

July 12, 2019

The Honorable Mitchell M. Zais  
Deputy Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington DC 20202

Dear Deputy Secretary Zais,

Thank you for the Department's July 3 response to our letters of Jan. 18, 2019, and June 21, 2019, asking the Department to clarify the reporting requirements of Section 117 of the Higher Education Act (HEA) in order to help colleges and universities comply with these obligations. In addition to those two letters, ACE and several of the undersigned associations have also met with Department staff to discuss Section 117.

Unfortunately, the response will not help institutions meet compliance obligations. Compliance requires a clear, unambiguous understanding of obligations. It is patently unfair to enforce requirements that do not exist in writing.

More than three decades after enactment, the Department has not issued regulations implementing Section 117. Rather, it has only issued two "Dear Colleague" letters, the last one 15 years ago, which provide only limited guidance. To date, the Department has steadfastly declined to answer specific, direct questions to improve compliance.

As we have repeatedly pointed out, there is confusion about what needs to be reported under Section 117. Indeed, at a Senate Permanent Subcommittee on Investigations hearing in February, as *Inside Higher Ed*<sup>1</sup> has reported, you noted there is a lack of clarity on the issue of gifts made to a university foundation.

The Department's July 3 response suggests the Department plans to enforce vague, incomplete, confusing, and obsolete guidance. The response also indicates that the Department plans to modernize the antiquated and burdensome information collection portal, but that does little good if the Department does not also make it clear what it is that institutions should report. Likewise, issuing discretionary grant conditions and a Title IV Program Participation Agreement Notice of Final Interpretation that Section 117 compliance is in the national security interest of the United States does nothing to clarify the current, limited guidance. Indeed, since "national security" is not referenced in the statute or the previous guidance, the letter implies the Department is expanding the scope of the requirement without any opportunity for public comment.

---

<sup>1</sup> July 9, 2019 "Foreign Gifts Under Scrutiny,"

<https://www.insidehighered.com/news/2019/07/09/colleges-call-more-clarity-rules-requiring-disclosure-foreign-gifts-and-contracts>

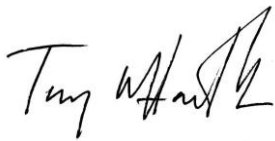
The Department has said that it will end the practice of ruling by guidance. Secretary DeVos herself has said that, “the era of rule by letter is over.” But that is precisely what the Department is doing in this case.

There are numerous examples where colleges and universities have worked closely with the Department to resolve difficult issues. Most recently, for example, a negotiated rulemaking panel reached consensus on a range of complex issues. We believe that similar collaboration is needed to clarify the Section 117 requirements. Clarifying the existing guidance as soon as possible would be especially helpful to institutions that very much want to comply. As Secretary DeVos promised in regards to not ruling by letter, the most effective way of ensuring that institutions know exactly how to comply with Section 117 is to undertake a formal rulemaking process that allows for public comments.

As the July 3 response acknowledges, higher education institutions are sensitive to national security, academic freedom, and other concerns associated with foreign funding. However, the Department cannot reasonably expect compliance with Section 117 without more clarity about the requirements.

We are eager to discuss this matter further and provide more information to assist the Department’s work in this area. I reiterate the willingness of colleges and universities to comply, and again request that the Department facilitate this by clarifying Section 117 requirements.

Sincerely,



Terry W. Hartle  
Senior Vice President  
Government Relations and Public Affairs

Cc: Diane Jones, Principal Deputy Under Secretary  
Jeff Appel, Director of Policy Liaison and Implementation, Office of Federal Student Aid

On behalf of:

American Association of Community Colleges  
American Association of State Colleges and Universities  
American Council on Education  
Association of American Universities  
Association of Public and Land-grant Universities  
Council on Governmental Relations  
National Association of Independent Colleges and Universities