Section 117 (FTEs, Budget)

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April 5, 2023

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-Milwaukee[5]

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]

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[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
Member of Congress

Burgess Owens
Member of Congress

Bob Good
Member of Congress

Lisa C. McClain
Member of Congress

Mary E. Miller
Member of Congress

Michelle Steel
Member of Congress

Ron Estes
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Julia Letlow
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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF LEGISLATION AND CONGRESSIONAL AFFAIRS

April 21, 2023

The Honorable Virginia Foxx
Chairwoman, Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Foxx:

Thank you for your letter dated April 5, 2023, requesting information regarding the U.S. Department of Education's (the Department's) administration of Section 117 of the Higher Education Act of 1965 (HEA), as amended. Your letter was referred to me, and I am pleased to provide an interim response on behalf of the Department.

The Department is committed to the robust enforcement of Section 117. Under Section 117, institutions 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.[1] This disclosure requirement is an important measure in ensuring transparency and identifying possible foreign influence in U.S. higher education.

As the Department noted in its April 3, 2023, letter to the Committee, the office of Federal Student Aid (FSA) is well positioned to lead and coordinate the Department's efforts relating to Section 117. FSA has already begun to take steps to strengthen the Department's efforts to ensure that colleges and universities comply with Section 117.

Thank you again for your interest in the Department's administration of Section 117. As we continue to work on a subsequent response to your letter, I have asked my staff to keep Committee staff informed on the status of our response. We anticipate sending an additional response soon. In the meantime, please contact the Department's Office of Legislation and Congressional Affairs at (202) 401-0020.

Sincerely,

Gwen Graham
Assistant Secretary
for Legislation and Congressional Affairs

cc: The Honorable Bobby Scott
Ranking Member, Committee on Education and the Workforce

[1] *See* 20 U.S.C. § 1011f.

UNITED STATES DEPARTMENT OF EDUCATION

THE UNDER SECRETARY

May 15, 2023

The Honorable Virginia Foxx
Chairwoman
Committee on Education and the Workforce
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Foxx:

Thank you for your letter dated April 5, 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 (HEA), as amended. The Department provided a response on April 21, 2023. This letter provides additional information in response to your requests. Please note that an identical response has been provided to the co-signers of your letter.

At its core, Section 117 is a reporting requirement about financial ties between institutions of postsecondary education and foreign sources. The Department continues to collect disclosure reports that institutions are required to file, make certain data publicly available, and monitor institutions' compliance with disclosure requirements. The Department remains committed to ensuring robust compliance with Section 117 and continues to devote substantial resources towards that compliance. Currently, dozens of employees across the Department as well as vendors may work on Section 117 matters that range from investigations and inquiries, regulatory and subregulatory guidance, data collection, and public access.

FSA Transition

As noted in my previous letter, the Department believes that it is advisable for a single office to assume primary responsibility for Section 117 and that Federal Student Aid (FSA) is the appropriate office within the Department to serve in that role. In introductory remarks during a June 2022 webinar, the Department indicated that it would restore primary responsibility for the administration of Section 117 to FSA.[1] The Department reiterated those organizational responsibilities in December 2022 in connection with FSA seeking approval from the Office of Management and Budget (OMB) for a new information collection request for Section 117.[2] Staff in FSA will consult and coordinate as necessary with other offices in the Department, relying on the collective expertise of the entire Department. In particular, FSA will continue to work closely with the Department's Office of the General Counsel on enforcement of Section 117, with OGC

[1] U.S. Department of Education, Webinar, "Section 117 of the Higher Education Act Presentation by the U.S. Department of Education" (June 23, 2022), https://www2.ed.gov/policy/highered/leg/section117-webinar-202206.pdf.

[2] Notice, Agency Information Collection Activities; Comment Request; Foreign Gifts and Contracts Disclosures, Docket No. ED-2022-SCC-0159, 87 Fed. Reg. 79,292 (Dec. 27, 2022).

attorneys continuing to work on resolving any pending investigations and advising FSA on compliance more generally. Similarly, FSA will continue to work with the Department's Office of the Under Secretary and Office of Postsecondary Education to conduct outreach to institutional and other stakeholders and engage with them on Section 117 as well as various other issues associated with research security and integrity.

FSA is well positioned to lead and coordinate the Department's efforts relating to Section 117. First, FSA has consistently been the office within the Department responsible for the systems used to collect data pursuant to Section 117.[3] The Section 117 webpage was recently transitioned to FSA's website. As noted below, FSA is currently evaluating its ability to make improvements to its reporting portal.

Second, FSA already collects data and information from the approximately 6,000 institutions of postsecondary education that participate in the programs of student financial aid under Title IV of the HEA. Given that many institutions already submit financial and other data to FSA, Section 117 reporting aligns with the types of responsibilities assumed by FSA for other programs administered by the Department. For example, FSA collects and analyzes student information through the Free Application for Federal Student Aid, institutional program and operational data through the Application for Approval to Participate in the Federal Student Aid Programs, and institutional financial data through the eZ-Audit system.

Third, FSA has significant audit and review expertise involving institutions of postsecondary education. As part of its current duties, FSA routinely conducts program reviews to confirm that an institution meets requirements for institutional eligibility, financial responsibility, Clery Act compliance, and administrative capability. FSA's ability to develop a programmatic approach to oversight and compliance is more likely to lead to widespread adoption by institutions of systematic processes for Section 117 reporting and compliance.

Ongoing Compliance

At present, the Department has 14 ongoing investigations into compliance with Section 117 requirements. I cannot provide details on specific, ongoing investigations at this time. The Department may, as appropriate, make observations from its investigations publicly available once these investigations have been completed.

