



Brigham Young University–Hawaii
Office of Compliance & Ethics Research Memo
HEA Disclosure of Foreign Gifts

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| Law/Act: | Higher Education Act Disclosure of Foreign Gifts requirements | |
| U.S. Code Citation: | 20 U.S.C. § 1011f | |
| Code of Federal Regulations Citation: | N/A | |
| Responsible Regulator: | U.S. Department of Education | |
| BYU–Hawaii Responsible Officer: | Administrative VP/Chief Financial Officer | |
| | Updated: December 2013 | Updated By: TDS |
| | Version 1.0 | Effective Date: 1986 |

I. PURPOSE

The provision on foreign gift reporting in the Higher Education Act seeks to “protect academic integrity threatened by gifts or contracts with foreign entities containing all sorts of restrictive conditions.”¹

II. HISTORY

The Higher Education Act (HEA) was originally enacted in 1965.² Amendments to the Higher Education Act passed in 1986 contain provisions requiring institutions of higher education to disclose gifts and contracts from foreign sources.³ The provision on foreign gift reporting was drafted and sponsored by the American Jewish Congress.⁴ Efforts to enact the provision were influenced by Georgetown University’s acceptance of large gifts from Arab governments in order to create an Arab studies center.⁵ Since being enacted, the requirements related to disclosure of foreign gifts have been moved to different sections of the U.S. Code, but they have not been substantially revised.⁶ No federal regulations related to this particular provision of the HEA have been adopted.⁷

¹ Will Maslow, Letter to the Editor, *Education Act Would Curb Foreign Gifts*, N.Y. TIMES, Oct. 16, 1986, at A30 (giving a statement from the general counsel for the American Jewish Congress, which sponsored the provision regarding foreign gift reporting). According to news sources, legislation requiring disclosure of foreign gifts “was prompted by reports that Arab countries and organizations had donated gifts to universities with provisions preventing Jewish students or faculty members from using benefits from those gifts. Edward A. Gargan, *Disclosure Bill on College Aid Sent to Cuomo*, N.Y. TIMES, June 1, 1984, at B1.

² Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (1965).

³ See Higher Education Act Amendments of 1986, Pub. L. No. 99-498, Title XII, § 1206, 100 Stat. 1268, 1577, (1986).

⁴ Maslow, *supra* note 1.

⁵ *Id.*

⁶ Compare 20 U.S.C. § 1145d (1988), with 20 U.S.C. § 1011f (showing that the gift disclosure requirements have not substantially changed). See also Higher Education Act Amendments of 1998, Pub. L. No. 105-244, Title I, § 117, 112 Stat. 1581, 1593 (1998) (effecting the most recent citation change for the provisions). The gift disclosure provision was repealed through a sunset provision in 1989, but was reenacted in 1992. Compare Higher Education Amendment Act Amendments of 1986, Pub. L. No. 99-498, Title XII, § 1206(b) (1986) and Higher Education Technical Amendments Act of 1987, Pub. L. No. 100-50, § 22(f) (1987) with Higher Education Amendments of 1992, Pub. L. No. 102-325, Title XII, § 1204 (showing that the disclosure requirements were reenacted in 1992 after the sunset provision enacted in 1986 and corrected in 1987 took effect in 1989).

⁷ See U.S. DEP’T OF EDUC., DEAR COLLEAGUE LETTER (Feb. 1, 1995), stating that “[a]lthough the statute permits the Secretary [of Education] to issue regulations concerning this reporting requirement, the Secretary has determined that regulations are unnecessary”).



III. APPLICABILITY TO BYU–HAWAII

Foreign gift and contract disclosure is a requirement for all public and private institutions that are legally authorized by a state to provide postsecondary education, provide a program for credit towards a bachelor's or advanced degree, are nationally accredited, and receive federal financial assistance.⁸ Since BYU–Hawaii is legally authorized as an institution of higher education by the state of Hawaii, provides degree programs, is nationally accredited, and receives federal financial assistance, BYU–Hawaii is subject to the HEA's foreign gift and contract disclosure requirements.

IV. REQUIREMENTS

Under the HEA, educational institutions are required to report gifts of money or property received from foreign sources as well as contracts entered into with foreign sources to the U.S. Secretary of Education.⁹ The law defines a foreign source as

- A foreign government;
- A legal entity (including government entities) created solely under the foreign laws;
- An individual who is not a citizen or national of the United States or its territories and protectorates; or
- An agent, subsidiary, or affiliate of a foreign legal entity acting on behalf of any of the above three types of sources.¹⁰

Reports are required only for gifts from and contracts with a single source that have an aggregate value of \$250,000 or more during a single calendar year.¹¹ The law defines a contract as "any agreement for the acquisition . . . of property or services by the foreign source, for the direct benefit or use of either of the parties."¹² The law treats gifts and contracts equally, and both gifts and contracts must be disclosed if their value is over \$250,000.¹³ All gift disclosure reports are public records, and must be available for inspection and copying during business hours.¹⁴

Report Contents

Reports vary depending on the nature of the foreign entity that gives the gift.¹⁵ The law provides for three major categories of gifts:

(1) Gifts from a foreign source that is not a government. Reports of this type must contain the aggregate dollar amount of the gift(s), and the giver's country of citizenship if the gift is given by a natural person, or the country of incorporation if the gift is from a legal entity.¹⁶ If the country of incorporation is unknown, the report should instead include the principal place of business.¹⁷

⁸ 20 U.S.C. § 1011f(h)(4)(A)-(C).

