
A final version of this guidance will be posted shortly to the [Research and Technology Transfer Guidance Memo application](#) shortly.

January 10, 2020

Subject: UC Guidance on Higher Education Act (HEA), Section 117 Reporting Requirements

OVERVIEW

Section 117 of the Higher Education Act (HEA) of 1965¹ requires higher education institutions that receive Title IV federal student aid to submit to the Secretary of Education reports about Gifts received from any Foreign Source, Contracts with a Foreign Source, and any ownership interest in, or control over the institution by a Foreign Source. Institutions must report Contracts with or Gifts from the same Foreign Source that have a value of \$250,000 or more, “considered alone or in combination with all other Gifts from or Contracts with that Foreign Source within a calendar year;” and must also report any ownership interests in or control over the institution by a Foreign Source. The Section 117 report is but one area of the Consumer Information and School Reporting required by the U.S. Department of Education (ED) for four-year colleges participating in federal student financial assistance programs.

The University of California receives approximately \$1.65 billion in federal student financial aid programs, including grants and scholarships, graduate fellowships, loans and work-study. The ED is authorized to undertake a civil action in federal district court to ensure compliance if a school fails to comply with the HEA Section 117 requirements in a timely manner.² Schools knowingly or willfully failing to comply must reimburse the U.S. Treasury for the full cost of obtaining compliance³. Several institutions are already under investigation by the ED for alleged under-reporting.⁴

¹ Higher Education Act (HEA), Title 1 Part B Sec. 117, codified at 20 U.S.C. § 1011f(a).

² 20 U.S.C. § 1011f(f); Department of Education, 2018-2019 Federal Student Aid Handbook, Vol. 2, ch. 6, p. 180 (Feb. 2019), available at <https://ifap.ed.gov/fsahandbook/attachments/1819FSAHbkVol2Ch6.pdf>.

³ 20 U.S.C. § 1011f(f).

⁴ The Department of Education has issued letters to Georgetown University, Texas A&M University, Cornell University, Rutgers University, the University of Maryland, and the Massachusetts Institute of Technology, requesting extensive and substantial documentation to verify the completeness and/or accuracy of their reports. These letters were published in the Federal Register (see <https://www.govinfo.gov/content/pkg/FR-2019-06-28/pdf/2019-13904.pdf>; <https://www.federalregister.gov/documents/2019/07/19/2019-15425/notice-of-investigation-and-record-requests>; <https://www.federalregister.gov/documents/2019/11/21/2019-25231/notice-of-investigation-and-record-requests>)

UC campuses should assess and, if necessary, strengthen their processes for complying with the Section 117 reporting requirements. This document provides guidance to campuses, including a description of the reporting requirements and UCOP's recommendations for risk mitigation. This document also includes Q&As (Appendix A), definitions of HEA Section 117 Terms (Appendix B), and an HEA Section 117 Reporting: UC Checklist (Appendix C).

In developing this UC guidance, the Research Policy Analysis and Coordination (RPAC) unit used currently available public sources, and coordinated with Ethics, Compliance and Audit Services (ECAS), Federal Governmental Relations (FGR), Institutional Advancement, and Student Financial Support at UCOP to further provide campuses with additional recommendations.

Note that on September 6, 2019, ED published a Notice of Information Collection in the Federal Register indicating proposed forthcoming changes to the information ED would require for HEA Section 117 reporting.⁵ On December 17, 2019, ED published its response to the submitted comments⁶, along with slightly modified reporting requirements from the version published on September 6, 2019. On December 23, 2019, ED issued an announcement⁷ stating that even if its updated reporting requirements are approved by the federal Office of Management and Budget, institutions will have the option of reporting under the old system for their reports due January 31, 2020.

The higher education community believes the updated reporting requirements described in ED's September and December notices and responses go substantially beyond the scope of what is required by the statute and represent a considerable change from the information ED previously requested and in how the reporting is to be completed. Nonetheless, UCOP believes that it is unlikely that ED will reverse course.

This guidance recommends that campuses use the existing ED portal at <https://eligcert.ed.gov/> for their January 31, 2020. However, note that this portal does not allow for the submission of all the new data elements under the updated 2019 reporting requirements (such as uploading true copies – See Table 1 below). Therefore, it is recommended that for the January 31, 2020 report, campuses submit only as much of the newly required data as the portal will allow (e.g., without submitting true copies).

⁵ The Notice can be found at 84 FR 46943 (accessible at: <https://www.federalregister.gov/documents/2019/09/06/2019-19296/agency-information-collection-activities-comment-request-foreign-gifts-and-contracts-disclosures>); and the specific proposed changes can be found in an attachment to the Federal Register Notice, accessible at:

<https://www.regulations.gov/document?D=ED-2019-ICCD-0114-0003>

⁶ "Emergency 10 day Federal Register Notice", along with the "Supporting and Related Materials" accessible at: <https://www.regulations.gov/document?D=ED-2019-ICCD-0154-0004>, and <https://www.regulations.gov/document?D=ED-2019-ICCD-0154-0002>

⁷ See: <https://ifap.ed.gov/eannouncements/122319Section117oftheHigherEducationAct.html>.

