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COMMITTEE ON
EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

April 5, 2023

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Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary Cardona:

As you know, the Office of General Counsel ("OGC") of the prior administration undertook specific and concrete steps to determine whether institutions of higher education were complying with the reporting requirements of Section 117 of the *Higher Education Act*.¹ In a report titled "Institutional Compliance with Section 117 of the Higher Education Act of 1965," OGC discovered nearly \$6.5 billion in previously unreported foreign money received by colleges and universities,² and found the following:

- (1) [T]he filings received . . . by the Department indicate the largest, wealthiest, and most sophisticated . . . institutions of higher education have received nearly all foreign funds, receiving billions . . . in assets using an assortment of related intermediaries, including functionally captive foundations, [and] foreign operating units [;]
- (2) [I]nstitutional decision-making is generally divorced from any sense of obligation to . . . taxpayers or concern for our American national interests, security, or values [;]
- (3) [H]igher education industry players have solicited foreign sources – including foreign governments, corporations, and persons – through official fundraising operations, quasi-entrepreneurial activities by professors and administrators, and through captive or affiliated foundations and alumni organizations . . . [and that] [f]or at least two decades, the industry has been on direct notice that at least some of these foreign sources are hostile to the United States and are targeting their . . . 'gifts' and

¹ Section 117 of the Higher Education Act of 1965 (20 U.S.C. § 1011f) requires nearly all colleges and universities to publicly report, twice a year, foreign gifts and contracts the value of which is \$250,000 or greater, considered alone or in combination with other gifts and contracts, with a foreign source.

² OFFICE OF THE GENERAL COUNSEL, U.S. DEPARTMENT OF EDUCATION, INSTITUTIONAL COMPLIANCE WITH SECTION 117 OF THE HIGHER EDUCATION ACT OF 1965 (Oct. 2020) at 1.

‘contracts’ to project soft power, steal sensitive and proprietary research, and spread propaganda [;]

- (4) [OGC’s] investigations [have] confirmed . . . [the Permanent Subcommittee on Investigations of the U.S. Senate Committee on Homeland Security and Government Affairs’] finding that Section 117 reporting is systemically underinclusive and inaccurate [;] [and]
- (5) [E]vidence shows the [higher education] industry has at once massively underreported while also anonymizing much of the money it did disclose, all to hide foreign sources (and, correspondingly, their influence on campus) . . . [and] [s]ince 2012, institutions reported anonymous donations from China, Saudi Arabia, Qatar, and Russia totaling more than \$1.14 billion[.]³

With this as background, and given the lack of detail in the administration’s recent budget proposals, including the FY 2024 proposal, I write to inquire about current Section 117 operations and enforcement activities of the Department and request you provide responses to the following:

1. Budgeted and expended amounts for all Section 117 activities in each of FY 2021 and FY 2022.
2. Budgeted and expended amounts for all Section 117 activities in FY 2023 through the date of this letter.
3. The number of Full Time Equivalents (“FTEs”) budgeted for Section 117 activities in FY 2023.
4. The proposed FY 2024 budget for Section 117 activities.
5. The number of FTEs to carry out Section 117 activities in the proposed FY 2024 budget.
6. The number of FTEs designated to carry out Section 117 enforcement and investigative activities in the proposed FY 2024 budget.
7. As of the date of this letter, the number of FTEs who are performing Section 117 enforcement activities.
8. As of the date of this letter, the number of FTEs who are investigating the compliance of institutions of higher education with Section 117.
9. The Department’s Section 117 website designates only four institutions with investigations or requests as closed under the category “Notices of Investigation

³ *Id.* at 2-3.

and Records Requests” (Georgetown University, Texas A & M University, University of Texas, and University of Alabama).⁴

Provide a detailed status report on each of the following institutions of higher education listed under “Notices of Investigation and Records Requests” that appear on the Department’s web site:

- a. Cornell University
- b. State University of New Jersey
- c. Massachusetts Institute of Technology
- d. University of Maryland
- e. Harvard University
- f. Yale University
- g. Case Western Reserve University
- h. Fordham University
- i. Stanford University
- j. Auburn University
- k. Florida State University
- l. Georgia State University
- m. University of Nevada, Las Vegas
- n. University of New Mexico
- o. University of Wisconsin-Milwaukee⁵

10. In an August 16, 2022 letter from Terry Hartle (Senior Vice President of the American Council on Education) to Lisa Brown (General Counsel of the Department), Richard Cordray (Chief Operating Officer of the Office of Federal Student Aid), and Melanie Muenzer (Chief of Staff in the Office of the Under Secretary), Mr. Hartle thanks Ms. Brown, Mr. Cordray, and Ms. Muenzer for providing an “update on the Department of Education’s (ED) efforts around Section 117 and answers to questions from our institutional members during our virtual meeting on June 23, [2022].”⁶ The letter further states, “The information and presentation by your [ED] teams [were] helpful, and . . . [w]e were pleased to learn that ED plans to close the outstanding Section 117 investigations that remain open; that ED will address the concerns and issues with the existing reporting portal; and that Section 117 management will be transferred back to Federal Student Aid (FSA).”⁷

