

# **Exhibit A-1**

February 7, 2022 FOIA Request



February 7, 2022

**VIA ELECTRONIC MAIL AND FACSIMILE**

U.S. Department of Education  
Office of the Executive Secretariat  
FOIA Service Center  
400 Maryland Ave. SW, LBJ 7W106A  
Washington, D.C. 20202-4536  
EDFOIAManager@ed.gov  
ATTN: FOIA Public Liaison

**Re: FOIA Request: Records Related to Section 117 Enforcement and the University of Pennsylvania's Biden Center for Diplomacy and Global Engagement**  
(DFI FOIA No. 100-3-22)

Dear FOIA Public Liaison:

The Defense of Freedom Institute for Policy Studies, Inc. (“DFI”) is a 501(c)(3) nonprofit, nonpartisan organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting civil and constitutional rights at schools and in the workplace. For the benefit of the public, DFI’s mission includes obtaining records related to the consideration and implementation of policies imposed by the federal government and its officials on the American people.

Section 117 of the Higher Education Act of 1965, codified at 20 U.S.C. § 1011f, clearly requires that institutions of higher education that receive federal funding provide semi-annual disclosures to ED of gifts and contracts from government and non-government foreign sources (*e.g.*, if the annual value of the gifts and contracts is \$250,000 or more from an institution owned or controlled by a foreign source, it must be disclosed to ED).<sup>1</sup>

According to the U.S. Department of Education (“ED”), various U.S. universities received at least \$6.5 billion in *undisclosed* foreign gifts and contracts between 2010 and 2020, frequently and illegally failing to reveal the true sources of those foreign gifts and contracts,<sup>2</sup> a practice known as “anonymizing.” Following ED’s increased enforcement of Section 117’s reporting requirements prior to 2021, many universities filed corrective reports with ED, reflecting previously undisclosed foreign gifts and contracts valued at approximately \$6.5 billion from government and non-

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<sup>1</sup> 20 U.S.C. § 1011f. See <https://www.govinfo.gov/content/pkg/USCODE-2018-title20/pdf/USCODE-2018-title20-chap28-subchapI-partB-sec1011f.pdf> and <https://sites.ed.gov/foreigngifts/>.

<sup>2</sup> Aruna Viswanatha and Melissa Korn, “Top Universities Took Billions in Unreported Foreign Funds, U.S. Finds,” Wall Street Journal (October 20, 2020), <https://www.wsj.com/articles/top-universities-took-billions-in-unreported-foreign-funds-u-s-finds-11603226953>.



government foreign sources in places such as the People’s Republic of China (“PRC”), Qatar, Saudi Arabia, and the United Arab Emirates.<sup>3</sup>

On February 1, 2017, the University of Pennsylvania (“UPenn”) announced<sup>4</sup> the formation of the “Penn Biden Center for Diplomacy & Global Engagement” (“Biden Center”), describing its mission as engaging “with its faculty and global centers to convene world leaders, develop and advance smart policy, and strengthen the national debate for continued American global leadership in the 21<sup>st</sup> century.”<sup>5</sup> The Biden Center opened a Washington, D.C. office in 2018. The next year, UPenn received an astonishing 389% higher reportable foreign contributions 2019 compared to 2018).<sup>6</sup> *The Philadelphia Inquirer* reported that foreign source contributions to UPenn increased by at least \$258 million.<sup>7</sup> Another analysis revealed that between 2013 and 2019, UPenn was the third highest university recipient of foreign funding from groups in the PRC and that approximately 40% of those gifts (approximately \$27.1 million) came from anonymous PRC donors.<sup>8</sup>

President Joseph R. Biden, Jr. officially launched his 2020 presidential campaign on April 25, 2019. As referenced above, a massive increase in foreign contributions to UPenn occurred during the period leading up to and after the campaign announcement, including millions of dollars in gifts from anonymous PRC donors. In May 2020, responding to a request from the public for

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<sup>3</sup> Lauren Camera, “Colleges and Universities Fail to Report Billions in Foreign Donations,” *U.S. News & World Report* (February 13, 2020), <https://www.usnews.com/news/education-news/articles/2020-02-13/colleges-and-universities-fail-to-report-billions-from-china-qatar-saudi-arabia-and-others>.

<sup>4</sup> “Vice President Joe Biden to lead the Penn Biden Center for Diplomacy and Global Engagement,” *Penn Today* (February 1, 2017), <https://penntoday.upenn.edu/spotlights/vice-president-joe-biden-lead-penn-biden-center-diplomacy-and-global-engagement>.

<sup>5</sup> See Penn Biden Center for Diplomacy & Global Engagement, <https://global.upenn.edu/penn-biden-center>. In addition to President Biden, the Biden Center maintains close ties with others in the Biden Administration. Antony Blinken, is former managing director, currently serves as the Secretary of State. Amy Gutmann, UPenn’s president, is President Biden’s nominee for Ambassador to Germany.

<sup>6</sup> Analytics Staff, “Penn received 389% more foreign donations in 2019 than in 2018, DP analysis finds,” *The Daily Pennsylvanian* (April 20, 2021), <https://www.thedp.com/article/2021/04/foreign-donations-penn-analysis-china>.

<sup>7</sup> Catherine Dunn, “Penn got \$258 million in foreign money, and there may be more it hasn’t disclosed,” *The Philadelphia Inquirer* (February 24, 2020), <https://www.inquirer.com/business/university-pennsylvania-foreign-donations-china-saudi-arabia-20200224.html>.

<sup>8</sup> Janet Lorin and Brandon Kochkodin, “Harvard Leads U.S. Colleges That Received \$1B from China,” *Bloomberg | Quint* (February 6, 2020), <https://www.bloombergquint.com/global-economics/harvard-leads-u-s-colleges-that-received-1-billion-from-china>.



information about anonymous donors benefitting the Biden Center, a UPenn spokesman stated that the Biden Center had “never solicited any gifts for the Penn Biden Center” and that none of its unsolicited gifts came from China.<sup>9</sup> Reporting by *Politico* confirmed that the Biden Center does not fundraise and that the Biden Center is instead funded by UPenn’s general funds for its operations.<sup>10</sup> ED’s online portal for Section 117 foreign disclosure reporting shows that from the time of the announcement by UPenn of the establishment of the Biden Center on February 1, 2017, through September 2020, UPenn received approximately \$21,187,333 in reportable foreign gifts and contracts from China.<sup>11</sup>

In a letter to President-elect Biden dated November 18, 2020, the American Council on Education (“ACE”) asked that the incoming administration act “quickly” to “[h]alt the expanded reporting requirements, including the new Information Collection Request (ICR) and Notice of Interpretation (NOI) on Section 117 imposed by the Department of Education in its effort to expand those reporting requirements...”<sup>12</sup> ACE claimed to represent the demands of approximately forty-six (46) higher education associations, which it named in its letter (and which are named in the request below). In the wake of that demand, ED’s enforcement of Section 117’s disclosure requirements has weakened since President Biden took office.<sup>13</sup>

ED’s Section 117 enforcement efforts are a matter of public interest given the PRC’s ongoing political, diplomatic, economic, and military competition<sup>14</sup> with the United States and its allies<sup>15</sup> and its ongoing efforts to leverage American higher education to its competitive advantage. DFI

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<sup>9</sup> Tori Sousa, “U. denies complaint that Penn Biden Center accepted undisclosed donations from China,” *The Daily Pennsylvanian* (May 30, 2020), <https://www.thedp.com/article/2020/05/penn-biden-center-china-undisclosed-donations-complaint-millions>.

<sup>10</sup> Theodoric Meyer, “Groups with Biden ties pose ethics quandary for his Administration,” *Politico* (January 18, 2021), <https://www.politico.com/news/2021/01/18/biden-ties-ethics-quandary-for-his-administration-460126>.

<sup>11</sup> See Section 117 of the Higher Education Act – Public Records, Foreign Funding Disclosure Reports, searchable at <https://sites.ed.gov/foreigngifts/>

<sup>12</sup> Letter to Joe Biden, President-Elect and Kamala Harris, Vice President-Elect, from the American Council on Education (ACE), <https://www.acenet.edu/Documents/Letter-Biden-Administration-Regulatory-Actions-111820.pdf>.

<sup>13</sup> Audrey Conklin, “US Colleges report fewer foreign gifts after Biden takes office, sparking concern from Rep. Gallagher,” *Fox News* (November 5, 2021), <https://sites.ed.gov/foreigngifts/>.

<sup>14</sup> Eric Tucker, “FBI director says the threat from China is ‘more brazen’ than ever before,” *Associated Press* (January 31, 2022), <https://www.npr.org/2022/01/31/1077174231/fbi-director-says-the-threat-from-china-is-more-brazen-than-ever-before>.

<sup>15</sup> Editorial Board Opinion, “China’s Xi promises the world ‘heads bashed bloody.’ He should be taken seriously,” *Washington Post* (July 5, 2021), <https://www.washingtonpost.com/opinions/2021/07/05/chinas-xi-promises-world-heads-bashed-bloody-he-should-be-taken-seriously/>.



thus seeks records and information related to ED's enforcement of Section 117. In this context, anonymized foreign contributions to American universities, including UPenn, which received \$21,187,333 in reportable foreign gifts and contracts from China after announcing the formation of the Biden Center, are of particular concern.

