



## **Fiscal Services**

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# **REPORTING OF FOREIGN GIFTS AND CONTRACTS**

## **FEDERAL HIGHER EDUCATION ACT OF 1965, SECTION 117**

### **GUIDANCE MEMO**

### **REVISED NOVEMBER 2021**

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## OVERVIEW

Congress requires U.S. colleges and universities (“Institutions”) publicly to report foreign gifts and contracts to the U.S. Department of Education (“ED”). Codified at Section 117 of the Higher Education Act of 1965, 20 U.S.C. 1011f (“Section 117”), this mandate requires higher education Institutions that receive Title IV federal student aid to report, twice each calendar year, foreign gifts and contracts the value of which is \$250,000 or more, considered alone or in combination with other gifts or contracts with a foreign source, and to disclose any foreign ownership or control to the U.S. Department of Education.

ED has recently taken concrete steps to enforce Section 117 by ensuring the integrity of reporting requirements, confirming the correct reporting and categorization of donations, and prohibiting the use of domestic conduits and intermediaries (including functionally captive foundations, foreign operating units, and other similar structures) to avoid the disclosures of foreign gifts and contracts. ED has also modernized the information reporting portal, asking Institutions to provide more information, and issued a notice of proposed rulemaking requiring institutions to submit true copies of foreign gift and contract agreements to confirm the accurate reporting and categorization of foreign money. Section 117 does not prohibit Institutions from taking foreign money; it mandates accurate and transparent disclosures of sources and amounts to ED.

Given the recent changes to the reporting portal and ED providing more information on the requirements of the reporting of foreign gifts and contracts, GMU has taken a deeper look into its process of communicating the information to the various GMU Reporting Units, the collection of data, and the need to evaluate GMU’s component units to determine if they should be included or excluded from this reporting.

ED is authorized to undertake a civil action in federal district court to ensure compliance if Institutions fail to comply with the Section 117 requirements in a timely manner. Institutions knowingly or willfully failing to comply must reimburse the U.S. Treasury, full costs of obtaining compliance, including all associated costs of investigation and enforcement. Several Institutions are already under investigation by ED for alleged under-reporting of foreign gifts and contracts.

GMU Reporting Units should assess and, if necessary, strengthen their processes for complying with the Section 117 reporting requirements. This document provides guidance to GMU Reporting Units and includes a list of all GMU Reporting Units, reporting deadlines, and describes the data collection and reporting process. This document also includes definitions of Section 117 terms (Appendix A), Section 117 Reporting Checklist (Appendix B); and an example of a completed Section 117 Reporting Template (Appendix C).

## GMU REPORTING UNITS

The following GMU units must report to Fiscal Services any foreign gift or contract activity.

**ALL GMU Schools/Colleges**

**ALL GMU Intermediaries/GMU Component Units**

**GMU Departments that receive gifts and/or enters into contracts with foreign sources**

## REPORTING DEADLINE

Reporting is on a calendar year basis and due to ED twice a year. For example:

For reporting period January 1, 2021 to June 30, 2021 - reporting deadline is July 31, 2021.

For reporting period July 1, 2021 to December 31, 2021 - reporting deadline is January 31, 2022.

Fiscal Services will send out an email to all GMU Reporting Units (see “GMU REPORTING UNITS” section above) on the first business day of the month preceding the reporting month. For example:

For reporting period January 1, 2021 to June 30, 2021 – email blast is sent on June 1, 2021.

For reporting period July 1, 2021 to December 31, 2021 – email blast is sent on December 1, 2021.

GMU Reporting Units are given approximately six weeks to gather and provide the information to Fiscal Services. For example:

For reporting period January 1, 2021 to June 30, 2021 - deadline is July 16, 2021.

For reporting period July 1, 2021 to December 31, 2021 - deadline is January 14, 2022.

Fiscal Services will then consolidate the data submitted by the GMU Reporting Units in the following two weeks and follow up with the GMU reporting units if additional information is required.

