

UNIVERSITY OF TOLEDO
FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 REPORTING PROTOCOL

Policy statement

Section 117 of the Higher Education Act (HEA) of 1965 requires higher education institutions that receive Title IV federal student aid to submit to the Secretary of Education reports about Gifts received from any Foreign Source, Contracts with a Foreign Source, and any ownership interest in, or control over the institution by a Foreign Source. Institutions must report Contracts with or Gifts from the same Foreign Source that have a value of \$250,000 or more, “considered alone or in combination with all other Gifts from or Contracts with that Foreign Source within a calendar year;” and must also report any ownership interests in or control over the institution by a Foreign Source. The Section 117 report is but one area of the Consumer Information and School Reporting required by the U.S. Department of Education (ED) for four-year colleges participating in federal student financial assistance programs.

Purpose of policy

The University of Toledo receives significant funding from federal student financial aid programs, including grants and scholarships, graduate fellowships, loans, and work-study. The ED is authorized to undertake a civil action in federal district court to ensure compliance if a school fails to comply with the HEA Section 117 requirements in a timely manner. Schools knowingly or willfully failing to comply must reimburse the U.S. Treasury for the full cost of obtaining compliance. Institutions may be subject to investigation by the ED for under-reporting.

UToledo divisions should assess and, if necessary, strengthen their processes for complying with the Section 117 reporting requirements. This policy provides guidance to divisions, including a description of the reporting requirements and UToledo recommendations for risk mitigation. This policy also includes a link to supporting procedures, including definitions of HEA Section 117 Terms, and an HEA Section 117 Reporting: UToledo Checklist.

In developing this UToledo guidance, the Internal Audit unit used currently available public sources, and coordinated with Research, Government Relations, Institutional Advancement, and Financial Aid at UToledo to further provide divisions with additional recommendations.

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Introduction

Regarding complying with Section 117 of the HEA, the UToledo has taken the position of developing and following internal procedures for reporting and documenting the decision to report or not report based on the sources provided by ED. UToledo continue to watch for updated ED guidance and update these procedures appropriately.

These procedures formulate a written protocol to address this regulatory area. UToledo has thought critically about how to resolve any reporting issues to develop a reasonable position with regards to collecting, analyzing, and reporting the information. UToledo has memorialized all positions taken in a formal Section 117 reporting protocol shared with relevant stakeholders in the Section 117 reporting process.

HEA Section 117 Reporting Basics

Definition of Foreign Source

HEA Section 117 defines a Foreign Source as:

- (a) A foreign government, including an agency of a foreign government.
- (b) A legal entity, governmental or otherwise, created solely under the laws of a foreign state or states.
- (c) An individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; and
- (d) An agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a Foreign Source.

UToledo recommends that UToledo locations adopt procedures under which any UToledo unit signing or accepting a Contract or Gift should ascertain whether the other party is a Foreign Source as defined above and its associated country. This can be done either by 1) the UToledo unit making its own determination based on the address and information supplied by the sponsor/donor or with information otherwise at the unit's disposition, or 2) by requesting that the sponsor/donor certify whether they are a Foreign Source, and if so, their associated country. If the country of incorporation/place of business or residence is foreign, UToledo can use this address to determine whether to include them in the HEA Section 117 report. If the country of incorporation/place of business or residence is U.S. based, the unit would need to determine whether the sponsor/donor is an agent, subsidiary, or affiliate of a Foreign Source.

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Definition of Gifts and Contracts

As defined by Section 117 of the HEA gifts are “any gift of money or property.” The University of Toledo Foundation is a separate legal entity; as such, gifts to the Foundation normally are not gifts to the University. However, to facilitate transparency, for the purposes of reporting under Section 117 of the Higher Ed Act, University reports should include donations to the University of Toledo Foundation that alone or in aggregate meet the reporting thresholds set out by Section 117.