Therefore, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of ED, 34 C.F.R. Part 5 ("Availability of Information to the Public"), DFI makes the following request for records within your possession and/or control:

### **Requested Records**

DFI requests that ED produce the following records within twenty (20) business days:

1. All records, including but not limited to electronic mail ("email"), texts, letters, memoranda, and other documentation from the following "higher education associations" to any and all ED officials from November 3, 2020, through the date the search is conducted, which reference "Section 117" or "foreign reporting" or "reporting requirements" or "foreign donors" or "anonymized" or "Information Collection Request" or the "Notice of Interpretation (NOI) on Section 117":
  - a. American Council on Education ("ACE")
  - b. ACPA-College Student Educators International
  - c. American Association of Colleges of Nursing
  - d. American Association of Collegiate Registrars and Admissions Officers
  - e. American Association of Community Colleges
  - f. American Association of State Colleges and Universities
  - g. American Dental Education Association
  - h. American Indian Higher Education Consortium
  - i. APPA, "Leadership in Educational Facilities"
  - j. Association of Governing Boards of Universities and Colleges
  - k. Association of American Colleges and Universities
  - l. Association of American Universities
  - m. Association of Catholic Colleges and Universities
  - n. Association of Community College Trustees
  - o. Association of Independent California Colleges and Universities
  - p. Association of Independent Colleges and Universities in Massachusetts
  - q. Association of Independent Colleges and Universities in Pennsylvania
  - r. Association of Independent Colleges and Universities in Rhode Island
  - s. Association of Jesuit Colleges and Universities
  - t. Association of Public and Land-grant Universities
  - u. Association of Research Libraries
  - v. Association of Vermont Independent Colleges
  - w. Coalition of Urban and Metropolitan Universities
  - x. College and University Professional Association for Human Resources



- y. Connecticut Conference of Independent Colleges
  - z. Council for Advancement and Support of Education
  - aa. Council for Christian Colleges & Universities
  - bb. Council for Higher Education Accreditation
  - cc. Council for Opportunity in Education
  - dd. Council of Graduate Schools
  - ee. Council on Government Relations
  - ff. Council on Social Work Education
  - gg. EDUCAUSE
  - hh. ETS
  - ii. Higher Education Consultants Association
  - jj. Hispanic Association of Colleges and Universities
  - kk. NAFSA: Association of International Educators
  - ll. NASPA – Student Affairs Administrators in Higher Education
  - mm. National Association for College Admission Counseling
  - nn. National Association for Equal Opportunity in Higher Education
  - oo. National Association of College and University Business Officers
  - pp. National Association of Independent Colleges and Universities
  - qq. National Association of Student Financial Aid Administrators
  - rr. National Collegiate Athletic Association
  - ss. Phi Beta Kappa Society
2. All records, including but not limited to email, texts, letters, memoranda, and other documentation from any and all ED officials to any and all of the entities listed in Item 1, from November 3, 2020, through the date the search is conducted, which reference “Section 117” or “foreign reporting” or “reporting requirements” or “foreign donors” or “anonymized” or “Information Collection Request” or the “Notice of Interpretation (NOI) on Section 117.”
  3. All records, including but not limited to email, texts, letters, memoranda, and other documentation from any and all ED officials and government contractors assigned to ED (*i.e.*, independent personnel contracted by the federal government to provide professional expertise and support directly or indirectly to ED officials) from November 3, 2020, through the date the search is conducted, which reference “UPenn” or “University of Pennsylvania” or “University of Pennsylvania’s Biden Center for Diplomacy and Global Engagement” or “Penn Biden Center” or “Biden Center” or “Center” or “Amy Gutmann” or “President of UPenn” or “Section 117” or “foreign reporting” or “reporting requirements” or “foreign donors” or “anonymized” or “Information Collection Request” or “Notice of Interpretation (NOI) on Section 117” or “China” or “PRC.”
  4. All records, including but not limited to email, texts, letters, memoranda, and other documentation from any and all ED officials and government contractors assigned to ED (*i.e.*, independent personnel contracted by the federal government to provide



professional expertise and support directly or indirectly to ED officials) from November 3, 2020, through the date the search is conducted, which reference ED’s Section 117 foreign source contracts and gifts reporting portal, including but not limited to “Information Collection Request” or “ICR” or “<https://partners.ed.gov/ForeignGifts>” or “reporting portal” or “Section 117 portal” or “change in enforcement” or “Section 117 statutory reporting obligation” or “reportable contracts” or “IHE opposition” or “rescission of prior guidance” or “Dear Colleague Letter (DCL), GEN-04-11” or “20 U.S.C. § 1011f” or “Section 117 Report” or “Report on Institutional Compliance with Section 117 of the Higher Education Act of 1965” or “Section 117 investigation” or “Section 117 investigations.”

## Definitions

Absent contrary statutory directives, words and phrases contained herein should be accorded their usual, plain, and ordinary meaning. Please note the following statutory definition:

“**Records**” are defined at 44 U.S.C. § 3301(a)(1-2) as including “all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them” and further “includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form, such as emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.

## Identification and Production of the Requested Records

FOIA imposes a burden on ED, as a covered agency under 5 U.S.C. § 551(1), to timely disclose requested agency records to the requestor<sup>16</sup> if ED (1) created or obtained the requested materials, and, (2) is “in control of the requested materials at the time the FOIA request [was] made.”<sup>17</sup> Upon request, ED must “promptly” make the requested records available to the requester.<sup>18</sup> Notably, covered agency records include materials provided to ED by both private and governmental organizations.<sup>19</sup> Upon receipt of a FOIA request that “reasonably” describes the records sought and is in compliance with ED’s published rules regarding the time, place, any fees, and procedures

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<sup>16</sup> FOIA requires the disclosure of nonexempt agency records to any person, which includes an individual, partnership, corporation, association, or public or private organization other than an agency. 5 U.S.C. § 551(2).

<sup>17</sup> *Department of Justice (DOJ) v. Tax Analysts*, 492 U.S. 136 at 144-45 (1989).

<sup>18</sup> 5 U.S.C. § 552(a)(3)(A).

<sup>19</sup> *Id.* at 144.





to be followed,<sup>20</sup> ED must conduct a search calculated to find responsive records in ED's control at the time of the request.<sup>21</sup> In addition, the records produced by ED are required to be provided in "any form or format requested . . . if the record is readily reproducible by the agency in that form or format."<sup>22</sup>

Upon receipt of this request, ED has twenty business days to "determine . . . whether to comply with [the] request" and "shall immediately notify" the requester of its determination and the reasons therefor," the right to seek assistance from the agency's FOIA public liaison, and the requester's right to appeal any "adverse determination" by ED.<sup>23</sup>

Consistent with FOIA guidelines, DFI requests the following regarding the provision of the requested records:

- ED should immediately act to protect and preserve all records potentially responsive to this request, notifying any and all responsible officials of this preservation request and verifying full compliance with the preservation request. This matter may be subject to litigation, making the immediate initiation of a litigation hold on the requested materials necessary.
- ED should search all record systems that may contain responsive records, promptly consulting with its information technology (IT) officials to ensure the completeness of the records search by using the full range of ED's IT capabilities to conduct the search. To constitute an adequate search for responsive records, ED should not rely solely on a search of a likely custodian's files by the custodian or representations by that likely custodian, but should conduct the search with applicable IT search tools enabling a full search of relevant agency records, including archived records, without reliance on a likely custodian's possible deletion or modification of responsive records.
- ED should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding ED's business operations. Responsive records include official business conducted on unofficial systems which may be stored outside of official recording systems and are subject to FOIA. ED should directly inquire, as part of its search, if likely custodians have conducted any such official business on unofficial systems and should promptly and fully acquire and preserve those records as ED's official records. Such unofficial systems include, but are not limited to, governmental business conducted by employees using personal emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or

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<sup>20</sup> 5 U.S.C. § 552(a)(3)(A)(i)

<sup>21</sup> *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004).

<sup>22</sup> 5 U.S.C. § 552(a)(3)(B).

<sup>23</sup> 5 U.S.C. § 552(a)(6)(A)(i).





ICQ, and shared messages systems such as Slack. Failure to identify and produce records responsive to this request from such unofficial systems would constitute a knowing concealment by ED calculated to deflect its compliance with FOIA's requirements.

- ED should timely provide entire records responsive to this request, broadly construing what information may constitute a “record” and avoiding unnecessarily omitting portions of potentially responsive records as they may provide important context for the requested records (*e.g.*, if a particular email is clearly responsive to this request, the response to the request should include all other emails forming the email chain, to include any attachments accompanying the emails).
- ED should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.
- If ED determines that any portions of otherwise responsive records are statutorily exempt from disclosure, DFI requests that ED disclose reasonably segregable portions of the records.
- For any responsive records withheld in whole or part by ED, ED should provide a clear and precise enumeration of those records in index form presented with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA”<sup>24</sup> and provide a sufficiently detailed justification and rationale for each non-disclosure and the statutory exemption upon which the non-disclosure relies.
- Please provide responsive records in electronic format by email, native format by mail, or PDF or TIH format on a USB drive. If it helps speed production and eases ED's administrative burden, DFI welcomes provision of the records on a rolling basis. Responsive records sent by mail should be addressed to the Defense of Freedom Institute for Policy Studies, 1455 Pennsylvania Avenue NW, Suite 400, Washington, D.C. 20004.

### **Fee Waiver Request**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.33, DFI requests a waiver of all fees associated with this FOIA request for agency records. Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and because disclosure of the information contained within the requested records is not primarily in the commercial interests of DFI. The subject of this request regards identifiable operations and activities of ED and, more specifically, the identities, positions held, and related professional experience of officials directly involved in ED's

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<sup>24</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).



policy-making and implementing operations and activities. Provision of the requested records will provide the public with a clearer understanding of ED's decisions regarding enforcement of Section 117 of the Higher Education Act of 1965.

DFI is an independent 501(c)(3) nonprofit organization without a commercial purpose primarily engaged in the dissemination of information about government policies to the public. DFI is engaged in the collection, analysis, and dissemination of information to educate the public about government policies that impact the civil and constitutional rights of American families, students, entrepreneurs, and workers. DFI actively publishes information and related analyses on its public website and promotes access to that information and analyses on social media platforms, including but not limited to distribution via Facebook and Twitter.