## DATA COLLECTION

To comply with Section 117 reporting requirements and deadline, all foreign income including grants, contracts, and gifts of money and property across the University must be aggregated properly to evaluate whether the reporting threshold has been met. Accordingly, departments, offices, schools, intermediaries or other units receiving gifts of any dollar value from a foreign source must promptly report such gifts as well as report all contracts of any dollar value with foreign sources to Fiscal Services.

GMU Reporting Units must ensure that all required information regarding each gift or contract transaction is provided in the Section 117 reporting template as described in the next section. In addition, GMU Reporting Units must provide copies of gift agreements and contracts to Fiscal Services.

Given that the annual \$250,000 threshold may be triggered by a combination of gifts and/or contracts from a single foreign source, and that such gifts and/or contracts (or information about those transactions) may be administered in a number of disparate GMU Reporting Units, Fiscal Services advises that all GMU Reporting Units submit the required information for **ALL foreign source contracts and gifts received** regardless of the dollar amount. Fiscal Services will then consolidate the data and determine whether the threshold is met for any given foreign source.

Fiscal Services recommends that GMU Reporting Units adopt procedures under which any GMU Reporting Unit signing or accepting a contract or gift should ascertain whether the other party is a foreign source (as defined in Appendix A) and its associated foreign country. This can be done either by:

- 1) the GMU Reporting 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 by completing the Foreign Source Data Collection Form. The form can be downloaded from Fiscal Services website.

If the country of incorporation/place of business or residence is foreign, this address can be used to determine if they should be included in the 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.

## **REPORTING TEMPLATE**

GMU Reporting Units must ensure that all required information regarding each gift or contract transaction is provided in the Section 117 Reporting Template. See Appendix C for an example of a completed template.

Column B	Indicate if this is a gift, contract, restricted gift, or restricted contract. See Appendix A for a description of each.
Column C	Enter date contract signed or gift received. Contract signature date is the date when both parties have signed the contract. In the event that the dates vary, use the latter of the two dates.
Column D	Enter total contract amount or gift amount regardless of when performance is rendered and/or when funds are received.
Column E	Enter contract start date. Enter N/A for gifts.
Column F	Enter contract end date. Enter N/A for gifts.
Column G	Indicate legal name of the party with whom the contract is signed or from whom the gift is received.
Column H	Enter “Y” if the entity identified in Column G is a foreign government or an agency of a foreign government. Enter “N” if the entity identified in Column G is an individual or a corporation that is not controlled by a foreign government.
Column I	Enter foreign government name or enter N/A if the entity identified in Column G is an individual or a corporation that is not controlled by a foreign government.
Column J	Enter name of contract or gift. If there is no gift agreement, enter a short description of what the gift is for.
Column K	Enter “Y” in all cases except when the foreign source is an individual. Enter “N” if the foreign source is an individual.
Column L	Enter “N” in all cases except when the foreign source is an individual. Enter “Y” if the foreign source is an individual.
Column M	Indicate if the gift/contract is from a person/subsidiary/affiliate of a foreign legal entity, who acts as an agent of a foreign government or acts as an agent of an individual who is not a citizen or national of the United States.
Column N	If answered “Y” in column M, provide name of the foreign government, legal entity, individual, or person. If answered “N” in column M, enter “N/A”.
Column O	If available, enter complete foreign source address. At a minimum, enter name of foreign country.
Column P	Enter domestic address if applicable. For example, if gift is from an Embassy located in USA, enter the US address of the Embassy.

Column Q	If this is a Restricted or Conditional Gift/Contract, provide narrative description of all conditions or restrictions.
Column R	Enter “Y” if contract/agreement is submitted to Fiscal Services.
Column S to V	Enter Banner Org/Fund/Account/Program codes if applicable. If not applicable, enter “N/A”.
Column W	Enter any other comments that are relevant.

## **SECTION 117 ATTESTATION LETTER**

All Reporting Units must submit a signed Section 117 Attestation Letter. By signing the Attestation Letter, the Reporting Unit affirms that the unit is in compliance with all reporting obligations of Section 117. This must be submitted even if units have nothing to report.

## **REPORTING PROCESS**

Once the information is received from all of the GMU Reporting Units, Fiscal Services will consolidate the data in the following two weeks and follow up with the GMU Reporting Units if additional information is required. For example:

For reporting period January 1, 2021 to June 30, 2021 – data consolidation and follow up period is July 19, 2021 to July 30, 2021.

