

December 15, 2020

To: Contract & Grant Officers
Research Compliance Officers
Development Officers
Student Financial Aid Officers

Subject: Section 117 of the Higher Education Act (HEA) of 1965 Foreign Gift and Contract Reporting

Purpose

This memo provides guidance regarding requirements for foreign gift and contract reporting under [Section 117 of the Higher Education Act \(HEA\) of 1965](#).

Background

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 Attorney General, at ED’s request, is authorized to undertake a civil action in federal district court to compel compliance if a school fails to comply with the HEA Section 117 requirements.² Schools knowingly or willfully failing to comply must reimburse the U.S. Treasury for the full cost of obtaining compliance³. In addition, the information collection is subject to 18 U.S.C. § 1001, which provides for penalties, consisting of fines and/or imprisonment, for knowingly and

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)(1).

³ 20 U.S.C. § 1011f(f)(2).

willfully falsifying, concealing, or covering up a material fact. Several institutions are already under investigation by the ED for alleged under-reporting.⁴

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 memo also includes Q&As (Attachment A), definitions of HEA Section 117 Terms (Attachment B), and an HEA Section 117 Reporting: UC Checklist (Attachment C).
- Additionally, [Appendix A](#) and [Appendix B](#) of ED's June 22, 2020 "[Reminder to report ownership/control by, and contracts/gifts from, foreign sources](#)" should be consulted. Appendix A outlines required reporting elements, while Appendix B provides certain responses to public comments when ED developed its requirements.

In developing this 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](#), Student Financial Support, and the [Office of General Counsel \(OGC\)](#) at UCOP to provide campuses with recommendations.

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)

⁴ The Department of Education has issued letters to several institutions requesting extensive and substantial documentation to verify the completeness and/or accuracy of their reports. These letters are available on the [Department of Education HEA Section 117 site](#).

- Business Contracts
- Technology Transfer or Licensing
- Development/ Institutional Advancement
- University affiliated foundations
- Education Abroad
- Financial Aid
- Real Estate
- University Extensions
- Affiliated overseas campuses, institutes, or programs
- For campuses with medical schools or hospitals: any corresponding offices in the clinical enterprise.

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.⁵

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.”⁶ UC's foundations are separate legal entities, and gifts to the foundations are not normally considered gifts to the University. However, to facilitate transparency, and in light of ED guidance⁷, for the purposes of reporting under Section 117 of the Higher Ed

⁵ 20 U.S.C. §1011f(h)(2)

⁶ 20 U.S.C. §1011f(h)(3)

⁷ See “Response to Public Comments (60-day notice)”, pages 3-4, on ED's [HEA Section 117 site](#); also, Q6 in Appendix B to ED's “[Electronic Announcement](#)”. ED “believes the statute requires an institution receiving the benefit of a gift from or a contract with a foreign source, even if through an intermediary, to disclose the gift or contract.” And that: “Where a legal entity (e.g., a foundation)

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 in Section 117 of the 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.”⁸ 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. Note that in ED’s December 17, 2020⁹ 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 in Section 117 of the HEA¹⁰ 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

operates substantially for the benefit or under the auspices of an institution, there is a rebuttable presumption that when that legal entity receives money or enters into a contract with a foreign source, it is for the benefit of the institution, and, thus, must be disclosed.”

⁸ 20 U.S.C. §1011f(h)(1)

⁹ See “Response to Public Comments (60-day notice)” at ED’s [HEA Section 117 site](#).

¹⁰ 20 U.S.C. §1011f(h)(5)

report: all gifts from or contracts, grants, or other agreements with a Foreign Source 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 agent/subsidiary of a foreign legal entity. Campuses must include the information for each category listed in the table below.

Additionally, [Appendix A](#) and [Appendix B](#) of ED’s June 22, 2020 “[Reminder to report ownership/control by, and contracts/gifts from, foreign sources](#)” should be consulted. Appendix A outlines required reporting elements, while Appendix B provides certain responses to public comments when ED developed its requirements.

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.