### **Conclusion**

DFI appreciates ED's prompt attention to this request for records pursuant to FOIA, which will provide important information to the American people regarding Section 117 foreign disclosure reporting enforcement by the U.S. Department of Education. Please contact me immediately if DFI's request for a fee waiver is not granted in full.

If you have any questions or I can further clarify DFI's request, please contact me at your earliest convenience at [jim.blew@dfipolicy.org](mailto:jim.blew@dfipolicy.org).

Sincerely yours,

*/s/ James C. Blew*

Jim Blew

Defense of Freedom Institute for Policy Studies, Inc.

## **Exhibit A-2**

February 8, 2022 FOIA  
Acknowledgment Letter



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

FOIA Service Center

February 8, 2022

Mr. Paul R Moore  
Senior Counsel  
Defense of Freedom Institute for Policy Studies  
1455 Pennsylvania Ave NW  
Suite 400  
Washington, DC 20004

RE: FOIA Request No. - 22-01850-F

Dear: Paul R Moore

This is in response to your letter dated February 7, 2022, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on February 8, 2022, and forwarded to the primary responsible office(s) for action.

You requested: 1. All records, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation from the following “higher education associations” to any and all ED officials from November 3, 2020, through the date the search is conducted, which reference “Section 117” or “foreign reporting” or “reporting requirements” or “foreign donors” or “anonymized” or “Information Collection Request” or the “Notice of Interpretation (NOI) on Section 117”:

- a. American Council on Education (“ACE”)
- b. ACPA-College Student Educators International
- c. American Association of Colleges of Nursing
- d. American Association of Collegiate Registrars and Admissions Officers
- e. American Association of Community Colleges
- f. American Association of State Colleges and Universities
- g. American Dental Education Association
- h. American Indian Higher Education Consortium
- i. APPA, “Leadership in Educational Facilities”
- j. Association of Governing Boards of Universities and Colleges
- k. Association of American Colleges and Universities
- l. Association of American Universities
- m. Association of Catholic Colleges and Universities
- n. Association of Community College Trustees
- o. Association of Independent California Colleges and Universities
- p. Association of Independent Colleges and Universities in Massachusetts

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- q. Association of Independent Colleges and Universities in Pennsylvania
  - r. Association of Independent Colleges and Universities in Rhode Island
  - s. Association of Jesuit Colleges and Universities
  - t. Association of Public and Land-grant Universities
  - u. Association of Research Libraries
  - v. Association of Vermont Independent Colleges
  - w. Coalition of Urban and Metropolitan Universities
  - x. College and University Professional Association for Human Resources
  - y. Connecticut Conference of Independent Colleges
  - z. Council for Advancement and Support of Education
  - aa. Council for Christian Colleges & Universities
  - bb. Council for Higher Education Accreditation
  - cc. Council for Opportunity in Education
  - dd. Council of Graduate Schools
  - ee. Council on Government Relations
  - ff. Council on Social Work Education
  - gg. EDUCAUSE
  - hh. ETS
  - ii. Higher Education Consultants Association
  - jj. Hispanic Association of Colleges and Universities
  - kk. NAFSA: Association of International Educators
  - ll. NASPA – Student Affairs Administrators in Higher Education
  - mm. National Association for College Admission Counseling
  - nn. National Association for Equal Opportunity in Higher Education
  - oo. National Association of College and University Business Officers
  - pp. National Association of Independent Colleges and Universities
  - qq. National Association of Student Financial Aid Administrators
  - rr. National Collegiate Athletic Association
  - ss. Phi Beta Kappa Society
2. All records, including but not limited to email, texts, letters, memoranda, and other documentation from any and all ED officials to any and all of the entities listed in Item 1, from November 3, 2020, through the date the search is conducted, which reference “Section 117” or “foreign reporting” or “reporting requirements” or “foreign donors” or “anonymized” or “Information Collection Request” or the “Notice of Interpretation (NOI) on Section 117.”
3. All records, including but not limited to email, texts, letters, memoranda, and other documentation from any and all ED officials and government contractors assigned to ED (i.e., independent personnel contracted by the federal government to provide professional expertise and support directly or indirectly to ED officials) from November 3, 2020, through the date the search is conducted, w (Date Range for Record Search: From 11/3/2020 To 2/8/2022)

Please refer to the FOIA tracking number to check the status of your FOIA request at the link provided below:

<https://foiaexpress.pal.ed.gov/app/CheckStatus.aspx>

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No. 22-01850-F

For any future correspondence, status updates or questions regarding your request, please contact the FOIA Public Liaison via email to [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov)

Sincerely,

ED FOIA Manager  
Office of the Executive Secretariat

## **Exhibit A-3**

February 8, 2022 Status Update Request





Paul Moore <paul.moore@dfipolicy.org>

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## Status Update for Request #22-01850-F

1 message

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**EDFOIManager@ed.gov** <EDFOIManager@ed.gov>  
To: paul.moore@dfipolicy.org

Tue, Feb 8, 2022 at 7:06 AM

Dear Paul Moore,

The status of your FOIA request #22-01850-F has been updated to the following status 'In Process'. To log into the DoEd FOIA Portal click on the Application URL below.

<https://foiaexpress.pal.ed.gov/>

Sincerely,  
Department of Education

## **Exhibit A-4**

February 22, 2022 Fee Waiver Denial



**UNITED STATES DEPARTMENT OF EDUCATION**

OFFICE OF THE SECRETARY

FOIA Service Center

February 22, 2022

Mr. Paul R Moore  
Senior Counsel  
Defense of Freedom Institute for Policy Studies  
1455 Pennsylvania Ave NW  
Suite 400  
Washington, DC 20004

RE: FOIA Request No. 22-01850-F

This letter is in response to your request dated February 7, 2022, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on February 8, 2022. Your request has been assigned to Multiple Offices within the Department to search for documents that may be responsive to your request.

In your request, you have asked for a waiver of all fees associated with the processing of your request. After reviewing your fee waiver request, your request for a fee waiver is denied.

The Department has concluded that you have failed to provide sufficient information to demonstrate your entitlement to a waiver of processing fees. More specifically, justification has not been provided to explain how the requested records would contribute significant information to the public's understanding of the Department's operations. You have also not provided any evidence demonstrating public interest in the documents.

OTHER

Accordingly, your requester category is determined to be an "all other use" requester and, therefore, subject to search fees after the first 2 hours, and duplication fees after the first 100 pages or \$3.00 per CD.

You did not indicate that you are willing to pay fees associated with processing your request. Until a search is completed, and the number of pages is established, a firm estimate of potential fees cannot be provided. You will be notified if the fees associated with your request will exceed \$25.00.

Attached is general information of the FOIA Fees and Waivers. Should you still wish to claim that the Department's processing fees should be waived, you must provide more specific and detailed evidence to support your claims under each statutory requirement described in the FOIA, available on the internet at: [www.usdoj.gov/foia](http://www.usdoj.gov/foia) and outlined in the attachment to this letter.

You have the right to seek assistance and/or dispute resolution services from the Department's FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA Public Liaison

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is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to appeals or litigation.

They can be contacted by:

|        |   |  |
|--------|---|--|
| Mail   | FOIA Public Liaison<br>Office of the Executive Secretariat<br>U.S. Department of Education<br>400 Maryland Ave., SW, LBJ 7C132<br>Washington, DC 20202-4500 | Office of Government Information Services<br>National Archives and Records Administration<br>8601 Adelphi Road<br>Room 2510<br>College Park, MD 20740-6001 |
| E-mail | <a href="mailto:robert.wehausen@ed.gov">robert.wehausen@ed.gov</a>  | <a href="mailto:OGIS@nara.gov">OGIS@nara.gov</a>   |
| Phone  | 202-205-0733  | 301-837-1996; toll free at 1-877-684-6448  |
| Fax    | 202-401-0920  | 301-837-0348   |

Lastly, you have the right to appeal this determination. You must submit any appeal within 90 calendar days after the date of this letter. Using the services described above does not affect your right, or the deadline, to pursue an appeal. An appeal must be in writing and must include a detailed statement of all legal and factual bases for the appeal; it should be accompanied by a copy of this letter, the initial letter of request, and any documentation that serves as evidence or supports the argument you wish the Department to consider in resolving your appeal.

Appeals may be submitted using the on-line form available at [www.ed.gov/policy/gen/leg/foia/foia-appeal-form.pdf](http://www.ed.gov/policy/gen/leg/foia/foia-appeal-form.pdf).

Appeals can also be submitted by:

E-mail: [EDFOIAappeals@ed.gov](mailto:EDFOIAappeals@ed.gov)  
Fax: 202-401-0920  
Mail: Appeals Office  
Office of the Executive Secretariat  
U.S. Department of Education  
400 Maryland Avenue, SW, LBJ 7W106A  
Washington, DC 20202-4500

If you have any questions or would like the original signed copy of this letter, please contact the FOIA Requester Service Center at (202) 401-8365 or via e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov) (please include the case number).

Sincerely,

*DeShawn Middleton*  
Government Information Specialist  
Office of the Executive Secretariat

Enclosure

Page 3 – Paul R Moore  
FOIA Request No. 22-01850-F

### **Freedom of Information Act FEES AND FEE Waivers (General Information)**

The FOIA authorizes agencies to recover from requesters certain costs associated with processing requests made under the Act. 5 U.S.C. § 552 (a)(4)(A)(i) and (ii). The statute further provides for such fees to be waived in whole or in part where “disclosure of the information [requested] is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii)(2000); 34 C.F.R. § 5.64.

