



One Dupont Circle NW  
Washington, DC 20036  
(202) 939-9300  
acenet.edu

August 16, 2022

Melanie Muenzer, Chief of Staff  
Office of the Under Secretary  
U.S. Department of Education  
400 Maryland Avenue SE  
Room 7E300  
Washington DC 20202

Lisa Brown, General Counsel  
Office of the General Counsel  
U.S. Department of Education  
400 Maryland Avenue, SE  
Room 6E301  
Washington DC 20202

Richard Cordray, Chief Operating Officer  
Office of Federal Student Aid  
U.S. Department of Education  
830 First Street, NE  
Washington DC 20202

Dear Ms. Muenzer, Ms. Brown, and Mr. Cordray:

On behalf of the American Council on Education (ACE) and the participating associations, thank you 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. The information and presentation by your teams was helpful, and we were happy to distribute the slides from that meeting to our larger community. We 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).

We hope that we can continue our engagement on the important issue of Section 117 reporting, and specifically, we would like to follow up regarding the need for timely changes to the reporting portal, and also be put in contact with the person or office who will be handling Section 117 following the transfer from OGC to FSA. In addition, we would like to schedule a second meeting where higher education participants can ask questions of ED in real time and have a more robust discussion. For example, we remain concerned that there continues to be questions and confusion around "cash in" vs. conditional value.

In our view, the information ED shared on June 23 reflects a substantial expansion of Section 117 reporting requirements, similar to what was proposed in the November 2019 and December 2019 "Information Collection Request" (ICR). As we stated at that time, the 2019 ICR process did not take into account substantial community comments or concerns, including that the "...ICR continues to clearly exceed the specific statutory authority set out in Sec. 117 by significantly expanding the disclosure reporting required under the statute."<sup>1</sup> We also remain concerned that ED continues to assert that Section 117 compliance is tied to an institution's

---

<sup>1</sup> <https://www.acenet.edu/Documents/Sec-117-Updated-ICR-Comment-Letter-Memo.pdf>

Program Participation Agreement (PPA) for the purposes of Title IV federal student aid.<sup>2</sup> As we stated in our letter of December 14, 2020, the existing statute sets out ED's Section 117 authority and enforcement mechanisms. Accordingly, we respectfully request that ED withdraw its interpretation that "[a]n institution's failure to adequately report Section 117 gifts and contracts is a violation of an institution's participation in the HEA programs and PPA under 20 U.S.C. 1094(a)(17)."

In addition, the recently passed CHIPS and Science Act of 2022 (H.R.4346) included Section 10339B Foreign Financial Support, which requires institutions of higher education receiving National Science Foundation (NSF) funding to submit to the NSF Director an annual disclosure report on any foreign gifts or contracts of \$50,000 or over. While this is an NSF reporting requirement, it does reference the definitions used in Section 117 of the Higher Education Act. We hope to engage with NSF as this provision is implemented, but as Congress creates additional reporting provisions aligned with Section 117, it will be important to have a clear understanding of Section 117 reporting requirements. Ultimately, we hope that through continued engagement and discussion with higher education stakeholders, we can improve implementation of Section 117 and address the requirements of the existing statute.

We look forward to continuing to work with ED to improve Section 117 administration by sharing questions and ensuring that the reporting required by the statute results in greater transparency regarding foreign gifts and contracts. We look forward to a future meeting where we can ask questions, and hope that the improvements to the reporting portal can be made before the next deadline.

Sincerely,



Terry Hartle, Senior Vice President

Cc: Hilary Malawer, Deputy General Counsel, Office of the General Counsel  
Kevin Slupe, Special Counsel, Office of the General Counsel  
Joanna Mikulski, Senior Policy Advisor, Domestic Policy Council  
Debbie Altenburg, Associate Vice President for Research Policy and Government Affairs, Association of Public and Land-grant Universities (APLU)  
Robert Hardy, Director of Research Security and Intellectual Property, Council on Governmental Relations (COGR)  
Toby Smith, Vice President for Policy, Association of American Universities (AAU)

---

<sup>2</sup> <https://www.acenet.edu/Documents/Comments-memo-ED-Section-117-121420.pdf>