

August 9, 2019

Mr. Reed Rubinstein
Acting General Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Avenue, SW
Washington DC 20202

Dear Mr. Rubinstein:

Deputy Security Mitchell Zais suggested that I reach out to you to seek clarification regarding the reporting requirements of Section 117 of the Higher Education Act (HEA) in order to help colleges and universities comply with these obligations.

Beginning with our letter dated January 18, 2019, we have been seeking clarification of specific areas of ambiguity in Section 117 and the two “Dear Colleague” letters issued by the Department. In all of our communication with the Department, we have emphasized that we seek this clarification so that colleges and universities can understand their reporting obligations under the law and comply accordingly.

Examples of the uncertainties that we hope to have clarified are the following:

1. Is the \$250,000 reporting threshold met only when an individual gift exceeds this amount or when the aggregate amount received from a country or specific foreign entity exceeds the threshold? For example, if a university receives multiple gifts or enters into several contracts with other entities or institutions from a foreign country, in order to trigger the disclosure requirement, must the gifts or contracts in one calendar year equal at least \$250,000 in aggregate from a single foreign source or entity?
2. What should be considered under the Section 117 definition of an “institution?” Specifically, are non-profit educational, cultural, or research entities which are legally organized and separate from a higher education institution obligated to comply with the reporting requirements? For example, does the reporting obligation apply to a separate foundation that disburses private gifts and manages an endowment but supports the university with funding for student financial aid or scientific research, especially if the foundation is a separate 501(c)(3) organization governed by its own fully independent board?
3. Is a gift limited only to “money or property?” Are in-kind gifts or donations covered?

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4. When is it sufficient to only list the country from which a gift(s) has been received versus a specific government-affiliated university, company, and/or other entity?
5. What mechanism should institutions use to submit corrections or amendments to previous reports?

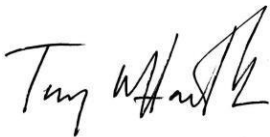
The legislative history of Section 117, the statute, and the Department's guidance do not address any of these issues.

I underscore that all we are seeking is clear, unambiguous instructions to enable schools to comply. The Department, as you know, has never issued regulations to govern Section 117 and only issued "guidance" in 1995 and 2004. For some reason, that "guidance" was recently removed from the Department's website so even that limited information is no longer available. Let me put it simply: it is now impossible for institutions to know how to comply. We are not blaming anyone. But we need your help to remedy this.

I've attached a copy of our January 18 letter for your review, as it describes in some detail these topics and the request for clarification to help ensure that our institutions understand their reporting obligations.

We hope that the Department will undertake a formal rulemaking process that permits public comments to answer these and other questions. I request a meeting with you as soon as possible that includes campus officials, in order for them to discuss their concerns with you firsthand.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry W. Hartle". The signature is written in a cursive, slightly slanted style.

Terry W. Hartle
Senior Vice President
Government Relations and Public Affairs