To qualify for a fee waiver, requesters must meet two statutory requirements. First, the requester must support the request with evidence that establishes that disclosure of the information sought is in the public interest. In order to determine this, the Department must consider the following four factors in order:

1. The subject matter of the requested records themselves must specifically concern identifiable “operations or activities of the government”;
2. In order for the disclosure to “likely contribute” to an understanding of specific government operations or activities, the disclosable portions of the requested information must be meaningfully informative in relation to the subject matter of the request;
3. The disclosure must contribute to the “understanding of the public at large,” as opposed to that of the individual requester or a narrow segment of interested persons. With regard to this element, requesters should address with particularity and in detail the requester’s subject matter expertise and intentions, ability, and methods of disseminating information to the public; and
4. The disclosure must “contribute significantly” to public understanding of government operations or activities.

Requesters must meet all four elements of the public interest test outlined above to satisfy this first statutory requirement for a fee waiver. See Judicial Watch, Inc. v. Department of Justice, No. 03-5093, 2004 WL 980826 (D.C. Cir. May 7, 2004).

If the first statutory requirement is met, the Department will then also determine whether the “disclosure of the information...is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). To determine whether this second requirement has been satisfied, the Department must consider the following two factors in order:

5. Does the request involve any “commercial interest of the requester” (if not, the requester satisfies the second prong of the statutory fee waiver test); and
6. If so, the agency must balance the requester’s commercial interest against the identified public interest in disclosure for the purpose of ascertaining which is the “primary interest;” a fee waiver or reduction may granted only where the public interest in disclosure is greater in magnitude than the requester’s commercial interest.

## **Exhibit A-5**

March 1, 2022 Fee Waiver Appeal



March 1, 2022

**VIA ELECTRONIC MAIL**  
**EDFOIAappeals@ed.gov**

Appeals Office  
Office of the Executive Secretariat  
U.S. Department of Education  
400 Maryland Ave. SW, LBJ 7W106A  
Washington, D.C. 20202-4500

**Re: Freedom of Information Act Fee Waiver Appeal**  
FOIA Request No. 22-01850-F  
(DFI FOIA No. 100-3-22)

Dear FOIA Appeals Officer:

This is an appeal under the Freedom of Information Act (“FOIA”) pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) (2000) and 34 C.F.R. § 5.33.

On February 7, 2022, the Defense of Freedom Institute for Policy Studies (“DFI”) submitted a request for documents from the U.S. Department of Education (“ED”) under the FOIA and requested a fee waiver, noting that (1) disclosure of the requested records “will provide important information to the American people regarding Section 117 foreign disclosure reporting enforcement” by ED, which “enforcement efforts are a matter of public interest given the PRC’s [China’s] ongoing political, diplomatic, economic, and military competition with the United States and its allies and its ongoing efforts to leverage American higher education to its competitive advantage”; (2) “[d]isclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and because disclosure of the information contained within the requested records is not primarily in the commercial interests of DFI”; and (3) “[p]rovision of the requested records will provide the public with a clearer understanding of ED’s decisions regarding enforcement of Section 117 of the Higher Education Act of 1965.”<sup>1</sup>

On February 22, 2022, DFI received a denial of its request for a fee waiver in a letter signed by DeShawn Middleton, Government Information Specialist, Office of the Executive Secretariat.<sup>2</sup>

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<sup>1</sup> See Exhibit 1 (FOIA Request No. 22-01850-F).

<sup>2</sup> See Exhibit 2 (Denial of Fee Waiver Request).





This letter constitutes DFI's appeal of that denial and the determinations cited by ED in support of it.<sup>3</sup>

### **PUBLIC INTEREST BASIS FOR FEE WAIVER<sup>4</sup>**

DFI's FOIA Request is for information that is demonstrably in the public interest as further described herein:

1. Section 117 of the Higher Education Act of 1965, codified at 20 U.S.C. § 1011f, requires that institutions of higher education that receive federal funding provide semi-annual disclosures to ED of certain gifts and contracts from government and non-government foreign sources.<sup>5</sup> Section 117's enactment and continued existence indicates the public's interest in ED's policies related to the disclosure of reportable foreign source gifts and contracts (*i.e.*, Section 117 enforcement policies).
2. In October 2020, ED issued a significant report ("Report") regarding its investigations of U.S. college and university compliance with Section 117's foreign disclosure requirements. As described in DFI's February 7, 2022, FOIA Request, ED's Report found that American colleges and universities had received at least \$6.5 billion in previously undisclosed gifts and contracts from foreign actors, including Russia and China (among others).<sup>6</sup> ED's published Report generated widespread national and local press coverage, indicating the public's interest in ED's Section 117 enforcement policies.
3. The Report, which concerned the national security interests of the American people, detailed pervasive foreign gift and contract disclosure failure by American colleges and universities ("fewer than 300 of the approximately 6,000 U.S. institutions self-report[ed] foreign money each year") and the associated national security risks ("[h]igher education industry players have solicited foreign sources – including foreign governments,

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<sup>3</sup> In DFI's Appeal No. 22-00019-A, the Chief FOIA Officer determined on February 22, 2022, that DFI was entitled to a fee waiver, pursuant to 5 U.S.C. § 552 and 34 C.F.R. § 5.33(b), regarding the records requested in FOIA Request No. 22-01809-F.

<sup>4</sup> 5 U.S.C. § 552(a)(4)(A)(iii) provides that "[d]ocuments shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."

<sup>5</sup> See <https://www.govinfo.gov/app/details/USCODE-2011-title20/USCODE-2011-title20-chap28-subchapI-partB-sec1011f>.

<sup>6</sup> Aruna Viswanatha and Melissa Korn, "Top Universities Took Billions in Unreported Foreign Funds, U.S. Finds," WALL STREET JOURNAL (October 20, 2020), <https://www.wsj.com/articles/top-universities-took-billions-in-unreported-foreign-funds-u-s-finds-11603226953>.



corporations, and persons – through official fundraising operations, quasi-entrepreneurial activities by professors and administrators, and through captive or affiliated foundations and alumni organizations . . . the industry has been on direct notice that at least some of these foreign sources are hostile to the United States and are targeting their investments (i.e., “gifts” and “contracts”) to project soft power, steal sensitive and proprietary research, and spread propaganda”).<sup>7</sup> The vulnerability of American colleges and universities to adversarial subterfuge, as detailed in the Report, is a matter of national security-related public interest to the American people. ED’s creation and publication of the Report is indicative of the public’s interest in ED’s Section 117 enforcement policies.

4. ED’s investigatory findings led to its implementation of a new Section 117 online reporting portal, in June 2020, to improve college and university reportable foreign source disclosures.<sup>8</sup> ED’s creation and continued maintenance of the portal indicates ED’s belief in the ongoing public interest in ED’s Section 117 enforcement policies.
5. On November 26, 2019, the U.S. Senate Permanent Subcommittee issued a bipartisan staff report relating to security concerns at colleges and universities (“China’s Impact on the U.S. Education System”).<sup>9</sup> Issuance of the Senate’s report indicated the bipartisan view of the Senate that the American people have an ongoing public interest in ED’s Section 117 enforcement policies.
6. Since 2019, several congressional legislative proposals impacting Section 117 compliance and enforcement have been introduced by members of Congress, including the “Safeguarding American Innovation Act,”<sup>10</sup> the “SECURE CAMPUS Act,”<sup>11</sup> the

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<sup>7</sup> OFFICE OF THE GEN. COUNSEL, U.S. DEPT. OF EDUC., INSTITUTIONAL COMPLIANCE WITH SECTION 117 OF THE HIGHER EDUCATION ACT OF 1965 (October 2020), <https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf>.

<sup>8</sup> See “Reminder to report ownership/control by, and contracts/gifts from, foreign sources,” (June 22, 2020), [https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-06-22/reminder-report-ownershipcontrol-and-contractsgifts-foreign-sources?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2020-06-22/reminder-report-ownershipcontrol-and-contractsgifts-foreign-sources?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

<sup>9</sup> UNITED STATES SENATE, PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, CHINA’S IMPACT ON THE U.S. EDUCATION SYSTEM, STAFF REPORT (November 2019), <https://www.hsgac.senate.gov/imo/media/doc/PSI%20Report%20China's%20Impact%20on%20the%20US%20Education%20System.pdf>.

<sup>10</sup> S. 3997, 116<sup>th</sup> Cong. (as introduced June 18, 2020); <https://www.congress.gov/bill/116th-congress/senate-bill/3997>.

<sup>11</sup> See <https://www.cotton.senate.gov/news/press-releases/cotton-blackburn-kustoff-unveil-bill-to-restrict-chinese-stem-graduate-student-visas-and-thousand-talents-participants>.



“Strategic Competition Act of 2021,”<sup>12</sup> and the “Greater Insight into Foreign Transactions in Higher Education Act of 2021.”<sup>13</sup> These legislative proposals, impacting compliance and enforcement of Section 117, are indicative of the public’s ongoing interest in ED’s Section 117 enforcement policies.

7. Higher education associations and other entities have frequently published their opinions regarding ED’s enforcement of Section 117, including several letters from the American Council on Education (“ACE”) to ED and, most notably, its letter to President-elect Biden dated November 18, 2020, demanding that the incoming administration act “quickly” to “[h]alt the expanding reporting requirements, including the new Information Collection Request (ICR) and Notice of Interpretation (NOI) on Section 117 . . .”<sup>14</sup> ACE’s letter includes dozens of signatories purporting to represent higher education interests. As indicated by the frequent public expressions of ACE and other interest groups, the public has a continuing interest in ED’s Section 117 enforcement policies.
8. Since January 2021, it appears that Section 117 reporting from colleges and universities regarding disclosable foreign gifts and contracts has significantly eroded, indicating important shifts in ED’s Section 117 enforcement policies.<sup>15</sup>
9. The requested records will indicate the impact of outside organizations on ED’s Section 117 enforcement policies. Many of the education interest groups represent financially self-interested colleges and universities that have benefitted by the receipt of billions of dollars of intermittently disclosed foreign source gifts and contracts (indicating a potential conflict of interest by the organizations seeking to “quickly” “halt” ED’s Section 117 enforcement policies), making it even more important that ED act with transparency by providing the requested records regarding how ED’s Section 117 enforcement policies have been transformed since January 20, 2021.
10. The public understanding of the operations of government, particularly with regard to Section 117 enforcement policies, will be significantly enhanced by the disclosure of the

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<sup>12</sup> S. 1169, 117<sup>th</sup> Cong. (as introduced on May 10, 2021), <https://www.congress.gov/bill/117th-congress/senate-bill/1169/text>.

