

June 12, 2023

Suzanne H. Plimpton
Reports Clearance Officer
National Science Foundation
2415 Eisenhower Avenue
Suite E7400
Alexandria, VA 22314

Re: National Science Foundation Proposal/Award Information—NSF Proposal and Award Policies and Procedures Guide, OMB Approval Number: 3145-0058

Dear Ms. Plimpton:

On behalf of the American Council on Education and the undersigned higher education associations, I write to offer comments on the revised National Science Foundation (NSF) Proposal and Award Policies and Procedures Guide (PAPPG), specifically the proposed implementation of PAPPG Chapter VII.D.3 “Foreign Gifts and Contracts Disclosure” created under Section 10339B, Foreign Financial Support, of the CHIPS and Science Act of 2022, (42 U.S.C. § 19040). We also support the detailed comments on the entire PAPPG being offered by our colleagues at the Council on Governmental Relations. However, these comments solely focus on the specific new disclosure requirement created in Section 10339B, given our ongoing engagement on foreign gift and contract disclosures.

As part of the CHIPS and Science Act, each institution of higher education that receives NSF funding must disclose annually all “current financial support, the value of which is \$50,000 or more, including gifts and contracts, received directly or indirectly from a foreign source” that is associated with a foreign country of concern.¹ This is a new reporting requirement, separate from the current reporting requirements under Section 117 of the Higher Education Act. As you are aware, Section 117 of the Higher Education Act requires institutions that participate in the Title IV student federal aid programs to submit to the secretary of education disclosure reports containing information about gifts received from any foreign source, contracts with a foreign entity, and any ownership interests in or control over the institution by a foreign entity.²

We appreciate the opportunity to comment on the proposed implementation of this new pre-award reporting requirement for the NSF. Our institutions take seriously our reporting obligations under Section 117 and other provisions, such as this newly created reporting requirement, regarding foreign gifts and contracts. We are aligned with the federal government regarding concerns around improper foreign influence and research security. However, we have been disappointed by the lack of engagement and continuing confusion around Section 117 reporting to the Department of Education (ED), and we believe the system remains in need

¹ See page 37, https://www.nsf.gov/bfa/dias/policy/papp/pappg24_1/FedReg/draftpappg_april2023.pdf

² <https://studentaid.gov/data-center/school/foreign-gifts>

of substantial additional work. While we have engaged extensively with the department in notice and comment to create its Information Collection Request (ICR), we continue to believe the system would be more useful if the department more fully engaged directly with the stakeholder community in creating processes and answering questions about current Section 117 requirements. Therefore, we ask NSF during this process to engage with the higher education community in substantial conversations regarding the creation of the reporting portal, and implementation of this statute.

While this new reporting requirement to NSF is similar, there are also some major differences with Section 117. NSF's reporting is meant to be an annual report, while Section 117 requires biannual reports (January 31 and July 31). The NSF reporting requirement also only applies to "countries of concern," while Section 117 was established to apply to any gift from a foreign source. The biggest difference is the reporting threshold under Section 117 is \$250,000, while under the new NSF disclosure the reporting threshold is \$50,000. These differences will likely create confusion and additional reporting burdens for our institutions. Both NSF and ED have publicly noted that these two reporting requirements may be duplicative and that there needs to be consistency in approach to reduce burden. Because of this, both ED and NSF should commit to engaging with the stakeholder community to ensure consistency, reduce regulatory burden for institutions, and work together regarding the continuing confusion around definitions and expectations in what institutions are reporting.

Regarding the draft implementation, we wanted to highlight the following concerns:

- The CHIPS and Science Act states "the Director shall request...a disclosure, in the form of a summary document." However, this proposed implementation implies that institutions will have to report each individual gift or contract over \$50,000 rather than a summary. This will be incredibly burdensome for institutions of higher education. We ask that the final implementation of this reporting requirement clarify that institutions will only need to report summaries, rather than individual reports for gifts and contracts over \$50,000.
- Section 10339B reads "...gifts and contracts, received directly or indirectly from a foreign source (as such term is defined in section 117 of the Higher Education Act of 1965 (20 U.S.C. 1011f(h)(2))) associated with a foreign country of concern." This language does not seem to include regular tuition payments from individual students and families. However, the lower \$50,000 threshold will likely capture tuition payments from individual foreign parents and families for international students studying at U.S. institutions of higher education. We ask that the final PAPPG clarify that this new disclosure is not meant to capture tuition for individuals, except in such cases where tuition payments are made from foreign embassies or consulates as part of foreign government sponsorship programs for international students.
- The proposed "Foreign Gifts and Contracts Disclosure" incorporates many of the same definitions and terms as Section 117, including names and addresses of foreign sources. We continue to be concerned about the reporting of names and addresses of individual foreign donors, which is at odds with the common practice at many institutions of allowing individual donors, including those living in other countries, to request

confidentiality in their giving. As we have also expressed to ED, we are also concerned about the slippery constitutional slope of institutions disclosing the names of natural-person donors. Recently, in striking down a state's donor disclosure law applicable to nonprofits, the Supreme Court based its holding on the well-established First Amendment right of nonprofit organizations not to disclose confidential donor information because of the risk that public disclosure could potentially chill associational rights.³

In addition, as we have expressed to ED in March 2020 comments on the Section 117 ICR, we are concerned that the disclosure of names and addresses of donors requesting confidentiality could jeopardize the safety of some foreign individuals, especially those from countries of concern.⁴ Potential examples include:

- a foreign individual from a religious minority in his or her home country who makes a donation to a religiously affiliated college could be subject to reprisal and religious persecution;
- an individual donor from a country where many believe females should not be educated who makes a gift to support college tuition for young women;
- an individual or entity donation from a Middle Eastern country to support research on Islamic fundamentalism and its connection to ISIS or other designated terrorist groups;
- an individual or entity donation from Russia to support research on corruption under Putin's regime; or
- an individual or entity donation from a country plagued by regular kidnapping of the affluent or perceived affluent for ransom.

We ask that, in final implementation, NSF not require individual names and addresses of donors, since the policy specifically asks for a summary of donations, rather than individual names and addresses.

- Under the CHIPS and Science Act, NSF is requesting a summary document "from a recipient institution of higher education," a disclosure "from the institution, a foundation of the institution, and related entities such as any educational, cultural, or language entity." We are concerned about our institutions' ability to collect information from foundations or related entities, which may be completely, legally separate from the institutions, with their own staff and governing boards, under the Internal Revenue Code's Sec. 501(c)(3) and/or Sec. 509(a)(3). An institution is unlikely to have any authority over such organizations and may be unable to compel the release of data. It would be helpful for NSF to engage in more substantial conversations with the stakeholder community about how to define such foundations and related entities to help reduce the burden in the collection of this data, as well as to clarify "related entities."

As NSF works to finalize the implementation of the "Foreign Gift and Contract Disclosure" requirements, we also ask that the agency substantially engage with the stakeholder

³ See Americans for Prosperity Foundation v. Bona, 141 S.Ct. 2373, ___ (2021)

⁴ <https://www.acenet.edu/Documents/Comments-Sec-117-revised-ICR-031120.pdf>

community in creating the reporting tool, including asking for technical feedback. There are numerous limitations with the current Section 117 reporting portal; however, there has not been any opportunity to provide technical feedback on the portal. A user-friendly reporting portal would greatly reduce burden and enhance the quality of information being reported.

Our associations, and members institutions, continue to be committed to responding to foreign gift and contract reporting requirements, as these issues become even more important to the public and policymakers. We hope NSF will continue to work with higher education stakeholders in regular and substantial engagement on the final implementation of this new reporting requirement.

Sincerely,



Ted Mitchell, President

On behalf of:

American Association of Collegiate Registrars and Admissions Officers
American Council on Education
Association of American Universities
Association of Catholic Colleges and Universities
Association of Governing Boards of Universities and Colleges
Association of Jesuit Colleges and Universities
Association of Public and Land-grant Universities
Association of Research Libraries
Council for Advancement and Support of Education
Council for Christian Colleges & Universities
NAFSA: Association of International Educators
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Council of University Research Administrators