- a. Provide the names of the schools with Section 117 investigations that have been closed (as noted in the letter) and the rationale for the closure.
- b. Provide a detailed description of the specific “concerns and issues with the existing reporting portal.”⁸

⁴ See <https://www2.ed.gov/policy/highered/leg/foreign-gifts.html>.

⁵ *Id.*

⁶ ACE letter of August 16, 2022 (Exhibit A).

⁷ *Id.*

⁸ *Id.*

- c. Provide the reason(s) for, and the legal authority under which, “Section 117 management . . . [has been or is being] transferred back to Federal Student Aid (FSA),”⁹ and if the transfer has occurred, when it occurred and the number of FTEs transferred.
 - d. In the August 16 letter, Mr. Hartle states. “[ACE] would like to follow up regarding the need for timely changes to the reporting portal.”¹⁰ Identify in detail the need for any “timely changes to the reporting portal,” as well as any changes made.
11. The status of the functionality of the current Section 117 reporting portal. If the reporting portal is not fully functional, please provide a detailed explanation of why it is not fully functional.
12. A detailed explanation of the specific actions the Department has taken between January 21, 2021, and the date of this letter to enforce the Notice of Interpretation of November 13, 2020 (“The Department’s Enforcement Authority for Failure to Adequately Report Under Section 117 of the Higher Education Act of 1965, as Amended”).¹¹
13. A list of all Section 117-related Program Participation Agreement (PPA) enforcement actions the Department has taken between January 21, 2021, and the date of this letter, including the withholding of Title IV student aid.
14. Is the Office of Enforcement within Federal Student Aid the office that is charged with enforcing Section 117? If it is not such office, please name the office charged with enforcing Section 117.

Please provide responses to the questions and other requests (instructions enclosed) no later two weeks after the date of this letter.

Sincerely,



Virginia Foxx
Chairwoman
U.S. House Committee on Education
and the Workforce



Joe Wilson
Member of Congress

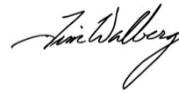
⁹ *Id.*

¹⁰ *Id.*

¹¹ 85 Fed. Reg. 72567 (Nov. 13, 2020).



Glenn "GT" Thompson
Member of Congress




Tim Walberg
Member of Congress



Glenn Grothman
Member of Congress



Elise Stefanik
Member of Congress



Rick Allen
Member of Congress



Jim Banks
Member of Congress



Lloyd Smucker
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Mary E. Miller
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Ron Estes
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Julia Letlow
Member of Congress



Kevin Kiley
Member of Congress



Aaron Bean
Member of Congress



Eric Burlison
Member of Congress



John James
Member of Congress



Brandon Williams
Member of Congress



Erin Houchin
Member of Congress

From: [Catoe, Tracy](#)
To: [CCU Intake](#)
Cc: [Ware, Angela](#); [Coles, Sarah](#); [Kegler, Tarkishia](#)
Subject: FW: New Letter from Chair Foxx
Date: Wednesday, April 5, 2023 10:03:19 AM
Attachments: [Instructions.pdf](#)
[Letter to Secretary Cardona on Sec. 117 vf.pdf](#)
[Exhibit A.pdf](#)

Hi Angela – for the Key Summary – to OGC for Sec sig. It is an OVERSIGHT letter. Thanks.

From: Cekuta, Stephen <Stephen.Cekuta@ed.gov>
Sent: Wednesday, April 5, 2023 9:58 AM
To: Kegler, Tarkishia <Tarkishia.Kegler@ed.gov>; Catoe, Tracy <Tracy.Catoe@ed.gov>
Cc: Buettner-Connelly, Sara <S.Buettner-Connelly@ed.gov>; Loewenstein, Roy <Roy.Loewenstein@ed.gov>; Levitan, Rachel <Rachel.Levitan@ed.gov>; Robinson, Matt (OGC) <Matthew.N.Robinson@ed.gov>; Martinez-Shriver, Joann <JoAnn.Martinez-Shriver@ed.gov>; Petersen, Molly <Molly.Petersen@ed.gov>; Aguilera, Allie <Allie.Aguilera@ed.gov>
Subject: New Letter from Chair Foxx

Good morning all,

Hope you're well. We just received another oversight letter from Chair Foxx on Ed and Workforce on Sec.117 of the HEA. It includes specific instructions for responding as well as an exhibit mentioned in the letter, and I've included those here. As the last three letters on 117 went to OGC, we think this should also be directed there. It is similar to the open Gooden letter.

