



UNITED STATES DEPARTMENT OF EDUCATION

THE DEPUTY SECRETARY

July 30, 2019

Terry Hartle
Senior Vice President
Government Relations and Public Affairs
American Council on Education
One Dupont Circle, NW
Washington, D.C. 20036

Dear Mr. Hartle:

Thank you for your letter of July 12 in response to my letter of July 3 regarding foreign gift and contract reporting.

First, section 117 of the Higher Education Act (HEA) requires the disclosure of certain gifts from and contracts with foreign sources, among other things. Specifically, “[w]henver any institution . . . receives a gift from or enters into a contract with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source . . . the institution shall file a disclosure report with the Secretary.” Sec. 117(a) of HEA (20 U.S.C. § 1011f(a)). Disclosure is also required for restricted or conditional gifts or contracts from a foreign source. Sec. 117(c) of HEA (20 U.S.C. § 1011f(c)).

The statute clearly puts institutions of higher education on notice of their duty to report. An institution’s reporting must include gifts from, or contracts entered into, with any campus or affiliated association, foundation, or entity that operates substantially for the benefit or support of, or under the auspices of, any institution covered by this statute. Specifically, this includes all aligned associations, foundations, or other entities whose purpose is to assist, aid, or support any institution covered by section 117.

Second, your assertion that “the Department plans to enforce vague, incomplete, confusing, and obsolete guidance” is incorrect. The Department is enforcing the plain text and ordinary meaning of section 117 (20 U.S.C. § 1011f). This is law, not guidance. Contrary to your assertion, this is not “rule by letter.” It is rule by law. This is an appropriate and necessary exercise of the Department’s statutory responsibilities as mandated by Congress.

Third, the statute does not require negotiated rulemaking. It requires enforcement.

Finally, as noted in my earlier letter of July 3, if an institution fails to report a contract or gift within the appropriate reporting period, it should report it via the E-App as soon as possible. If an institution identifies an error regarding a contract or gift already reported, it should contact the respective School Participation Division¹ to have the error corrected.

¹ See <https://www2.ed.gov/offices/OSFAP/services/casemanagement.html>.

Thank you again for your interest in these matters. With respect to any future correspondence or communications on gift and contract disclosures, please consider Reed Rubinstein, Acting General Counsel of the Department, your key point of contact, 202-401-6000.

Sincerely,



Mitchell M. Zais, Ph.D.