



HEA Section 117 Reporting Guidance – Gifts from and Contracts with Foreign Sources

December 2020

Overview

Section 117 of the Higher Education Act (HEA) of 1965¹ 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.

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 by a number of disparate offices or organizations across UW–Madison, each campus department or intermediary organization is required to submit information for **all foreign source contracts and gifts received**.

Definitions²

“**Agent**” has its plain and ordinary meaning

“**Contract**” means 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**” means (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

“**Gift**” means any gift of money or property

“**Intermediary**” is an entity other than an institution that receives a gift originating from a foreign source or enters into a contract with a foreign source that is for the benefit of the institution

¹ Higher Education Act (HEA), Title 1 Part B Sec. 117, codified at 20 U.S.C. § 1011f.

² U.S. Dept. of Education’s [Foreign Gift and Contract Disclosure Form](#); 20 U.S.C. § 1011f(h); and U.S. Dept. of Education’s [Response to Public Comments \(30-day notice\)](#)

“Restricted or conditional gift or contract” means 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

Reporting Fundamentals

The UW–Madison HEA Section 117 business process for reporting to ED is posted [here](#). Any UW–Madison department, division, or intermediary organization that receives funds from a foreign source is to submit information to the Division of Business Services (DoBS) each July and January. In preparing reports to be submitted to DoBS, the UW–Madison department, division, or intermediary organization must employ the following principles.

All transactions where UW–Madison or an intermediary organization is receiving funds from a foreign source for the benefit of UW–Madison are to be disclosed to the Division of Business Services.

- Any obligations or receipts from a foreign source, regardless of dollar amount, are to be included. Intermediary organizations may agree to other arrangements with DoBS. DoBS will determine, based on all obligations or receipts across the institution, whether the \$250,000 threshold has been met or exceeded for each foreign source.
- Only report transactions to DoBS that occur on funds **other than** 133, 144, 233, and 161/162. Transactions that are recorded on funds 133, 144, and 233 will be identified and captured by RSP and DoBS, and information will be collected from the UW System Office of Trust Funds by DoBS.
- Report multiple gifts from or contracts with a single foreign source separately to DoBS. Do not combine multiple gifts or contracts into one reportable item; information regarding obligations or receipts must be disaggregated. Intermediary organizations may agree to other arrangements with DoBS.

The value of contract receipts (excluding fee-for-service contracts) are to be included in the semi-annual report to the Division of Business Services for only the obligated funds or known contract value at the time of signing, regardless of the duration of the contract.

For example: A contract is signed in February 2021 for UWMSN to receive \$500,000 each year for three years. The first \$500,000 is obligated in March 2021, however certain deliverables need to be met by UWMSN in each of the subsequent years in order to receive the remaining funds. UWMSN would report the \$500,000 obligated value in the July 2021 disclosure report. The remaining amounts would be reported in the calendar year in which they are obligated.

If the value of the contract is unknown at the time of signing, transactions are to be included in the report to DoBS when the monies are received. This would include receipts from clinical trials and student tuition.

Receipts from fee-for-service contracts are to be included in the semi-annual report to the Division of Business Services when monies are received. Fee-for-service contracts are typically

contracts where RSP negotiates the agreements, but the departments or divisions manage invoicing the contracting party and collecting receipts.

Gifts from foreign sources, both monetary and in-kind, are to be included in the semi-annual report to the Division of Business Services when they are received. If UW–Madison or an intermediary receives all or a portion of a pledge or bequest that meets the reporting threshold, that portion of a pledge or bequest must be reported.

UW–Madison is required to perform “reasonable due diligence” to determine if a party meets the definition of a foreign source. Each department that receives payments from a foreign source is to maintain documentation of how the foreign source designation was determined. A brief questionnaire can be used to satisfy this requirement and obtain the information from donors and contracting parties to verify the source designation, as well as identify affiliate or subsidiary relationships with foreign entities that may not be obvious. UW–Madison questionnaires for both organizations and individuals are available [here](#). Any completed questionnaires obtained are to be retained by the department/division should they ever be needed upon request.

Intermediary organizations must perform due diligence to determine whether they have reportable gifts from or contracts with a foreign source. Intermediaries can elect to use the UW–Madison questionnaire or their own documentation but are ultimately responsible for the manner in which due diligence is performed. Intermediaries are to retain questionnaires or other documentation regarding foreign source designation should it ever be needed upon request.

Transactions where UW–Madison is making a purchase from a foreign entity are typically not required to be reported. However, an atypical transaction, such as a purchase with a deep discount, should be evaluated for any potential reportable elements.