For reporting period July 1, 2021 to December 31, 2021 - data consolidation and follow up period is January 17, 2022 to January 31, 2022.

After consolidating the data, Fiscal Services will only report those foreign gifts and contracts, the value of which is \$250,000 or more considered alone or in combination with other gifts or contracts from the same foreign source. The information is reported via the ED’s foreign gifts & contracts reporting portal.

## **CORRECTING REPORTS**

As soon as a GMU Reporting Unit becomes aware that information was omitted or not submitted to Fiscal Services, the GMU Reporting Unit must immediately report this information to Fiscal Services without further delay.

Currently ED has not provided any guidance on how to report corrections. In the event that a correction needs to be made to a submitted report, Fiscal Services will contact ED for further guidance on submitting corrections.

## **RESOURCES**

The following can be found on ED’s foreign gifts and contracts website:

Statute - Section 117, 20 U.S.C. 1011f

<https://www.govinfo.gov/content/pkg/USCODE-2018-title20/pdf/USCODE-2018-title20-chap28-subchapI-partB-sec1011f.pdf>

Foreign Gift and Contract Online Search

<https://sites.ed.gov/foreigngifts/>

ED’s October 2020 report on Institutional Compliance with Section 117

<https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf>

The following can be found on Fiscal Service's website:

Guidance Memo

FAQs

Reporting Template

Foreign Gifts & Contracts Reporting Presentation Slides from 4.28.2021

Foreign Source Data Collection Form

### CONTACTS

<b>Name</b>	<b>Phone Number</b>	<b>Email Address</b>
Nusrat Sultana	Ext 3-2640	<a href="mailto:nsultan5@gmu.edu">nsultan5@gmu.edu</a>
Claire Wurmfeld	Ext 3-5328	<a href="mailto:cwurmfel@gmu.edu">cwurmfel@gmu.edu</a>
Sharon L. Heinle	Ext 3-6714	<a href="mailto:sheinle@gmu.edu">sheinle@gmu.edu</a>

## APPENDIX A

### DEFINITIONS

#### **Section 117 Higher Education Act, codified at 20 U.S.C. § 1011f(h)**

##### **Contract: 20 U.S.C. § 1011f(h)(1)**

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.

##### **Foreign Source: 20 U.S.C. § 1011f(h)(2)**

- (i) A foreign government, including but not limited to any agency of a foreign government;
- (ii) A legal entity, governmental or otherwise, created solely under the laws of a foreign state or states;
- (iii) An individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof;
- (iv) An agent (including a subsidiary or affiliate of a foreign legal entity) acting on behalf of a foreign source such as a foreign government, or a legal entity created solely under the laws of a foreign state or states, or an individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

##### **Gift: 20 U.S.C. § 1011f(h)(3)**

Any gift of money or property received.

##### **Institution: 20 U.S.C. § 1011f(h)(4)**

Any institution, public or private, or, if a multi-campus institution, any single campus of such institution, in any State, that:

- (i) Is legally authorized within such State to provide a program of education beyond secondary school;
- (ii) Provides a program for which the institution awards a bachelor's degree (or provides not less than a 2-year program which is acceptable for full credit toward such a degree) or more advanced degrees; and
- (iii) Is accredited by a nationally recognized accrediting agency or association and to which institution Federal financial assistance is extended (directly or indirectly through another entity or person), or which institution receives support from the extension of Federal financial assistance to any of the institution's subunits.

##### **Restricted or conditional gift or contract: 20 U.S.C. § 1011f(h)(5)**

Any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding:

- (i) The employment, assignment, or termination of faculty;
- (ii) The establishment of departments, centers, research or lecture programs, or new faculty positions;
- (iii) The selection or admission of students; or
- (iv) The awarded 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.

## APPENDIX B

### SECTION 117 REPORTING CHECKLIST

#### **YEAR LONG PREPARATION:**

- ☐ All GMU Reporting Units signing or accepting contracts and/or gifts should:
  - Adopt procedures to ascertain whether the Sponsor/Donor is a foreign source. Units can either:
    - ❖ Request that each Sponsor or Donor certify whether they are a foreign source, by requesting the Sponsor or Donor to complete the Foreign Source Data Collection Form; or
    - ❖ Make their own determination with information supplied by the Sponsor/Donor or with information otherwise at the unit'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;
    - ❖ 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.