<sup>13</sup> S. 2593, 117<sup>th</sup> Cong. (as introduced August 3, 2021), <https://www.congress.gov/bill/117th-congress/senate-bill/2593/text>.

<sup>14</sup> See Letter to Joe Biden, President-Elect, and Kamala Harris, Vice President-Elect, from the American Council on Education (November 18, 2020), <https://www.acenet.edu/Documents/Letter-Biden-Administration-Regulatory-Actions-111820.pdf>.

<sup>15</sup> Audrey Conklin, “US colleges report fewer foreign gifts after Biden takes office, sparking concern from Rep. Gallagher,” FOX NEWS (November 5, 2021), <https://www.foxnews.com/politics/gallagher-biden-foreign-gifts-colleges>.



requested records (which will indicate the degree of impact and influence of the outside organizations known to have opposed ED's previous Section 117 enforcement policies).

11. The requested information is not already in the public domain (in duplicative or substantially identical form). Disclosure is, therefore, of greater significance to the public's understanding of the impact and influence of outside organizations known to have opposed ED's previous Section 117 enforcement policies.
12. DFI seeks the requested records not primarily for its own benefit, but for the public benefit, which public is significantly impacted by ED's policies. The relation of ED's Section 117 enforcement policies to the national security interests of the country (*i.e.*, the public) have been cited by the Senate's 2019 Report, ED's Report, and various bipartisan officeholders. Records indicating the access and impact of outside interest groups on ED's Section 117 enforcement policies will be meaningfully informative to "a reasonably broad audience of persons interested in the subject"<sup>16</sup> (here, as indicated *supra*, a wide spectrum of the public appears to be impacted by and has an interest in ED's Section 117 enforcement policies).
13. Recent polling indicates that the public has tremendous interest in ED policies, with 46% of voters telling pollsters that education will be "extremely important" as they vote in the 2022 elections, including significant percentages of voters from differing political affiliations.<sup>17</sup> Section 117 enforcement policies impact the national security interests of the public, particularly at times of conflict and potential conflict with America's adversaries (*e.g.*, Russia and China), which adversaries have provided significant reportable foreign source gifts and contracts to American colleges and universities.
14. The public understanding of ED's Section 117 enforcement policies will be aided by the requested records which will indicate access and impact of outside organizations (sometimes acting at the behest of potentially financially self-interested colleges and universities)
15. As a 501(c)(3) nonprofit, DFI by definition **does not have a commercial purpose**; the release of the information requested is not in its financial interest. DFI's mission is to defend and advance freedom and opportunity for every American family, student, entrepreneur, and worker and to protect our civil and constitutional rights at school and work. To that end, DFI will use the information gathered to educate the public by making those records and DFI's analyses of them publicly available on our website and on social media platforms such as Facebook and Twitter.<sup>18</sup> As noted in DFI's original request, disclosure of the requested information is not primarily in the commercial interest of

<sup>16</sup> See *Cause of Action v. FTC*, 799 F.3d 1108, at 1115-16 (D.C. Cir. 2015).

<sup>17</sup> Aerial Edwards-Levy, "CNN Poll: Economy and education could shape how Americans vote in 2022," CNN (February 11, 2022), <https://www.cnn.com/2022/02/11/politics/cnn-poll-economy-education-2022/index.html>.

<sup>18</sup> DFI has nearly 9,000 followers on Facebook, although it launched only in September of 2021.



501(c)(3) nonprofit organizations that, like DFI, are interested in the transparency of ED for the benefit of the general public and all other interested organizations and entities. Disclosure of the requested information would simply not further a commercial, trade, or profit interest affecting DFI.<sup>19</sup>

16. DFI's ability to contribute to the public's understanding of the requested disclosures is heightened by the qualifications of DFI personnel regarding ED policies and the implementation of those policies. DFI personnel include individuals who, as a result of their professional experiences and expertise in the public and private sectors, are better able to understand, extract, synthesize, and usefully disseminate the requested information to the general public for its benefit.
17. ED's response (February 22, 2022, denial of fee waiver) to DFI's request appears to be inconsistent with its prior practices regarding comparable FOIA requests from other similarly situated 501(c)(3) organizations seeking transparency from federal agencies. For example, with reference to ED FOIA Request Nos. 19-00911-F<sup>20</sup> and 19-00916-F (Appeal 19-00039-A)<sup>21</sup>, ED ultimately produced the requested materials it provided (regarding communications with outside organizations and individuals) to the requesters without cost. There appears to be no reason treat this DFI FOIA request for records any differently than the similarly situated requesters in FOIA Request Nos. 19-00911-F and 19-00916-F.
18. Finally, please note ED's decision on February 22, 2022, in Appeal No. 22-00019-A regarding DFI's FOIA Request No. 22-01809-F, in which the Chief FOIA Officer determined that DFI qualified for a fee waiver, determining that DFI, as a nonprofit organization, had provided justification to explain (1) how the requested records would contribute new significant information to the public's understanding of the Department's operations, (2) how DFI would disseminate those records and its analyses of them to the public at large, and (3) that the public has an interest in the information contained within the requested records. DFI believes the information contained in its original request in this matter, as well as the supplementary information contained within this appeal, similarly provides justification for ED to grant DFI's appeal of the fee waiver denial in this matter. The legal issues presented by this appeal are identical to those in Appeal No. 22-00019-A, which was decided in favor of DFI.

## Conclusion

For the reasons discussed above, we respectfully request that ED reconsider DFI's request for a fee waiver for FOIA Request No. 22-01850-F as provision of the records will contribute

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<sup>19</sup> See OMB Fee Schedule and Guidelines, 52 Fed. Reg. at 10,012, 10,017-18.

<sup>20</sup> See <https://www.americanoversight.org/document/ed-communications-with-ballard-partners-during-2017>.

<sup>21</sup> See <https://www.americanoversight.org/document/ed-records-regarding-mitchell-zais-communications-with-outside-individuals-and-entities>.



meaningfully informative, significant knowledge to the public's understanding of ED's Section 117 enforcement policies and the impact on those policies by potentially financially self-interested outside organizations (and/or their representatives). The disclosures are not primarily in the commercial interests of DFI and because of its professional expertise in matters of ED policy and policy implementation, DFI is well positioned to contribute to the public's understanding of the operations and activities of ED upon disclosure of the requested records.

Thank you for your consideration. If you have any questions or I can further clarify DFI's appeal, please contact me at your earliest convenience at [paul.moore@dfipolicy.org](mailto:paul.moore@dfipolicy.org).

Sincerely yours,

*/s/ Paul R. Moore*

Paul R. Moore

Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.

#### **Attachments**

Exhibit 1

Exhibit 2



# EXHIBIT 1



FOIA Request - ED - DFI No. 100-3-22 (2) (1) (1).pdf





# EXHIBIT 2



Fee Waiver Denial - Feb 22, 2022 - No. 22-01850-F.pdf

**Exhibit A-6**  
March 2, 2022 FOIA Appeal  
Acknowledgment Letter



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SECRETARY

*FOIA Service Center*

March 2, 2022

Mr. Paul R Moore  
Senior Counsel  
Defense of Freedom Institute for Policy Studies  
1455 Pennsylvania Ave NW  
Suite 400  
Washington, DC 20004

RE: Appeal – FOIA Request No. 22-01850-F/ Appeal – 22-00022-A

Dear Paul R Moore:

This is to acknowledge receipt of your March 1, 2022 letter appealing the Department's February 22, 2022 decision to deny your fee waiver for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, which was received by this office on February 8, 2022.

An administrative review of our response is underway, and the Department's Chief FOIA Officer will issue a determination on the appeal once it is completed.

Please refer to the appeal tracking number to check the status of your appeal at the link provided below:

<https://foiaexpress.pal.ed.gov/app/CheckStatus.aspx>

If you have a question or concern, please contact the FOIA Office at (202) 401-8365 or [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,

**Art Caliguiran**  
Art Caliguiran  
FOIA Appeals Coordinator  
Office of the Executive Secretariat

## **Exhibit A-7**

March 3, 2022 Department's  
Grant of DFI's Fee Waiver  
Denial Appeal



**UNITED STATES DEPARTMENT OF EDUCATION**

OFFICE OF THE SECRETARY

Office of the Executive Secretariat

March 3, 2022

Mr. Paul R. Moore  
Senior Counsel  
Defense of Freedom Institute for Policy Studies  
1455 Pennsylvania Ave NW  
Suite 400  
Washington, DC 20004

Re: Appeal No. 22-00022-A - FOIA Request No. 22-01850-F

Dear Mr. Moore:

I am writing in response to your letter dated March 1, 2022, appealing the U.S. Department of Education's (Department's) February 22, 2022 decision to deny your February 7, 2022 request for a fee waiver pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

**Background**

You requested the Department to waive all fees because “(1) disclosure of the requested records “will provide important information to the American people regarding Section 117 foreign disclosure reporting enforcement” by ED, which “enforcement efforts are a matter of public interest given the PRC’s [China’s] ongoing political, diplomatic, economic, and military competition with the United States and its allies and its ongoing efforts to leverage American higher education to its competitive advantage”; (2) “[d]isclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and because disclosure of the information contained within the requested records is not primarily in the commercial interests of DFI”; and (3) “[p]rovision of the requested records will provide the public with a clearer understanding of ED’s decisions regarding enforcement of Section 117 of the Higher Education Act of 1965.”