Stephen Cekuta
Special Assistant | Office of Legislation and Congressional Affairs
United States Department of Education
(202) 251- 5042 | Stephen.Cekuta@ed.gov

Responding to Committee Document Requests

1. The agency's response to questions and request(s) should be answered or provided in a separate document and not included inside a narrative response.
2. In complying with this request, you should produce all responsive documents that are in your agency's possession, custody, or control, whether held by you or other past or present employees of the executive branch, or a representative acting on your behalf. Your response should also produce documents that you have a legal right to obtain, that the agency has a right to copy or to which you have access, or that you have placed in the temporary possession, custody, or control of any third party.
3. Records, documents, data or information that have been requested and/or are related to underlying requests should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee on Education and the Workforce (the "Committee").
4. If any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
5. The Committee's preference is to receive documents in electronic form (i.e., email, CD, memory stick, or thumb drive) in lieu of paper productions. To the extent responses are provided in paper form, any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to a request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued.
6. Regardless of format, documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Indicate the office or division and person from whose files each document was produced.
7. Regardless of format, documents produced to the Committee should include an index describing the contents of the production and a total page count for the entire production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box, or folder should contain an index describing its contents. Documents produced in electronic format should also be identified and indexed electronically.
8. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.

(c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

9. All documents shall be Bates-stamped sequentially and produced sequentially.
10. When you produce documents, you should individually identify the paragraph, question number or request number in the Committee's request to which the documents respond.
11. It shall not be a basis for refusal to produce documents that any other person or entity—either inside or outside of the executive branch—also possesses non-identical or identical copies of the same documents.
12. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), the agency's staff should consult with the Committee staff to determine the appropriate format in which to produce the information.
13. If compliance with any request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
14. If the agency does not expect to produce all documents responsive to a request by the date requested, the agency's staff shall consult with the Committee as soon as it is known the agency cannot meet the deadline, but no later than 24 hours before the due date to explain:
 - (a) what will be provided by the due date;
 - (b) why the agency believes certain materials cannot be produced by the due date; and
 - (c) the agency's proposed timeline for providing any omitted information.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should:
 - (a) identify the document, including its date, author, subject, and recipients;
 - (b) explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party;
 - (c) state how the document was disposed of;
 - (d) identify the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
 - (e) state the date of disposition; and

- (f) identify the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.
- 16. If any document responsive to this request cannot be located, identify the document and describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.
- 17. In the event that a document or portion of a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document or redaction:
 - (a) Bates number(s);
 - (b) the privilege asserted and the grounds therefor;
 - (c) the type of document;
 - (d) the general subject matter;
 - (e) any other description necessary to identify the document;
 - (f) the date, author, and addressee; and
 - (g) the relationship of the author and addressee to each other.

If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced.

- 18. Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date.
- 19. In complying with the request, be apprised that (unless otherwise determined by the Committee) the Committee does not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative-process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
- 20. Any assertion by a request recipient of any such non-constitutional legal bases for withholding documents or other materials, for refusing to answer any deposition question, or for refusing to provide hearing testimony, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee (or the chair of the Committee, if authorized) has consented to recognize the assertion as valid.

21. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or other agency employees, or is otherwise apparent from the context of the request, you should produce all documents that would be responsive as if the date or other descriptive detail were correct.
22. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 20, 2021 to the present.
23. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery. Such submission shall include an explanation as to why the information was not produced originally.
24. If physical documents are to be delivered, two sets of documents should be delivered, one set to the Majority Staff in Room 2176 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building during Committee office hours (9am-5pm, unless other arrangements are made) and signed by members of the respective staffs upon delivery.
25. Upon completion of the document production, the agency's written response should include a written certification, signed by the Secretary or his or her designee, stating that:
 - (a) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and
 - (b) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs,

microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “documents in your possession, custody or control” means documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and/or documents that have been placed in the possession, custody, or control of any third party.
3. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
7. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflect s, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
8. The term “agency” means any department, independent establishment, or corporation of the federal government. For the purposes of responding to oversight requests, the Committee expects information to be provided from all sub-agencies of an agency and not just the information that is immediately available to the addressee or the addressee’s immediate sub-agency.
9. The term “privilege” includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

Terms often used, but specific to the particular request:

- The term “employee” means agent, borrowed employee, casual employee, consultant, de facto employee, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, contract employee, contractor, or any other type of service provider.
- The term “Administration” means and refers to any department, agency, division, office, subdivision, entity, official, administrator, employee, attorney, agent, advisor, consultant, staff, or any other person acting on behalf or under the control or direction of the Executive Branch.
- *For government recipients:* “You” or “your” means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, contractors, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.
- *For private company:* The term “[insert name of entity referenced in the request]” means [full entity name] including (i) its predecessors, successors, parents, wholly or partly owned direct or indirect subsidiaries, divisions, affiliates, and joint ventures and any (ii) any current, past, or future partners, officers, directors, employees, representatives, or agents of any of the above entities.