This guidance document is based on UCOP's interpretations of the law and ED information published in the Federal Register. Should the final ED instructions differ from this guidance, we will update this guidance accordingly.

DATA COLLECTION

Campuses must ensure that all required information regarding each gift or contract transaction is provided in the HEA Section 117 report as described in the next section. In addition, campuses may consider collecting for internal purposes the following information in case there is later a need to easily locate the source of reported information:

- Department/individual recipient
- PI's name/contact
- Agreement number
- Sponsor name
- Project title

Given that the annual \$250,000 threshold may be triggered by a combination of Gifts or Contracts from a single Foreign Source, and that such Gifts or Contracts (or information about those transactions) may be administered in a number of disparate offices, UCOP advises that relevant offices, including those listed below, submit to a campus coordinating unit required information for **all Foreign Source Contracts and Gifts received**. The coordinating unit can then determine whether the threshold is met. The relevant offices may include:

- Sponsored Projects (including any office responsible for receiving sponsored research agreements, industry contracts, and clinical trial contracts)
- Business Contracts
- Technology Transfer or Licensing
- Development/ Institutional Advancement
- University affiliated foundations
- Education Abroad
- Financial Aid
- Real Estate
- For campuses with medical schools or hospitals: any corresponding offices in the clinical enterprise.

HEA SECTION 117 REPORTING BASICS

1. Definition of Foreign Source

HEA Section 117 defines a Foreign Source 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 or a trust territory or protectorate thereof; and
- (D) An agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a Foreign Source.⁸

UCOP recommends that UC locations adopt procedures under which any UC unit signing or accepting a Contract or Gift should ascertain whether the other party is a Foreign Source as defined above and its associated country. This can be done either by: 1) the UC unit making its own determination based on the address and information supplied by the sponsor/donor or with information otherwise at the unit's disposition, or 2) by requesting that the sponsor/donor certify whether they are a Foreign Source, and if so, their associated country. If the country of incorporation/place of business or residence is foreign, this address can be used to determine if they should be included in the HEA Section 117 report. If the country of incorporation/place of business or residence is U.S. based, the unit would need to determine whether the sponsor/donor is an agent, subsidiary or affiliate of a Foreign Source.

2. Definition of Gifts and Contracts

Gifts are defined by Section 117 of the HEA as “any gift of money or property.”⁹

UC's foundations are separate legal entities, and gifts to the foundations are not normally considered gifts to the University. However, to facilitate transparency, for the purposes of reporting under Section 117 of the Higher Ed Act, University campus reports should include donations to UC campus foundations that alone or in aggregate meet the reporting thresholds set out by Section 117.

Contracts are defined by HEA as “any agreement for the acquisition by purchase, lease, or barter of property or services by the Foreign Source, for the direct benefit or use of either of the parties.”¹⁰ With respect to HEA Section 117 reporting requirements, UCOP interprets Contracts to include sponsored research contracts and grants, service contracts, revenue-generating contracts, and other agreements involving the inflow of funds to the University from a Foreign Source.

⁸ 20 U.S.C. §1011f(h)(2)

⁹ 20 U.S.C. §1011f(h)(3)

¹⁰ 20 U.S.C. §1011f(h)(1)

Note that in ED's December 17, 2020 response to public comments, it clarified that it interprets the definition of contract to exclude a contract involving the transfer of funds FROM an institution TO a foreign source.

A Restricted or Conditional Gift or Contract is defined by HEA¹¹ as:

Any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding —

- (A) the employment, assignment, or termination of faculty;
- (B) the establishment of departments, centers, research or lecture programs, or new faculty positions;
- (C) the selection or admission of students; or
- (D) the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

Most Contracts and Gifts to the University would likely not meet the conditions above for a "Restricted or Conditional Gift or Contract." An example of a contract that does meet the Restricted/Conditional definition is one that requires the *establishment of an institute* as a condition of funding, as opposed to generalized support for a variety of research projects or students.

3. Timing of submission

HEA Section 117 reports are due twice per calendar year: January 31 (covering the previous July 1-December 31 period) and July 31 (covering the previous January 1-June 30 period). A school must report information by January 31 or July 31 (whichever is sooner) after the date of receipt of the gifts, date of the contract, or date of ownership or control.

