



COUNCIL FOR ADVANCEMENT  
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OFFICE OF THE PRESIDENT

August 1, 2019

The Honorable Mitchell M. Zais  
Deputy Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

*Dear Deputy Secretary Zais,*

We write in support of letters sent by the American Council of Education and our higher education association colleagues to the Department of Education seeking further guidance on the reporting requirements for foreign gifts and contracts outlined in Section 117 of the Higher Education Act. We urge the Department to undertake a formal rulemaking process with public comments so that colleges and universities have clarity on how they can effectively comply with the law.

The Council for Advancement and Support of Education (CASE) is the global association for professionals in advancement – alumni relations, communications, fundraising, marketing and advancement services – who share the goal of championing education to transform lives and society. Today, CASE's membership includes more than 3,600 colleges and universities, primary and secondary independent and international schools, and nonprofit organizations in 82 countries around the world, with 2,910 of our member institutions located in the United States. CASE helps its members build stronger relationships with their alumni and donors, raise funds for campus projects, produce recruitment materials, market their institutions to prospective students, diversify the profession, and foster public support of education.

In 2018, U.S. colleges and universities reported \$46.7 billion in charitable contributions according to the most recent CASE Voluntary Support of Education survey<sup>1</sup>. Institutions receive charitable gifts from a variety of sources including alumni and non-alumni individuals, corporations, and foundations. These contributions support critical needs such as student financial aid/scholarships, academic programs, faculty, research, and facilities.

Institutions often receive gifts from foreign individuals and entities, particularly from alumni or others who have a close affinity with an institution. In the 2017/18 academic year, international students represented 5.5 percent of total student enrollment, the highest percentage of international students on record at U.S. institutions.<sup>2</sup> International student exchange has long been part of the US higher education experience, and those students develop deep bonds with their American alma maters.

CASE, like our colleague associations and member institutions, is cognizant of national security concerns raised by undue foreign influence. CASE is also committed to safeguarding academic freedom. Our

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<sup>1</sup> 2018 CASE Voluntary Support of Education Survey <https://www.case.org/trending/2018-vse-survey-results>

<sup>2</sup> Institute of International Education <https://www.iie.org/Research-and-Insights/Open-Doors/Data/International-Students/Enrollment>

Global Policy Framework, approved by the CASE Board of Trustees in 2018, specifically states our support for policies around the world that preserve institutional autonomy and academic freedom.<sup>3</sup> While CASE strongly supports transparency around the relationships that colleges and universities have with foreign governments, individuals and entities, it is critical that any federal reporting or other requirements do not discourage anyone who wants to make a difference from making legitimate charitable gifts to educational institutions.

Section 117 of the Higher Education Act requires higher education institutions that receive federal funding to file a report with the Secretary of Education disclosing any gifts received from or contracts with a foreign source exceeding \$250,000. The statute also requires further disclosure for restricted or conditional gifts/contracts and for institutions who are owned or controlled by a foreign entity.

Section 117 was enacted more than 30 years ago, and as detailed below, contains several ambiguous terms and concepts. The Department has yet to issue any formal guidance or regulations on how institutions should interpret and comply with the statute. As a result, our member institutions have been left to interpret the statute on their own.

The need for guidance has taken on increased urgency given the Department's recent letters to specific colleges and universities asking for details on how these institutions are complying with Section 117. These letters reflect interpretations of Section 117 that are not consistent with the plain language of the statute and are not publicly known or understood by the higher education community. Without further clarification from the Department, it will continue to be extremely difficult if not impossible for colleges and universities to comply fully with the law. Below are some of the areas where further guidance/clarification from the Department is needed.

### **Reporting**

Section 117 requires institutions to report gifts of \$250,000 or above received from foreign individuals and entities and to aggregate gifts made from a single source for reporting purposes. It is unclear whether the reporting requirement is triggered when an institution receives multiple gifts from separate individuals and/or entities from a single country that on their own do not meet or exceed \$250,000 but when combined meet or exceed the reporting threshold. For example, if an institution received five gifts of \$60,000 from five separate individuals who are citizens of Country A, would the institution need to disclose that it received \$300,000 total from foreign sources in Country A? Based on our reading of the law, the institution would not need to disclose these gifts.

