



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

Terry Hartle
American Council on Education
One Dupont Circle NW
Washington, DC 20036

September 6, 2019

Dear Mr. Hartle:

Thank you for your letter to me, dated August 9, 2019, and to Deputy Secretary Mitchell Zais, dated August 2, 2019. I am pleased to respond to both letters.

First, with respect to your numbered questions, the Department directs your attention to the text of 20 U.S.C. § 1011f, Deputy Secretary Zais' letter of July 3, 2019, and the Federal Register publications at 84 Fed. Reg. 31052 and 84 Fed. Reg. 34878, and the other Departmental letters published at <https://www2.ed.gov/policy/highered/leg/foreign-gifts.html>.

Second, the Department respectfully disagrees with your assertion that it is impossible for institutions to know how to comply with the requirements of Section 117. Instead, the Congressional intent and the reporting obligation are plainly evident in the statutory text. Also, Section 117 was last amended in 1998. However, your claims of ambiguity and uncertainty were first raised on January 18, 2019, well *after* GAO and Congressional investigators uncovered massive underreporting by colleges and universities of monies knowingly and intentionally obtained from a propaganda arm of the Chinese government. For institutions serious about transparency, the law is, and always has been, clear – *all* foreign monies flowing or funneled to them by way of gifts, contracts, and conditional or restricted gifts with or from foreign sources must be reported.

Third, you have asked the Department to undertake “a formal rulemaking process.” As noted in Deputy Secretary Zais’s letter of July 3, 2019, the Department, *inter alia*, intends to modernize the Section 117 information collection portal. Modernization will include publication of a comprehensive information collection with public notice and comment under the Paperwork Reduction Act (the “Act”). Consistent with the Act and 5 CFR part 1320, the Department will carefully review and evaluate all public comments, including any comments the American Council on Education or your individual member institutions might care to make. To comment, please see <https://www.regulations.gov/docket?D=ED-2019-ICCD-0114>.

Finally, and with regret, due to the ongoing investigations and the other Section 117-related actions described above, I am unable to meet with you at this time.

400 MARYLAND AVE. SW, WASHINGTON, DC 20202-2100
www.ed.gov

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Terry Hartle
American Council on Education
September 6, 2015
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We appreciate your interest in these matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "Reed D. Rubinstein". The signature is fluid and cursive, with a prominent initial "R" and a trailing flourish.

Reed D. Rubinstein
Principal Deputy General Counsel
Delegated the duties and authority of the
General Counsel