



Procedure Title	Reporting Sources of Foreign Support
Date of Review	31 May 2022
Responsible Office	Research Compliance
Contact Information	researchcomp@kennesaw.edu

Abbreviations & Definitions:

1. KSURSF: KSU Research & Service Foundation
2. KSUF: KSU Foundation
3. PEBC: Partner Enterprise Business Collaboration; the U.S. Dept. of Education portal to report foreign support
4. “Agent” has its plain and ordinary meaning
5. “Contract” has the meaning given at 20 U.S.C. § 1011f(h)(1)
6. “Foreign source” has the meaning given at 20 U.S.C. § 1011f(h)(2)
7. “Gift” has the meaning given at 20 U.S.C. § 1011f(h)(3)
8. “Institution” has the meaning given at 20 U.S.C. § 1011f(h)(4)
9. “Restricted or conditional gift or contract” has the meaning given at 20 U.S.C. § 1011f(h)(5)
10. As provided in 20 U.S.C. § 1011f(b)(1), a gift or contract is “attributable” to the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business, for a foreign source which is a legal entity

Goals:

1. Comply with Section 117 of the Higher Education Act, as detailed in [20 USC § 1011f](#), requiring reporting of sources of foreign funds (gifts or contracts) >\$250,000 to the U.S. Department of Education.
2. File reports in the Federal Student Aid PEBC system by January 31 & July 31 each year.
 - a. January 31 is the deadline for reporting aggregate totals for the prior calendar year.
 - b. July 31 is the deadline for reporting aggregate totals for the first six months of the current year.

Processes:

1. January 1 & July 1 of each year, Sponsored Programs (also reporting for KSURSF) and the Division of University Advancement (also reporting for KSUF) will compile lists of foreign funding sources & outlays for the previous 6 months.
 - a. Data should be grouped in or labeled with the following categories:
 - i. Gifts
 - ii. Contracts
 - iii. Restricted or conditional gifts
 - iv. Restricted or conditional contracts
 - b. Information should be consistent with the questions in Appendix A.
 - c. Each office will forward these data to Research Compliance (researchcomp@kennesaw.edu)
2. By January 31 & July 31 of each year, Research Compliance will log in to the PEBC reporting system and report any sources that have in aggregate furnished KSU with >\$250,000 in the given calendar year.
 - a. Research Compliance will coordinate with the Office of Financial Aid, which controls KSU’s access to the PEBC Reporting system as a part of their reporting to the Office of Postsecondary Education Identification, to ensure that no double reporting occurs.
 - b. January 31 is the reporting date for the prior calendar year.
 - c. July 31 is the reporting date for any gifts and contracts that meet the threshold during the first six months of the current calendar year.

Appendix A: Questions for PEBC Reporting

1. Office of Postsecondary Education Identification (OPEID)
 - a. List all campuses.
 - b. Is the institution, or any part thereof, owned or substantially controlled by a foreign source? (Y/N)
 - i. If yes, then identify:
 1. The foreign source
 2. The date on which the foreign source assumed ownership or control
 3. Any changes in program or structure resulting from the change in ownership or control
2. Gifts from a foreign source.
 - a. Name of foreign source.
 - i. Is the gift from a foreign government, including but not limited to any agency of a foreign government? (Y/N)
 1. If yes, provide the name of the foreign government
 - ii. Is the gift from a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states? (Y/N)
 - iii. Is the gift from an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof? (Y/N)
 - iv. Is the gift from a person, including a subsidiary or affiliate of a foreign legal entity, who acts as an agent of a foreign government, a legal entity created solely under the laws of a foreign state or states, or an individual who is not a citizen or national of the United States or a trust territory or protectorate thereof? (Y/N)
 1. If yes, provide the name of the foreign government, legal entity, individual, or person.
 - b. Foreign source address including country of origin
 - i. For gifts received from a foreign source other than a foreign government, the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.
 - c. Gift terms.
 - i. Amount.
 - ii. Date received.
 - d. Recipient, including any and all intermediaries.
3. Contracts with a foreign source.
 - a. Name of the foreign source.
 - i. Is the contract with a foreign government, including but not limited to any agency of a foreign government? (Y/N)
 1. If yes, provide the name of the foreign government.
 - ii. Is the contract with a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states? (Y/N)
 - iii. Is the contract with an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof? (Y/N)
 - iv. Is the contract with a person, including a subsidiary or affiliate of a foreign legal entity, who acts as an agent of a foreign government, legal entity created solely under the laws