4. Information to be reported for each subcategory of Contracts and Gifts

For the purpose of fulfilling their HEA Section 117 obligations, all campuses must report: all gifts from or contracts, grants, or other agreements which individually or in the aggregate amount to or exceed \$250,000 from a single Foreign Source in any calendar year. The required information varies depending on whether the funding is a contract or a gift, whether it is restricted/conditional, and whether the Foreign Source is a foreign government, a legal entity, an individual, or an

¹¹ 20 U.S.C. §1011f(h)(5)

agent/subsidiary of a foreign legal entity. Campuses must include the information for each category listed in the table below. However, ED has indicated that for the report due on January 31, 2020, institutions could choose to use either the existing ED reporting system or their new system, which has not yet been released, but is expected to be ready by January 31, 2020.

Table 1:

FOREIGN SOURCE CATEGORY	TYPE OF FUNDS	Country Name	Foreign Source Name	Address*	Agreement True Copy*	Recipient*		Amount	Receipt Date of Gift or Start & End Date of Contract	Description of the Conditions & Restrictions
						Domestic Party/Institution ¹²	Intermediaries ¹³			
Foreign Government	Gifts or Contracts	✓	✓		✓	✓		✓	✓	
	Restricted or Conditional Gifts or Contracts	✓	✓		✓	✓		✓	✓	✓
Foreign Entity (non-government)	Gifts or Contracts	✓	✓	✓	✓	✓		✓	✓	
	Restricted or Conditional Gifts or Contracts	✓	✓	✓	✓	✓		✓	✓	✓
Foreign Person	Gifts or Contracts	✓	✓	✓	✓	✓		✓	✓	
	Restricted or Conditional Gifts or Contracts	✓	✓	✓	✓	✓		✓	✓	✓

*** These items are not required if institutions use the existing system as that system does not include these data fields or contain an upload mechanism for true copies. Since there**

¹² The *Domestic Party or Institution* is normally the campus receiving the funds, unless an Intermediary is involved. See footnote below.

¹³ *Intermediaries* are legal entities that “exist for the purpose of serving as an intermediary for certain gifts or contracts,” such as UC affiliated foundations that fundraise for the benefit of UC.

are substantive issues that still need to be clarified, including ED’s ability to maintain the privacy and confidentiality of agreement terms, UCOP recommends that campuses use the old system (without submission of true copies) for submission of the January 31, 2020 report.

The reporting requirements are triggered whenever the aggregate amount of Gifts from/Contracts with any individual Foreign Source totals \$250,000 in a calendar year. ED has clarified that once the threshold is met, all individual Gifts and Contracts that add up to the \$250,000 threshold (and beyond) must be reported.

5. *Where and how to report*

At UC, currently the Financial Aid Directors’ offices submit the HEA Section 117 reports through ED’s Federal Student Aid E-App portal.¹⁴ The Chancellor’s wet signature must be transmitted to ED after the data entry in the portal. The information submitted is publicly available¹⁵ and can be downloaded as an Excel file that is filterable by a number of data points, including institution, date of gift or contract, amount, country of origin, and the name of the gifting or contracting individual or entity.

- The portal currently used to file the reports is E-App accessible at <https://eligcert.ed.gov/>. Pending approval by OMB, ED is developing a new system, separate from the current one that, among other changes, will most likely include the ability to upload the true copies of Foreign Source Contracts or Gifts. As stated above, **for the report due January 31, 2020, UCOP advises campuses to use the existing system linked above, which does not require uploading of true copies of agreements.**
- For Restricted or Conditional Gifts or Contracts, the campus must include the conditions or restrictions (see definition 2 above) in question 69.
- Campuses must report the information requested in Section K, question 71.
- Section L is to be used to complete the signature page and submit the report.
- To correct an error regarding a Contract or Gift already reported, campuses should contact the California School Participation Division: San Francisco 415-486-5677. (See <https://www2.ed.gov/offices/OSFAP/services/casemanagement.html>)

6. *Additional Resources*

¹⁴ See [2017-2018 Financial Student Aid Handbook, Chapter 6](#), pages 2-180 – 2-182 for more information.

¹⁵ <https://studentaid.ed.gov/sa/about/data-center/school/foreign-gifts>

In addition to the published letters sent to institutions under investigation,¹⁶ and all the notices for information collection published in the Federal Register in September and December 2019, mentioned above, ED has issued two “Dear Colleague” letters,¹⁷ and responded to requests for guidance sent by the American Council on Education this year.¹⁸ The Department of Education also addresses the reporting requirement in its “Federal Student Aid Handbook,” Volume 2, Chapter 6.¹⁹

Contact

For questions regarding this guidance, contact Research Policy Manager Dragana Nikolajevic at Dragana.Nikolajevic@ucop.edu.

LOURDES DEMATTOS
ASSOCIATE DIRECTOR
RESEARCH POLICY ANALYSIS & COORDINATION

¹⁶ See link provided in Footnote 5.

