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Reporting of Foreign Gifts, Contracts, and Relationships by Institutions

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GEN-04-11

Subject: Reporting of Foreign Gifts, Contracts, and Relationships by Institutions

Summary: This letter reminds institutions of the statutory requirement that they report gifts received from or contracts entered into with foreign sources, and ownership or control of institutions by foreign entities.

Dear Partner:

Section 117 of the Higher Education Act of 1965 (HEA), as amended, requires most institutions that participate in the Title IV student assistance programs to submit to the Secretary disclosure reports containing information about gifts received from any foreign source, contracts with a foreign entity, and any ownership interests in or control over the institution by a foreign entity. We want to remind institutions of the importance of complying with this provision of the HEA.

The remainder of this letter, presented in a Question & Answer (Q&A) format, provides details about the reporting requirement and the processes we have developed to collect the required information from institutions. Please note that definitions of many of the terms used in the Q&A section appear at the end of the letter. Also please note that the information in this letter is presented in summary form. Institutions are encouraged to carefully review the full text of section 117 of the HEA (see attachment to this letter) in order to ensure their compliance with the provision.

**General -****Q1 How do I know if my institution is required to submit a report of foreign gifts, contracts, or ownership and control?**

A1 All domestic institutions that receive any Federal financial assistance (directly or indirectly) and that offer a bachelor's degree or higher, or that offer a transfer program of not less than two years that is acceptable for credit toward a bachelor's degree, are required to report. [See HEA section 117(h)(4)]

**Q2 What are the conditions that require reporting?**

A2 An institution must submit a report if the total of all gifts from and contracts with a foreign source exceeds \$250,000 in any calendar year or it is owned or controlled by a foreign source. [See HEA section 117(a)]

**Q3 Is the foreign gift, contract, and ownership information my institution reports made public?**

A3 Yes, consistent with the law, all disclosure reports are public records and are available for inspection and copying. [See HEA section 117(e)]

**Q4 What happens if my institution does not comply with the foreign gift, contract, or ownership reporting requirements?**

A4 If an institution fails to comply with the reporting requirement in a timely manner the Secretary may recommend that the Department of Justice undertake a civil action in Federal District Court to ensure compliance. In addition, the institution must reimburse the government for the full costs of obtaining compliance following a knowing or willful failure to comply. [See HEA section 117(f)]

#### **When and How to Report -**

##### **Q5 When must my institution submit its foreign gift, contract, and ownership or control report?**

A5 An institution must report no later than the January 31 or July 31, whichever is sooner, that immediately follows the activity that triggers the need for a report as discussed in Q&A #2. [See HEA section 117(a)]

##### **Q6 What if I have missed filing a required report?**

A6 You should immediately file all of the missed reports.

##### **Q7 If my institution meets the "ownership or control" criteria noted in Q&A #2, must we continue to report that condition every six months?**

A7 No, an institution must only report when there is a substantive change to a previously reported ownership or control status, or in the institution's program or structure, as it relates to a foreign source.

##### **Q8 How does my institution report foreign gift, contract, or ownership and control information to the Secretary?**

A8. Foreign gift, contract, and ownership or control reports must be submitted to the Department's Federal Student Aid (FSA) Case Management Teams using FSA's electronic application process (eAPP) ([www.eligcert.ed.gov](http://www.eligcert.ed.gov)). Go to Section K, Question 69, and enter the appropriate information about the foreign gift, contract, or ownership and control, then go to Section L, to complete the signature page. Submit the report electronically and mail in the signature page to the address provided.