of a foreign state or states, or individual who is not a citizen or national of the United States or a trust territory or protectorate thereof? (Y/N)

1. If yes, provide the name of the foreign government, legal entity, individual, or person.
- b. Foreign source address including country of origin.
 - i. For contracts with a foreign source other than a foreign government, the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.
- c. Domestic party
- d. Contract terms.
 - i. Amount.
 - ii. Contract start date.
 - iii. Contract end date.
4. Restricted or conditional gifts from a foreign source.
 - a. Name of the foreign source.
 - i. Is the gift from a foreign government, including but not limited to any agency of a foreign government? (Y/N)
 1. If yes, provide the name of the foreign government.
 - ii. Is the gift from a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states? (Y/N)
 - iii. Is the gift from an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof? (Y/N)
 - iv. Is the gift from a person, including a subsidiary or affiliate of a foreign legal entity, who acts as an agent of a foreign government, a legal entity created solely under the laws of a foreign state or states, or an individual who is not a citizen or national of the United States or a trust territory or protectorate thereof? (Y/N)
 1. If yes, provide the name of the foreign government, legal entity, individual, or person.
 - b. Foreign source address including country of origin.
 - i. For gifts received from a foreign source other than a foreign government, the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.
 - c. Restricted or conditional gift terms.
 - i. Amount.
 - ii. Date received.
 - iii. Detailed description of all conditions or restrictions.
 - d. Specific restricted or conditional gift provisions.
 - i. Do the restrictions or conditions concern or relate to the employment, assignment, or termination of faculty? (Y/N)
 - ii. Do the restrictions or conditions concern or relate to the establishment of departments, centers, research or lecture programs, or new faculty positions? (Y/N)
 - iii. Do the restrictions or conditions concern or relate to the selection or admission of students? (Y/N)
 - iv. Do the restrictions or conditions concern or relate to 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? (Y/N)

- e. Recipient, including any and all intermediaries.
- 5. Restricted or conditional contract with a foreign source.
 - a. Name of the foreign source.
 - i. Is the contract with a foreign government, including but not limited to any agency of a foreign government? (Y/N)
 - 1. If yes, provide the name of the foreign government.
 - ii. Is the contract with a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states? (Y/N)
 - iii. Is the contract with an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof? (Y/N)
 - iv. Is the contract with a person, including a subsidiary or affiliate of a foreign legal entity, who acts as an agent of a foreign government, a legal entity created solely under the laws of a foreign state or states, or an individual who is not a citizen or national of the United States or a trust territory or protectorate thereof? (Y/N)
 - 1. If yes, provide the name of the foreign government, legal entity, individual, or person.
 - b. Foreign source address including country of origin.
 - i. For contracts with a foreign source other than a foreign government, the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.
 - c. Domestic party.
 - d. Restricted or conditional contract terms.
 - i. Amount.
 - ii. Contract start date.
 - iii. Contract end date.
 - iv. Narrative description of all conditions or restrictions
 - e. Specific restricted or conditional contract provisions.
 - i. Do the restrictions or conditions concern or relate to the employment, assignment, or termination of faculty? (Y/N)
 - ii. Do the restrictions or conditions concern or relate to the establishment of departments, centers, research or lecture programs, or new faculty positions? (Y/N)
 - iii. Do the restrictions or conditions concern or relate to the selection or admission of students? (Y/N)
 - iv. Do the restrictions or conditions concern or relate to 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? (Y/N)
- 6. Acknowledgement: This information collection is subject to 18 U.S.C. § 1001, which provides that whoever knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, may be subject to fines and imprisonment. (Y/N)

Appendix B: Frequently Asked Questions from U.S. Dept. of Education

Q1: Are institutions required to report contracts involving purchases *made by* institutions from foreign sources, such as equipment purchased by an institution from a foreign source?

