

NASFAA Joins Other Organizations in Criticizing ED's Foreign Gifts Reporting Guidance

By [Hunter B. Martin, NASFAA Staff Reporter](#)

NASFAA, along with 29 other higher education organizations, on Tuesday [signed on to a letter](#) offering comments about the Department of Education's (ED) proposed rules on foreign gift reporting requirements. ED's Information Collection Request (ICR), released in September, was immediately met with outcry from many colleges and universities around the nation.

In the letter, the higher education organizations argued that ED's proposed request has exceeded the requirements of [Section 117](#) of the Higher Education Act (HEA) by "directing institutions to make disclosures — without statutory basis — of a vastly expanded amount of information and documents."

The new ICR rules "dramatically and unnecessarily, expand the reporting requirements for all institutions," and significantly increase both the burden and cost to schools obligated to report additional information, the letter said. ED has also greatly underestimated the amount of time institutions needed to comply with the new rules, the groups claimed.

NASFAA had [previously urged](#) ED to establish a rulemaking process for foreign gift reporting to allow higher education stakeholders to offer advice and feedback on the best ways to provide institutions with clear information on the foreign gifts reporting process.

Foreign gift reporting was adopted into the HEA in 1986 and requires institutions to report gifts of more than \$250,000 that originated outside of the United States. However, due to a lack of formal regulations, institutions have [repeatedly requested](#) guidance from ED on the reporting requirements.

Enacted during the Cold War, the goal of Section 117 was to monitor foreign gifts and contracts with American colleges and universities. However, despite institutional pleas for clarity, ED had only issued two Dear Colleague Letters related to Section 117 — one 1995 and another 2004 — but neither addressed questions from institutions.

Under the Trump administration, ED increased scrutiny over institutions' management of the reporting process following a [bipartisan Senate report](#) released in February. The report cited inaction by ED regarding monitoring foreign gifts, particularly those of Chinese origin.

This increased level of scrutiny resulted in federal investigations launched over the summer into Cornell University, Georgetown University, Texas A&M University, and Rutgers University due to alleged failures in properly reporting foreign gifts. Most recently, the University of Maryland - College Park received a letter from ED in late September citing concern over the university's reporting of foreign gifts and contracts and requesting records from recent years.

"These concerns arise in the context of an apparently unprecedented attempt by [ED] to expand statutory reporting requirements," the letter said. "[ED]'s information collection request exceeds its authority under Section 117 and is therefore arbitrary and capricious and unlawful."

A key complaint listed in the letter is that college and university staff and financial aid administrators are confused by the new rules due to reasonable differences in interpretation. For example, Section 117 sets the statutory monetary threshold for reporting foreign gifts at

\$250,000, but the new ICR guidance requires reportation of all gifts, including those below the statutory threshold.

“[ED]’s [ICR] requires such a large amount of information that it will actually undermine, as opposed to increase, the transparency of the relationships colleges and universities have with foreign individuals and entities, and efforts to identify nefarious conduct or inappropriate relationships,” the letter said. “[ED]’s actions also risk a chilling effect on foreign giving and the willingness of foreign entities to enter contractual agreements with colleges and universities.”

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