

UNIVERSITY OF TOLEDO
FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 REPORTING PROTOCOL

Policy statement

Section 117 of the Higher Education Act (HEA) of 1965 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.

Purpose of policy

The University of Toledo receives significant funding from federal student financial aid programs, including grants and scholarships, graduate fellowships, loans, and work-study. The ED is authorized to undertake a civil action in federal district court to ensure compliance if a school fails to comply with the HEA Section 117 requirements in a timely manner. Schools knowingly or willfully failing to comply must reimburse the U.S. Treasury for the full cost of obtaining compliance. Institutions may be subject to investigation by the ED for under-reporting.

UToledo divisions should assess and, if necessary, strengthen their processes for complying with the Section 117 reporting requirements. This policy provides guidance to divisions, including a description of the reporting requirements and UToledo recommendations for risk mitigation. This policy also includes a link to supporting procedures, including definitions of HEA Section 117 Terms, and an HEA Section 117 Reporting: UToledo Checklist.

In developing this UToledo guidance, the Internal Audit unit used currently available public sources, and coordinated with Research, Government Relations, Institutional Advancement, and Financial Aid at UToledo to further provide divisions with additional recommendations.

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE

FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE

SECTION 117 OF THE HEA REPORTING PROTOCOL

Introduction

Regarding complying with Section 117 of the HEA, the UToledo has taken the position of developing and following internal procedures for reporting and documenting the decision to report or not report based on the sources provided by ED. UToledo continue to watch for updated ED guidance and update these procedures appropriately.

These procedures formulate a written protocol to address this regulatory area. UToledo has thought critically about how to resolve any reporting issues to develop a reasonable position with regards to collecting, analyzing, and reporting the information. UToledo has memorialized all positions taken in a formal Section 117 reporting protocol shared with relevant stakeholders in the Section 117 reporting process.

HEA Section 117 Reporting Basics

Definition of Foreign Source

HEA Section 117 defines a Foreign Source as:

- (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.

UToledo recommends that UToledo locations adopt procedures under which any UToledo unit signing or accepting a Contract or Gift should ascertain whether the other party is a Foreign Source as defined above and its associated country. This can be done either by 1) the UToledo unit making its own determination based on the address and information supplied by the sponsor/donor or with information otherwise at the unit's disposition, or 2) by requesting that the sponsor/donor certify whether they are a Foreign Source, and if so, their associated country. If the country of incorporation/place of business or residence is foreign, UToledo can use this address to determine whether to include them in the HEA Section 117 report. If the country of incorporation/place of business or residence is U.S. based, the unit would need to determine whether the sponsor/donor is an agent, subsidiary, or affiliate of a Foreign Source.

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE

FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE

SECTION 117 OF THE HEA REPORTING PROTOCOL

Definition of Gifts and Contracts

As defined by Section 117 of the HEA gifts are “any gift of money or property.” The University of Toledo Foundation is a separate legal entity; as such, gifts to the Foundation normally are not gifts to the University. However, to facilitate transparency, for the purposes of reporting under Section 117 of the Higher Ed Act, University reports should include donations to the University of Toledo Foundation that alone or in aggregate meet the reporting thresholds set out by Section 117.

As defined by HEA, contracts are “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.” With respect to HEA Section 117 reporting requirements, UToledo interprets Contracts to include sponsored research contracts and grants, service contracts, revenue-generating contracts, and other agreements involving the inflow of funds to the University from a Foreign Source.

HEA defines a Restricted or Conditional Gift or Contract as: 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.

Most Contracts and Gifts to the University would not meet the conditions above 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.

Where to Report

Departments should forward relevant information to Internal Audit. As an additional measure, Internal Audit will contact stakeholder departments including (but not limited to) the Center for International Studies and Programs, the University of Toledo Foundation, the Treasurer’s Office, Office of Research and Sponsored Programs, and the Office of Technology Transfer. Data analytics produced by Internal Audit is further measure to ensure the collection of all reportable financial data, applicable to both the academic and clinical enterprises (i.e., the medical center).

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE

FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE

SECTION 117 OF THE HEA REPORTING PROTOCOL

Timing of submission

HEA Section 117 reports are due twice per calendar year: January 31 (covering the previous July 1-December 31 period) and July 31 (covering the previous January 1-June 30 period). A school must report information by January 31 or July 31 (whichever is sooner) after the date of receipt of the gifts, date of the contract, or date of ownership or control.

