

THE
NATIONAL LAW REVIEW

Higher Education Institutions under Increased Scrutiny for Foreign Contracts and Gifts

Tuesday, June 18, 2019

The U.S. Department of Education (the Department) in recent months has undertaken increased scrutiny of postsecondary institutions' contracts with, and gifts from, foreign entities and individuals. Although long-required to report significant foreign contracts and gifts to the Department, in February 2019 [a bipartisan report](#) of the U.S. Senate Permanent Subcommittee on Investigations found that one Chinese entity directly provided over \$158 million to U.S. colleges and universities since 2006 and that 70% of the recipient schools failed to report such funding as required by existing federal law and regulation.

On May 13, 2019, the Deputy Secretary of the Department, Mitchell M. Zais, issued a letter to postsecondary institutions reminding them of pertinent reporting obligations under Section 117 of the Higher Education Act (20 U.S.C. § 1011f).

Specifically, all domestic higher education 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 to the Department information about (1) contracts with and gifts received from any foreign source, in either case exceeding \$250,000 in any calendar year; and (2) any ownership interests in or control over the institution by a foreign entity.

The Higher Education Act defines a "foreign source" as being 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. The term "contract" is defined by the law to include any agreement for the purchase, lease, or barter of property or services; the term "gift" includes any gift of money or property. If an institution fails to comply with the reporting requirement in a timely manner, the Department may recommend that the Department of Justice undertake a civil action in Federal District Court to ensure compliance. In addition, per the statute, the institution must reimburse the government for the full costs of obtaining compliance following a knowing or willful failure to comply.

According to [press reports](#) on June 13, 2019, the Department of Education has initiated investigations into foreign funding received through contracts and donations by two prominent universities, including requests for years of financial records related to those matters. Those inquiries are presumed to be only the beginning of a broader effort by the Department to review foreign funding received by domestic institutions, and to assess compliance with and more robustly enforce Section 117 of the Higher Education Act.

© 2019 Drinker Biddle & Reath LLP. All Rights Reserved

Source URL: <https://www.natlawreview.com/article/higher-education-institutions-under-increased-scrutiny-foreign-contracts-and-gifts>

Drinker Biddle®

Article By [Jonathan D. Tarnow](#)
[John R. Przepyszny](#)
[Drinker Biddle & Reath LLP](#) Insights

[Public Education & Services](#)
[Global](#)
[Criminal Law / Business Crimes](#)
[All Federal](#)