Reporting Frequency and Submission

Section 117 reporting is performed semi-annually on a calendar year basis. Transactions must be reported to the Division of Business Services at a minimum of twice per calendar year that occur within a calendar year period. Transactions can be reported to DoBS more frequently based on the preferences of the department, division, or intermediary.

- Report transactions that occurred between January – June no later than July 20th.
- Report transactions that occurred between July – December no later than January 20th.
 - Any transactions from January – June that were not previously reported for any reason are to be included in the July – December report.

Foreign source receipt information can be submitted via email to the following address: foreignreceipts@bussvc.wisc.edu, and is to be submitted using the applicable gift and/or contract excel template located [here](#).

Departments are to work with their Dean, Director, or Divisional Business Office to determine who will be responsible for reporting the foreign receipt information to the Division of Business Services. (i.e. the department or the Dean, Director, or Divisional Business Office) It is

considered a best practice for departments to report the foreign receipt information to a representative in their Dean, Director, or Divisional Business Office who will then be responsible for reviewing and reporting the information to the Division of Business Services.

Frequently Asked Questions

See Appendix A for various Q and A topics regarding Section 117 reporting.

Contact

For any unusual circumstances or transactions that are not addressed in these guidelines, please contact the Division of Business Services at foreignreceipts@bussvc.wisc.edu.

Reference

U.S. Department of Education Section 117 website:
<https://www2.ed.gov/policy/highered/leg/foreign-gifts.html>

Intermediary Organization Information

Gifts or contracts reported from intermediary organizations to the Division of Business Services are not business records of UW–Madison and will be treated as confidential information of the intermediary and will not be used or disclosed for any purpose other than for inclusion in UW–Madison’s report to the U.S. Department of Education, if DoBS determines such inclusion is required. Should UW–Madison receive a records request, subpoena or other order to divulge copies of intermediary gifts or contracts, UW–Madison will work cooperatively with the affected intermediary(ies) to provide an opportunity for the intermediary to seek relief.

Appendix A: Frequently Asked Questions on Section 117 Reporting

Q: What is a foreign source for purposes of HEA Section 117? Are U.S. subsidiaries and affiliates of foreign entities considered to be a foreign source?

A: Under HEA, Section 117, foreign source means:

- (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;³

ED does not consider an individual who has dual citizenship that includes United States citizenship to be a foreign source under 20 U.S.C. 1011f(h)(2)(C).⁴

The term includes subsidiaries and affiliates (see subsection D) of a foreign legal entity acting on behalf of a foreign source. While there might be circumstances in which a subsidiary or affiliate of a foreign entity is not acting on behalf of that foreign entity, for ease of reporting and consistency, UW–Madison departments and intermediary organizations should treat all affiliates and subsidiaries of foreign legal entities as foreign sources for purposes of HEA Section 117 reporting.

Q: How do I know if a source is a subsidiary or affiliate of a foreign entity?

A: ED requires institutions to perform due diligence and “make a good faith effort” to make the determination. Since affiliate relationships are not always obvious, for all transactions entered into after December 31, 2019, UW–Madison departments can request that a sponsor or donor complete a questionnaire, available [here](#). The department or intermediary organization should make its own determination with information supplied by the sponsor/donor or with information otherwise at the department’s or intermediary’s disposal.

Q: Are we supposed to report all receipts from foreign sources to the Division of Business Services, or just those that add up to \$250,000 or more from a single foreign source?

A: All receipts from foreign sources are to be reported to the Division of Business Services. DoBS will review all receipt information provided by the entire institution and intermediary organizations to determine whether receipts from each foreign source meet or exceed the reporting threshold.

³ [20 USC § 1011f\(h\)\(2\)](#)

⁴ See “Response to Public Comments (60-day notice)”, page 5, on ED’s HEA Section 117 site (<https://www2.ed.gov/policy/highered/leg/foreign-gifts.html>)

Q: What are examples of contracts that should be reported to Department of Education?

A: Contracts include sponsored research contracts and grants, service contracts, revenue-generating contracts such as fee-for-service contracts, leases, barter, intellectual property license fees, data or materials sold, tuition for students, and other agreements involving the inflow of funds or property to UW–Madison from a foreign source.

Q: Do we need to report contracts and agreements where we are paying a foreign entity?

A: In Department of Education’s April 13, 2020⁵ response to public comments, ED interprets the definition of contract to exclude a contract involving the transfer of funds FROM an institution TO a foreign source.

Q: Do we need to report property or services received from a foreign source by way of donation or barter?

