

Section 117 of the Higher Education Act
Foreign Gift and Contract Reporting:
Background and Summary of Issues of Concern
September 12, 2019

Since the mid-1980s, under Section 117 of the Higher Education Act, colleges and universities have been required to file reports twice a year with the Department of Education (Department) disclosing all gifts from or contracts entered into with a foreign government or non-governmental foreign source (i.e. citizens of foreign countries, foreign corporations) with a value of at least \$250,000.

Since its enactment, the statute was largely ignored by the Department and other policy makers. Indeed, the Department has never issued any regulations implementing the statute, instead only issuing two so-called “Dear Colleague” letters in 1995 and 2004 which provide limited guidance about how institutions are to comply with the law. For some time, the reported data was not even readily accessible, until the Department, through the Federal Student Aid office, starting posting it on a downloadable spreadsheet.

Over the last year, motivated largely by concerns about China’s perceived growing influence, federal policy makers and national security and science agencies have been looking into ways to protect sensitive research and academic freedom at American colleges and universities. It was then that the Department and other policy makers started to focus on the Sec. 117 foreign gift reporting requirements. Last February, the Senate Permanent Subcommittee on Investigations (PSI) held a hearing following the release of its report regarding [China’s impact on the U.S. higher education system](#). The PSI found that nearly 70 percent of schools that should have reported receiving funds from China for a Confucius Institute under Sec. 117 failed to do so. Earlier this year, the Department launched investigations at four major research universities about gifts and contracts which those institutions received from foreign sources.

In response to the increasing concerns of policy makers and requests from campuses seeking guidance about Sec. 117 reporting requirements, ACE and several higher education associations wrote the Department last January requesting clarification of the Sec. 117 foreign gift reporting obligations. Since that time, we have exchanged several letters with the Department about the need to clarify those reporting requirements, but the Department has repeatedly refused to supply the needed information and ignored our requests to meet to discuss how to address confusion about the Sec. 117 requirements.

On Friday, September 6, the Department issued an [information collection request](#) seeking input on additional Sec. 117 reporting. This proposed information collection, as written, would vastly expand the scope of Sec. 117, extending well beyond statutory language and congressional intent. The proposed information collection will require many more institutions to report to the Department, as well as significantly expand the administrative burden on those schools.

The following are major areas of concern:

- It suggests that institutions may be required to report all foreign gifts and contracts, even those below the \$250,000 threshold specified in Sec. 117. If so, this would conceivably require reporting even a \$100 alumni contribution from a foreign source.
- The name and address of anonymous individual donors from a foreign source will now have to be disclosed.
- The proposed information collection raises new uncertainties and questions - such as, do institutions need to report tuition payments from individual foreign students? Do institutions need to report token gifts that are exchanged during visits from visiting foreign institutions?
- The definition of “institution” would be expanded to include all independent foundations and other organizations that operate substantially for the benefit of a college or university, even if they do not receive any foreign funds. The schools may have no way to collect the required information from the foundation.
- Institutions would be required to upload to the Department’s information collection instrument gift or donation agreements, contracts, and restricted or conditional gift agreements and contracts with foreign sources, with no guarantee of confidentiality. Some of those agreements include proprietary information that institutions may be contractually obligated not to disclose.
- For restricted or conditional gifts or contracts, institutions will be required to verify and describe whether “the restricted or conditional gift [was] for the purpose of or did it have the effect of influencing any program or curricula at the institution, either directly or indirectly.”
- Institutions will be required to report gifts and contracts from foreign sources, including subsidiaries. This could include U.S. entities that are owned or subsidized by foreign sources. Our institutions may not know or be aware of foreign ownership or control of U.S. entities from whom they receive donations or with whom they contract (e.g. research collaborators).
- Institutions will be required to certify compliance with certain anti-terrorism, sanctions, export control, anti-boycott and other trade laws and regulations that the Department has no authority to enforce, and they will be required to certify that the reported foreign sources have not engaged in activities that violate federal criminal law.
- The penalties for knowing or willful failure to provide accurate information would be significantly expanded to potentially include imprisonment.