In anticipation of this submission, Internal Audit retrieves relevant data from the following sources:

- Research/Technology Transfer (independently validated by Internal Audit)
- University of Toledo Foundation
- Office of the Treasurer (independently validated by Internal Audit)
- Center for International Studies and Programs
- Internal Audit internal databases of university financial transactions

Internal Audit follows up with the above stakeholders as necessary prior to the January and July submissions and collaborates with other functional areas across the University as necessary, should they possess data that requires reporting.

Data analytics produced by Internal Audit is further measure to ensure the collection of all reportable financial data, applicable to both the academic and clinical enterprises (i.e., the medical center).

Information reportable for each subcategory of Contracts and Gifts

For fulfilling their HEA Section 117 obligations, all divisions must report: all gifts from or contracts, grants, or other agreements which individually or in the total amount to or exceed, \$250,000 from a single Foreign Source in any calendar year. The required information varies depending on whether the funding is a contract or a gift, whether it is restricted/conditional, and whether the Foreign Source is a foreign government, a legal entity, an individual, or an agent/subsidiary of a foreign legal entity.

The University triggers the reporting requirements whenever the aggregate total of Gifts from/Contracts with any individual Foreign Source totals \$250,000 in a calendar year. ED has clarified that once an institution meets the threshold, it must report all individual Gifts and Contracts that add up to the \$250,000 threshold (and beyond).

Appendices

- Appendix A: Questions and Answers
- Appendix B: HEA Section 117 Definitions
- Appendix C: HEA Section 117 Reporting: UToledo Checklist

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX A: QUESTIONS AND ANSWERS

These procedures group questions by category: a) What is a Reportable Foreign Source? b) Reporting Process, and c) Correcting Reports.

WHAT IS A REPORTABLE FOREIGN SOURCE?

Q1: What is a Foreign Source for purposes of HEA Section 117? Are U.S. subsidiaries and affiliates considered to be a Foreign Source?

A1: 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.

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).

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, UToledo advises divisions to treat all affiliates and subsidiaries of foreign legal entities as Foreign Sources for purposes of HEA Section 117 reporting.

Q2: How do I know if a source is a subsidiary or affiliate of a foreign entity?

A2: 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, UToledo recommends that: 1) the UToledo unit make its own determination with information supplied by the sponsor/donor or with information otherwise at the unit’s disposition, including any UToledo provided databases or use of third-party resources such as World-Check One or 2) the UToledo unit request that the sponsor/donor certify whether or not they are a Foreign Source, including a subsidiary or affiliate of a Foreign Source. Note that the University can request negative certification as an option (e.g., where the sponsor/donor certifies that they are not a foreign source as defined by HEA Section 117).

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX A: QUESTIONS AND ANSWERS

Q3: If we are receiving funds from a U.S. entity, but the funds' prime sponsor is a foreign entity, do we report those funds?

A3: If the U.S. entity is not an agent, affiliate or subsidiary of a Foreign Source, such transactions do not require reporting. Section 117 of the HEA only addresses "contracts with" a Foreign Source (including affiliates or subsidiaries of a Foreign Source). In this case, the UToledo funding contract would be with a U.S. entity.

Q4: For contracts, should we report both funds paid to, and funds received from, a Foreign Source?

A4: With respect to contracts where the cash is going out of the University, UToledo will follow ED guidance from October 2020, while also seeking additional ED guidance:

The Department believes that cash-out agreements can fall under Section 117 reporting requirements. Cash sent abroad may be part of contract that would fall under Section 117's purview. Currently, it can be difficult to ascertain whether these agreements are reportable without further Department investigation.

The October 2020 Report also indicates that ED plans to "identify accounting and audit best practices to capture all foreign 'cash in' and all foreign 'cash out' in integrated and auditable accounts(s)."

Given the level of present guidance from ED on this subject, UToledo has taken the conservative position for contracts, of reporting funds paid to, and funds received from, a Foreign Source.

Q5: HEA Section 117 refers to Gifts and Contracts only; how do we report grants?

A5: Grants are Contracts for the purpose of HEA Section 117 reporting.

Q6: Is revenue generating contracts reportable?

A6: Include all contracts for which UToledo is receiving financial consideration from a Foreign Source for the provision of goods or services by UToledo. This includes contracts in which UToledo is providing a service, e.g., architectural design and construction service contracts, conference services agreements, laboratory service agreements, a.

