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Heightened Focus on Foreign Influence in Academia

Department of Education Report Warns that Academic Institutions Are Failing to Meet Compliance Obligations in Fight Against Foreign Influence

Last month the Department of Education (“DOE” or “Department”) released an unusual public report (“Report”) “to highlight for institutions of higher education the importance of compliant, transparent, and effective reporting under Section 117” and to “assist schools in assessing the state of their compliance.”¹ Section 117 of the Higher Education Act of 1965 requires institutions of higher education to submit disclosure reports to DOE concerning gifts received from any foreign source, contracts with a foreign entity, and any ownership interests in or control over the institution by a foreign entity.² The Report details the Department’s initial findings from twelve Section 117 compliance investigations launched in less than two years³ and found that U.S. institutions failed to meet Section 117 disclosure requirements with “fewer than 300 of the approximately 6,000 U.S. institutions self-report[ing] foreign money each year.”⁴ In explaining the Report’s importance, U.S. Secretary of Education Betsy DeVos pointedly remarked: “The threat of improper foreign influence in higher education is real . . . Transparency in foreign funding of higher education is . . . the law. For too long, enforcement of that law was lax, but not anymore.”⁵

To this end, the Report makes several observations based on the dozen Section 117 investigations, including:

- *Reporting requirements are not being met.* As an example, the Report notes that one institution failed to disclose more than \$760 million in funding and then was “dumbfounded” to explain this reporting error.⁶
- *Legal and accounting processes are inadequate.* Among other issues, the Report notes that higher education institutions often lack a single “point-person” with Section 117 compliance oversight responsibilities, universities have internal disagreements over legal interpretations of Section 117’s requirements, and there is a lack of third-party auditing and integration between institutional financial ledger systems and contractual records.⁷



- *Inadequate oversight of transactions with foreign governments and individuals.* The Report further noted the need for timely disclosures of foreign gifts and contracts under Section 117 and found that institutions regularly work with foreign entities that pose national security risks which are not being disclosed, including multimillion-dollar contracts with Huawei and agreements with foreign governments, including China.⁸

Key Takeaways

The Department makes clear that “[c]ompliant Section 117 reporting requires a significant culture change in the higher education industry”⁹ and lays out a number of steps it intends to take, including:

- Referring cases to the Department of Justice for criminal investigation and enforcement.
- Identifying auditing best practices and encouraging compliance opinions from third-party auditors, to improve compliance auditing.
- Providing in-depth updates to Congress.

The Report on Section 117 compliance shortcomings should be viewed as part of a larger and irreversible push by the federal government to increase oversight and reporting of potential foreign influence and conflicts of interest in academia. These efforts extend far beyond the Department of Education and include:

- Potential civil liability arising from foreign conflicts of interest under the False Claims Act (as addressed in a prior client alert, available [here](#));
- Increased regulation and oversight of foreign influence and conflict of interest disclosures affecting federally funded research by a panoply of agencies, including: the National Institutes of Health, National Science Foundation, Department of Energy, Department of Defense, and National Aeronautics and Space Administration, among others;
- Criminal investigations by the Federal Bureau of Investigation and Department of Justice of individual university professors and institutions;
- Heightened congressional attention and inquiries into foreign influence issues; and
- Potential legislative action intended to further heighten scrutiny over foreign influence in academia.

Regardless of any changes to senior political leadership, federal agencies will continue to focus intently on foreign influence, disclosure, and funding in higher education and among research institutions. This Report highlights the need for institutions to assess and potentially reevaluate their approach to addressing these issues. Most importantly, and in light of the increased scrutiny that institutions are facing from a wide array of federal agencies, institutions should evaluate their overall compliance and audit regimes and confirm that adequate measures are in place for due diligence, internal controls, monitoring legal and enforcement updates, educating relevant personnel and potential investigative or espionage targets, and (as necessary) responding to law enforcement.



¹ OFFICE OF THE GEN. COUNSEL, U.S. DEP'T OF EDUC., INSTITUTIONAL COMPLIANCE WITH SECTION 117 OF THE HIGHER EDUCATION ACT OF 1965 at 3 (Oct. 2020), <https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf> [hereinafter REPORT].

² 20 U.S.C. 1011f(a); *see also Section 117 of the Higher Education Act of 1965*, U.S. DEPARTMENT OF EDUCATION, www2.ed.gov/policy/highered/leg/foreign-gifts.html (last modified Oct. 23, 2020).

³ REPORT, *supra* note 1, at 13.

⁴ REPORT, *supra* note 1, at 7.

⁵ Press release, U.S. Dep't of Educ., U.S. Department of Education Uncovers Vast Underreporting of Foreign Gifts and Contracts by Higher Education Institutions (Oct. 20, 2020), <https://www.ed.gov/news/press-releases/us-department-education-uncovers-vast-underreporting-foreign-gifts-and-contracts-higher-education-institutions>.

⁶ REPORT, *supra* note 1, at 15.

⁷ REPORT, *supra* note 1, at 17–18.

⁸ REPORT, *supra* note 1, at 18–27.

⁹ REPORT, *supra* note 1, at 34.

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