

# NAS Comments on Proposed Foreign Disclosure Regulations

National Association of Scholars

Statement

November 04, 2019

[Department of Education](#)   [Secretary of Education](#)   [Accountability/Public Disclosure](#)   [Foreign Policy](#)

On September 6th, the Department of Education [proposed](#) issuing [revised forms](#) for colleges and universities to use when disclosing large gifts and contracts with foreign sources.

The National Association of Scholars is pleased to see that the Department of Education has closely followed our [own proposals for better foreign gift disclosures](#). We strongly support the majority of the Department of Education's proposal.

We continue to urge Congress to pass a bill requiring colleges to disclose the names of foreign donors; to disclose major gifts from Americans registered and acting as foreign agents; to lower the threshold for disclosure to \$50,000, down from \$250,000; to specify that in-kind gifts count toward the disclosure threshold; to clarify that gifts to university foundations are covered by disclosure laws; and to require institutions to disclose the purpose and any terms of agreement for the gift. While the Department of Education can implement some of these changes via its proposed disclosure forms, only Congress can lower the disclosure threshold. Congress can also make these changes more permanent by statute

by statute.

We urge the Department of Education to adopt the majority of its proposed updates to foreign gift disclosure forms, with minor modifications.

Read our comment to the Department of Education below.

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[Docket ID number ED-2019-ICCD-0114]

November 4, 2019

The Honorable Betsy DeVos

Secretary

U.S. Department of Education

400 Maryland Avenue, S.W.

Washington, DC 20202

Dear Secretary DeVos,

I urge the Department of Education to implement its proposed updates to the form for collecting disclosures of foreign gifts to colleges and universities—with minor modifications to ensure the Department collects and presents this information in a useful fashion.

I write as President of the National Association of Scholars (NAS). NAS is a network of scholars and citizens united by our commitment to intellectual freedom, the pursuit of truth, and virtuous citizenship. As part of our mission, we advocate enhanced transparency of foreign gifts to protect colleges and universities from undue foreign influence.

NAS is among the chief critics of lax foreign gift disclosure, and we recognize the need to update the Department's disclosure forms and to step up enforcement of 20 U.S.C. 1011f.

We are particularly pleased to see that the Department's proposal closely matches NAS's own proposals for enhanced foreign gift disclosures, as set forth in

- Rachelle Peterson, "U.S. Universities' Dangerous Lack of Foreign Gift Transparency," *Real Clear Education*, July 12, 2019.  
[https://www.realcleareducation.com/articles/2019/07/12/us\\_universities\\_dangerous\\_lack\\_of\\_foreign\\_gift\\_transparency.html](https://www.realcleareducation.com/articles/2019/07/12/us_universities_dangerous_lack_of_foreign_gift_transparency.html)
- Rachelle Peterson, "China's Insidious Institutes," *National Review Online*, March 15, 2019. <https://www.nationalreview.com/2019/03/confucius-institutes-chinese-government-academic-freedom/>
- Rachelle Peterson, "Get China's Pernicious Confucius Institutes Out of US Colleges," *The Hill*, February 22, 2018.  
<https://thehill.com/opinion/education/375092-get-chinas-pernicious-confucius-institutes-out-of-us-colleges>

In particular, we support these aspects of the Department's proposal:

- The requirement for institutions to list and disclose information regarding "all legal entities (including foundations or other organizations) that operate substantially for the benefit for or under the auspices of your institution" (1.b. and 1.c.);
- The requirement for institutions to disclose the name of the foreign source (2.a., 3.a., 4.a., and 5.a.);
- The requirement for institutions to disclose gifts from persons acting as foreign agents (2.a.iv., 3.a.iv., 4.a.iv., and 5.a.iv.);
- The requirement for institutions to disclose the terms of foreign gifts and contracts (2.c., 3.d., 4.c. and 4.d., 5.d. and 5.e.) and to upload a copy of the

gift or donation agreement (2.e., 3.e., 4.f., and 5.f.); and

- The requirement for institutions to answer the questions in 4.c., 4.d., 5.d., and 5.e. related to the description of conditional or restricted gifts.