#### **Contents of Reports -**

##### **Q9 In the case of an institution that meets the "contract or gift " criteria noted in Q&A #2, what information is required to be included in the report?**

A9 For gifts received from or contracts entered into with a foreign government the report must include the identity of the foreign country and the aggregate amount of such gifts and contracts received from each foreign government. [See HEA section 117(b)(2)]

For gifts received from or contracts entered into with a foreign source other than a foreign government the report must include the name of the foreign state to which the contract(s) or gift(s) is attributable and the aggregate dollar amount of such gifts and contracts attributable to a particular country. [See HEA section 117(b)(1)]

##### **Q10 In the case of an institution that meets the "ownership or control" criteria noted in Q&A #2, what information is required to be included in the report?**

A10 For such an institution each disclosure report must contain the identity of the foreign entity, the date on which the foreign entity assumed ownership or control, and a description of any substantive changes to previously reported ownership or control, or in institutional program or structure resulting from the change in ownership or control. [See HEA section 117(b)(3)]

##### **Q11 What additional information must be included in the report about restricted or conditional gifts or contracts?**

A11 Whenever an institution receives a restricted or conditional gift or contract from a foreign government it must disclose the name of the country, the amount of the gift or contract, the date of the gift or contract, and a description of all conditions or restrictions as defined below. [See HEA section 117(c)(2)]

Whenever an institution receives a restricted or conditional gift or contract from a person it must disclose the citizenship, or if unknown, the principal residence for that person, the amount of the gift or contract, the date of the gift or contract, and a description of all conditions or restrictions as defined below. [See HEA section 117(c)(1)]

Whenever an institution receives a restricted or conditional gift or contract from a legal entity other than a foreign state or an individual it must disclose the country of incorporation, or if unknown, the principal place of business for that foreign source, the amount of the gift or contract, the date of the gift or contract, and a description of all conditions or restrictions as defined below. [See HEA section 117(c)(1)]

#### **Alternative Reporting -**

##### **Q12 What if my state requires similar reporting of foreign gifts, contracts, and ownership?**

A12 If the state has provided the Secretary assurances that the institution has met the requirements for public disclosure under State law the

institution may submit a copy of the disclosure report filed with the State in lieu of the report required by the Secretary. [See HEA section 117(d)(1)]

**Q13 What if another Federal agency requires similar reporting of foreign gifts, contracts, and ownership?**

A13 If an institution has filed a report substantially similar to the report required under section 117 of the HEA with any other agency of the Federal Government it may submit a copy of that report in lieu of the report required by the Secretary. [See HEA section 117(d)(2)]

**Q14 Whom can I contact for additional information on the foreign gifts, contracts, and ownership and control reporting?**

A14 For additional information you may contact the Case Management Team for your State. The telephone numbers for the Case Teams can be found at [www.eligcert.ed.gov](http://www.eligcert.ed.gov).

**Definitions -**

**Q15 What is the definition of a "foreign source"?**

A15 The HEA defines the term "foreign source" as -

- § A foreign government, including an agency of a foreign government;
- § A legal entity created solely under the laws of a foreign state or states;
- § An individual who is not a citizen or national of the United States; and
- § An agent acting on behalf of a foreign source.

[See HEA section 117(h)(2)]

**Q16 What is the definition of a "contract"?**

A16 The HEA defines the term "contract" as any agreement for the purchase, lease, or barter of property or services. [See HEA section 117(h)(1)]

**Q17 What is the definition of a "gift"?**

A17 The HEA defines the term "gift" as any gift of money or property. [See HEA section 117(h)(3)]

**Q18 What is the definition of the term "restricted or conditional gift or contract" used in Q&A #11?**

A18 For purposes of the reporting required by section 117 of the HEA, "restricted or conditional gift or contract" means any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding -

- § The employment, assignment, or termination of faculty;
- § The establishment of departments, centers, research or lecture programs, or new faculty positions;
- § The selection or admission of students; or
- § The award of grants, loans, scholarships, fellowships, or financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

[See HEA section 117(h)(5)]

We thank you in advance for your cooperation in meeting the statutorily required reporting requirements discussed in this letter. As noted above, if you have any questions please contact the FSA Case Team that is responsible for your institution. Contact information for Case Teams is available at [www.eligcert.ed.gov](http://www.eligcert.ed.gov).

Sincerely,

Theresa S. Shaw  
Chief Operating Officer

Attachment: HEA Section 117

**Attachments/Enclosures:**

[Attachment: Section 117 of the Higher Education Act in MS Word Format, Size 28KB, 5 pages](#)