¹⁷ https://ifap.ed.gov/dpcletters/doc0158_bodyoftext.htm (1995). <https://ifap.ed.gov/dpcletters/GEN0411.html> (2004).

¹⁸ See, for example, <https://www.acenet.edu/news-room/Documents/Letter-to-Dept-of-Education-Regarding-Section-117-of-HEA.pdf> (January 2019); a follow-up <https://www.acenet.edu/news-room/Documents/Follow-Up-Letter-to-Ed-Dept-Regarding-Section-117-of-HEA.pdf> (June 2019); DoE’s response <https://www.acenet.edu/news-room/Documents/ED-Section-117-Letter-to-ACE.pdf> (July 2019); and the higher education organizations’ reply to DoE’s response <https://www.acenet.edu/news-room/Documents/Letter-ED-Associations-Response-on-Section-117.pdf> (July 2019). Despite these responses, there continue to be areas of uncertainty regarding the Section 117 reporting requirements, and ACE, among others, continue to request guidance from ED. This document will be updated as needed.

¹⁹ Available at: <https://ifap.ed.gov/fsahandbook/attachments/1718FSAHbkVol2Ch6.pdf>

APPENDIX A: Q&A

Questions are grouped by category: a) What is a Reportable Foreign Source? b) Reporting Process, and c) Correcting Reports.

WHAT IS A REPORTABLE FOREIGN SOURCE?

Q1: What is a Foreign Source for purposes of HEA Section 117? Are U.S. subsidiaries and affiliates considered to be a Foreign Source?

A1: Under HEA, Section 117, Foreign Source means:

- (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 or a trust territory or protectorate thereof; and
- (D) An agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a Foreign Source;²⁰

ED does not consider an individual who has dual citizenship that includes United States citizenship to be a foreign source under 20 U.S.C. 1011f(h)(2)(C).

The term includes subsidiaries and affiliates (see subsection D) of a foreign legal entity acting on behalf of a Foreign Source. While there might be circumstances in which a subsidiary or affiliate of a foreign entity is not acting on behalf of that foreign entity, for ease of reporting and consistency, UCOP advises campuses to treat all affiliates and subsidiaries of foreign legal entities as Foreign Sources for purposes of HEA Section 117 reporting.

Q2: How do I know if a source is a subsidiary or affiliate of a foreign entity?

A2: ED requires institutions to perform due diligence and “make a good faith effort” to make the determination. Since affiliate relationships are not always obvious, for all transactions entered into after December 31, 2019, UCOP recommends that: 1) the UC unit make its own determination with information supplied by the sponsor/donor or with information otherwise at the unit’s disposition, including any UC provided databases or use of third-party resources such as World-Check One or 2) the UC unit request that the sponsor/donor certify whether or not they are a Foreign Source, including a subsidiary or affiliate of a Foreign Source. Note that the campus can request negative certification as an option (e.g., where the sponsor/donor certifies that they are *not* a foreign source as defined by HEA Section 117).

²⁰ [20 USC § 1011f\(h\)\(2\)](#)

Q3: If we're receiving funds from a U.S. entity, but the funds' prime sponsor is a foreign entity, do we report those funds?

A3: Assuming that the U.S. entity is not an agent, affiliate or subsidiary of a Foreign Source, such transactions do not need to be reported. Section 117 of the HEA only addresses "contracts *with*" a Foreign Source (including affiliates or subsidiaries of a Foreign Source). In this case, UC's funding contract would be with a U.S. entity.

Q4: For contracts, should we report both funds paid to and funds received from a Foreign Source?

A4: Only funds received from Foreign Sources need to be reported. This is consistent with recent statements from the Department of Education.^{21, 22} Therefore, transactions where UC is procuring goods or services from a Foreign Source do not need to be reported.

Q5: HEA Section 117 refers to Gifts and Contracts only; how do we report grants?

A5: Grants are considered Contracts for the purpose of HEA Section 117 reporting.

Q6: Are revenue generating contracts to be reported?

A6: All contracts for which UC is receiving financial consideration from a Foreign Source for the provision of goods or services by UC should be included. This includes contracts in which UC is providing a service, e.g., architectural design and construction service contracts, conference services agreements, laboratory service agreements, etc

Q7: Are Material/Data Transfer Agreements (MTAs/DTAs) to be reported and if so how do we determine a dollar amount to assign?

A7: Pending further clarification by ED, agreements that do not involve the provision of funds to UC, or for which the valuation of materials provided to UC is unknown, do not need to be reported. MTAs/DTAs should be included in HEA Section 117 reporting if they involve receipt from a Foreign Source of materials that have a known value.

Q8: Are in-kind contributions reportable?

A8: In-kind contributions with a known value should be included in HEA Section 117 reporting.

