



UNITED STATES DEPARTMENT OF EDUCATION

THE UNDER SECRETARY

April 3, 2023

The Honorable Virginia Foxx  
Chairwoman  
Committee on Education and the Workforce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairwoman Foxx:

Thank you for your letter dated February 24, 2023, to Secretary Cardona requesting information regarding the U.S. Department of Education's (the Department's) administration of Section 117 of the Higher Education Act of 1965 (HEA), as amended. Your letter was referred to me, and I am pleased to respond on behalf of Secretary Cardona. Please note that an identical response has been provided to the co-signers of your letter.

Under Section 117, institutions are required to report to the Department statutorily defined gifts, contracts, and/or restricted and conditional gifts or contracts from or with a statutorily defined foreign source.<sup>1</sup> This disclosure requirement is an important measure in ensuring transparency and identifying foreign influence in U.S. higher education.

The Department remains committed to the robust enforcement of Section 117. We continue to collect the disclosure reports that institutions are required to file, make certain data publicly available, and monitor institutions' compliance with disclosure requirements. Clarification of our organizational responsibilities will help us continue to fulfill our obligations to ensure transparency with respect to foreign gifts and contracts in higher education.

In February 2019, the Senate Permanent Subcommittee on Investigations held a hearing and issued a staff report on the U.S. education system and activities of the Chinese government.<sup>2</sup> The staff report recommended that the Department take action to ensure that institutions comply with the law and properly report foreign gifts and contracts as required by Section 117. Following that Subcommittee hearing and report, the Department took steps to enhance Section 117 compliance and continues its efforts to assist institutions in understanding and complying with their reporting obligations.

From 2019 to 2022, the Department's efforts relating to Section 117 were not centralized within, or coordinated through, a single office. The Department's office of Federal Student Aid (FSA) continued to handle the administration of various Section 117 matters, such as maintaining the

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<sup>1</sup> See 20 U.S.C. § 1011f.

<sup>2</sup> U.S. Senate Permanent Subcommittee on Investigations, Staff Report, "China's Impact on the U.S. Education System," (Feb. 27, 2019), <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/PSI%20Report%20China's%20Impact%20on%20the%20US%20Education%20System.pdf>.

reporting portal used by institutions to file disclosure reports and providing technical support to institutions and individual users for correctly filing and amending disclosure reports. The Office of the General Counsel (OGC) assumed responsibility for some of the remaining aspects of Section 117 administration. Specifically, in 2020, political appointees in OGC led the Department's efforts to obtain approval for a new information collection request to gather more detailed data on foreign gifts and contracts and to conduct investigations and inquiries into possible noncompliance by a number of institutions.

More recently, the Department has taken steps to strengthen its efforts to ensure that colleges and universities comply with Section 117, including by designating FSA as the lead office for that role. In introductory remarks during a June 2022 webinar, the Department indicated that it would return primary responsibility for the administration of Section 117 to FSA.<sup>3</sup> The Department reiterated those organizational responsibilities in December 2022 in connection with FSA seeking approval from the Office of Management and Budget (OMB) for a new information collection request for Section 117.<sup>4</sup> Staff in FSA will consult and coordinate as necessary with other offices in the Department, relying on the collective expertise of the entire Department. In particular, FSA will continue to work closely with OGC on enforcement of Section 117, with OGC attorneys continuing to work on resolving any pending investigations and advising FSA on compliance more generally. Similarly, FSA will continue to work with the Department's Office of the Under Secretary and Office of Postsecondary Education to conduct outreach to institutional and other stakeholders and engage with them on Section 117 as well as various other issues associated with research security and integrity.

FSA is well positioned to lead and coordinate the Department's efforts relating to Section 117. First and foremost, FSA has consistently been the office within the Department responsible for the systems used to collect data pursuant to Section 117.<sup>5</sup> FSA is currently evaluating its ability to make improvements to its reporting portal.