⁹ *Id.* § 1011f(a).

¹⁰ *Id.* § 1011f(h)(2).

¹¹ *Id.* § 1011f(a).

¹² *Id.* § 1011f(h)(1). Because the law treats gifts and contracts identically, the remainder of this memo will refer only to gifts, although all provisions apply to both gifts and contracts.

¹³ *Id.* § 1011f(a).

¹⁴ *Id.* § 1011f(e).

¹⁵ *Id.* § 1011f(b)(1)-(3).

¹⁶ *Id.* § 1011f(b)(1).

¹⁷ *Id.*



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(2) Gifts from a foreign government. These reports must include the aggregate dollar amount of the gifts.¹⁸

(3) Restricted and conditional gifts. This type of report incurs further reporting requirements.¹⁹ A gift is restricted or conditional if it contains provisions regarding any of the following:

- Employment, assignment, or termination of faculty;
- Establishment of departments, centers, research or lecture programs, or new faculty positions;
- Student admissions;
- Award of grants, loans, scholarships, fellowships, or financial aid, if the aid is restricted to students of a certain country, religion, sex, ethnic origin, or political opinion.²⁰

Reports on restricted or conditional gifts must contain the dollar amount, the date, and a description of the gift's conditions and restrictions, in addition to the source information that would be provided in a report on unconditional and unrestricted gifts.²¹

Alternate Reports

If the institution receiving the gift is required to submit a foreign gift report under state law, or under requirements from another federal department, agency, or bureau, the report under that law or requirement may be submitted to the Secretary of Education instead of the report that is normally required.²²

Submitting the Report

In order to submit the required report, institutions should use the Department of Education's Federal Student Aid Case Management Teams' electronic application process website (www.eligcert.ed.gov).²³ The applicable section of the form is Section K, Question 71, which deals with information about the foreign gifts and contracts, as well as Section L, which is a signature page.²⁴ The information may be submitted electronically, but the signature page must be mailed to the address provided on the form.²⁵

In the case of missed reports, the institution "should immediately file all of the missed reports."²⁶ Neither the law nor guidance from the Department of Education indicates that there is a limit on how many missed disclosures from the past must be filed.

Enforcement

¹⁸ *Id.* § 1011f(b)(2).

¹⁹ *Id.* § 1011f(c).

²⁰ *Id.* § 1011f(h)(5)(A)-(D).

²¹ *Id.* § 1011f(c)(1)-(2).

²² *Id.* § 1011f(d).

²³ U.S. DEP'T OF EDUC., DEAR COLLEAGUE LETTER (Oct. 4, 2004), *available at* https://www.insidehighered.com/sites/default/server_files/media/2004%20IFAP%20-%20Dear%20Colleague%20Letter.pdf.

²⁴ *Id.* While the Dear Colleague Letter lists question 69 as the question about foreign gifts and contracts, current forms solicit this information at question 71.

²⁵ *Id.*

²⁶ *Id.*



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If the Department of Education believes an institution has failed to submit required reports, the Secretary of Education may request that the Attorney General bring a civil action to compel the institution to submit the required reports.²⁷ Institutions that willfully fail to submit the reports are required to pay the full costs of the investigation and enforcement actions that were required to obtain the reports.²⁸

V. COMPLIANCE CALENDAR

When gift amounts for a certain source reach the reporting threshold for a calendar year, the institution must file its report with the Secretary of Education on January 31 or July 31, whichever is sooner.²⁹

VI. STAYING UP-TO-DATE

The following websites provide valuable information regarding this law and its applicability.

| DOCUMENT/REFERENCE | DESCRIPTION |
|---|---|
| http://www.ifap.ed.gov/dpcletters/GEN0411.html | Department of Education guidance on submitting foreign gift and contract reports. |
| http://www.eligcert.ed.gov/ows-doc/eapp.pdf | Department of Education form for submitting gift and contract information (see page 42, question 71). |
| http://policies.emory.edu/2.120 | Emory University's policy on foreign gift reporting. |

²⁷ 20 U.S.C. § 1011f(f)(1).

²⁸ *Id.* § 1011f(f)(2).

²⁹ *Id.* § 1011f(a).