the White House have sought to introduce new financial restrictions for institutions of higher education, building on efforts made during President Trump's first term. These proposed restrictions include limits on foreign donations to institutions, changes to the reporting process for such donations, and increases to the endowment tax. Since President Trump's inauguration, congressional Republicans have advanced several legislative proposals, varying in scope and structure. In this client alert, part of Jenner & Block's "First 100 Days" Series, we unpack these developments at the federal level and suggest steps for institutions to consider.

1. Reporting Threshold for Foreign Donations to Universities

Both the White House and congressional Republicans have revived their efforts to limit foreign donations to colleges and universities. On February 7, 2025, Representative Michael Baumgartner (R-WA) and Education and Workforce Committee Chairman Tim Walberg (R-MI) introduced H.R. 1048, the Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions (DETERRENT) Act.¹ This act would amend Section 117 of the Higher Education Act of 1965 (HEA) in order to "limit foreign influences, hold universities accountable, and ensure clarity" in foreign gift reporting.²

Currently, Section 117 of the HEA requires semi-annual disclosures from universities to the US Department of Education of any foreign gifts from or contracts with foreign entities that, alone or combined, amount to at least \$250,000 in a calendar year.³ Universities must also report any foreign ownership or control to the Secretary of Education.

The DETERRENT Act would amend Section 117 by:

- Slashing the foreign gift reporting threshold for colleges and universities from \$250,000 to \$50,000;⁴

- Introducing a strict \$0 reporting threshold for “countries of concern,” including China, Iran, North Korea, and Russia,⁵ and creating a publicly searchable database of any investments made by these countries of concern;
- Requiring institutions to secure a waiver from the Department of Education before contracting with any country of concern;
- Requiring the disclosure of foreign gifts to individual staff and faculty at research-heavy institutions; and
- Imposing penalties for non-compliance, including fines and/or the loss of Title IV funding.

The bill passed the House in a 241-169 vote on March 27, 2025,⁶ and was recently introduced in the Senate.⁷

The DETERRENT Act was first passed by the House in 2023, but it failed to make progress in the Senate before the end of the last Congress.⁸ The DETERRENT Act’s supporters contend the bill would curb the threats tied to foreign donations, including threats to national security, research and IP, and student and academic freedoms.⁹ Opponents of the bill, such as the Association of American Universities¹⁰ and the American Council on Education,¹¹ believe such legislation would chill important research activities, duplicate existing federal oversight efforts, and create a burdensome data collection regime.

2. Potential Changes to the Endowment Tax

Enacted during President Trump’s first term, the 2017 Tax Cuts and Jobs Act (TCJA) introduced a 1.4% excise tax on endowment income for private institutions with at least 500 tuition-paying students—half or more of whom are in the United States—and at least \$500,000 per student in endowment funds.¹² Under that threshold, in 2023, the 1.4% tax generated approximately \$380 million in revenue from 56 eligible institutions.¹³

The 1.4% tax remains in effect today, though many of the TCJA’s provisions are set to expire later this year.¹⁴ Seizing upon this opening, Republican legislators have recently introduced or re-introduced the following bills:

- **Endowment Tax Fairness Act.**¹⁵ Sponsored by Representative Troy Nehls (R-TX-22), this bill would increase the 1.4% tax rate to match the corporate tax rate of 21%.
- **Endowment Accountability Act.**¹⁶ Sponsored by Representatives Mike Lawler (R-NY-17), Lauren Boebert (R-CO-4), Brandon Gill (R-TX-26), and Ronny Jackson (R-TX-13), this bill proposes

to increase the tax rate to 10% and lower the per-student endowment threshold from \$500,000 to \$200,000, thus covering additional institutions.

- **Higher Education Accountability Tax (HEAT) Act.**¹⁷ Sponsored by Representatives Dave Joyce (R-OH-14) and Nicole Malliotakis (R-NY-11), this recently reintroduced bill proposes to increase the endowment tax to 10%, or in some instances 20%, and lower the per-student endowment threshold to \$250,000.
- **Woke Endowment Security Tax (WEST) Act.**¹⁸ Sponsored and recently reintroduced by Senator Tom Cotton (R-AR), this bill would impose a one-time 6% tax on endowment assets for the 11 largest private institutions by endowment. Notably, this bill aims to tax the endowment principal, not investment income.
- **Protecting American Students Act.**¹⁹ Sponsored by Representatives Vern Buchanan (R-FL-16) and Elise Stefanik (R-NY-21), this bill would not change the tax rate, but it would effectively lower the endowment threshold by counting only those students who are eligible for federal financial assistance, thus covering additional institutions.
- **University Accountability Act.**²⁰ Sponsored and recently reintroduced by Nicole Malliotakis (R-NY-11) and Elise Stefanik (R-NY-21), this bill leaves the endowment tax unchanged but threatens to penalize institutions that have a civil judgment entered against them by a federal court for violating Title VI of the Civil Rights Act of 1964 with a fine of 5% of the institutions' aggregate administrative compensation (as reported on their Form 990s) or \$100,000, whichever is greater. Institutions with three or more violations would be subject to an IRS review of their tax-exempt status for possible revocation.

