SECTION 117: WHERE FOREIGN INFLUENCE AND GIFT MANAGEMENT OFTEN COLLIDE

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Under the Trump administration, the U.S. Department of Education (ED) has increased efforts to monitor colleges' and universities' compliance with Section 117 of the Higher Education Act of 1965. Section 117 requires that institutions report on any gift from or contract with a foreign source[1] with an aggregate value of $250,000 or more within a calendar year. Some premier institutions saw more targeted scrutiny from Congress and the ED over their relationships with foreign entities, and the possibility of additional inquiry could expand beyond these top institutions.

Congress has been concerned over potential foreign interference in U.S. research efforts and has proposed legislation to reduce the reporting threshold from [$250,000 to $50,000](). In this changing environment, it is important for institutions to take action and develop strategies to strengthen gift and contract acceptance programs to comply with ED requirements and to respond quickly and efficiently to recurring information requests.

While the Biden administration has appeared to decline to use enforcement mechanisms identified under President Trump[2], compliance with Section 117 remains a key component of university foreign influence programs and has been emphasized in recent guidance documents issued by the White House Office of Science and Technology Policy (OSTP).

Gift Acceptance, Contract Execution and Management Challenges

Institutions encounter organizational and operational challenges regarding gift acceptance, agreement and contract execution, and management. Several of these challenges may impact foreign gift and contract-reporting requirements:

Anonymous Gift Acceptance

Donors who wish to remain truly anonymous (i.e., only a very few select individuals within the institution would know the identity of the donor) are common within philanthropy. Effectively respecting the donor's request may require out-of-system workaround solutions when current systems do not have the adequate capability to record data and maintain donor privacy. Accepting anonymous donations or recording the details incompletely could present at least two complications for institutions: 1) The anonymous donation may be classified as an ethical concern if the funding source is unclear (see next section for discussion of ethical concerns) and 2) Compliance with Section 117 and recent information collection request (ICR) requirements stipulate that institutions must submit the names and addresses of anonymous individual donors.[3]

Ethical Gift Acceptance

Institutions may encounter circumstances where acceptance of a gift may pose a reputational risk to the institution. The philanthropist or donor organization may have a past history of engaging in activities that are in conflict with the institution's mission and policies. On the extreme end, examples include criminal accusations or convictions and human rights violations, among others.

Data Collection and Management

To ensure Section 117 compliance, institutions must report on gifts or contracts when the aggregate value received from the entity across the institution is at least $250,000 within the calendar year. Institutions should define how the value of gifts is recorded for the purposes of Section 117 reporting, such as following the process used to report gifts on institutional financial statements.

For some institutions, compiling and aggregating data from distributed offices across the institution is a very manual, time-consuming process. When donors have relationships with multiple units across an institution — such as advancement, sponsored research, procurement or patient services — each unit may have differing standards for recording the names of their donors within their information systems. These contrasting data collection models pose challenges for appropriately counting gifts and contracts, including those from foreign sources.

Additionally, reports by ED have stated that financial ledger systems that are not fully integrated with institutional contracts and agreements management systems have presented reporting challenges for institutions and diluted the accuracy of available data. Missing, or minimal, integration between distributed systems (e.g., financial ledgers, contract management systems, advancement, etc.) results in manual analysis and leaves room for error.

Affiliate Organizations[4]

International campuses and other affiliated foundations and nonprofit organizations that operate for the benefit of the institution — and receive gifts from or enter into contracts with a foreign source — may be subject to the reporting requirements of Section 117. This presents a significant burden for organizing, recording data and reporting for institutions that operate internationally and/or operate other entities organized under the umbrella of the institution. This difficulty may stem from business process-related issues more than system capabilities, though either matter could prevent institutions from accurately reporting in a timely manner.

Conclusion

A potential, significant reduction in foreign gift reporting thresholds could affect more than just top institutions. Therefore, it is important that higher education leaders better understand the impacts of such legislation, including the organizational and operational challenges regarding gift acceptance, agreement and contract execution, and management.

Huron has worked with many institutions to develop strategies to address their business operations and compliance challenges. For more information on foreign activities in research, visit our Research Compliance Resource Library.

Related Work

Fostering International Collaboration While Managing Undue Foreign Influence in Academic Research

Navigating Foreign Influence in Research Compliance

Key Takeaways

To develop an effective plan to manage foreign influence compliance risks, institutional leaders should:

Think differently.

Understand compliance requirements regarding gift acceptance, agreement and contract execution, and management.

Plan differently.

Proactively identify foreign influence risk exposure and develop frameworks to assess international relationships, quantify risks and track data.

Act differently.

Foster a culture that values diversity and promotes collaboration without increasing the risks of foreign influence.

[1] For the definition of "foreign source," see https://www.govinfo.gov/content/pkg/USCODE-2018-title20/pdf/USCODE-2018-title20-chap28-subchapI-partB-sec1011f.pdf.

[2] Council on Government Relations, Rules and Proposed Rules Revoked or Paused under the January 20, 2021 Regulatory Freeze Pending Review Presidential Memorandum, February 5, 2021, https://www.cogr.edu/sites/default/files/Regulatory%20Review%20Chart.pdf.

[3] 85 Fed. Reg. 26,674 (May 5, 2020); 85 Fed. Reg. 11,059 (February 26, 2020); 84 Fed. Reg. 64,309 (November 21, 2019); 84 Fed. Reg. 34,878 (July 19, 2019); 84 Fed. Reg. 31,052 (June 28, 2019).

[4] See Institutional Compliance With Section 117 of the Higher Education Act of 1965, p. 14, released October 2020.

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