This information is crucial for the Department to effectively carry out 20 U.S.C. 1011f, as it will ensure the Department has a more complete record of foreign gifts and contracts and the information necessary to verify whether institutions are complying with the law.

**We support, with clarification, the Department’s proposal to require institutions to list and disclose information regarding “all legal entities (including foundations or other organizations) that operate substantially for the benefit for or under the auspices of your institution” (1.b. and 1.c.).** This provides necessary clarification.

Many colleges have stated they are unsure whether gifts and contracts from foreign sources to college or university foundations are covered by the law. The law clearly intends to provide transparency about foreign gifts and contracts that bestow material benefits upon colleges and universities—which logically includes gifts and contracts made to university foundations or related institutions.

Requiring colleges to provide this information will help to ensure the Department receives a more complete record of foreign gifts and contracts.

However, the Department should amend its draft form to make it clear that institutions, in addition to listing these legal entities, must also disclose foreign gifts and contracts to these entities.

**We support, with minor modification, the Department’s proposal to require disclosing the name of the foreign source (2.a., 3.a., 4.a., 5.a.).**

This information is crucial for the Department to effectively carry out 20 U.S.C. 1011f. The Department is required, under 20 U.S.C. 1011f, to verify that institutions comply with the disclosure requirements, and the Department is authorized to request a civil action

brought by the Attorney General “whenever it appears that an institution has failed to comply with the requirements of this section.”

The current system for collecting foreign gift disclosures fails to provide the information that would enable the Department to tell whether an institution “has failed to comply with the requirements of this section.” The Department must be able to distinguish particular gifts and contracts from each other—but the current disclosure spreadsheets on the Department’s website show more than 3,200 gifts that include no identifying information besides the date, gift amount, and country of origin.

Without additional information about each gift, the Department is left to enforce the law by means of opening an investigation, as it has recently done with at least five institutions of higher education. Requiring institutions to provide relevant information upfront will enable the Department to verify compliance more quickly, to notice incomplete disclosures more regularly, and request additional disclosures more efficiently, all without opening a formal investigation. This is beneficial both for the Department, for the institutions, and for the public.

However, it is unnecessary to require colleges to list the address of the foreign government. This information should be publicly accessible and does not meaningfully contribute to the efficacy of the disclosure form.

**We support the Department’s proposal to require institutions to disclose gifts from persons acting as foreign agents (2.a.iv., 3.a.iv., 4.a.iv., 5.a.iv.).**

Foreign sources who run gifts through Americans registered as foreign agents are clearly subverting the law. The Department is right to ask institutions to verify whether they receive gifts from agents representing foreign governments or sources, and who those agents represent.

**We support the Department’s proposal to require institutions to disclose the terms of foreign gifts and contracts (2.c., 3.d., 4.c. and 4.d., 5.d. and 5.e.) and to upload a copy of the gift or donation agreement (2.e., 3.e., 4.f., and 5.f.).**

This information is crucial for the Department to identify and distinguish individual gifts and contracts—particularly when there are multiple gifts from the same source—and therefore to verify that institutions are complying with the law.

This information is also necessary to enforce the current legal requirement in 20 U.S.C. 1011f that institutions must provide a “description of such conditions or restrictions” of gifts received from or contracts entered into with a foreign source or foreign government. Current disclosures on the Department’s website show no descriptions whatsoever of any conditions or restrictions on the gifts, indicating that current disclosure system has failed to implement this section of the law.

In particular, the PDF copy of the gift or donation agreement is crucial. It enables both the Department and the public to verify that institutions’ self-provided descriptions of “conditions and restrictions” are accurate, and it provides the Department information needed to verify compliance.

**We support the questions in 4.c., 4.d., 5.d., and 5.e. related to the description of conditional or restricted gifts—and propose an additional question.**

These questions prompt colleges and universities to provide necessary and relevant information regarding the restrictions and conditions that foreign sources have placed on gifts and contracts. We find all of the questions important.

By asking these questions in a series of yes/no questions, the Department ensures that the information collected will be thorough and readily useful for analysis. Asking institutions to self-describe restrictions or conditions has proved inadequate—as evidenced by the fact that of the 23,000 disclosures on the Department’s most recent disclosure spreadsheet, not a single one includes any information on conditions or restrictions. The Department is right to prompt institutions with particular salient questions about conditions or restrictions.