Summary of Reporting Requirements

Foreign Source Category	Type of Funds	Country Name	Foreign Source Name	Address	True Copy of Agreement	Recipient Domestic Party/ Institution ¹¹ or Intermediaries ¹²	Aggregate Amount by Source	Gift Receipt Date or Start & End Date of Contract	Description of the Conditions and Restrictions
Foreign Government	Gifts or Contracts	Required	Required	Not Required	Not Required	Required	Required	Required	Not Required
	Restricted or Conditional Gifts or Contracts	Required	Required	Not Required	Not Required	Required	Required	Required	Required
Foreign Entity (non-government)	Gifts or Contracts	Required	Required	Required	Not Required	Required	Required	Required	Not Required
	Restricted or Conditional Gifts or Contracts	Required	Required	Required	Not Required	Required	Required	Required	Required
Foreign Person	Gifts or Contracts	Required	Required	Required	Not Required	Required	Required	Required	Required
	Restricted or Conditional Gifts or Contracts	Required	Required	Required	Not Required	Required	Required	Required	Required

- Both “Address” and “Recipient” are required under new reporting requirements that apply to any reports submitted after June 22, 2020¹³. These reports must be submitted using ED’s new [HEA 117 reporting portal](#).

¹¹ The *Domestic Party or Institution* is normally the campus receiving the funds, unless an Intermediary is involved.

¹² *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.

¹³See ED’s June 22, 2020 “[Electronic Announcement](#)”.

- ED has agreed to engage in negotiated rulemaking regarding a proposed requirement to provide true copies of agreements. Therefore, campuses should not provide such copies at this time. This guidance will be updated if and when such a requirement is finalized.

5. Where and how to report

Reports submitted after June 22, 2020 must be submitted through ED's dedicated [HEA Section 117 reporting system](#).

At UC, the Financial Aid Directors' offices have been responsible for submitting the HEA Section 117 reports. UCOP recommends that the Financial Aid Director on each campus create a second administrative account for the most appropriate submitting office, as determined by the campus, to complete and submit Section 117 reporting through the Federal Student Aid (FSA) Access and Identity Management System. The information submitted is publicly available¹⁴ 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.

6. Additional Resources

ED's HEA Section 117 page contains the new information collection requirements, the most recent public Excel file of reported foreign gifts and contracts, a link to the statute, and copies of various other related ED letters, including the letters sent to institutions under investigation.¹⁵ In addition, ED has responded to requests for guidance sent by the American Council on Education recently.¹⁶ The Department of Education also addresses the most recent reporting requirements in its June 22, 2020 Announcement, which also contains a link to the reporting portal, as well as the summary of required information (attached to this document as Appendix D) and a list of Frequently Asked Questions.¹⁷

Export Control/Office of Foreign Assets Control (OFAC) Sanctions Compliance

UCOP recommends that campus departments and units administering international Gifts or Contracts vet the sponsors or donors through a tool such as Visual Compliance¹⁸ to identify any potential sponsors or donors on federal restricted party lists, and establish protocols requiring review by the campus Export Control Officer for risk mitigation strategies when there is a positive hit. Export control regulations, such as the sanctions from the Office of Foreign Asset Controls that regulate foreign financial transactions, may trigger licensing requirements for

¹⁴ ED's publicly available [Foreign Gift and Contract Report](#).

¹⁵ ED's [HEA Section 117 page](#).

¹⁶ See, for example, ACE's [January 2019 letter](#); a [June 2019 follow-up](#); ED's [July 2019 response](#); and the [higher education organizations' July 2019 reply](#) to ED's response. 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.

¹⁷ Available in ED's June 22, 2020 "[Electronic Announcement](#)"

¹⁸ Information about screening tools can be found on the [UCOP ECAS](#) website.

transactions with certain persons, banks, or other entities. World-Check One is another Know Your Customer tool that may help in identifying foreign ownership connections.

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Attachments:

Q&As (Attachment A)
Definitions of HEA Section 117 Terms (Attachment B)
HEA Section 117 Reporting: UC Checklist (Attachment C).