

Comparison of Reporting Obligations Pursuant to Section 117 of the Higher Education Act of 1965 and Section 10339B of the CHIPS & Science Act

Last updated June 6, 2024

	Section 117 of the Higher Education Act of 1965 “Section 117 Reporting”	Section 10339B of the CHIPS & Science Act “Foreign Financial Disclosure Report” or “FFDR”
Agency Overseeing the Reporting Obligation	U.S. Department of Education (“ED”)	National Science Foundation (“NSF”)
Overview of Reporting Obligation	<p>Institutions of higher education (“IHEs”) must submit affirmative reports on a semiannual basis for any gifts from and contracts with a foreign source that, alone or combined, are valued at \$250,000 or more in a calendar year. IHEs must also report if the IHE is owned or controlled by a foreign source.</p> <p>20 U.S.C. § 1011f.</p>	<p>IHEs that are direct recipients of NSF funding on or after May 20, 2024, must submit annual affirmative and negative reports of all financial support at or in excess of \$50,000 received from any source associated with a foreign country of concern.</p> <p>42 U.S.C. § 19040.</p>
General Requirements for the Reporting Obligation		
Reporting Deadlines	<p>Beginning in 1986, IHEs must submit reports on a semiannual basis: January 31 for reportable transactions occurring between July 1 and December 31 and July 31 for reportable transactions occurring between January 1 and June 30 of the reporting year.</p> <p>20 U.S.C. §1011f(a); FSA Frequently Asked Questions.</p>	<p>Beginning July 31, 2024,* IHEs receiving NSF funding on or after May 20, 2024, must submit reports on an annual basis for the preceding 12-month period—from July 1 of the prior year to June 30 of the reporting year.</p> <p>* NSF is providing a one-time grace period for the initial report until September 3, 2024 at 5:00 pm (based on the submitting organization’s local time).</p> <p>42 U.S.C. § 19040; PAPPG, Chapter VII.D.3: FFDR Requirements.</p>

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Entities Subject to the Reporting Obligation	<p>“Institutions of higher education,” as defined at 20 U.S.C. § 1001(a).</p> <p>As noted below, per ED guidance, the reporting obligation also applies for financial arrangements with any “intermediaries” of the IHE.</p> <p>ED Presentation, Section 117 of the Higher Education Act (Apr. 2023).</p>	<p>“Institutions of higher education,” as defined at 20 U.S.C. § 1001(a), that are direct recipients of NSF funding (including new awards or amendments to existing awards) on or after May 20, 2024.</p> <p>The reporting obligation also applies to a foundation of the institution and “related entities” such as any educational, cultural, or language entity that is affiliated with the IHE.</p> <p>As noted below, per NSF guidance, the reporting obligation also applies for financial arrangements with any “intermediaries” of the IHE.</p> <p>The reporting obligation does not apply to IHEs that receive NSF subawards but no applicable direct NSF awards.</p> <p>42 U.S.C. § 19040; PAPPG, Chapter VII.D.3: FFDR Requirements.</p>
Reporting on Financial Arrangements with an Intermediary	<p>IHEs must also report funds received by “intermediaries.”</p> <p>“[A]n intermediary may be a legal entity other than an institution that receives a gift originating from or enters into a contract with a foreign source, and then passes to an institution part or all of the benefit of the gift or contract with the foreign source.”</p> <p>An intermediary need not be an “institution” or “fall under the direct control of an institution,” but “may operate under the auspices of, or on behalf of, an institution, which is when an entity is acting as a representative or agent of the institution and thus in furtherance of the institution’s interests.”</p> <p>Once an entity meets the definition of an intermediary, then there is a rebuttable presumption that money received by an intermediary is for the benefit of the institution.</p> <p>Example from ED Guidance</p> <p>An IHE establishes, manages, and operates a laboratory, off campus grounds, to conduct scientific research. In some instances, laboratory employees may even be treated as employees of the institution. If a foreign source were to contract with the laboratory, for purposes of conducting scientific research, and the contract were valued at \$250,000 or more, then the institution would be required to report the contract.</p> <p>FSA Frequently Asked Questions: Foreign Gifts and Contract Disclosures Summary of Public Comments with Responses (Apr. 24, 2023); ED Presentation, Section 117 of the Higher Education Act (Apr. 2023).</p>	<p>Applicable IHEs must also report funds received by “intermediaries.”</p> <p>An “intermediary” is defined as an individual or legal entity other than an IHE that receives a gift or contract from a foreign source and then passes part or all of the gift or contract to the IHE.</p> <p>Example from NSF Guidance</p> <p>If an IHE receives a gift from a European foundation but the source of the gift originates from a country of concern and is greater than or equal to \$50,000, the IHE must list the source of the gift as the foreign source based in the country of concern; the country of attribution should be the country of concern, and the intermediary would be the European foundation.</p> <p>FFDR Requirements.</p>