Exhibit A



One Dupont Circle NW
Washington, DC 20036
(202) 939-9300
acenet.edu

August 16, 2022

Melanie Muenzer, Chief of Staff
Office of the Under Secretary
U.S. Department of Education
400 Maryland Avenue SE
Room 7E300
Washington DC 20202

Lisa Brown, General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, SE
Room 6E301
Washington DC 20202

Richard Cordray, Chief Operating Officer
Office of Federal Student Aid
U.S. Department of Education
830 First Street, NE
Washington DC 20202

Dear Ms. Muenzer, Ms. Brown, and Mr. Cordray:

On behalf of the American Council on Education (ACE) and the participating associations, thank you for providing an update on the Department of Education's (ED) efforts around Section 117 and answers to questions from our institutional members during our virtual meeting on June 23. The information and presentation by your teams was helpful, and we were happy to distribute the slides from that meeting to our larger community. We were pleased to learn that ED plans to close the outstanding Section 117 investigations that remain open; that ED will address the concerns and issues with the existing reporting portal; and that Section 117 management will be transferred back to Federal Student Aid (FSA).

We hope that we can continue our engagement on the important issue of Section 117 reporting, and specifically, we would like to follow up regarding the need for timely changes to the reporting portal, and also be put in contact with the person or office who will be handling Section 117 following the transfer from OGC to FSA. In addition, we would like to schedule a second meeting where higher education participants can ask questions of ED in real time and have a more robust discussion. For example, we remain concerned that there continues to be questions and confusion around "cash in" vs. conditional value.

In our view, the information ED shared on June 23 reflects a substantial expansion of Section 117 reporting requirements, similar to what was proposed in the November 2019 and December 2019 "Information Collection Request" (ICR). As we stated at that time, the 2019 ICR process did not take into account substantial community comments or concerns, including that the "....ICR continues to clearly exceed the specific statutory authority set out in Sec. 117 by significantly expanding the disclosure reporting required under the statute."¹ We also remain concerned that ED continues to assert that Section 117 compliance is tied to an institution's

¹ <https://www.acenet.edu/Documents/Sec-117-Updated-ICR-Comment-Letter-Memo.pdf>

Program Participation Agreement (PPA) for the purposes of Title IV federal student aid.² As we stated in our letter of December 14, 2020, the existing statute sets out ED's Section 117 authority and enforcement mechanisms. Accordingly, we respectfully request that ED withdraw its interpretation that "[a]n institution's failure to adequately report Section 117 gifts and contracts is a violation of an institution's participation in the HEA programs and PPA under 20 U.S.C. 1094(a)(17)."

In addition, the recently passed CHIPs and Science Act of 2022 (H.R.4346) included Section 10339B Foreign Financial Support, which requires institutions of higher education receiving National Science Foundation (NSF) funding to submit to the NSF Director an annual disclosure report on any foreign gifts or contracts of \$50,000 or over. While this is an NSF reporting requirement, it does reference the definitions used in Section 117 of the Higher Education Act. We hope to engage with NSF as this provision is implemented, but as Congress creates additional reporting provisions aligned with Section 117, it will be important to have a clear understanding of Section 117 reporting requirements. Ultimately, we hope that through continued engagement and discussion with higher education stakeholders, we can improve implementation of Section 117 and address the requirements of the existing statute.

We look forward to continuing to work with ED to improve Section 117 administration by sharing questions and ensuring that the reporting required by the statute results in greater transparency regarding foreign gifts and contracts. We look forward to a future meeting where we can ask questions, and hope that the improvements to the reporting portal can be made before the next deadline.

Sincerely,



Terry Hartle, Senior Vice President

Cc: Hilary Malawer, Deputy General Counsel, Office of the General Counsel
Kevin Slupe, Special Counsel, Office of the General Counsel
Joanna Mikulski, Senior Policy Advisor, Domestic Policy Council
Debbie Altenburg, Associate Vice President for Research Policy and Government Affairs, Association of Public and Land-grant Universities (APLU)
Robert Hardy, Director of Research Security and Intellectual Property, Council on Governmental Relations (COGR)
Toby Smith, Vice President for Policy, Association of American Universities (AAU)

² <https://www.acenet.edu/Documents/Comments-memo-ED-Section-117-121420.pdf>