

May 17, 2024

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](#). This memo cancels and replaces previous guidance provided in RPAC Guidance Memo 20-03.

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. Institutions must also report any ownership interests in or control over the institution by a Foreign Source. The HEA 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 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

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).

of obtaining compliance.³ 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 willfully falsifying, concealing, or covering up a material fact. Several institutions have been investigated by the ED for alleged under-reporting.⁴

This memo provides guidance to UC Locations (“Locations”) including a description of the reporting requirements and UCOP’s recommendations for risk mitigation, and incorporates by reference the [Frequently Asked Questions](#) available on the RPAC website. UC Locations should assess and, if necessary, strengthen their processes for complying with the HEA Section 117 reporting 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 [UC Legal](#) at UCOP to provide Locations with recommendations.

Location Data Collection

Locations 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, Locations may consider collecting for internal purposes the following information (where applicable) in case there is a later 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 several disparate offices, UCOP advises that relevant offices, including those listed below, submit to a Location 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
- Material/Data Transfer
- Development/Institutional Advancement
- University affiliated foundations
- Education Abroad

³ 20 U.S.C. § 1011f(f)(2).

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](#).

- Financial Aid
- Real Estate
- University Extensions
- Affiliated overseas Locations, institutes, or programs
- For Locations with medical schools or hospitals: any corresponding offices in the clinical enterprise.

Guidance on HEA Section 117 Reporting Basics

1. 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 perform due diligence and make a good faith effort to ascertain whether the other party is a Foreign Source, as defined above, and its associated country. Reasonable due diligence may vary: more diligence may be appropriate for transactions with a new foreign source, less diligence may be necessary for transactions with a repeat foreign source. Exercising reasonable due diligence may include strategies such as the following:

- consulting public records, such as [state corporate registries](#), [SAM.gov entity information](#), and [Securities & Exchange Commission \(SEC\) filings](#);
- considering the terms of the contract or agreement;
- asking the sponsor/donor for additional information;
- utilizing information at the unit's disposition, including any UC provided databases or use of third-party resources such as [World-Check One](#), [Dun & Bradstreet](#), [OpenCorporates](#), and the [Legal Entity Identifier registry](#);
- requesting that the sponsor/donor certify whether they are or are not a Foreign Source, including a subsidiary or affiliate of a Foreign Source, as defined by HEA Section 117.
Note: While these "self-certifications" can be useful, ED cautions against overreliance on them. Self-certifications are best when used in combination with other tools.

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. When considering whether a sponsor/donor is acting as an agent of a foreign source, including whether it is a subsidiary or affiliate, ED recommends evaluating the degree to which the foreign parent or affiliate exercises control or the formal relationship between the parties and the

⁵ 20 U.S.C. §1011f(h)(2).

practical realities of how the parties interact. For the latter, Locations could look at the direction, supervision, or management by the foreign entity, both generally and in the context of the specific gift or contract.

See also RPAC's [Frequently Asked Questions page](#) for more information.

2. Gifts and Contracts

A Gift is defined by HEA Section 117 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 consistent with ED guidance⁷ for the purposes of reporting under HEA Section 117, University Locations' reports should include donations to UC campus foundations that alone or in aggregate with other gifts and contracts the Location received from the same foreign source meet the reporting thresholds set out by HEA Section 117.

A Contract is defined in HEA Section 117 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, 2019, response⁹ 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 HEA Section 117¹⁰ as:

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

⁶ 20 U.S.C. §1011f(h)(3).

⁷ See "[Response to Public Comments \(60-day notice\)](#), April 2023", pages 3-4, on ED's [HEA Section 117 site](#); also, Q6 in [Appendix B](#) to ED's "[Electronic Announcement](#)" and pages 2-3 of ED's "[Response to Public Comments \(30-day notice\), April 2020.](#)" 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) 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 \(60-day notice\) December 2019](#)", pages 2-3 at [ED's FSA HEA Section 117 site](#).

¹⁰ 20 U.S.C. §1011f(h)(5).

- 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.

See also RPAC’s [Frequently Asked Questions page](#) more information.

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. ED Required Information for each subcategory of Contracts and Gifts

For the purpose of fulfilling their HEA Section 117 obligations, all Locations must 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. Locations 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	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	Required	Required	Required	Not Required
	Restricted or Conditional Gifts or Contracts	Required	Required	Not Required	Required	Required	Required	Required
Foreign Entity (non-government)	Gifts or Contracts	Required	Required	Required	Required	Required	Required	Not Required
	Restricted or Conditional Gifts or Contracts	Required	Required	Required	Required	Required	Required	Required
Foreign Person	Gifts or Contracts	Required	Required	Required	Required	Required	Required	Required
	Restricted or Conditional Gifts or Contracts	Required	Required	Required	Required	Required	Required	Required

5. Where and how to report

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

Where the Financial Aid Directors’ office or other unit has responsibility for reporting the campus’ student and other data required under the Federal Student Aid (FSA) Access and Identity Management System, that office can create a second administrative account for the submission of Foreign Source contract and gift data, as determined by the Location.

6. Additional Resources

[ED’s HEA Section 117 page](#) contains the information collection requirements, the most recent public Excel file of reported foreign gifts and contracts, a link to the statute, and links to copies of various other related ED letters, including the letters sent to institutions under investigation.

¹¹ The *Domestic Party or Institution* is normally the Location 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.

The ED Excel file is downloadable and can be filtered 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.¹³

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

UCOP recommends that Location departments and units administering international Gifts or Contracts vet the sponsors or donors through a tool such as Visual Compliance¹⁴ to identify any potential sponsors or donors on federal restricted party lists and establish protocols requiring review by the Location's 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 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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¹³ Available in ED's June 22, 2020 "[Electronic Announcement](#)."

¹⁴ Information about screening tools can be found on the [UCOP ECAS](#) website.