²¹ For example, see the second paragraph of this letter from DoE to ACE: <https://www.acenet.edu/Documents/ED-Section-117-Letter-to-ACE.pdf>: "Section 117 of the Higher Education Act (HEA) of 1965 requires your members to report **all foreign moneys that flow or are funneled to them**, whether directly or through their affiliates." [emphasis added].

²² ED Response to Public Comments, December 17, 2019 – the document can be accessed at: <https://www.regulations.gov/document?D=ED-2019-ICCD-0154-0002>

Q9: A grant appears to be covered under 117(h)(5) as a “restricted or conditional gift or contract” when it includes provisions that, among other things, establish research programs (117(h)(5)B).

a) Do research agreements meet the definition of a Restricted or Conditional Gift or Contract? Do affiliate membership programs in which our research results are presented fall in this category?

b) Do renewals, supplemental and continuing awards for existing centers fall under this category?

A9: a) Per HEA Section 117, a Restricted or Conditional Gift or Contract is one that requires the establishment of “departments, centers, research or lecture programs, or new faculty positions.” Research Contracts (which include grants) from a Foreign Source in support of a research project proposed and defined by UC must be reported under HEA Section 117, but do not normally meet the definition of a “Restricted or Conditional Gift or Contract.” An example of a contract that does meet the Restricted/Conditional definition is one that requires the *establishment of an institute or center* as a condition of funding, as opposed to generalized support for a variety of research projects or students. With regard to affiliate membership programs, members are generally not in the position of requiring that UC establish any research or lecture programs, rather, they are invited by UC to participate in a University program, over which the University has full control and discretion, including whether or not to establish or maintain such program. As such, in general, membership affiliate agreements with Foreign Sources do not fall into the definition of Restricted/Conditional, though they too must be reported to ED.

b) When providing funding for an existing program, by its very nature, such agreements are not requiring the *establishment* of a program; however, it would be prudent to include such agreements if the same Foreign Source is providing renewal, continuation, or supplemental funds for the same purpose as the original contract or gift establishing the program.

Note that agreements described here in this question ARE reportable, even if they may not meet the definition of a *Restricted or Conditional Gift or Contract*.

Q10: How do we determine the description to be entered in the ED reporting module question 69 for Restricted or Conditional Gift or Contracts?

A10: You should select the condition(s) that makes the Gift or Contract “restricted or conditional” in accordance with the definition for a Restricted or Conditional Gift or Contract, and enter such condition(s) in the ED system. Therefore, for Restricted or Conditional Gifts and Contracts, campuses should enter one or more of the four conditions below, as applicable.

(A) the gift/contract requires the employment, assignment, or termination of faculty;

- (B) the gift/contract requires the establishment of departments, centers, research or lecture programs, or new faculty positions;
- (C) the gift/contract requires the selection or admission of students; or
- (D) the gift/contract requires the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

Q11: Should we report contracts and grants by project period, or by budget period? For example, if we enter into a \$600K contract for a five year period, it is less than \geq \$250K value in any given calendar year (budget period) since it will be spread over five years. However, if we use the project period than we are reporting the \$600K amount in the year of signing the contract.

A11: UCOP recommends reporting the full amount of the contract in the ED reporting period in which it is signed. This will also eliminate the burden of tracking a contract over time, and the risk of an appearance of non-compliance, even though individual performance periods might not meet the reporting threshold. For example, if the \$600K, five year contract was executed in March, UCOP recommends reporting the full \$600K on the next HEA 117 report, due at the end of July.

Q12: How do we calculate amounts aggregated by Sponsor?

A12: Institutions must report contracts with or gifts from the same Foreign Source that have a value of \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that Foreign Source within a calendar year. Pertinent campus departments should submit reports of all foreign source gifts and contracts (regardless of the amount) to the campus coordinating office, who will then sum up all the values to determine if the thresholds have been met. UCOP recommends using the final Contract signature date or Gift acceptance date to determine which Contracts or Gifts to report in a given reporting period. The examples below show how a campus should calculate the totals. Note that reporting of start and end dates are only required for Contracts; only the receipt date is required for Gifts.

Example 1

A campus receives the following three distinct contracts from Foreign Source A in the January-June reporting period.

- Award 1 – Contract \$90,000 Received 2/3/19 (Start Date 2/2/2019 – End Date 11/30/2019)
- Award 2 – Grant - \$100,000 Received 3/8/2019 (Start Date 1/12/19 – End Date 12/30/2019)
- Award 3 – Clinical Trial - \$110,000 Received 6/1/2019 (Start Date 3/3/2019 – 3/3/2024)

Since the aggregate of all Gifts and Contracts by Sponsor (\$300,000) for the time period to be reported exceeds \$250,000, the campus would report all three transactions.

