

January 18, 2019

Diane Jones  
Delegated Under Secretary and  
Assistant Secretary for Postsecondary Education  
Office of Postsecondary Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington DC 20202

Dear Delegated Under Secretary Jones,

The American Council on Education (ACE) and the undersigned higher education associations are working together to address recent security concerns regarding foreign influence and efforts to protect federally funded research from theft and foreign intrusion. We share a strong interest with the government in safeguarding the integrity of government-funded research and protecting academic freedom and free speech from foreign influence and/or interference. We also take seriously our responsibility to ensure transparency around the relationships U.S. colleges and universities have with foreign entities. Accordingly, we welcome the opportunity to continue to work with the Administration to address these important issues.

Section 117 of the Higher Education Act requires institutions of higher education that receive Title IV federal student aid dollars to submit to the Secretary of Education reports about gifts received from any foreign source, contracts with a foreign entity, and any ownership interests in or control over the institution by a foreign entity. But in our efforts to share best practices and standard compliance across our institutions, it has become apparent that there are several questions about how to interpret the law correctly and comply with Section 117 requirements.

As you may know, the Department of Education has never issued regulations on this matter. Thus, universities rely on two Dear Colleague letters, one issued in 1995 and the other issued in 2004 regarding Section 117 requirements. There is insufficient information in these documents to ensure effective compliance, so we ask for clarification on four issues:

1. Whether the \$250,000 reporting threshold is met only when an individual gift exceeds this amount or when the aggregate amount received from a country or specific foreign entity exceeds the threshold?
2. What should be considered under the Section 117 definition of an "institution"?
3. When is it sufficient to only list the country from which a gift(s) has been received versus a specific government-affiliated university, company, and/or other entity?
4. What mechanism should institutions use to submit corrections or amendments to previous reports?

First, section 117 states that the disclosure requirement is triggered once an institution receives gifts or enters into a contract with a foreign source with an aggregate value of \$250,000 or more per calendar year attributable to a particular country. The term “foreign source” in the statute is defined as “(A) a foreign government, including an agency of a foreign government; (B) a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states; (C) an individual who is not a citizen or a national of the United States; and (D) an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source.”

We interpret this to mean that institutions do not report gifts or contracts which in aggregate are below the \$250,000 threshold in one calendar year from a single foreign source. In addition, for the purpose of calculating the \$250,000 threshold, the statute appears to require an aggregate value for gifts or contracts from each individual non-governmental foreign source within a calendar year. For instance, while a campus may receive multiple gifts or enter into several contracts with other entities or institutions from that foreign country, in order to trigger the disclosure requirement, the gifts or contracts in one calendar year must reach at least \$250,000 in aggregate from a single foreign source or entity. Is this interpretation correct?

Second, the February 1995 Dear Colleague letter<sup>1</sup> defines “institution” as “an institution, public or private, or if a multi-campus institution, any single campus of such institution, in any State which 1) is legally authorized within such State to provide a program of education beyond secondary level; 2) provides a program for which it awards a bachelor’s degree (or provides not less than a 2-year program which is acceptable for full credit toward such a degree) or more advanced degrees; and 3) is accredited by a nationally recognized accrediting agency or association and to which institution Federal financial assistance is extended (directly or indirectly through another entity or person), or which institution receives support from the extension of Federal financial assistance to any of its subunits.”

Under this definition, we do not believe that a non-profit educational, cultural, or research entity that is legally organized and separate from a higher education institution must comply with the reporting requirements. This includes, for example, a separate foundation that receives, reports, and disburses private gifts and manages an endowment that supports the university, especially if the foundation is a separate 501(c)(3) organization governed by its own board. We would, however, appreciate further clarification from the Department on this matter to assure us that this is, in fact, an accurate interpretation.

Third, we also seek clarification on when it is sufficient to list the country from which a gift(s) has been received versus individual, specific government-affiliated companies, universities, or other entities. The 2017-2018 FSA Handbook states “for gifts received from or contracts entered into with a foreign source other than a foreign government, (institutions must report) the name of the foreign state to which the contracts or gifts are attributable and the aggregate dollar amount of the gifts and contracts attributable to a

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<sup>1</sup> [https://ifap.ed.gov/dpccletters/doc0158\\_bodyoftext.htm](https://ifap.ed.gov/dpccletters/doc0158_bodyoftext.htm)

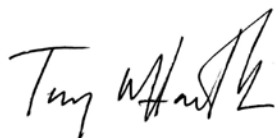
particular country.”<sup>2</sup> Are institutions ever required to list specific gifting or contract entities as opposed to the country from which the gifts or contracts came?

Finally, the 2004 guidance<sup>3</sup> states that if an institution missed filing a report, it “should immediately file all of the missed reports.” However, there is no additional guidance on how to amend or retroactively report to the Department of Education. How should universities proceed if they believe they need to file additional information or corrections?

Given increased awareness at our institutions regarding the influence of foreign governments and the need for transparency relating to foreign gifts and contracts from entities affiliated with such governments, our institutions want to ensure we are in compliance with Section 117 and thus, clear guidance on how to address the aforementioned issues would be useful. We would very much like to discuss these important issues with you and receive additional written clarification from the Department of Education regarding the questions we have raised above.

We look forward to working with you and the staff at the Department of Education to protect both our national security and our long-cherished values of academic freedom and free speech.

Sincerely,



Terry Hartle  
Senior Vice President  
Government Relations and Public Affairs

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  
National Association of Independent Colleges and Universities

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<sup>2</sup> <https://ifap.ed.gov/fsahandbook/attachments/1718FSAHbkVol2Ch6.pdf>, Page 2-181

<sup>3</sup> <https://ifap.ed.gov/dpcletters/GEN0411.html>