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Threshold for Reporting Obligation and Applicable Financial Arrangements	<p>IHEs must report any gifts and contracts, including restricted or conditional gifts or contracts, valued at \$250,000 or more.</p> <p>“Gift” is any gift of money or property.</p> <p>“Contract” is 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.</p> <p>“Restricted or conditional gift or contract” is any endowment, gift, grant, contract, award, present, or property of any kind that includes provisions regarding—</p> <ol style="list-style-type: none"> 1. The employment, assignment, or termination of faculty; 2. The establishment of departments, centers, research or lecture programs, or new faculty positions; 3. The selection or admission of students; or 4. 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. <p>20 U.S.C. § 1011f(h)(1), (3), and (5).</p>	<p>Applicable IHEs must report any financial support, including gifts and contracts, valued at or in excess of \$50,000.</p> <p>“Gift” means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, license, special access, equipment time, samples, research data, or other item having monetary value. A gift also includes services as well as gifts of training, transportation, local travel, lodging, meals, research hours, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has occurred. A gift by definition is given without expectation of anything in return.</p> <p>“Contract” means a source of financial support that does not fall under the definition of a gift for the purposes of the FFDR.</p> <p>FFDR Definitions.</p>
Foreign Source for Reporting Obligation	<p>IHEs must report any gifts or contracts received from a “foreign source” that meet the \$250,000 threshold.</p> <p>“Foreign source” means—</p> <ol style="list-style-type: none"> 1. A foreign government, including an agency of a foreign government; 2. A legal entity, governmental or otherwise, created solely under the laws of a foreign state or states; 3. An individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; and 4. An agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source. <p>20 U.S.C. § 1011f.</p>	<p>Applicable IHEs must report any financial support received from a foreign source associated with a “foreign country of concern.”</p> <p>“Foreign source” has the same meaning as Section 117.</p> <p>“Foreign country of concern” means –</p> <ol style="list-style-type: none"> 1. The People’s Republic of China (but not the special administrative regions of Macau and Hong Kong); 2. The Democratic People’s Republic of Korea; 3. The Russian Federation; 4. The Islamic Republic of Iran; or 5. Any other country deemed to be a country of concern as determined by the Secretary of State. <p>42 U.S.C. § 19221; FFDR Definitions.</p>

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Penalties for Failures to Submit Timely or Accurate Reports	<p>IHEs should conduct "reasonable due diligence in ascertaining the source of the funds that they receive from an entity, including legal entities that operate for the benefit of or under the auspices of the institution."</p> <p>If an IHE fails to comply with Section 117, the U.S. Attorney General may file a civil action to compel the IHE to comply with the reporting obligation and, for knowing or willful failure to comply, the IHE will be required to pay the costs for any investigation and enforcement.</p> <p>20 U.S.C. § 1011f(f); FSA Frequently Asked Questions.</p>	<p>If an IHE fails to timely submit reports, NSF will delay the processing of additional funding and administrative actions, including no-cost extensions. In the case of continuing grants, failure to submit timely reports will delay processing of funding increments.</p> <p>FFDR Preparation and Submission.</p>
Specific Issues Regarding the Reporting Obligation		
Tuition from a Foreign Source	<p>Although student sponsorship agreements are reportable under the statute, per ED guidance, tuition payments alone are unlikely to meet the threshold except where a foreign source is paying tuition for multiple students.</p> <p>If an IHE has several student sponsorship agreements that each meet or exceed the threshold, and if the terms of the agreements are substantially the same, the IHE may aggregate the transactions and report them collectively.</p> <p>20 U.S.C. § 1011f(h)(5)(D); FSA Frequently Asked Questions.</p>	<p>Tuition payments for a specific student(s) are excluded from the reporting requirement.</p> <p>If tuition payment is received from a foreign source in the form of a grant, scholarship, or other form of financial aid that stipulates a specific criterion (e.g., student's country of origin, students with a particular major, students studying a particular language, etc.), but not for the benefit of a sole student, the payment is reportable when the cumulative threshold of \$50,000 from a foreign source is met.</p> <p>Tuition for non-matriculated students has the same reporting requirements as tuition for matriculated students.</p> <p>PAPPG, Chapter VII.D.3; FFDR Requirements.</p>

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Multi-Year Financial Arrangements	<p>IHEs must “disclose a contract based on the anticipated value at the time it is entered into” if such anticipated value is at or above the \$250,000 threshold.</p> <p>“Given the valuation challenges presented by certain contracts (e.g., indefinite delivery/indefinite quantity contracts), institutions may wish to consider simply reporting contracts whose values could meet or exceed the statutory threshold to avoid potential non-compliance.”</p> <p>“Generally, reasonably valued contracts need only be reported once. Institutions should file updates when previously reported information is determined to be materially inaccurate.”</p> <p>FSA Frequently Asked Questions.</p>	<p>Multi-year gifts and contracts are only required to be reported in the first year the gift is received or the first year in which the contract is initiated, and are reportable only if the total amount received across all years is greater than or equal to \$50,000.</p> <p>The full gift or contract amount must be reported in the first FFDR after receipt of the gift or the initiation of the contract.</p> <p>If the gift was received or the contract initiated before the reporting period beginning July 1, 2023, the reporting entity is not required to report the gift or contract.</p> <p>FFDR Requirements.</p>
Modifications to Reporting After Submission	<p>To edit a submitted report, the IHE must flag that submission for withdrawal and re-submit a corrected disclosure report in full. At that point, ED will mark the disclosure report as withdrawn.</p> <p>FSA Frequently Asked Questions.</p>	<p>Submission preparers will be able to edit submitted reports up until the submission deadline when the submission window closes.</p> <p>After the submission deadline, a submitted report cannot be deleted and any modifications to submitted reports must be requested directly to NSF.</p> <p>FFDR Post-Submission.</p>