Example 2

In the January-June reporting period, a campus receives a total of \$200,000 from Foreign Source B, and \$60,000 from the same Foreign Source in the July-December reporting period.

The campus would not be required to include Foreign Source B in the Jan-June report. However, because the tally from the first six months of a calendar year rolls over to the next six months of a calendar year for the purpose of determining whether a Foreign Source should be reported, the entire \$260,000 should be reported in the July-December report.

Example 3

In the January-June reporting period, a campus receives a total of \$800,000 from Foreign Source C, and \$300,000 from the same Foreign Source in the July-December reporting period.

Since the campus should have already reported the \$800,000 from Foreign Source C in the January-June report, only the additional \$300,000 needs to be reported in the July-December report. In other words, values previously reported should not be repeated.

Example 4

A campus reported \$800,000 in support from Foreign Source D in the January-June reporting period, and then receives another award for \$60,000 in the July-December period.

The campus should report the additional \$60,000 in the July-December report because it needs to capture all amounts in excess of \$250,000 in a calendar year.

Q13: Are gifts from Donor Advised Funds reportable? For example, if UC receives funding from, Fidelity Charitable DAF (a US entity), should we report gifts provided by a foreign donor?

A13: A Donor Advised Fund (DAF) is a charitable giving vehicle created to manage charitable donations on behalf of organizations, families or individuals. Donors may make recommendations on how the donation is distributed, but they relinquish ownership of the donation. Legally, UC receives the donation from the DAF, not from the entity or person who made a contribution to the DAF. Therefore, gifts from a DAF should not be reported under HEA Section 117, unless the DAF itself is foreign.

Q14: Must we report the Gift Donor name of a Foreign Source that has requested anonymity?

A14: To the extent that the campus has or could reasonably obtain the donor's identity, ED expects that their information be reported.²³ The campus should clearly indicate that the Gift was anonymously provided as ED commits to not making anonymous donors' identities or addresses available to the public.

Q15: Do we need to report Huawei USA funding?

A15: Gifts and Contracts from subsidiaries and affiliates of foreign legal entities acting on behalf of a Foreign Source are reportable. As discussed above in Q/A #1, for ease of reporting and consistency, UCOP is advises campuses to treat ALL affiliates and subsidiaries of foreign legal entities as Foreign Sources for purposes of reporting under Section 117 of the HEA. So, yes, gifts and Contracts from Huawei USA that meet or exceed the reporting threshold should be included in campus reports.

Q16: For "Restricted or Conditional Gifts or Contracts", how are campuses interpreting the following part of the ED definition: the employment, assignment, or termination of faculty? Is it enough if a faculty member is paid from the grant, or does the grant have to create a new faculty position?

A16: As described above in the answer to Question 8, Contracts or grants in support of a UC proposed and defined scope of work do not generally fall into the category of Restricted/Conditional. While the sponsor often requires that we obtain their prior approval for a change in the Principal Investigator or other key personnel, these awards do not normally dictate that we must hire a particular person(s), and UC normally retains full control of whom it decides to employ. The prior approval requirements normally focus on having a knowledgeable person leading the project. Therefore, the mere fact that a UC employee is paid under a research contract or grant does not mean that the contract/grant should be considered Restricted/ Conditional. If, however, the *purpose* of the award is for the "employment, assignment, or termination of faculty" (rather than for the performance of a research project, for example), then it should be reported as Restricted/Conditional. Likewise, a Gift that establishes an endowed chair usually does not create a new position, but rather normally provides support for the chair holder's scholarly activities. Only those that would require the creation of a new position would be considered "restricted."

²³ <https://www.regulations.gov/document?D=ED-2019-ICCD-0154-0002>

Q17: Should we report funds that are originally U.S. but flow through a foreign entity? And if so, how should this be reported?

A17: Since UC's contract is with the foreign entity, this is a reportable transaction. The foreign entity from which we receive the funds is the Foreign Source for the purpose of HEA Section 117 reporting.

Q18: Should start-up packages for investigators and institutional research grants be included?

A18: If these are funded by a Gift or Contracts from Foreign Sources, then such start-up packages are reportable.

Q19: Should we report royalties received from a Foreign Source?

A19: Yes, ED has indicated that licensing agreements fall under the definition of Contracts under HEA Section 117²⁴, and as such are reportable.[UCOP is analyzing the requirement to report licensing agreements and may update this guidance with more details accordingly].

Q20: Are tuition payments made by foreign students to the University considered reportable?

A20: ED sees tuition payments as "contracts" between the foreign student and the University, but are reportable under HEA Section 117 only if they meet the \$250,000 threshold, which would almost never be the case for an individual student's tuitions. ED notes that the threshold could be met in situations where a foreign source pays tuition for multiple students and the aggregate amount exceeds the \$250,000 threshold. ²⁵

REPORTING PROCESS:

Q21: Are UC campuses considered as independent entities, or is "The UC Regents" the entity that reports?