Since receipt of your letter, the Department has concluded its Section 117 inquiry relating to the University of Nevada, Las Vegas (UNLV). On January 15, 2021, the Department sent a letter to UNLV initiating an inquiry to determine whether the institution was in compliance with Section 117. In connection with that inquiry, UNLV submitted documentation and information in response to the Department's requests. The Department conducted a review of UNLV's submissions and its statutorily required disclosure reports. Upon completion of its review, the Department sent a letter to UNLV on April 14, 2023, notifying the institution that the

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[3] *See, e.g.*, Federal Student Aid, Electronic Announcement, "Section 117 of the Higher Education Act" (Dec. 23, 2019), https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2019-12-23/section-117-higher-education-act; U.S. Department of Education, Dear Colleague Letter, DCL ID GEN-04-11, "Reporting Gifts, Contracts, and Relationships by Institutions" (Oct. 4, 2004), https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2004-10-04/reporting-foreign-gifts-contracts-and-relationships-institutions.

Department had concluded its Section 117 compliance investigation. A copy of the Department's April 14, 2023, closure letter is available on FSA's website dedicated to Section 117.[4]

As stated in the closure letter, UNLV has filed disclosure reports to correct for errors and omissions in its reporting from January 1, 2016, through the most recent reporting deadline of January 31, 2023. Prior to commencement of the Department's inquiry in 2021, UNLV had never filed a disclosure report pursuant to Section 117. Since 2021, UNLV has reported 19 gifts and contracts with reported value of more than $19 million in total, including transactions that should have been reported prior to 2021. These transactions are reflected in the publicly available data posted on the Department's website. Further, UNLV has taken steps to implement procedures and systems designed to address and achieve compliance with the disclosure requirements of Section 117 going forward.

The Department remains committed to ensuring compliance with Section 117 and is actively engaged with the institutions with open investigations and other stakeholders to ensure that institutions fully understand and comply with their reporting obligations. In introductory remarks during a June 2022 webinar with the American Council on Education, the Department indicated that it hoped to work with individual institutions to take the steps necessary to resolve any outstanding matters.[5] But the Department has not indicated, nor is it in a position to state now, when or how it will resolve or close its ongoing investigations.

Where appropriate and necessary, the Department will consider pursuing a range of corrective and remedial actions to ensure compliance with Section 117. The Department anticipates that, in most instances, institutions will agree to comply voluntarily with their reporting requirements and that obtaining voluntary compliance is the most efficient way to address concerns surrounding noncompliance with the Section 117 reporting requirements. However, if the Department encounters knowing or willful noncompliance, it will consider all available tools to secure compliance, including initiating enforcement processes for corrective and remedial action.

In the Department's experience, institutions are willing and interested in complying with their statutory disclosure obligations and look to the Department for clarity to understand how to meet those obligations. The Department has consistently maintained mailboxes through which it has provided technical assistance to institutions about issues related to Section 117 reporting. We have begun to take additional steps to provide much-needed clarity to institutions concerning their obligations under Section 117. The Department is currently seeking approval from OMB to renew its information collection for Section 117 data. As noted above, that process began on December 27, 2022, with publication of a notice requesting comments by February 27, 2023. As part of that process, the Department responded to public comments seeking clarification and guidance about the scope of the statutory requirements, and the Department issued an updated

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[4] U.S. Department of Education, Notices of Investigation and Records Request, "Closure Notification to the University of Nevada, Las Vegas" (Apr. 14, 2023), https://www2.ed.gov/policy/highered/leg/20230411-un-closeout.pdf.

[5] U.S. Department of Education, Webinar, "Section 117 of the Higher Education Act Presentation by the U.S. Department of Education" (June 23, 2022), https://www2.ed.gov/policy/highered/leg/section117-webinar-202206.pdf.

information collection notice on May 4, 2023.[6] We invite and encourage further public comment on the proposed information collection during the comment period which ends on June 5, 2023. The Department is aiming to release additional guidance in advance of the next reporting deadline on July 31, 2023.

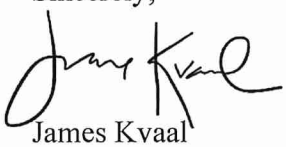
Reporting Portal

Your letter also requests information about the current Section 117 reporting portal. Institutions are able to report statutorily defined gifts and contracts through FSA's Partner Enterprise Business Collaboration (PEBC) environment. Robust reporting of foreign gifts and contracts has continued throughout the current Administration.

As noted in the supporting statement to our information collection, institutions have identified certain limitations and challenges with respect to their experience with the current reporting portal. The Department has been evaluating its ability to make improvements to the user experience within the ecosystem of its current reporting portal as well as other ways to address some of the technical feedback received from institutions, and we have been able to make some system enhancements to improve the functionality of the reporting portal. The Department is continuing to assess how to improve the portal to make it easier on institutions, while still protecting information security and data integrity.

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

cc: Robert C. "Bobby" Scott, Ranking Member

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[6] Notice, Agency Information Collection Activities; Comment Request; Foreign Gifts and Contracts Disclosures, Docket No. ED-2022-SCC-0159, 88 Fed. Reg. 28533 (May 4, 2023), https://www.govinfo.gov/content/pkg/FR-2023-05-04/pdf/2023-09503.pdf.
The Department's response to the public comments is located at
60D Comment Response Summary, Supplementary Document, Information Collection Review ICR Reference No: 202212-1845-003, Office of Information and Regulatory Affairs, Office of Management and Budget (April 26, 2023), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202212-1845-003.