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX A: QUESTIONS AND ANSWERS

Q7: Are Material/Data Transfer Agreements (MTAs/DTAs) reportable and if so, how do we determine a dollar amount to assign?

A7: Pending further clarification by ED, agreements that do not involve the provision of funds to UToledo, or for which the valuation of materials provided to UToledo is unknown, do not require reporting. Include MTAs/DTAs in HEA Section 117 reporting if they involve receipt from a Foreign Source of materials that have a known value.

Q8: Are in-kind contributions reportable?

A8: Include in-kind contributions with a known value in HEA Section 117 reporting.

Q9: 117(h)(5) covers grants as a “restricted or conditional gift or contract” when it includes provisions that, among other things, establish research programs (117(h)(5)B).

a) Do research agreements meet the definition of a Restricted or Conditional Gift or Contract? Do affiliate membership programs that present our research results fall in this category?

b) Do renewals, supplemental and continuing awards for existing centers fall under this category?

A9: a) Per HEA Section 117, a Restricted or Conditional Gift or Contract is one that requires the establishment of “departments, centers, research or lecture programs, or new faculty positions.” Research Contracts (which include grants) from a Foreign Source in support of a research project proposed and defined by UToledo are reportable under HEA Section 117, but do not normally meet the definition of 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 or center as a condition of funding, as opposed to generalized support for a variety of research projects or students. Regarding affiliate membership programs, members are generally not in the position of requiring that UToledo establish any research or lecture programs, rather, they are invited by UToledo to participate in a university program, over which the University has full control and discretion, including whether to establish or maintain such program. As such, in general, membership affiliate agreements with Foreign Sources do not fall into the definition of Restricted/Conditional, though they are also reportable to ED.

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX A: QUESTIONS AND ANSWERS

- b) When providing funding for an existing program, by its very nature, such agreements are not requiring the establishment of a program; however, it would be prudent to include such agreements if the same Foreign Source is providing renewal, continuation, or supplemental funds for the same purpose as the original contract or gift establishing the program.

Note that agreements described here in this question ARE reportable, even if they may not meet the definition of a Restricted or Conditional Gift or Contract.

Q10: How do we determine the description to enter in the ED reporting module question 69 for Restricted or Conditional Gift or Contracts?

A10: You should select the condition(s) that makes the Gift or Contract “restricted or conditional” in accordance with the definition for a Restricted or Conditional Gift or Contract and enter such condition(s) in the ED system. Therefore, for Restricted or Conditional Gifts and Contracts, the University should enter one or more of the four conditions below, as applicable.

- (A) the gift/contract requires the employment, assignment, or termination of faculty.
- (B) the gift/contract requires the establishment of departments, centers, research or lecture programs, or new faculty positions.
- (C) the gift/contract requires the selection or admission of students; or
- (D) the gift/contract requires 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.

Q11: Example: UToledo purchases a \$1 million item on a purchase order from an international company with U.S. offices. Is this a “foreign source”? How is “foreign source” defined and how is it determined?

A11: According to ED, a foreign source is ...

- a foreign government, including an agency of a foreign government,
- a legal entity created solely under the laws of a foreign state or states,
- an individual who is not a citizen or national of the United States, and
- an agent acting on behalf of a foreign source.

A purchase order is a contract, and international company with U.S. offices meets the definition of a foreign source. These facts, combined with the dollar amount of the transaction, would require reporting under UToledo policy.

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX A: QUESTIONS AND ANSWERS

- Q12: Example: UToledo has a pending service agreement with an individual contractor, would this be a foreign source?**
- A12:** Using the definition of foreign source documented in the answer to question #11, if the contracts with or gifts from the same foreign source had 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; the ownership interests in or control over the institution by the foreign source would need to be reported per UToledo policy and Section 117 of the HEA.
- Q13: Should we report contracts and grants by project period, or by budget period? For example, if we enter in a \$600K contract for a five-year period, it is less than \geq \$250K value in any given calendar year (budget period) because of its spreading over five years. However, if we use the project period than we are reporting the \$600K amount in the year of signing the contract.**
- A13:** UToledo recommends reporting contract monies in the period received. UToledo may not fully receive contracted amounts; therefore, we recommend reporting on a cash basis.
- Q14: How do we calculate amounts aggregated by Sponsor?**
- A14:** 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. Pertinent University divisions should submit reports of all foreign source gifts and contracts (regardless of the amount) to the University Department of Internal Audit, who will then sum up all the values to determine if the meeting of thresholds. As an additional measure, Internal Audit will contact stakeholder departments including (but not limited to) the Center for International Studies and Programs, the University of Toledo Foundation, the Treasurer's Office, Office of Research and Sponsored Programs, and the Office of Technology Transfer. Data analytics produced by Internal Audit is further measure to ensure the collection of all reportable financial data, applicable to both the academic and clinical enterprises (i.e., the medical center). UToledo recommends using the date of receipt to determine which Contracts or Gifts to report in a reporting period. The examples below show how a division should calculate the totals. Note that the regulations require reporting of start and end dates only for Contracts; the regulations require the receipt date only for Gifts.
- Example one**
A division 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 period reported exceeds \$250,000, the division would report all three transactions.