A1: Section 20 U.S.C. § 1011f(h)(1) defines “contract” as “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.” The Department is bound by the statutory text, construed in context and with a view to the words’ place in the statutory scheme. Although the Department must follow statutory text and not legislative history, we note the legislative history provides an example of a type of contract that would not have to be reported: an arms-length transaction in which an institution purchased equipment from a foreign source or leased property from a foreign source. Based on the language “any agreement for the acquisition...by the foreign source...[,]” the Department interprets the definition to exclude a contract involving the transfer of funds from an institution to a foreign source. We note, however, that each transaction should be evaluated independently.

Q2: Are institutions required to disclose payments of tuition and fees for foreign students paid directly by the student, or under certain circumstances, paid by other individuals, institutions, or governments?

A2: We generally consider instances where a foreign source pays tuition for a student or students to meet the definition of a “contract” under Section 117(h)(1). An institution would only need to report this type of contract if the \$250,000 threshold is met by a given foreign source. We note the threshold would likely be met in situations where a foreign source pays tuition for multiple students, and the aggregate amount exceeds the \$250,000 threshold.

Q3: Are institutions required to report contracts involving an intellectual property license fee from a foreign licensee of a University patent or data or materials to be transferred for use in research?

A3: While each transaction should be evaluated independently, intellectual property license fees from a foreign licensee of a University patent and data or materials to be transferred via purchase, lease, or barter for use in research would generally be included in the statutory definition of “contract.”

Q4: Is an institution required to report the maximum potential amount of the contract once it is executed or wait to report the contract once the institution receives payments that reach the \$250,000 reporting threshold?

A4: Section 117(a) requires that whenever an institution “*enters* into a contract with a foreign source, the *value* of which is \$250,000 or more, considered alone or in combination with all other contracts with that foreign source within a calendar year,” it must be disclosed. (emphasis added). Therefore, whether a particular contract must be reported by an institution depends upon whether the value of the contract when it is signed, combined with the value of all other gifts and contracts with that foreign source, meets or exceeds the statutory threshold. 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.

Q5: How should institutions value property?

A5: In general, the value of property should be the fair market value of the property.

Q6: Are institutions required to report gifts and contracts involving organizations outside of the direct control of an institution, such as alumni associations, athletic booster clubs, and student clubs and affiliated groups?

A6: An institution receiving the benefit of a gift from or a contract with a foreign source, even if through an intermediary, must disclose the gift or contract. Additionally, where a legal entity (e.g., a foundation) operates substantially for the benefit or under the auspices of an institution, there is a rebuttable presumption that when that legal entity receives money or enters into a contract with a foreign source, it is for the benefit of the institution, and, thus, must be disclosed. Institutions have a duty, under Section 117, to conduct reasonable due diligence when they receive the benefit of a contract or gift from any entity to determine whether the gift or contract is from or with a foreign source. If they do receive such a benefit and it meets the threshold amount, they must report the item to the Department. However, institutions are not required to report any gift to or contract between a foreign source and an entity if the institution did not receive a benefit from the gift or contract.

Q7: How is the term “intermediary” defined?

A7: For purposes of Section 117 reporting, an 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.

Q8: How must an institution report the names and addresses of anonymous donors when it is nearly impossible for an institution to obtain the name or address of an anonymous donor?

A8: An institution is required to report the names and addresses of anonymous donors to the extent that the institution has or could reasonably obtain the donor’s identity. However, in all instances, including gifts and contracts involving anonymous parties, the Department will withhold a party’s name and address (excepting country) from becoming part of the public disclosure report. Institutions must make a reasonable effort to obtain a donor’s identity. The reasonableness standard is well established by law.