As defined by HEA, contracts are “any agreement for the acquisition by purchase, lease, or barter of property or services by the Foreign Source, for the direct benefit or use of either of the parties.” With respect to HEA Section 117 reporting requirements, UToledo interprets Contracts to include sponsored research contracts and grants, service contracts, revenue-generating contracts, and other agreements involving the inflow of funds to the University from a Foreign Source.

HEA defines a Restricted or Conditional Gift or Contract as: Any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding —

- (a) the employment, assignment, or termination of faculty.
- (b) the establishment of departments, centers, research or lecture programs, or new faculty positions.
- (c) the selection or admission of students; or
- (d) 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.

Most Contracts and Gifts to the University would not meet the conditions above for a “Restricted or Conditional Gift or Contract.” An example of a contract that does meet the Restricted/Conditional definition is one that requires the establishment of an institute as a condition of funding, as opposed to generalized support for a variety of research projects or students.

Where to Report

Departments should forward relevant information to Internal Audit. As an additional measure, Internal Audit will contact stakeholder departments including (but not limited to) the Center for International Studies and Programs, the University of Toledo Foundation, the Treasurer’s Office, Office of Research and Sponsored Programs, and the Office of Technology Transfer. Data analytics produced by Internal Audit is further measure to ensure the collection of all reportable financial data, applicable to both the academic and clinical enterprises (i.e., the medical center).

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APPENDIX A: QUESTIONS AND ANSWERS**

Q3: If we are receiving funds from a U.S. citizen or resident alien, do we need to report them?

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APPENDIX A: QUESTIONS AND ANSWERS**

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- Q12: Example: UToledo has a pending service agreement with an individual contractor, would this be a foreign source?**
- A12:** Using the definition of foreign source documented in the answer to question #11, if the contracts with or gifts from the same foreign source had a value of \$250,000 or more, considered alone or in combination with all other Gifts from or Contracts with that foreign source within a calendar year; the ownership interests in or control over the institution by the foreign source would need to be reported per UToledo policy and Section 117 of the HEA.
- Q13: Should we report contracts and grants by project period, or by budget period? For example, if we enter in a \$600K contract for a five-year period, it is less than • \$250K value in any given calendar year (budget period) because of its spreading over five years. However, if we use the project period than we are reporting the \$600K amount in the year of signing the contract.**
- A13:** UToledo recommends reporting contract monies in the period received. UToledo may not fully receive contracted amounts; therefore, we recommend reporting on a cash basis.
- Q14: How do we calculate amounts aggregated by Sponsor?**
- A14:** Institutions must report contracts with or gifts from the same Foreign Source that have a value of \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that Foreign Source within a calendar year. Pertinent University divisions should submit reports of all foreign source gifts and contracts (regardless of the amount) to the University Department of Internal Audit, who will then sum up all the values to determine if the meeting of thresholds. As an additional measure, Internal Audit will contact stakeholder departments including (but not limited to) the Center for International Studies and Programs, the University of Toledo Foundation, the Treasurer's Office, Office of Research and Sponsored Programs, and the Office of Technology Transfer. Data analytics produced by Internal Audit is further measure to ensure the collection of all reportable financial data, applicable to both the academic and clinical enterprises (i.e., the medical center). UToledo recommends using the date of receipt to determine which Contracts or Gifts to report in a reporting period. The examples below show how a division should calculate the totals. Note that the regulations require reporting of start and end dates only for Contracts; the regulations require the receipt date only for Gifts.
- Example one**
A division receives the following three distinct contracts from Foreign Source A in the January-June reporting period.
- Award 1 – Contract \$90,000 Received 2/3/19 (Start Date 2/2/2019 – End Date 11/30/2019)
 - Award 2 – Grant - \$100,000 Received 3/8/2019 (Start Date 1/12/19 – End Date 12/30/2019)
 - Award 3 – Clinical Trial - \$110,000 Received 6/1/2019 (Start Date 3/3/2019 – 3/3/2024)
- Since the aggregate of all Gifts and Contracts by Sponsor (\$300,000) for the period reported exceeds \$250,000, the division would report all three transactions.

