



UNITED STATES DEPARTMENT OF EDUCATION

THE UNDER SECRETARY

May 12, 2023

The Honorable Lance Gooden
U.S. House of Representatives
Washington, DC 20515

Dear Representative Gooden:

Thank you for your letter dated January 19, 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. Your letter was referred to me, and I am pleased to respond on behalf of Secretary Cardona.

Under Section 117, institutions of higher education 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. The Department is committed to robust compliance with Section 117. We collect disclosure reports that institutions are required to file and make data publicly available as required by the statute. Section 117 is a transparency statute, and the Department's responsibilities under Section 117 are to ensure compliance with its reporting requirements.

Your letter requested information about public disclosure of the names of foreign donors. Prior to June 22, 2020, the Department did not require institutions to provide the identity of foreign sources when submitting disclosure reports required by Section 117. To the extent an institution provided the name of a gift or contract's foreign source, this information was included in the data made publicly available by the Department. There was not an assurance of confidentiality for information submitted at that time.

The Department updated its information collection system for Section 117 reporting, and that new system has been in place since June 22, 2020. As part of that process, the Department clarified that Section 117 requires institutions to provide the identity of foreign sources to the Department. Under the current information collection, institutions are required to provide the name and address for each foreign source identified in its disclosure report. A foreign source can be a foreign government, a legal entity created solely under the laws of a foreign state, an individual who is not a citizen or national of the United States, or an agent acting on behalf of a foreign source.¹ The Department requires the name and address of foreign sources to assess an institution's compliance with Section 117.

¹ 20 U.S.C. § 1011f(h)(2).

During the previous administration, the Department stated that the name and address of a foreign source are not considered to be part of the disclosure report that must be made public. The Department explained this position in its responses to public comments received in 2019 and 2020 on a proposed information collection.² The statute itself lists the specific content that the Department is required to post publicly, including the amount, date, and country of attribution for each reported transaction.³ Under current law, the name and address of the foreign source is not required to be publicly disclosed except in the case of restricted or conditional gifts and contracts with a foreign government.⁴ In accordance with the statute, the Department publishes the names of foreign government sources for restricted or conditional transactions.

In 2020, under the previous administration, the Department assured submitting institutions that it would “withhold [the name and address of a foreign source] from the public disclosure report and protect the confidentiality of this information to the extent permitted by law.”⁵ The Department provided this assurance in response to several concerns raised by members of the higher education community, including concerns that disclosure of a foreign source’s identity in certain instances could put the foreign source in danger of being harmed by violence or subject the foreign source to political pressure and persecution by their home countries. Consistent with that assurance of confidentiality, the Department has not publicly disclosed the foreign source name and address (excepting country) other than with respect to restricted or conditional transactions with a foreign government.

The Department collaborates with other federal agencies through various interagency initiatives relating to research security and combatting 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 work in support of other federal agencies to contribute toward cross-government efforts in these areas.

Your letter also requests information on the University of Pennsylvania and its Penn Biden Center for Diplomacy and Global Engagement (Penn Biden Center) regarding gifts from and contracts with a foreign source. In May 2020, the Department received a letter from the National Legal and Policy Center requesting an investigation into foreign gifts and contracts received by the University of Pennsylvania and its Penn Biden Center. Citing transactions reported pursuant to Section 117, the letter expressed concerns similar to those raised in your letter.

² See Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Foreign Gifts and Contracts Disclosures, ED-2019-ICCD-0114, 85 Fed. Reg. 7540 (Feb. 10, 2020); Agency Information Collection Activities; Comment Request; Foreign Gifts and Contracts Disclosures, ED-2019-ICCD-0114, 84 Fed. Reg. 46943 (Sept. 6, 2019).

³ 20 U.S.C. § 1011f(b)-(c).

⁴ The statute states that “whenever any institution receives a restricted or conditional gift or contract from a foreign source, the institution shall disclose . . . for gifts received from or contracts entered into with a foreign government, the amount, date, a description of such conditions or restrictions, and *the name of the foreign government*.” *Id.* § 1011f(c) (emphasis added).

⁵ See Summary of Public Comments with Responses, Information Collection Review (ICR) Documents, ICR Reference No: 202002-1801-002, Office of Information and Regulatory Affairs, Office of Management and Budget (Apr. 13, 2020), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202002-1801-002.

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 20, 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