Second, FSA already collects data and information from the approximately 6,000 institutions of higher education that participate in the programs of student financial aid under Title IV of the HEA. At its core, Section 117 is a reporting requirement about financial ties between institutions and foreign sources. Given that many institutions already submit financial and other data to FSA, such reporting reasonably aligns with the types of responsibilities assumed by FSA for other programs administered by the Department. For example, FSA collects and analyzes student information through the Free Application for Federal Student Aid, institutional program and operational data through the Application for Approval to Participate in the Federal Student Aid Programs, and institutional financial data through the eZ-Audit system. In contrast, collection and analysis of financial and other institutional data are not functions routinely handled by OGC.

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<sup>3</sup> U.S. Department of Education, Webinar, "Section 117 of the Higher Education Act Presentation by the U.S. Department of Education" (June 23, 2022), <https://www2.ed.gov/policy/highered/leg/section117-webinar-202206.pdf>.

<sup>4</sup> Notice, Agency Information Collection Activities; Comment Request; Foreign Gifts and Contracts Disclosures, Docket No. ED-2022-SCC-0159, 87 Fed. Reg. 79,292 (Dec. 27, 2022).

<sup>5</sup> See, e.g., Federal Student Aid, Electronic Announcement, "Section 117 of the Higher Education Act," (Dec. 23, 2019), <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2019-12-23/section-117-higher-education-act>; U.S. Department of Education, Dear Colleague Letter, DCL ID GEN-04-11, "Reporting Gifts, Contracts, and Relationships by Institutions" (Oct. 4, 2004), <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2004-10-04/reporting-foreign-gifts-contracts-and-relationships-institutions>.

Third, FSA has significant audit and review expertise involving institutions of higher education. As part of its current duties, FSA routinely conducts program reviews to confirm that an institution meets requirements for institutional eligibility, financial responsibility, Clery Act compliance, and administrative capability. FSA's ability to develop a programmatic approach to oversight and compliance is more likely to lead institutions to widely adopt systematic processes for Section 117 reporting and compliance reviews.

Your letter also requests information on the University of Pennsylvania and any communications with, or documents submitted to, the Department in connection with Section 117 enforcement. Section 117 is a transparency statute, and the Department's responsibilities under Section 117 are focused on ensuring compliance with reporting requirements. If there is evidence of an institution knowingly or willfully failing to meet its disclosure obligations, the Department can pursue a range of enforcement actions, including a referral to the Department of Justice to bring a civil action. Section 117 does not, however, direct the Department to police international education partnerships or to take enforcement action against an institution based on its assessment of whether duly reported foreign gifts and contracts rise to the level of undue foreign influence. Congress and the executive branch agencies with expertise in foreign intelligence are best positioned to make such an assessment.

The Department continues to collaborate with other federal agencies through various interagency initiatives relating to research security and foreign malign influence in higher education. The Department recognizes that information collected pursuant to Section 117 can serve as a valuable tool in the federal government's comprehensive efforts to respond to potential national security threats. Accordingly, the Department is exploring ways in which it can deepen its partnerships with, and broaden its support to, other federal agencies to contribute toward cross-government efforts in these areas.

In May 2020, the Department received a letter requesting that it conduct an investigation into foreign gifts and contracts received by the University of Pennsylvania and its Penn Biden Center for Diplomacy and Global Engagement. Citing transactions reported pursuant to Section 117, the letter expressed concerns similar to those raised in your letter. During the previous administration, the Department carefully reviewed the request and determined that the information was insufficient to justify further investigation into the University of Pennsylvania's compliance with Section 117's reporting requirements. Enclosed, please find copies of the May 10, 2020, letter to the Department and the Department's June 18, 2020, letter in response.

Thank you again for your letter. If you need any additional information, please contact the Department's Office of Legislation and Congressional Affairs at (202) 401-0020.

Sincerely,



James Kvaal

Enclosures