**Determination of Appeal**

Based on a careful review of the correspondence, the information at issue in your appeal, and applicable legal precedent, I have decided to grant your appeal in full. The reasons for my determination are discussed below.

**Discussion**

Your appeal challenges the Department's improper denial of your fee waiver request. I agree. As a non-profit organization, your fee waiver request has, in fact, been granted by the Department.

You have provided sufficient information to satisfy other necessary factors that would entitle you to a waiver or reduction of fees. See *34 C.F.R. § 5.33(b)*. More specifically, you have provided

Paul R. Moore  
Appeal No. 22-00022-A - FOIA Request No. 22-01850-F  
Page 2

justification to explain how copies of the requested records would contribute new significant information to the public's understanding of the Department's operations and how you would disseminate it to the public at large. You have also provided evidence demonstrating public interest in the documents.

**Notice of Further Rights**

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD, 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 301-837-1996; toll free at 1-877-684-6448, or facsimile at 301-837-0348.

If you are dissatisfied with my action on your appeal, you may file a lawsuit in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in blue ink that reads "Tracey St. Pierre". The signature is written in a cursive, flowing style.

Tracey St. Pierre  
Chief FOIA Officer

## **Exhibit A-8**

**March 21, 2022 Department's  
20-Day Status Notification**





**UNITED STATES DEPARTMENT OF EDUCATION**

OFFICE OF THE SECRETARY

FOIA Service Center

March 9, 2022

Mr. Paul R Moore  
 Senior Counsel  
 Defense of Freedom Institute for Policy Studies  
 1455 Pennsylvania Ave NW  
 Suite 400  
 Washington, DC 20004

**RE: 20 –DAY NOTIFICATION 22-01850-F**

Dear Paul R Moore:

This is the Department of Education’s (the Department) initial determination letter to your request dated, February 7, 2022, seeking information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was forwarded to the appropriate office(s) within the Department for any responsive documents they may have.

We aim to complete your requests as promptly as possible. At this time, we are unable to provide an estimated completion date, but intend to provide records on a rolling basis as they become available. Should you wish to narrow the scope of your requests, this action may limit the number of potentially responsive records and speed the necessary processing.

You can check on the status of your FOIA request at the link provided below:

<https://foiaexpress.pal.ed.gov/app/CheckStatus.aspx>

You have the right to seek assistance and/or dispute resolution services from the Department’s FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA Public Liaison is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

They can be contacted by:

|        |  |   |
|--------|--|---|
| Mail   | FOIA Public Liaison<br>Office of the Executive Secretariat<br>U.S. Department of Education<br>400 Maryland Ave., SW, LBJ<br>7C132<br>Washington, DC 20202-4500 | Office of Government Information Services<br>National Archives and Records Administration<br>8601 Adelphi Road<br>College Park, MD 20740-6001 |
| E-mail | <a href="mailto:robert.wehausen@ed.gov">robert.wehausen@ed.gov</a>   | <a href="mailto:OGIS@nara.gov">OGIS@nara.gov</a>  |
| Phone  | 202-205-0733   | 202-741-5770; toll free at 1-877-684-6448   |

Page 2 - Paul R Moore  
FOIA Request No. 22-01850-F

|     |              |              |
|-----|--------------|--------------|
| Fax | 202-401-0920 | 202-741-5769 |
|-----|--------------|--------------|

Sincerely,

*Tiffany Tucker*  
Government Information Specialist  
Executive Secretariat

## **Exhibit A-9**

April 22, 2022 Production Request Inquiry



Paul Moore &lt;paul.moore@dfipolicy.org&gt;

## ED FOIA 22-01850-F - Production Request

1 message

Paul Moore <paul.moore@dfipolicy.org>  
 To: ED FOIA Manager <EDFOIAManager@ed.gov>  
 Cc: Paul Moore paul.moore@dfipolicy.org

Fri, Apr 22, 2022 at 2:43 PM

Dear ED FOIA Manager:

On February 7, 2022, DFI Co-founder James C. Blew submitted a FOIA request on behalf of the Defense of Freedom Institute for Policy Studies (ED FOIA 22-01850-F; DFI FOIA No. 100-322). The request was for records related to Section 117 (foreign source gifts and contracts statutory reporting requirements) enforcement and the University of Pennsylvania's Biden Center for Diplomacy and Global Engagement.

This request is for records related to ED's change in enforcement policies regarding Section 117 (20 USC 1011f) and advocacy efforts by outside interest groups representing many of the universities, including the University of Pennsylvania, known to have received large foreign source gifts and contracts (*i.e.*, required to be reported to ED pursuant to Section 117). ED should have within its control and custody communications, if any, received from the entities specifically identified in Item 1 (a) ( ) and respond by ED official to those communications, as further described in Items 1, 2, 3, and 4 (Items 3 and 4 essentially request the same information as Items 1 and 2, except as regards communications with government contractors assigned to ED (rather than records involving employees, as described in Items 1 and 2). The request identified seven terms to be searched against records originating from the identified outside interest group (and respond thereto).

Under applicable law, documents responsive to this request are well past due.

ED provided DFI with a 20-day notification letter on March 9, 2022. Using March 9 (rather than February 8—the date of ED's acknowledgement) as the date when the statutory production clock began ticking, production should then have occurred by April 6, 2022.

DFI appreciates that ED receive many FOIA requests and that some of them may generate particularly large volumes of records.

As noted in DFI's FOIA request, it would welcome rolling production by ED in response to this request. In that spirit, DFI recommends to ED that rolling production could begin quite early with the provision of Item 1 and 2 (essentially, records of outside interest group efforts to influence ED's Section 117 enforcement policies and the responses by ED officials to those efforts) for an initially more limited number of ED officials in particular ED offices (identified below) rather than a system-wide request for records. DFI recommends that Items 1 and 2 should take precedence over production of the records described in Item 3 and 4.

In an effort to simplify the ease of ED's response, DFI recommends that ED could most efficiently begin rolling production by initially producing documents responsive to the following requests (more fully described in DFI's FOIA request):

- Records requested in Item 1 (records of outside interest group Section 117 communications)
- Record requested in Item 2 (record of the response of ED official to the record in Item 1 for the following ED offices: Office of the Secretary, Office of the Deputy Secretary, Office of the Under Secretary, Office of Communications and Outreach, Office of the General Counsel, Office of Legislative and Congressional Affairs, Office of Postsecondary Education)

Items 3 and 4 could be produced subsequently (as well as the remainder of Item 2 records).

This proposed initial production should substantially improve ED's ability to more quickly respond to DFI's FOIA request by narrowing what could be produced first (in the rolling production) to records from several particular ED offices rather than a Department-wide search for responsive records.

As described in DFI's FOIA request (and its subsequent successful appeal of ED's fee waiver denial), provision of the requested records will meaningfully inform the general public regarding the efforts of outside interest groups on Section 117 enforcement policies, which policies may have tremendous impact on students, families, taxpayers, and national security. DFI (a nonprofit organization) has no commercial purpose and is engaged in the dissemination of

information about government policies to the public. DFI is also a representative of the news media with a demonstrated ability to review and analyze publicly-available information and to provide insights regarding that information to the general public

Respectfully, DFI requests that ED respond to this email indicating when Items 1 and 2 (limited initially to the offices identified above) will be produced to DFI by ED. Again, DFI appreciates the volume of FOIA requests undoubtedly received by ED and this recommendation is meant to assist in simplifying the production process while meeting ED's statutory obligations.

Please contact me if I can further assist or otherwise aid in ED's production efforts regarding this FOIA request.

DFI appreciates your efforts and prompt attention to this matter.

Sincerely,  
Paul Moore



**Paul R. Moore, Senior Counsel**  
Defense of Freedom Institute for Policy Studies  
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(617) 901-8343  
[paul.moore@dfipolicy.org](mailto:paul.moore@dfipolicy.org)  
[www.dfipolicy.org](http://www.dfipolicy.org)

## **Exhibit A-10**

May 16, 2022 Production Request Inquiry



May 16, 2022

**VIA ELECTRONIC MAIL**

U.S. Department of Education  
Office of the Executive Secretariat  
FOIA Service Center  
400 Maryland Ave. SW, LBJ 7W106A  
Washington, D.C. 20202-4536  
EDFOIAManager@ed.gov  
ATTN: FOIA Manager

**Re: Production Request Inquiry 22-01850-F**  
(DFI FOIA No. 100-3-22)

Dear FOIA Manager:

On February 7, 2022, the Defense of Freedom Institute for Policy Studies, Inc. (“DFI”) electronically submitted a request for records within the possession and control of the U.S. Department of Education (“ED”), pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of ED at 34 C.F.R. Part 5 (“Availability of Information to the Public”). DFI’s FOIA request was for records related to ED’s enforcement policies regarding Section 117 (20 U.S.C. § 1011f), including those related to the University of Pennsylvania’s Biden Center for Diplomacy and Global Engagement.

On February 7, 2022, ED’s FOIA Manager acknowledged receipt of DFI’s request and indicated that it was “forwarded to the primary responsible office(s) for action.”

On March 9, 2022, ED provided DFI with a 20-day notification letter (subsequent to DFI’s successful appeal of ED’s initial denial of DFI’s fee waiver request). ED’s statutory deadline to provide the requested records to DFI was April 6, 2022.

On April 22, 2022, DFI electronically submitted a “Production Request” to ED’s FOIA Manager, inquiring about the status of the request, offering to accept a rolling production of the requested records, and helpfully offering a path for ED to “most efficiently begin rolling production” through an initial production of the requested records by first providing records of outside interest group communications regarding Section 117 enforcement (the specific groups having been identified in the FOIA request) and subsequently providing records of the responses of ED officials to those outside interest group communications.

