

**ARCHIVED****DCLPublicationDate: 2/1/95****DCLID: GEN-95-12****AwardYear:****Summary: To inform postsecondary educational institutions how to report ownership or control by, contracts with, or gifts from, foreign sources.**

February, 1995

GEN-95-12

PURPOSE: To inform postsecondary educational institutions how to report ownership or control by, contracts with, or gifts from, foreign sources.

Dear Colleague:

The Higher Education Act of 1965 (HEA), as amended, requires an institution of postsecondary education to file a disclosure report with the Secretary on January 31 or July 31 of each year, containing certain information about gifts received from or contracts entered into with foreign sources or about ownership or control of the institution by a foreign source (Section 1209, 20 U.S.C. 1145d). Although the statute permits the Secretary to issue regulations concerning this reporting requirement, the Secretary has determined that regulations are unnecessary. The information in this letter is intended to inform institutions about the statute and provide affected institutions with an address to which the reports should be forwarded.

The average time required to complete this information collection is estimated at 30 minutes per response, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. For institutions with numerous foreign gifts or contracts, the time required to complete this information could take much longer. If you have any comments concerning the accuracy of the time estimate or suggestions, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have any comments or concerns regarding the status of your individual submission of this information, write directly to: Office of the Director, Institutional Participation Division, U.S. Department of Education, 600 Independence Avenue, S.W., Washington, D.C. 20202-5323.

Gifts and contracts that are to be reported are those of \$250,000 or more in value, considered alone or in combination with all of the institution's other gifts from or contracts with the same foreign source within a calendar year.

Each disclosure report to the Secretary shall contain:

- For gifts received from or contracts entered into with a foreign source other than a foreign government, the aggregate dollar amount of such gifts and contracts attributable to a particular country. The country to which a gift is attributable is 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.

- For gifts received from or contracts entered into with a foreign government, the aggregate amount of such gifts and contracts received from each foreign government.

- In the case of an institution which is owned or controlled by a foreign source, the identity of the foreign source, the date on which the foreign source assumed ownership or control, and any changes in program or structure resulting from the change in ownership or control.

The statute requires additional disclosures for restricted and conditional gifts and contracts received by an institution. Whenever any institution receives a restricted or conditional gift or contract from a foreign source, the institution shall disclose:

- For such gifts received from or contracts entered into with a foreign source other than a foreign government, the amount, the date, and a description of such conditions or restrictions. The reports shall also disclose the country of citizenship, or if unknown, the principal residence for a foreign source which 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.

- For gifts received from or contracts entered into with a foreign government, the amount, the date, a description of such conditions or restrictions, and the name of the foreign government.

If an affected institution is within a State that has enacted requirements for public disclosure of gifts or contracts with a foreign source that are substantially similar to the disclosure requirements of Section 1209, a copy of the disclosure report filed with the State may be filed with the Secretary in lieu of the report required by Section 1209. If the State report is filed, the institution shall also provide a statement from the appropriate State official indicating that the institution has met the requirements for public disclosure under State law.

If an institution receives a gift from, or enters into a contract with, a foreign source, where any other department, agency or bureau of the Executive Branch of the Federal Government requires a report containing requirements substantially similar to Section 1209, a copy of this report may be filed in lieu of a report required by Section 1209.

For purposes of this reporting requirement, Section 1209(h) defines certain terms as follows:

- Foreign source means a foreign government, including an agency of a foreign government; a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states; an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; or an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source.

- Contract means any agreement for the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of either of the parties.

- Gift means any gift of money or property.

- Restricted or conditional gift or contract means any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding 1) the employment, assignment, or termination of faculty; 2) the establishment of departments, centers, research or lecture programs, or new faculty positions; 3) the selection or admission of students; or 4) 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.

- Institution means any institution, public or private, or, if a multi-campus institution, any single campus of such institution, in any State which 1) is legally authorized within such State to provide a program of education beyond secondary level; 2) provides a program for which it 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 3) is accredited by a nationally recognized accrediting agency or association and to which institution Federal financial assistance is extended (directly or indirectly through another entity or person), or which institution receives support from the extension of Federal financial assistance to any of its subunits.

Each affected institution must report to the Secretary on the first January 31 or July 31, whichever is sooner, following receipt of \$250,000 from a foreign source in a calendar year. The institution's transmittal must display its OPEID (institutional identifier found on its eligibility or approval letter establishing its HEA eligibility) on the upper right side of the transmittal. Reports should be forwarded to the following address:

if by mail: if by fax:

U.S. Department of Education (202) 260-6107  
Institutional Participation Division ATTN: Foreign Gift  
Foreign Gift Team Team  
600 Independence Avenue, S.W.  
Washington, D.C. 20202-5323

if by overnight mail or courier delivery: if by Internet:

U.S. Department of Education [forgift@sfa.ope.ed.gov](mailto:forgift@sfa.ope.ed.gov)  
Institutional Participation Division  
Foreign Gift Team  
7th & D Streets, S.W.,  
GSA Building Room 3030  
Washington, D.C. 20407

As this letter is the first official notification to institutions, the reports due July 31, 1995 should include an itemization of all gifts received and contracts entered into, and ownership or control by a foreign source since July 23, 1992. However, the institution is required to report only if the institution has received \$250,000 from any single foreign source in any of these calendar year periods: July 23 - December 31, 1992; January 1 - December 31, 1993; January 1 - December 31, 1994; and/or January 1 - July 31, 1995.

If an institution fails to comply with the requirements of Section 1209 in a timely way, the Secretary is authorized to undertake a civil action in Federal District Court to ensure compliance. An institution must reimburse the Treasury of the United States for the full costs of obtaining compliance with Section 1209 following a knowing or willful failure to comply.

All information provided by institutions under Section 1209 is open to inspection and duplication by members of the public during normal business hours.

We would be pleased to answer your questions regarding this letter. Please contact the Institutional Participation Division, 202-708-4906, and either ask to speak with Mr. Jack Reynolds, with Ms. Ann Clough, or with Dr. Robert Jamroz.

Sincerely,

David A. Longanecker

OMB Number: 1840-0695  
Expiration Date: 6/97