



GUIDANCE ON FOREIGN GIFT AND CONTRACT REPORTING REQUIREMENTS

I. BACKGROUND

Section 117 of the Higher Education Act of 1965 (the “Act”) requires colleges and universities to disclose all foreign gifts and contracts totaling at least \$250,000 within a calendar year to the Secretary of Education.

In 2020, the Secretary of Education launched an online reporting system and required more rigorous reporting than was previously required. The online portal can be found at the below link:

<https://partners.ed.gov/ForeignGifts>

At the direction of the Biden Administration, the Secretary of Education is in the process of revising the additional requirements on colleges and universities that were issued in 2020. No final guidance has been issued yet; however it is not expected that the Biden Administration will make significant changes to the guidance.

Under the current regulations, colleges and universities are required to report qualifying foreign gifts and/or contracts on July 31st and January 31st annually.

II. DEFINITION OF “FOREIGN SOURCE”

The following is a list of individuals and entities that are considered foreign sources and may trigger a reportable disclosure:

- A foreign government or foreign governmental agency;
- A legal entity, governmental or otherwise, created solely under the laws of a foreign state or states;
- An individual who is not a citizen or national of the United States or any United States Territory;
 - The Department of Education does not consider an individual who has dual citizenship that includes U.S. Citizenship to be a foreign source
- An agent of a foreign legal entity acting on behalf of a foreign source;
- Foreign subsidiaries of US-based corporations may constitute foreign forces; and

- US corporations with foreign parent companies may constitute foreign sources if the counterparty to the transaction is acting as an agent of the foreign parent company.

III. REQUIREMENTS OF COLLEGES AND UNIVERSITIES

Colleges and universities **must**:

- Conduct “reasonable due diligence” to determine whether a contract and/or gift is coming from a foreign source and meets the \$250,000 reportable threshold;
 - More diligence may be required when transactions involve a new foreign source, likewise, less diligence may be required when transactions involve a repeat foreign source
- Make a “good faith effort” to determine whether the contract or gift is coming from a foreign source;
 - Must gather information directly from the counterparty to the transaction or gather information through independent research
- Report the identity of the foreign source to the Department of Education, even if the foreign source wishes to remain anonymous;
- Submit disclosure reports on July 31st and January 31st annually; and
- Only users authorized by the college or university as its Primary Destination Point Administrator (“PDPA”) may submit disclosure reports. Each institution should designate a PDPA that will be responsible for reporting any qualifying transactions.
 - Outside accountants and consultants may submit disclosure reports on behalf of the college or university if they have been authorized as a PDPA

IV. RESTRICTED GIFTS AND CONTRACTS

Section 117 of the Act requires additional disclosures from colleges and universities, including a description of the conditions, for the following gifts or contracts if they include 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;
- The award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.

V. PROCEDURE FOR REPORTING FOREIGN GIFTS AND CONTRACTS

- All departments must report potential foreign transactions totaling \$250,000 or more to the Office of General Counsel (“OGC”);

- OGC will contact Purchasing, Institutional Advancement, the Finance Office, and any other department that it suspects may have knowledge of foreign transactions semi-annually to inquire whether each department has any foreign transactions to report;
- All questions regarding compliance with the Act should be directed to a member of the OGC.

VI. WHICH CONTRACTS AND/OR GIFTS REQUIRE REPORTING?

Foreign Gifts and Contracts that MUST be Reported Bi-Annually	Foreign Gifts and Contracts that do NOT need to be Reported
Contracts totaling \$250,000+ within a calendar year	Contracts that are less than \$250,000 total within a calendar year
Gifts that are \$250,000+ within a calendar year	Gifts that are less than \$250,000 within a calendar year
Pledged gifts, or a portion of a pledged gift that is actually received , totaling \$250,000+ within a calendar year	Pledged gifts, or a portion of a pledged that is actually received , that is less than \$250,000 within a calendar year
Intellectual property license fee from a foreign licensee of a College patent/data/materials to be used in research totaling \$250,000+ within a calendar year	Intellectual property license fee from a foreign licensee of a College patent/data/materials to be used in research totaling less than \$250,000 within a calendar year
Tuition payments totaling \$250,000+ within a calendar year	Tuition payments totaling less than \$250,000 within a calendar year
Grants totaling \$250,000+ within a calendar year	Grants totaling less than \$250,000 within a calendar year
	“money-out” transactions, like the College buying equipment from a foreign source, regardless of the price
Contracts totaling \$250,000+ within a calendar year with a U.S. Company that has a foreign parent company, only if the foreign parent company exercises control over the U.S. Company’s operations generally, and with respect to the contract	Contracts totaling \$250,000+ within a calendar year with a U.S. Company that has a foreign parent company, only if the foreign parent company does not exercise control over the U.S. Company’s operations generally, and with respect to the contract
Gifts totaling \$250,000+ within a calendar year from a foreign citizen that does not have dual, or U.S. citizenship	Gifts for any amount from an individual that is a dual U.S. Citizen and foreign citizen or lives in a foreign country while maintaining U.S. Citizenship