To date, ED has neither acknowledged nor responded to DFI’s April 22, 2022, “Production Request” inquiry (and offer).



As discussed at length in DFI's electronic submissions to ED, the American people have a right to be meaningfully informed regarding ED's enforcement of Section 117, particularly at a time when adversaries such as Russia and China have demonstrated an ongoing interest and ability to access vital U.S. research and development technologies through access to American universities (access which is often reflected in semi-annual disclosures by universities of foreign-source gifts and contracts). Those policies have tremendous impact on students, families, taxpayers, and the security interests of the American people.

The statutory burden imposed on ED is clear: upon receipt of the FOIA request, ED has twenty business days to "determine . . . whether to comply with [the] request" and "shall immediately notify" the requester of its determination and the reasons therefor," the right to seek assistance from the agency's FOIA public liaison, and the requester's right to appeal any "adverse determination" by ED.<sup>1</sup>

On March 15, 2022, U.S. Attorney General Merrick Garland issued guidance to federal agencies, clarifying the statutory obligation of those agencies, including ED, to timely disclose information "in the faithful application of FOIA" to "enable information about federal government operations to be more readily available to all." Attorney General Garland emphasized that "[t]imely disclosure of records is also essential to the core purpose of FOIA" and that "[a]gency FOIA professionals should continue to work with FOIA requesters in a spirit of cooperation" and "work with requesters to remove barriers to access . . . ."<sup>2</sup>

These records concern current and vital U.S. national security interests and are worthy of timely production in order to meaningfully inform current public interest in our nation's security. Delayed production of the requested records diminishes the important value they may hold for informing the public.

The requested records should be promptly provided to DFI (either by rolling or full production), which has actively attempted to facilitate ED's production of the responsive records.

As DFI awaits your reply, thank you for your attention to this matter.

Sincerely yours,

/s/ *Paul R. Moore*

Paul R. Moore, Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.

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<sup>1</sup> 5 U.S.C. § 552(a)(6)(A)(i).

<sup>2</sup> See <https://www.justice.gov/ag/page/file/1483516/download>.



## **Exhibit A-11**

**January 13, 2023 Production Request Inquiry**



January 13, 2023

**VIA ELECTRONIC MAIL**

The Honorable Dr. Miguel Cardona  
Secretary  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, D.C. 20202

Mr. Robert Wehausen  
FOIA Public Liaison and Team Lead  
Office of the Executive Secretariat  
400 Maryland Avenue SW  
Washington, D.C. 20202

**Re: DFI's Feb. 7, 2022 Request for Records Related to UPenn and the Biden Center  
Production Request Inquiry 22-01850-F  
(DFI FOIA No. 100-3-22)**

Dear Secretary Cardona and FOIA Public Liaison Wehausen:

I write to inquire about the nearly year-old request for records related to the University of Pennsylvania's ("UPenn") Biden Center for Diplomacy and Global Engagement ("UPenn Biden Center") and the U.S. Department of Education's ("Department") statutory enforcement efforts regarding foreign source contributions to America's colleges and universities, including those related to UPenn. The Defense of Freedom Institute for Policy Studies' ("DFI") request for records is now 340 days old and yet the Department has failed to produce a single record, in defiance of its statutory obligations.

On January 12, 2023, U.S. Attorney General Merrick Garland appointed former U.S. Attorney Robert Hur as special counsel to lead an investigation regarding potential violations of criminal law and the discovery of classified documents at the UPenn Biden Center.<sup>1</sup> As the Department's records reveal,<sup>2</sup> UPenn has been a tremendous beneficiary of foreign gifts and contracts since then former Vice President Biden's February 2017 announcement of the establishment of the Biden Center at UPenn.<sup>3</sup> UPenn enjoyed a truly stunning 389% increase in reportable foreign gifts and contracts between 2018 and 2019 alone.<sup>4</sup>

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<sup>1</sup> Anders Hagstrom, "AG Garland appoints special counsel to investigate Biden classified documents," FOX NEWS (Jan. 12, 2023), <https://www.foxnews.com/politics/ag-garland-appoints-special-counsel-investigate-biden-classified-documents>.

<sup>2</sup> See <https://sites.ed.gov/foreigngifts/>.

<sup>3</sup> Isabel Vincent, "Penn Biden Center where classified papers were found is a 'dark-money nightmare,'" NEW YORK POST (Jan. 11, 2023), <https://nypost.com/2023/01/11/penn-biden-center-is-dark-money-nightmare-patronage-mill/>.

<sup>4</sup> "Penn received 389% more foreign donations in 2019 than in 2018, DP analysis finds," THE DAILY PENNSYLVANIAN (Apr. 20, 2021), <https://www.thedp.com/article/2021/04/foreign-donations-penn-analysis-china>.



This critical development follows a search by the White House Counsel’s Office of President Biden’s UPenn Biden Center office and his two Delaware residences.<sup>5</sup> The Attorney General’s decision also follows the Department’s December 27, 2022 announcement that it plans to downgrade the Department’s enforcement of reportable foreign gifts and contracts to colleges and universities by shifting those enforcement efforts from the Office of the General Counsel (“OGC”) to the Office of Federal Student Aid (“FSA”).<sup>6</sup> As you are well aware, FSA’s mission is to “direct, coordinate[], and recommend[] policies for programs that are designed to provide financial assistance to eligible students enrolled in postsecondary educational institutions” to provide “grants, loans, and work-study assistance” to students through colleges and universities.<sup>7</sup> FSA is neither designed to investigate nor capable of overseeing the Department’s important foreign gift reporting enforcement obligations.

Former Department Acting General Counsel Reed Rubinstein correctly observed that “[t]he Biden Administration’s decision to move the [foreign gifts and contracts reporting] compliance program – which requires high order investigatory skills – back to Federal Student Aid *is really a decision to bury the program*. Among other things, this signals to the [higher education foreign fundraising] industry that the foreign money grab-fest is back, because the federal watchdog has been chained up.”<sup>8</sup> The need for serious investigative capability – something FSA cannot provide - is demonstrated by UPenn’s implausible denial that, despite the massive influx of foreign funds to UPenn after establishment of the Biden Center, it had “never solicited or received any gifts from any Chinese or other foreign entity” and that “the University has never solicited any gifts for the center.”<sup>9</sup>

These circumstances, potentially implicating America’s national security interests, prompted DFI’s request for records from the Department regarding its foreign gifts and contracts reporting enforcement efforts, particularly regarding the UPenn Biden Center. The Department has effectively refused to timely (or otherwise) fulfill its statutory obligation to provide the requested records, despite DFI’s repeatedly proffered willingness to accept rolling production of those records (since the records may be voluminous).

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<sup>5</sup> Dareh Gregorian and Michael Kosnar, “Special counsel named to investigate Biden classified records that included top secret document,” NBC NEWS (Jan. 12, 2023), <https://www.nbcnews.com/politics/white-house/white-house-says-classified-documents-found-bidens-garage-delaware-rcna65509>.

<sup>6</sup> 87 Fed. Reg. 79,292 (Dec. 27, 2022).

<sup>7</sup> See <https://www2.ed.gov/about/offices/or/fs/fsa/intro.html#mission>.

<sup>8</sup> Jerry Dunleavy, “Biden Education Department drops ball on foreign funding investigations, GOP says,” THE WASHINGTON EXAMINER (Nov. 16, 2022), <https://www.washingtonexaminer.com/news/justice/biden-education-department-drops-ball-foreign-funding-investigations-gop-says> (emphasis added).

<sup>9</sup> Imran Siddiqui, “Penn denies renewed allegations of foreign donations to Biden Center after GOP letter,” THE DAILY PENNSYLVANIAN (Jan. 29, 2021), <https://www.thedp.com/article/2021/01/penn-biden-center-republican-inquiry>.



DFI must now respectfully insist that the Department explain its failure to produce a single responsive record as required by law or, in the alternative, to identify the precise date by which the requested records will be provided to DFI.

### **DFI's Request for Records Related to the University of Pennsylvania and the Biden Center**

On February 7, 2022, DFI submitted a request for records<sup>10</sup> within the possession and control of the U.S. Department of Education (“ED”), pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of ED at 34 C.F.R. Part 5 (“Availability of Information to the Public”). DFI’s FOIA request was for records related to ED’s enforcement policies regarding Section 117 (20 U.S.C. § 1011f), including those related to the University of Pennsylvania’s Biden Center for Diplomacy and Global Engagement.

On February 7, 2022, ED’s FOIA Manager acknowledged receipt of DFI’s request and indicated that it was “forwarded to the primary responsible office(s) for action.”

On March 9, 2022, ED provided DFI with a 20-day notification letter (subsequent to DFI’s successful appeal of ED’s initial denial of DFI’s fee waiver request). ED’s statutory deadline to provide the requested records to DFI was April 6, 2022.

On April 22, 2022, DFI electronically submitted a “Production Request” to ED’s FOIA Manager, inquiring about the status of the request, offering to accept a rolling production of the requested records, and helpfully offering a path for ED to “most efficiently begin rolling production” through an initial production of the requested records by first providing records of outside interest group communications regarding Section 117 enforcement (the specific groups having been identified in the FOIA request) and subsequently providing records of the responses of ED officials to those outside interest group communications.

To date, ED has neither acknowledged nor responded to DFI’s April 22, 2022, “Production Request” inquiry (and offer).

As discussed at length in DFI’s electronic submissions to ED, the American people have a right to be meaningfully informed regarding ED’s enforcement of Section 117, particularly at a time when adversaries such as Russia and China have demonstrated an ongoing interest and ability to access vital U.S. research and development technologies through access to American universities (access which is often reflected in semi-annual disclosures by universities of foreign-source gifts and contracts). Those policies have tremendous impact on students, families, taxpayers, and the security interests of the American people.