#### **REPORTABLE INFORMATION:**

- ☐ Submit completed Reporting Template.
- ☐ Submit copies of all contracts and gift agreements.
- ☐ Submit Section 117 Attestation Letter. This must be submitted even if you have nothing to report.



A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W
1	APPENDIX C																					
2	REPORTING TEMPLATE																					
3	Disclosure of Foreign Gifts, Contracts and Relationships in accordance with the Higher Education Act, Section 117																					
4	Reporting Period: July 1, 2020 to December 31, 2020																					
5	Please indicate if this is a Gift, Contract, Restricted Gift, or Restricted Contract	Date Contract Signed or Gift Received	Total Contract Amount/Gift Amount	Contract Start Date	Contract End Date	Legal Name of Foreign Source	Is the gift/contract with a foreign government, including but not limited to any agency of a foreign government? (Y/N) If yes, provide the name of the foreign government in column I	Foreign Government Name	Given Name of Contract/Gift	Is the gift/contract from a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states? (Y/N)	Is the gift/contract from an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof? (Y/N)	Is the gift/contract from a person/subsidiary/affiliate of a foreign legal entity, who acts as an agent of a foreign government or acts as an agent of an individual who is not a citizen or national of the United States? (Y/N)	If answered yes in column M, provide name of the foreign government, legal entity, individual, or person	Foreign Source Address including Country of Origin	Domestic Address	If this is a Restricted or Conditional Gift/Contract, provide narrative description of all conditions or restrictions	Contract or Gift Agreement Included (Y/N)	Where is this gift or contract money received recorded in Banner?				Other Comments
6																		Banner Organization Code	Banner Fund Code	Banner Account Code	Banner Program Code	
7																						
8																						
9																						
10	Contract	7/1/2020	\$32,000	9/1/2020	8/31/2021	Korea Research Institute of Chemical Technology	Y	Government of South Korea	Cooperative Project (Consignment) Agreement	Y	N	N	N/A	141, Gajeong-ro, Yuseong-gu, Daejeon, South Korea	N/A	N/A	Y		223534			Research work on Development of Smart Materials for IoT Device.
11	Contract	8/1/2020	\$80,000	8/1/2020	4/30/2021	National Security Research Institute of Korea	Y	Government of South Korea	Collaborative Research Agreement - Natural Resource Investigation and Monitoring Technology	Y	N	N	N/A	1559 Yuseong-daero, Yuseong-gu, Daejeon, South Korea	N/A	N/A	Y		223444			Collaborative research work on a study of Next-Gen SOC Framework (TTP-Based Threat Situation Awareness and Detection Technique).
12	Contract	9/17/2020	\$92,074	4/1/2021	3/31/2022	Ministry of Natural Resources of the People's Republic of China	Y	Government of China	Smart City and GIS Applications	Y	N	N	N/A	China	N/A	N/A	Y		223612			To provide short-term training on Smart City and GIS Applications.
13	Contract	12/13/2020	\$82,722	7/8/2021	4/1/2023	Jiangsu Provincial Department of Natural Resources, The People's Republic of China	Y	Government of China	Fast Grants Program	Y	N	N	N/A	China	N/A	N/A	Y		223596			Gift is for Mercatus' Fast Grants program which is to provide funding for scientific research on COVID-19.
14	Gift	8/14/2020	\$1,000,000	N/A	N/A	Milner Global Foundation	N	N/A	General donation from South Korean Volley Ball Player	Y	N	N	N/A	One Bay Street, Nassau, Bahamas	N/A	N/A	N		N/A. Posted to the financial statements of Mercatus			This is a general donation from a South Korean Volley Ball Player.
15	Gift	11/16/2020	\$914	N/A	N/A	Lee Da-Young	N	N/A		N	Y	N	N/A	South Korea	N/A	N/A	N		N/A. Posted to the financial statements of Mason Korea.			