### **Definition of a gift**

Section 117 defines a gift simply as "any gift of money or property." Colleges and universities, however, often receive charitable gifts that are not easily defined as money or property. The *CASE Reporting Standards and Management Guidelines for Educational Fundraising*, the common set of set of definitions and standards used by U.S. educational institutions to report fundraising performance, defines a gift as "a contribution received by an institution for either unrestricted or restricted use in the furtherance of the institution for which the institution has made no commitment of resources or services other than, possibly, committing to use the gift as the donor specifies."<sup>4</sup>

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<sup>3</sup> CASE Global Policy Framework <https://www.case.org/resources/public-policy>

<sup>4</sup> CASE Reporting Standards & Management Guidelines for Educational Fundraising, 4<sup>th</sup> Edition

For example, are institutions required to report in-kind gifts received from a foreign source that meet or exceed \$250,000? What about services provided as a gift to an institution that meet or exceeds the reporting threshold? Our interpretation of the law would be that in-kind gifts and services would not be reportable.

Additionally, how should institutions report pledges and bequests? Pledges and bequests are commitments by donors to make future gifts to an institution. If a foreign source announces a pledge commitment that meets or exceeds the reporting threshold, when should an institution report the pledge? The year the commitment is made? The year when the aggregate number of pledge payments exceeds the reporting threshold? Or the year when the pledge is fully realized? And, if yearly payments on a pledge commitment never meet or exceed \$250,000, but the cumulative pledge commitment meets or exceeds \$250,000, do institutions have to report these pledge payments at all?

### **Gifts made to Institutionally Related Foundations and other Affiliated Entities**

Many public colleges and universities have separately incorporated institutionally related foundations that accept charitable gifts and manage institutional endowments on behalf of the institution. These foundations typically have 501(c)3 charitable status and are governed by their own boards. The definition of institution in Section 117 does not include these foundations or other affiliated entities (research foundations, alumni associations, etc.). Therefore, our reading is that gifts made from foreign individuals or entities to these foundations or other related organizations would not be subject to the reporting requirement under Section 117. In addition, our interpretation is that any contracts between these related entities and foreign sources would also not be subject to the reporting requirements in Section 117.

### **Restricted/Conditional Gift Disclosure**

In addition to reporting gifts from foreign individuals/entities of \$250,000 or more, institutions must disclose additional information on restricted or conditional gifts and contracts. According to Section 117, "the term 'restricted or conditional gift or contract' means 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."

Institutions of higher education must report the "amount, the date, and a description of such conditions or restrictions" of restricted or conditional gifts that meet or exceed the \$250,000 reporting threshold.

Under our reading of the law, if a foreign individual or entity made a \$250,000 gift to an institution restricted to scholarships, but the awarding of the scholarships was not restricted to a specific country, religion, sex, ethnic origin, or political opinion, the institution would only have to report the amount of the gift and the attributable country. The institution, under this scenario, would not have to report that the gift was restricted nor provide a description of the conditions or restrictions. Is this interpretation correct?

Under another scenario, how would an institution treat a \$50,000 restricted gift from a foreign individual or entity that meets the requirements as a restricted or conditional gift under Section 117. Assuming this is a single gift from one individual/entity in a calendar year, our interpretation would be that reporting this gift would not be required. However, if this gift was one of five gifts from one foreign source in a particular year, and the sum total of the gifts from this source exceeds the \$250,000 threshold, would the institution be required to disclose the restriction on the \$50,000 gift even though the gift, by itself, did not meet or exceed the threshold?

**Filing Missed or Amended Reports**

As the American Council on Education has pointed out, there is a lack of information and guidance on how colleges and universities can file amended or missing reports with the Department. How can institutions file such reports?

Once again, we urge the Department to undertake a formal rulemaking process with public comments on Section 117 of the Higher Education Act. We would welcome the opportunity to meet with you and/or your colleagues at the Department to discuss these issues in further detail. We also stand ready to work with you, our higher education association colleagues, and our member institutions to ensure that colleges and universities have the information they need to fully comply with the law.

*Yours sincerely,*



Sue Cunningham  
President & CEO