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX A: QUESTIONS AND ANSWERS

Example two

In the January-June reporting period, a division 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 regulations do not require the University to include Foreign Source B in the Jan-June report. However, because 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 to report a Foreign Source, report the entire \$260,000 in the July-December report.

Example three

In the January-June reporting period, a division 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 University should have already reported the \$800,000 from Foreign Source C in the January-June report, only the additional \$300,000 is reportable in the July-December report. In other words, do not report values previously reported.

Example four

A division 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 University should report the additional \$60,000 in the July-December report because it needs to capture all amounts more than \$250,000 in a calendar year.

Q15: Are gifts from Donor Advised Funds reportable? For example, if UToledo receives funding from, Fidelity Charitable DAF (a US entity), should we report gifts provided by a foreign donor?

A15: A Donor Advised Fund (DAF) is a charitable giving vehicle created to manage charitable donations on behalf of organizations, families, or individuals. Donors may make recommendations on the distribution of the donation, but they relinquish ownership of the donation. Legally, UToledo receives the donation from the DAF, not from the entity or person who contributed to the DAF. Therefore, gifts from a DAF are not reportable under HEA Section 117, unless the DAF itself is foreign.

Q16: Must we report the Gift Donor name of a Foreign Source that has requested anonymity?

A16: To the extent that the University has or could obtain the donor's identity, ED expects that the University report their information. The University should clearly indicate the anonymous providing of the Gift as ED commits to not making anonymous donors' identities or addresses available to the public.

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX A: QUESTIONS AND ANSWERS

Q17: Do we need to report Huawei USA funding?

A17: Gifts and Contracts from subsidiaries and affiliates of foreign legal entities acting on behalf of a Foreign Source are reportable. As discussed above in Q/A #1, for ease of reporting and consistency, UToledo is advising divisions to treat ALL affiliates and subsidiaries of foreign legal entities as Foreign Sources for purposes of reporting under Section 117 of the HEA. So, yes, disclose gifts and Contracts from Huawei USA that meet or exceed the reporting threshold in university reports.

Q18: For "Restricted or Conditional Gifts or Contracts", how are divisions interpreting the following part of the ED definition: the employment, assignment, or termination of faculty? Is it enough if the grant pays a faculty member, or does the grant have to create a new faculty position?

A18: As described above in the answer to Question 8, Contracts, or grants in support of a UToledo proposed and defined scope of work do not fall into the category of Restricted/Conditional. While the sponsor often requires that we obtain their prior approval for a change in the Principal Investigator or other key personnel, these awards do not normally dictate that we must hire a particular person(s), and UToledo normally retains full control of whom it decides to employ. The prior approval requirements normally focus on having a knowledgeable person leading the project. Therefore, the mere fact that a research contract or grant pays a UToledo employee does not mean that the contract/grant is Restricted/ Conditional. If, however, the purpose of the award is for the “employment, assignment, or termination of faculty” (rather than for the performance of a research project, for example), then it is reportable as Restricted/Conditional. Likewise, a Gift that establishes an endowed chair usually does not create a new position, but rather normally provides support for the chair holder’s scholarly activities. Only those that would require the creation of a new position would be “restricted.”

Q19: Should we report funds that are originally U.S. but flow through a foreign entity? And if so, how should UToledo report this?

A19: Since the UToledo contract is with the foreign entity, this is a reportable transaction. The foreign entity from which we receive the funds is the Foreign Source for the purpose of HEA Section 117 reporting.

Q20: Should UToledo include start-up packages for investigators and institutional research grants?

