

## US Department of Education Scrutinizes Foreign Investment Into Higher Education

The U.S. Department of Education (DOE) recently launched investigations into at least a half dozen top research institutions for failing to disclose foreign-sourced gifts or contracts. Under section 117 of the Higher Education Act of 1965, colleges and universities receiving federal funds have a duty to disclose any foreign gift or contract that exceeds \$250,000, regardless of the form of the donation or whether the monies come from a single source or many. U.S. Secretary of Education Betsy DeVos blames "[historically lax oversight](#)" for these violations—2019 saw the first enforcement actions in section 117's history—and the DOE claims that just 6 of the schools they have investigated thus far collectively failed to report \$1.3 billion in foreign gifts and contracts.

The U.S. Senate and the Trump administration have described higher education institutions as a "black hole" for foreign money, alleging that institutions either neglect to report gifts or contracts or mischaracterize them as scholarships, joint ventures, foreign campus development, or alumni fundraising.

In February 2019, the Senate's Permanent Subcommittee on Investigations released a staff report titled, "China's Impact on the U.S. Education System" in which it reached findings and recommendations concerning the Chinese government-funded Confucius Institutes that began establishing a presence on college campuses around the world in 2004, and by 2019 had over 100 institutes in the United States. Although Confucius Institutes provide language classes and cultural events such as cooking, music, and dance performances, the subcommittee's staff report concluded that the "Confucius Institutes' soft power encourages complacency towards China's pervasive, long-term initiatives against both government critics at home and businesses and academic institutions abroad." The subcommittee's report also concluded that the DOE was failing to provide an accurate or complete picture of China's overall spending on Confucius Institutes in the United States despite federal requirements that educational institutions participating in Title IV student assistance programs submit to the DOE foreign financial disclosure reports. The DOE's [recent notices of investigation](#) focus specifically on connections to firms on the U.S. sanctions blacklist, such as Kaspersky Labs, for allegedly posing a security risk to the United States. The DOE, however, is interested in all foreign investment made by Chinese, Russian, Qatari, Saudi, and Iranian governments and government-controlled corporations.

Colleges and universities have voiced concern about the dramatic change in course undertaken by the DOE, arguing that the guidance around section 117 is "[vague, incomplete, confusing, and obsolete](#)" and that there have only been 2 efforts to clarify its meaning in the past 30 years, with no effort in the last 15. Institutions point specifically to the fact that although section 117 is 30 years old, no regulations have ever been passed to implement it, and 2019 saw the first enforcement actions in its history. In response, the DOE [argues](#) that the statute's terms are unambiguous. A significant friction point is the term "institution," which schools have understood to mean the college or university itself. The DOE's investigations have expanded the term to include "all legal entities (including foundations or other organizations) that operate substantially for the benefit or under the auspices of the institution." That definition extends scrutiny to independent nonprofit organizations such as alumni foundations, athletic boosters, university hospitals, and independent but affiliated research centers.

### Takeaway for Higher Education Institutions

Modern colleges and universities are complex organizations that increasingly prioritize private partnerships for research, scholarships, construction, athletics, and overseas expansion. While foreign investment may be benign, the DOE has now made it unmistakably clear that it expects all financial contributions meeting section 117's threshold to be reported. Institutional teams should meet with general counsel, finance, grants and contracts, and academic leaders to have a frank discussion about foreign investment. The challenge is that there is no single point of entry for external funding in the higher ed environment, and it is not unreasonable to assume that foreign funding could flow in through individual faculty, academic departments, grants and contracts offices, research collaboration, athletics, construction loans, alumni channels, and other channels. Accordingly, institutions must take a broad, holistic view of foreign investment.

© 2020 Perkins Coie LLP

## **Explore more in**

[White Collar & Investigations](#)   [Educational Institutions & Services](#)

## **Related insights**

Update

[\*\*Employers and Immigration Under Trump: What You Need To Know\*\*](#)

Update

[\*\*'Tis the Season... for Cybercriminals: A Holiday Reminder for Retailers\*\*](#)