A21: For the purpose of HEA Section 117 reporting, each campus submits reports for gifts and contracts received by that campus.

²⁴ December 17, 2019: ED's Response to Public Comments (accessible at: <https://www.regulations.gov/document?D=ED-2019-ICCD-0154-0002>)

²⁵ December 17, 2019: ED's Response to Public Comments (accessible at: <https://www.regulations.gov/document?D=ED-2019-ICCD-0154-0002>)

Q22: Do systemwide initiatives housed at a particular campus report through the campus, or through UCOP?

A22: The location that administers the program should manage the reporting.

Q23: Should UC overseas programs report on their own behalf or through their home campus?

A23: Overseas programs should report through their home campus; e.g., UCB reports for BEARS (Singapore), UCD reports for Chile Life Sciences Innovation Center (Chile), etc.

Q24: Which office is responsible for the reporting of foreign Contracts and Gifts in accordance with Section 117 of the Higher Education Act?

A24: At UC, the Financial Aid Offices submit the reports that include information on receipt of foreign Contracts or Gifts as required by HEA Section 117, though information to be included on those reports must be collected from all campus departments or units managing reportable transactions. The campus may, at its discretion, assign the coordinating function to another office. (Note that grants from Foreign Sources for financial aid must also be reported under HEA Section 117.)

Q25: How can we ensure that we're collecting Gifts that are provided outside the Office of Development? If there are Gifts arrangements made for campus departments or projects that flow independently from the Office of Development, how can we find them?

A25: Per UC policy, all gifts received by campus departments and by UC affiliated foundations should be reported to the campus Development Office. As such, the campus Development Office *should* have a full list of gifts received for that campus. Note that for Contracts, it is important to collect the information from the various offices / departments managing contracts because under current practices, these do not always get reported to a central office (see Background section of guidance for more details).

Q26: Are the funds from a foreign source that are received by a university foundation reportable?

A26: UC must report Foreign Source funds received through legal entities that “exist for the purpose of serving as an intermediary for certain gifts or contracts,” such as UC affiliated foundations that fundraise for the benefit of UC.

Q27: Are campuses required to collect and upload true copies of agreements with foreign sources? How will the privacy and confidentiality of information in the agreements be protected from FOIA,

A27: While the December 17, 2019 ED Response to Public Comments (RPC)²⁶ indicates that institutions will be required to upload true copies of agreements, as of the publication of this guidance, OMB has not yet approved ED's Information Collection Request. UCOP recommends that campuses continue to submit reports through the old portal, which does not include a mechanism for uploading true copies.

ED also states in the RPC referenced above that they will not make the true copies publicly available and in case of a FOIA request, they will treat the true copies as "business information" under 34 C.F.R. § 5.11(b)(1) and follow the procedures described therein (see 34 C.F.R. § 5.11(d)-(j)), including redacting, as appropriate. ED envisions the true copies of the contracts to be uploaded in their new reporting portal, whose release is currently pending the OMB approval. UCOP advises campuses to use the old reporting portal (without uploading true copies) as long as ED makes this option available. UCOP will provide additional guidance when more information is available.

Q28: What is the difference between the reporting elements in the existing ED system and the new ED system (expected to be released in January 2020)? Which do we use?

A28: ED has not yet released their new system; however, based on the ED December Federal Register Notices, the table below provides a comparison between the existing and new expected elements. Though there are some differences in terminology, we believe that there are 4 basic differences. Under the new system, we must report 3 new elements: Foreign Source Address, Recipient Name (i.e., UC or Intermediary, such as a UC Foundation; see footnotes 12 and 13 of the Guidance), and Unredacted True Copies of the Gifts or Contracts. These 3 new elements cannot be included or uploaded using the old ED system. The fourth difference is that whereas ED previously instructed institutions to provide reporting in the aggregate by Funding Source (i.e., "the name of the country and the aggregate amount of all gifts and contracts received from each foreign government" or "the aggregate dollar amount of the gifts and contracts attributable to a particular country," (emphasis added)), they have now stated they want disaggregated data (presumably by Contract or Gift). For the January 31, 2020 report, if a campus is using the old portal, they may continue to aggregate data and omit the 3 new elements.