What to Do Now

It is unclear whether any of these existing proposals will become law. Although Republicans now have a majority in both houses of Congress, their majority in the House of Representatives is slight. And so far, the existing proposals have not attracted enthusiasm from Democrats. In this landscape, institutions should consider the following:

1. **Ensure compliance with Section 117.** This includes making an annual disclosure report to the Department of Education for any foreign gift that totals at least \$250,000, alone or combined, and identifying other large sources of foreign funding.
2. **Track the DETERRENT Act and any other related proposals.** These may alter existing restrictions and reporting obligations, and as they take shape or near passage, institutions may wish to consider what additional compliance mechanisms will be necessary.

3. **Stay current on existing endowment-related proposals and any new ones.** Institutions should continue to track the growing number of proposals and consider whether and how to engage allies and/or legislators. In addition, institutions should prepare for other possible endowment-related policies, such as minimum payout rules forcing institutions to spend a percentage of their endowment income.
4. **Monitor IRS activity.** Institutions may see renewed efforts from President Trump's first term to strip institutions of their tax-exempt status and should monitor changes to the Internal Revenue Code or Treasury Regulations that could impact them.
5. **Work with legislators to minimize potential tax liability.** Cooperation is particularly important with legislators who share a common interest in rejecting increases to the endowment tax.
6. **Highlight the value of retaining endowment income.** Many of the existing proposals purport to impose a higher tax on institutions as punishment for perceived wealth, an alleged failure to address antisemitism on campus, or the supposed indoctrination of students. Institutions should consider challenging such narratives by showcasing endowment spending in support of students, faculty, or operations.

Jenner & Block has one of the nation's preeminent higher education practice groups. We have counseled and represented institutions in numerous areas of the law, including regulatory compliance and litigation. If you are interested in learning more about our work in this area, please contact practice group Co-Chairs Ishan Bhabha (ibhabha@jenner.com), Lauren Hartz (lhartz@jenner.com), and Terri Mascherin (tmascherin@jenner.com).

Footnotes

[1] H.R. 1048, 119th Cong. (2025).

[2] Michael Baumgartner & Tim Walberg, Baumgartner, Walberg Introduce Bill to Thwart Foreign Influence in U.S. Colleges, U.S. HOUSE OF REPRESENTATIVES COMM. ON EDUC. & THE WORKFORCE (Feb. 7, 2025), <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=412188>.

[3] Higher Education Act of 1965, § 117, 20 U.S.C. § 1011f (2021).

[4] See fn. 1.

[5] Countries of Particular Concern, Special Watch List Countries, and Entities of Particular Concern, U.S. Department of State, <https://www.state.gov/countries-of-particular-concern-special-watch-list-countries-entities-of-particular-concern/> (last visited Apr. 14, 2025).

[6] Roll Call 83, On Passage, H.R. 1048, 119th Cong. (2025), <https://clerk.house.gov/Votes/202583>.

[7] Thom Tillis & Bill Cassidy, Tillis, Cassidy Introduce Legislation to Deter Malicious Foreign Influence in Postsecondary Education, U.S. Senate (Apr. 4, 2025), <https://www.tillis.senate.gov/2025/4/tillis-cassidy-introduce-legislation-to-deter-malicious-foreign-influence-in-postsecondary-education>.

[8] H.R. 5933, 118th Cong. (2025), <https://www.congress.gov/bill/118th-congress/house-bill/5933>.

[9] Rep. Michael Steel, DETERRENT Act Fact Sheet, U.S. House of Representatives Comm. On Educ. & the Workforce (Oct. 11, 2023), https://edworkforce.house.gov/uploadedfiles/10.11.23_deterrent_act_118th_congress_bill_fact_sheet_final_pdf.pdf.

[10] Ass'n. of Am. Universities, AAU Urges House Opposition to the DETERRENT Act (Mar. 24, 2025), <https://www.aau.edu/key-issues/aau-urges-house-opposition-deterrent-act>.

[11] Am. Council on Educ., Letter to the House of Representatives Regarding the DETERRENT Act (Mar. 25, 2025), <https://www.acenet.edu/Documents/Letter-House-DETERRENT%20Act-032525.pdf>.

[12] I.R.C. § 4968 (2017).

[13] See Garrett Watson & Daniel Bunn, *New Efforts on Taxing Endowments Raise Questions on Neutrality and Revenue Collection*, Tax Found. (Jan. 28, 2025), <https://taxfoundation.org/blog/taxing-endowments-revenue-analysis/>.

[14] See *generally* Donald J. Marples & Brendan McDermott, Cong. Rsch. Serv., Reference Table: Expiring Provisions in the “Tax Cuts and Jobs Act” (TCJA, P.L. 115-97), R47846, 2024.

[15] H.R. 445, 119th Cong. (2025).

[16] H.R. 1128, 119th Cong. (2025).

[17] H.R. 1006, 119th Cong. (2025) (re-introduced); H.R. 8833, 117th Cong. (2022).

[18] S. 936, 119th Cong. (2025) (re-introduced); S. 3465, 118th Cong. (2023).

[19] H.R. 1905, 119th Cong. (2025).

[20] Press Release, Elise Stefanik, Stefanik, Malliotakis Reintroduce Legislation to Impose Penalties on Antisemitic Universities (Apr. 7, 2025), <https://stefanik.house.gov/press-releases?ID=5D711B86-71A0-411E-BC6C-1572EA30C4A6>; H.R. 2686, 119th Cong. (2025) (re-introduced); H.R. 8914, 118th Cong. (2024).

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