A20: If a Gift or Contracts from Foreign Sources funds these, then such start-up packages are reportable.

**UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX A: QUESTIONS AND ANSWERS**

Q21: Should we report royalties received from a Foreign Source?

A21: Yes, ED has indicated that licensing agreements fall under the definition of Contracts under HEA Section 11724, and as such are reportable. [UToledo is analyzing the requirement to report licensing agreements and may update this guidance with more details accordingly].

Q22: Are tuition payments made by foreign students to the University considered reportable?

A22: ED sees tuition payments as “contracts” between the foreign student and the University but are reportable under HEA Section 117 only if they meet the \$250,000 threshold, which would never be the case for an individual student’s tuitions. ED notes that a university could meet the threshold in situations where a foreign source pays tuition for multiple students and the aggregate amount exceeds the \$250,000 threshold.

REPORTING PROCESS:

Q23: Are UToledo divisions considered as independent entities, or is “The University of Toledo” the entity that reports?

A23: For HEA Section 117 reporting, the University submits reports for gifts and contracts received by that division.

Q24: Do University-Wide initiatives in a division report through the division, or through UToledo?

A24: The University should manage the reporting.

Q25: Should UToledo overseas programs report on their own behalf or through their home division?

A25: Overseas programs should report through the University, e.g., UToledo reports for BEARS (Singapore), UToledo reports for Chile Life Sciences Innovation Center (Chile), and other programs.

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX A: QUESTIONS AND ANSWERS

Q26: Which office is responsible for the reporting of foreign Contracts and Gifts in accordance with Section 117 of the Higher Education Act?

A26: At UToledo, the Department of Internal Audit submits the reports that include information on receipt of foreign Contracts or Gifts as required by HEA Section 117, though from all University departments or units managing reportable transactions must collect information included on those reports. The University may, at its discretion, assign the coordinating function to another office. (Note that grants from Foreign Sources for financial aid must also be reportable under HEA Section 117.)

Q27: How can we ensure that we are collecting Gifts provided outside the Office of Institutional Advancement? If there are Gifts arrangements made for university departments or projects that flow independently from the Office of Institutional Advancement, how can we find them?

A27: Per UToledo policy, report all gifts received by university departments and by UToledo affiliated foundations to the University Institutional Advancement Office. As such, the University Institutional Advancement Office should have a full list of gifts received for that division. Note that for Contracts, it is important to collect the information from the various offices / departments managing contracts because under current practices, a central office does not always receive these (see Background section of guidance for more details).

Multiple interpretations of Section 117 have concluded that, if the institution has intermediaries that receive gifts or entered contracts on its behalf, the institution must also include those agreements. These interpretations support the UToledo position on this subject.

Q28: Are the funds from a foreign source received by the university foundation reportable?

A28: UToledo must report Foreign Source funds received through legal entities that “exist for the purpose of serving as an intermediary for certain gifts or contracts,” such as the UT Foundation, which fundraises for the benefit of UToledo.

**UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX A: QUESTIONS AND ANSWERS**

Q29: Are universities required to collect and upload true copies of agreements with foreign sources? How will universities protect the privacy and confidentiality of information in the agreements from FOIA?

A29: While the December 17, 2019, ED Response to Public Comments (RPC) indicates that institutions must upload true copies of agreements, as of the publication of this guidance, OMB has not yet approved ED's Information Collection Request.

ED also states in the RPC referenced above that they will not make the true copies publicly available and in case of a FOIA request, they will treat the true copies as "business information" under 34 C.F.R. § 5.11(b)(1) and follow the procedures described therein (see 34 C.F.R. § 5.11(d)-(j)), including redacting, as appropriate. ED envisions the true copies of the contracts to upload in their new reporting portal, whose release is currently pending the OMB approval. UToledo will provide additional guidance when more information is available.

CORRECTING REPORTS:

Q30: What if the University missed filing a report?

A30: According to the DoE 2004 guidance, the University should immediately file the missed reports.

Q31: How should we correct incomplete or incorrect (over-inclusive or under-inclusive) reports? Do we file the missed reports through the reporting portal? Should we provide any other communication to Department of Education with our missed reports?

A31: To correct an existing report, universities should contact the DoE School Participation Division for guidance on submitting corrections. For UToledo, the Ohio School Participation Division is in Chicago, and the contact number is 312-730-1511.