We suggest that the Department adds to this list another relevant question: “Do the restrictions or conditions concern or relate to the provision of travel for, awards or honors given to, or other benefits for a member or members of the institution’s administration?” Because gifts and contracts can have the potential to influence not only

hiring, admissions, grants and scholarships, the creation of programs, and the curriculum, but also any decisions by the administrators of a college or university, the Department should add this question.

**In response to the Department's question “(1) Is this collection necessary to the proper functions of the Department?” we answer yes.** This collection is required under 20 U.S.C. 1011f and is necessary for the Department to provide oversight and transparency of foreign donations and contracts.

This information is also necessary for the public, which deserves access to information (and is given that access under 20 U.S.C. 1011f) that sheds light on potentially compromising gifts and contracts between American colleges and universities and foreign sources and governments.

We strongly encourage the Department, in addition to collecting this information, to make it available online in an easily useable, downloadable format, for public dissemination.

**In response to the Department's question “(2) Will this information be processed and used in a timely manner?” we answer yes, it can be, if the Department provides an appropriate online form for institutions to complete and an appropriate online report for the public to download.** We describe our recommendations for these forms in our comment on question (4) below.

**In response to question “(4) How might the Department enhance the quality, utility, and clarity of the information to be collected?” we suggest the following:**

- *Make all disclosures available online in an easily downloadable format, preferably in Excel or a similar program that allows the user to sort and analyze the information.* The public's ability to make use of these disclosures depends on its ability to access the information in a useable, sortable, extractable format. The Department should not release the disclosure reports as PDFs or in any other format that prevents the public from sorting, summing, extracting, and otherwise using the information. The Department is required under 20 U.S.C. 1011f to ensure that “All disclosure



Department is required under 20 U.S.C. 1011f to ensure that all disclosure reports required by this section shall be public records open to inspection and copying during business hours.” We appreciate that the Department

has made available online a downloadable Excel spreadsheet that lists the disclosures made in the last six years. We urge it to continue to make these disclosures available online in Excel or a similar format.

- *Make available previous disclosures, from earlier than six years ago, also in an easily downloadable and sortable format.* The information disclosed will enjoy greater “quality, utility, and clarity” when it can be seen in the context of a longer historical arc. The public must have easy access to these older disclosures. In the past, NAS has asked the Department for these earlier disclosures and received them by email as Excel spreadsheets dating to 1982. We trust that the Department can retrieve these older disclosures and make them available online as well.
- *Provide an online form that enables the public to select features of the data to download.* The public is required under 20 U.S.C. 1011f to have access to all disclosures made under this law, and the Department is required to facilitate this. The Department should create an online program under which users can select features of the disclosures they wish to download as a spreadsheet, such as the institution name, the country of origin, the foreign source or foreign government name, the date range of gift, whether it was reported to influence the appointment of faculty, and so on for each of the questions the Department proposes to ask institutions to disclose. Giving the public the ability to select specific features of the report to download will make the disclosures more useful.
- *Provide disclosure information in a format that is consistent across years.* The Department should ensure that whatever spreadsheets or other disclosures it makes available online can be easily matched, sorted, and analyzed across years—even though disclosures under the new forms will be much more detailed than those from earlier years. Older disclosures



can have columns that are left blank, for instance, for questions that the

Department did not ask institutions at the time. This continuity of format is crucial. Unless the information can be easily sorted and analyzed across time, it will lose a significant aspect of its value.

- *Provide an online portal through which the public can download each of the PDFs of contracts.* The Department proposes to collect these PDFs from institutions, and is required under 20 U.S.C. 1011f to therefore treat them as “public records open to inspection.” It should make them easily available online for download by the public.

**In response to question “(5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology?” we urge the Department to make available an easily useable online form through which institutions can submit their disclosures.**

This online form should sync with a database that automatically generates the reports the public can access.

The National Association of Scholars thanks the Department of Education for proposing these excellent revisions to its foreign gift disclosure forms, and urges it to adopt these new forms with the recommendations given above.

Yours,

Peter Wood  
President

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*Image: Thomas Breher, Public Domain*