²⁶ December 17, 2019: ED's Response to Public Comments (accessible at: <https://www.regulations.gov/document?D=ED-2019-ICCD-0154-0002>)

Existing ((E-App) (www.eligcert.ed.gov) Reporting Elements	ED December 17, 2019 Proposed Reporting Elements
Gift Type (i.e., Gift, Contract, Restricted Gift, Restricted Contract)	Type (i.e., Gift, Contract, Restricted Gift, Restricted Contract)
Description of Conditions/Restrictions for Restricted Gifts and Contracts	Description of Conditions/Restrictions for Restricted Gifts and Contracts
Date Gift Received	Date Gift Received
Contract Start Date	Contract Start Date
Contract End Date	Contract End Date
Amount (<i>Aggregated by Foreign Source</i>)	Amount (<i>per Contract or Gift</i>)*
Giver Name	Foreign Source Name
	Foreign Source Address*
Country	Country Name
	Unredacted True Copy*
	Recipient Name* (UC or Intermediary, such as a UC Foundation)

*New elements not previously required. These cannot be included or uploaded using the old ED system.

CORRECTING REPORTS:

Q29: What if a campus missed filing a report?

A29: According to the DoE 2004 guidance, the campus should immediately file the missed reports.²⁷

Q30: How should we correct incomplete or incorrect (over-inclusive or under-inclusive) reports? Do we file the missed reports through the reporting portal? Should we

²⁷ Dear Colleague Letter (Oct. 4, 2004), available at <https://ifap.ed.gov/dpccletters/GEN0411.html>.

provide any other communication to Department of Education with our missed reports?

A30: In order to correct an existing report, universities should contact the DoE School Participation Division for guidance on submitting corrections. For UC campuses, the California School Participation Division is in San Francisco, and the contact number is 415-486-5677.

APPENDIX B:

HEA SECTION 117 DEFINITIONS²⁸

Contract: any agreement for the acquisition by purchase, lease, or barter of property or services by the Foreign Source, for the direct benefit or use of either of the parties.

Foreign Source:

- (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 or a trust territory or protectorate thereof; and
- (D) An agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a Foreign Source.

Gift: any gift of money or property;

Institution: any institution, public or private, or, if a multicampus institution, any single campus of such institution, in any State, that—

- (A) is legally authorized within such State to provide a program of education beyond secondary school;
- (B) provides a program for which the institution 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
- (C) 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 the institution's subunits.

Restricted or conditional gift or contract: any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding—

- (A) the employment, assignment, or termination of faculty;
- (B) the establishment of departments, centers, research or lecture programs, or new faculty positions;
- (C) the selection or admission of students; or
- (D) the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

²⁸ 20 U.S.C. §1011f(h), available at <https://www.govinfo.gov/content/pkg/USCODE-2011-title20/html/USCODE-2011-title20-chap28-subchap1-partB-sec1011f.htm>.

APPENDIX C:

HEA SECTION 117 REPORTING: UC CHECKLIST

YEARLONG PREPARATION:

- ❑ All units signing or accepting Contracts or Gifts should:
 - Adopt procedures to ascertain whether the sponsor/donor is a Foreign Source. Units can *either*:
 - Request that each sponsor or donor certify whether they are a Foreign Source, as defined in HEA Section 117, including whether they are an agent acting on behalf of a Foreign Source, and/or a subsidiary or affiliate of a foreign legal entity; or
 - Make their own determination with information supplied by the sponsor/donor or with information otherwise at the unit's disposition.
 - Obtain the following information for all Sponsors/Donors designated as a Foreign Source:
 - If the sponsor/donor is a Foreign Source that is a natural person, identify their country of citizenship or, if unavailable, their principal country of residence;
 - If the sponsor/donor is a Foreign Source that is a legal entity, identify their country of incorporation or, if unavailable, their principal place of business;
 - If the sponsor/donor is an Agent of a Foreign Source and/or a subsidiary or affiliate of a foreign legal entity, identify the Foreign Source or foreign legal entity and the country of citizenship and/or incorporation, as applicable.

INFORMATION COLLECTION:

- ❑ UC campus Financial Aid Office (or other assigned office, per campus decision) coordinates the collection of information reportable under HEA SECTION 117 from relevant offices, including:
 - Sponsored Projects (including any office responsible for receiving sponsored research agreements, industry contracts, and clinical trial contracts)
 - Business Contracts
 - Technology Transfer or Licensing
 - Development/ Institutional Advancement
 - UC affiliated foundations
 - Education Abroad
 - Financial Aid
 - Real Estate
 - For campuses with medical schools or hospitals: any corresponding offices in the clinical enterprise.
 - Other relevant offices

- ❑ Reports due for submission on the DoE E-App (<https://eligcert.ed.gov/>):
 - January 31 (covering the previous July 1-December 31 period) and
 - July 31 (covering the previous January 1-June 30 period).

Note: A school must report any new information by January 31 or July 31 (whichever is sooner) after the date of receipt of the gifts, date of the contract, or date of ownership or control.

REPORTABLE INFORMATION:

- ❑ Trigger: \$250,000 or more in Gifts or Contracts (including grants) received, alone or in combination from a single Foreign Source within a calendar year.
- ❑ For details on required information required per type of funding and category of Foreign Source, see Table#1 of this Guidance.