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX B: HEA SECTION 117 DEFINITIONS

Contract: 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:

- (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: any gift of money or property.

Institution: any institution, public or private, or, if a multi-campus institution, any single campus of such institution, in any State —

- (A) legally authorized within such State to provide a program of education beyond secondary school.
- (B) that provides a program for which the institution awards a bachelor's degree (or provides not less than a 2-year program which is acceptable for full credit toward such a degree) or more advanced degrees; and
- (C) accredited by a nationally recognized accrediting agency or association and extended institution Federal financial assistance (directly or indirectly through another entity or person), or which institution receives support from the extension of Federal financial assistance to any of the institution's subunits.

Restricted or conditional gift or contract: 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.

UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX C: HEA SECTION 117 REPORTING: UTOLEDO CHECKLIST

YEARLONG PREPARATION:

- All units signing or accepting Contracts or Gifts should:
 - ✓ Adopt procedures to ascertain whether the sponsor/donor is a Foreign Source. Divisions can *either*:
 - Request that each sponsor or donor certify whether they are a Foreign Source, as defined in HEA Section 117, including whether they are an agent acting on behalf of a Foreign Source, and/or a subsidiary or affiliate of a foreign legal entity; or
 - Make their own determination with information supplied by the sponsor/donor or with information otherwise at the division's disposition.
 - ✓ Obtain the following information for all Sponsors/Donors designated as a Foreign Source:
 - If the sponsor/donor is a Foreign Source that is a natural person, identify their country of citizenship or, if unavailable, their principal country of residence.
 - If the sponsor/donor is a Foreign Source that is a legal entity, identify their country of incorporation or, if unavailable, their principal place of business.
 - If the sponsor/donor is an Agent of a Foreign Source and/or a subsidiary or affiliate of a foreign legal entity, identify the Foreign Source or foreign legal entity and the country of citizenship and/or incorporation, as applicable.

INFORMATION COLLECTION:

- UToledo Internal Audit Office (or other assigned office, per university decision) coordinates the collection of information reportable under HEA SECTION 117 from relevant offices, including:
 - ✓ Sponsored Programs (including any office responsible for receiving sponsored research agreements, industry contracts, and clinical trial contracts)
 - ✓ Finance and Administration
 - ✓ Technology Transfer or Licensing
 - ✓ Development/ Institutional Advancement
 - ✓ UT Foundation
 - ✓ Study Abroad
 - ✓ Financial Aid
 - ✓ Facilities and Construction
 - ✓ Any corresponding offices at the University of Toledo Medical Center enterprise.
 - ✓ Other relevant offices
- As an additional measure, Internal Audit will contact stakeholder departments including (but not limited to) the Center for International Studies and Programs, the University of Toledo Foundation, the Treasurer's Office, Office of Research and Sponsored Programs, and the Office of Technology Transfer.
- Data analytics produced by Internal Audit is further measure to ensure the collection of all reportable financial data, applicable to both the academic and clinical enterprises (i.e., the medical center).

**UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX C: HEA SECTION 117 REPORTING: UTOLEDO CHECKLIST**

REPORTABLE INFORMATION:

- Trigger: \$250,000 or more in Gifts or Contracts (including grants) received, alone or in combination from a single Foreign Source within a calendar year.
- For details on required information required per type of funding and category of Foreign Source, see the Table below.

FOREIGN SOURCE CATEGORY	TYPE OF FUNDS	Country Name	Foreign Source Name	Address	Agreement True Copy *	Recipient *		Amount	Receipt Date of Gift or Start & End Date of Contract	Description of the Conditions & Restrictions
						Domestic Party/Institution	Intermediaries			
Foreign Government	Gifts or Contracts	X	X		X	X		X	X	
	Restricted or Conditional Gifts or Contracts	X	X		X	X		X	X	X
Foreign Entity (non-government)	Gifts or Contracts	X	X	X	X	X		X	X	
	Restricted or Conditional Gifts or Contracts	X	X	X	X	X		X	X	X
Foreign Person	Gifts or Contracts	X	X	X	X	X		X	X	
	Restricted or Conditional Gifts or Contracts	X	X	X	X	X		X	X	X

**UTOLEDO FOREIGN GIFTS AND CONTRACTS REPORTING PROCEDURE
SECTION 117 OF THE HEA REPORTING PROTOCOL
APPENDIX C: HEA SECTION 117 REPORTING: UTOLEDO CHECKLIST**