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APPENDIX A: QUESTIONS AND ANSWERS

Q17: Do we need to report Huawei USA funding?

A17: Gifts and Contracts from subsidiaries and affiliates of foreign legal entities acting on behalf of a Foreign Source are reportable. As discussed above in Q/A #1, for ease of reporting and consistency, UToledo is advising divisions to treat ALL affiliates and subsidiaries of foreign legal entities as Foreign Sources for purposes of reporting under Section 117 of the HEA. So, yes, disclose gifts and Contracts from Huawei USA that meet or exceed the reporting threshold in university reports.

Q18:

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Q29: Are universities required to collect and upload true copies of agreements with foreign sources? How will universities protect the privacy and confidentiality of information in the agreements from FOIA?

A29: While the December 17, 2019, ED Response to Public Comments (RPC) indicates that institutions must upload true copies of agreements, as of the publication of this guidance, OMB has not yet approved ED’s Information Collection Request.

ED also states in the RPC referenced above that they will not make the true copies publicly available and in case of a FOIA request, they will treat the true copies as “business information” under 34 C.F.R. § 5.11(b)(1) and follow the procedures described therein (see 34 C.F.R. § 5.11(d)-(j)), including redacting, as appropriate. ED envisions the true copies of the contracts to upload in their new reporting portal, whose release is currently pending the OMB approval. UToledo will provide additional guidance when more information is available.

CORRECTING REPORTS:

Q30: What if the University missed filing a report?

A30: According to the DoE 2004 guidance, the University should immediately file the missed reports.

Q31: How should I correct a report?

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APPENDIX C: HEA SECTION 117 REPORTING: UTOLEDO CHECKLIST

- All units signing or accepting Contracts or Gifts should:
 - Adopt procedures to ascertain whether the sponsor/donor is a Foreign Source. Divisions can *either*:
 - Request that each sponsor or donor certify whether they are a Foreign Source, as defined in HEA Section 117, including whether they are an agent acting on behalf of a Foreign Source, and/or a subsidiary or affiliate of a foreign legal entity; or
 - Make their own determination with information supplied by the sponsor/donor or with information otherwise at the division's disposition.
 - Obtain the following information for all Sponsors/Donors designated as a Foreign Source:
 - If the sponsor/donor is a Foreign Source that is a natural person, identify their country of citizenship or, if unavailable, their principal country of residence.
 - If the sponsor/donor is a Foreign Source that is a legal entity, identify their country of incorporation or, if unavailable, their principal place of business.
 - If the sponsor/donor is an Agent of a Foreign Source and/or a subsidiary or affiliate of a foreign legal entity, identify the Foreign Source or foreign legal entity and the country of citizenship and/or incorporation, as applicable.

- UToledo Internal Audit Office (or other assigned office, per university decision) coordinates the collection of information reportable under HEA SECTION 117 from relevant offices, including:
 - Sponsored Programs (including any office responsible for receiving sponsored research agreements, industry contracts, and clinical trial contracts)
 - Finance and Administration
 - Technology Transfer or Licensing
 - Development/ Institutional Advancement
 - UT Foundation
 - Study Abroad
 - Financial Aid
 - Facilities and Construction
 - Any corresponding offices at the University of Toledo Medical Center enterprise.
 - Other relevant offices

- As an additional measure, Internal Audit will contact stakeholder departments including (but not limited to) the Center for International Studies and Programs, the University of Toledo Foundation, the Treasurer's Office, Office of Research and Sponsored Programs, and the Office of Technology Transfer.

- Data analytics produced by Internal Audit is further measure to ensure the collection of all reportable financial data, applicable to both the academic and clinical enterprises (i.e., the medical center).

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- Trigger: \$250,000 or more in Gifts or Contracts (including grants) received, alone or in combination from a single Foreign Source within a calendar year.
- For details on required information required per type of funding and category of Foreign Source, see

