



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

THE GENERAL COUNSEL

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Dear Mr. Peery:

Thank you for your inquiry regarding Section 117 of the Higher Education Act, 20 U.S.C. § 1011f. The Department believes the plain meaning and intent of 20 U.S.C. § 1011f are clear. Congress has mandated that all institutions of higher education, including foundations or other organizations operating substantially for the benefit for or under the auspices of an institution, must report all gifts from or contracts with a foreign source when the value of the transactions exceeds the statutory threshold. This includes transactions related to gifts, contracts, and/or restricted and conditional gifts or contracts directly from or with a foreign source, and funds indirectly from or with a foreign source's agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source.

You submitted the following questions in an email dated July 18, 2018 to Patrick Shaheen of the Department:

1. Does the word "contract," in the HEA's Section 117(h)(1), include an investment contract or joint venture-related contract with "foreign sources"?

Answer: Yes. The word "contract" in Section 117 means 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. 20 U.S.C. § 1011f(h)(1). Thus, if the investment contract or joint venture-related contract (types of agreements) is for the acquisition of property or services by the foreign source, for the direct benefit or use of either of the parties, then reporting is required.

2. How is "foreign source" defined?

Answer: "Foreign source" is defined at 20 U.S.C. § 1011f(h)(2) 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.

The word “agent” used at 20 U.S.C. § 1011f(h)(2)(D) should be given its ordinary meaning, that is, one who is authorized to act for or in the place of another; a representative. (e.g., see Black's Law Dictionary 68 (8th ed. 2004) *cited in Alston et al., v. District of Columbia et all*, 561 F.Supp.2d 29, 44 (D.D.C. 2009).

3. What is the electronic platform, means/method or form which we would use to disclose a “gift” or “contract,” as such terms are defined in Section 117(h)(1) and (3)?

Answer: See pages 2-180 to 2-182 of the Consumer Information and School Reporting chapter of the Federal Student Aid Handbook available at <https://ifap.ed.gov/fsahandbook/attachments/1718FSAHbkVol2Ch6.pdf>.

Sincerely,



Reed D. Rubinstein  
Acting General Counsel