A: Any property or services received as a donation from a foreign source that were not reported to the Division of Business Services through the [Gift in Kind](#) process for any reason are to be included in the Section 117 reporting. Property or services that were reported to DoBS through the Gift in Kind process will be captured by DoBS. Any property or services received from a foreign source through a barter or exchange agreement are to be included in the Section 117 reporting.

Q: Do we need to report amounts received from foreign sources at UW Foundation or UW System Trust Funds?

A: DoBS will request and collect any potential reportable information from UW Foundation and the UW System Office of Trust Funds, as well as other intermediary organizations. Campus departments/divisions do not need to report amounts received at organizations outside of UW–Madison.

Q: Do we need to report receipts from foreign sources where there is no signed contract in place? For example, invoiced products or services?

A: Yes, all receipts from foreign sources must be reported to the Division of Business Services. DoBS will determine what foreign receipts are reported to the Department of Education based on institution wide information.

Q: HEA Section 117 refers to gifts and contracts only; how do we report grants?

A: Grants are considered contracts for the purpose of HEA Section 117 reporting.

⁵ See “Response to Public Comments (60-day notice)” at <https://www2.ed.gov/policy/highered/leg/foreign-gifts.html>

Q: How would we know if a gift or contract meets the definition of “Restricted or conditional gift or contract”?

A: Most contracts and gifts to UW–Madison would likely not meet the conditions 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. Research contracts (which include grants) from a foreign source in support of a research project proposed and defined by UW–Madison must be reported under HEA Section 117, but do not normally meet the definition of a “Restricted or conditional gift or contract.”

Q: What happens if we’ve signed a contract and it is later amended to increase or decrease the dollar value UW–Madison will receive from the foreign source?

A: The Department of Education has not provided guidance regarding this type of scenario. Until it does, UW–Madison is treating each calendar year independently for reporting purposes. Any transactions or receipts within the same calendar year from the same foreign source will be evaluated on whether they, in aggregate, meet or exceed the reporting threshold. If any transactions or receipts occur in a subsequent calendar year, they will be considered independently of the original transactions or receipts. See Example 5 below.

Q: How do we calculate amounts aggregated by sponsor?

A: 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. UW–Madison departments or intermediary organizations should therefore report all foreign source gifts and contracts (regardless of the amount) to the Division of Business Services, who will then sum up all the values to determine if the threshold has been met. The final contract signature date or gift acceptance date should be used to determine which contracts or gifts to report in a given reporting period. The examples below show how to calculate the totals. Note that reporting start and end dates are only required for contracts; only the receipt date is required for gifts.

Example 1

A UW–Madison department 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 time period to be reported exceeds \$250,000, the department would report all three transactions to DoBS.

UW–Madison would include a total of \$300,000 from foreign source A in its July report to ED.

Example 2

In the January - June reporting period, an intermediary organization receives a total of \$200,000 from foreign source B, and \$60,000 from the same foreign source in the July - December reporting period.

The intermediary organization would include \$200,000 from foreign source B in the Jan. - June report to DoBS. However, it would not be included in UW–Madison’s Jan. – June report to ED, because it does not meet the \$250,000 threshold. The tally from the first six months of a calendar year rolls over to the next six months of a calendar year for the purpose of determining whether a foreign source should be reported, so the intermediary organization would include \$60,000 in the July – December report to DoBS.

UW–Madison would then include the entire \$260,000 in the July - December report (submitted in January for the previous calendar year) to ED.

Example 3

In the January - June reporting period, a UW–Madison department receives a total of \$800,000 from foreign source C, and \$300,000 from the same foreign source in the July - December reporting period.

Since the department should have already reported the \$800,000 from foreign source C to DoBS in the January - June report, only the additional \$300,000 needs to be reported to DoBS in the July-December report. In other words, values previously reported should not be repeated.

UW–Madison would include \$800,000 in its July report to ED and \$300,000 in its January report to ED.

Example 4

An intermediary organization reported \$800,000 in support from foreign source D in the January - June reporting period, and then receives another award for \$60,000 in the July - December period.

The organization should report to DoBS the additional \$60,000 in the July - December report.

UW–Madison would include \$800,000 in its July report to ED and \$60,000 in its January report, because it needs to capture all amounts in excess of \$250,000 in a calendar year.

Example 5

In 2020, a UW–Madison department receives a contract of \$400,000 from foreign source E. The department reports the amount to DoBS, and UW–Madison would include the contract in its report to ED.

In 2021, the same UW–Madison department receives an amendment of an additional \$100,000 to the original contract from foreign source E. The department reports the amount to DoBS. UW–Madison does not include the \$100,000 amendment in its report to ED, because the amount received in 2021 does not meet or exceed the \$250,000 threshold.