The statutory burden imposed on ED is clear: upon receipt of the FOIA request, ED has twenty business days to “determine . . . whether to comply with [the] request” and “shall immediately

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<sup>10</sup> See <https://dfipolicy.org/wp-content/uploads/2022/03/FOIA-Request-ED-DFI-No.-100-3-22-Section-117-2.7.2022.pdf>.



notify” the requester of its determination and the reasons therefor,” the right to seek assistance from the agency’s FOIA public liaison, and the requester’s right to appeal any “adverse determination” by ED.<sup>11</sup>

On March 15, 2022, U.S. Attorney General Merrick Garland issued guidance to federal agencies, clarifying the statutory obligation of those agencies, including ED, to timely disclose information “in the faithful application of FOIA” to “enable information about federal government operations to be more readily available to all.” Attorney General Garland emphasized that “[t]imely disclosure of records is also essential to the core purpose of FOIA” and that “[a]gency FOIA professionals should continue to work with FOIA requesters in a spirit of cooperation” and “work with requesters to remove barriers to access . . . .”<sup>12</sup>

These records concern current and vital U.S. national security interests and are worthy of timely production in order to meaningfully inform current public interest in our nation’s security. Delayed production of the requested records has diminished the important value they may hold for informing the American people about the Department’s enforcement of Section 117, particularly regarding UPenn and the Biden Center.

The requested records should be promptly provided to DFI (either by rolling or full production), which has actively attempted to facilitate ED’s production of the responsive records.

As DFI awaits your reply, thank you for your attention to this important matter.

Sincerely yours,

*/s/ Paul R. Moore*

Paul R. Moore, Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.

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<sup>11</sup> 5 U.S.C. § 552(a)(6)(A)(i).

<sup>12</sup> See <https://www.justice.gov/ag/page/file/1483516/download>.

# **Exhibit B-1**

February 7, 2022 OMB FOIA Request



February 7, 2022

**VIA ELECTRONIC MAIL AND FACSIMILE**

Dionne Hardy  
FOIA Officer  
Office of Management and Budget  
725 17<sup>th</sup> Street NW, Suite 9204  
Washington, D.C. 20503  
OMBFOIA@omb.eop.gov  
ATTN: FOIA Officer

**Re: FOIA Request: Records Related to Section 117 Enforcement and the University of Pennsylvania's Biden Center for Diplomacy and Global Engagement**  
(DFI FOIA No. 100-4-22)

Dear FOIA Officer Hardy:

The Defense of Freedom Institute for Policy Studies, Inc. ("DFI") is a 501(c)(3) nonprofit, nonpartisan organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting civil and constitutional rights at schools and in the workplace. For the benefit of the public, DFI's mission includes obtaining records related to the consideration and implementation of policies imposed by the federal government and its officials on the American people.

Section 117 of the Higher Education Act of 1965, codified at 20 U.S.C. § 1011f, clearly requires that institutions of higher education that receive federal funding provide semi-annual disclosures to ED of gifts and contracts from government and non-government foreign sources (*e.g.*, if the annual value of the gifts and contracts is \$250,000 or more from an institution owned or controlled by a foreign source, it must be disclosed to ED).<sup>1</sup>

According to the U.S. Department of Education ("ED"), various U.S. universities received at least \$6.5 billion in *undisclosed* foreign gifts and contracts between 2010 and 2020, frequently and illegally failing to reveal the true sources of those foreign gifts and contracts,<sup>2</sup> a practice known as "anonymizing." Following ED's increased enforcement of Section 117's reporting requirements prior to 2021, many universities filed corrective reports with ED, reflecting previously undisclosed

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<sup>1</sup> 20 U.S.C. § 1011f. See <https://www.govinfo.gov/content/pkg/USCODE-2018-title20/pdf/USCODE-2018-title20-chap28-subchapI-partB-sec1011f.pdf> and <https://sites.ed.gov/foreigngifts/>.

<sup>2</sup> Aruna Viswanatha and Melissa Korn, "Top Universities Took Billions in Unreported Foreign Funds, U.S. Finds," Wall Street Journal (October 20, 2020), <https://www.wsj.com/articles/top-universities-took-billions-in-unreported-foreign-funds-u-s-finds-11603226953>.



foreign gifts and contracts valued at approximately \$6.5 billion from government and non-government foreign sources in places such as the People’s Republic of China (“PRC”), Qatar, Saudi Arabia, and the United Arab Emirates.<sup>3</sup>

On February 1, 2017, the University of Pennsylvania (“UPenn”) announced<sup>4</sup> the formation of the “Penn Biden Center for Diplomacy & Global Engagement” (“Biden Center”), describing its mission as engaging “with its faculty and global centers to convene world leaders, develop and advance smart policy, and strengthen the national debate for continued American global leadership in the 21<sup>st</sup> century.”<sup>5</sup> The Biden Center opened a Washington, D.C. office in 2018. The next year, UPenn received an astonishing 389% higher reportable foreign contributions 2019 compared to 2018).<sup>6</sup> *The Philadelphia Inquirer* reported that foreign source contributions to UPenn increased by at least \$258 million.<sup>7</sup> Another analysis revealed that between 2013 and 2019, UPenn was the third highest university recipient of foreign funding from groups in the PRC and that approximately 40% of those gifts (approximately \$27.1 million) came from anonymous PRC donors.<sup>8</sup>

President Joseph R. Biden, Jr. officially launched his 2020 presidential campaign on April 25, 2019. As referenced above, a massive increase in foreign contributions to UPenn occurred during the period leading up to and after the campaign announcement, including millions of dollars in

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<sup>3</sup> Lauren Camera, “Colleges and Universities Fail to Report Billions in Foreign Donations,” *U.S. News & World Report* (February 13, 2020), <https://www.usnews.com/news/education-news/articles/2020-02-13/colleges-and-universities-fail-to-report-billions-from-china-qatar-saudi-arabia-and-others>.

<sup>4</sup> “Vice President Joe Biden to lead the Penn Biden Center for Diplomacy and Global Engagement,” *Penn Today* (February 1, 2017), <https://penntoday.upenn.edu/spotlights/vice-president-joe-biden-lead-penn-biden-center-diplomacy-and-global-engagement>.

<sup>5</sup> See Penn Biden Center for Diplomacy & Global Engagement, <https://global.upenn.edu/penn-biden-center>. In addition to President Biden, the Biden Center maintains close ties with others in the Biden Administration. Antony Blinken, is former managing director, currently serves as the Secretary of State. Amy Gutmann, UPenn’s president, is President Biden’s nominee for Ambassador to Germany.

<sup>6</sup> Analytics Staff, “Penn received 389% more foreign donations in 2019 than in 2018, DP analysis finds,” *The Daily Pennsylvanian* (April 20, 2021), <https://www.thedp.com/article/2021/04/foreign-donations-penn-analysis-china>.

<sup>7</sup> Catherine Dunn, “Penn got \$258 million in foreign money, and there may be more it hasn’t disclosed,” *The Philadelphia Inquirer* (February 24, 2020), <https://www.inquirer.com/business/university-pennsylvania-foreign-donations-china-saudi-arabia-20200224.html>.

<sup>8</sup> Janet Lorin and Brandon Kochkodin, “Harvard Leads U.S. Colleges That Received \$1B from China,” *Bloomberg | Quint* (February 6, 2020), <https://www.bloombergquint.com/global-economics/harvard-leads-u-s-colleges-that-received-1-billion-from-china>.





gifts from anonymous PRC donors. In May 2020, responding to a request from the public for information about anonymous donors benefitting the Biden Center, a UPenn spokesman stated that the Biden Center had “never solicited any gifts for the Penn Biden Center” and that none of its unsolicited gifts came from China.<sup>9</sup> Reporting by *Politico* confirmed that the Biden Center does not fundraise and that the Biden Center is instead funded by UPenn’s general funds for its operations.<sup>10</sup> ED’s online portal for Section 117 foreign disclosure reporting shows that from the time of the announcement by UPenn of the establishment of the Biden Center on February 1, 2017, through September 2020, UPenn received approximately \$21,187,333 in reportable foreign gifts and contracts from China.<sup>11</sup>

In a letter to President-elect Biden dated November 18, 2020, the American Council on Education (“ACE”) asked that the incoming administration act “quickly” to “[h]alt the expanded reporting requirements, including the new Information Collection Request (ICR) and Notice of Interpretation (NOI) on Section 117 imposed by the Department of Education in its effort to expand those reporting requirements...”<sup>12</sup> ACE claimed to represent the demands of approximately forty-six (46) higher education associations, which it named in its letter (and which are named in the request below). In the wake of that demand, ED’s enforcement of Section 117’s disclosure requirements has weakened since President Biden took office.<sup>13</sup>

ED’s Section 117 enforcement efforts are a matter of public interest given the PRC’s ongoing political, diplomatic, economic, and military competition<sup>14</sup> with the United States and its allies<sup>15</sup>

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<sup>9</sup> Tori Sousa, “U. denies complaint that Penn Biden Center accepted undisclosed donations from China,” *The Daily Pennsylvanian* (May 30, 2020), <https://www.thedp.com/article/2020/05/penn-biden-center-china-undisclosed-donations-complaint-millions>.

<sup>10</sup> Theodoric Meyer, “Groups with Biden ties pose ethics quandary for his Administration,” *Politico* (January 18, 2021), <https://www.politico.com/news/2021/01/18/biden-ties-ethics-quandary-for-his-administration-460126>.

<sup>11</sup> See Section 117 of the Higher Education Act – Public Records, Foreign Funding Disclosure Reports, searchable at <https://sites.ed.gov/foreigngifts/>

<sup>12</sup> Letter to Joe Biden, President-Elect and Kamala Harris, Vice President-Elect, from the American Council on Education (ACE), <https://www.acenet.edu/Documents/Letter-Biden-Administration-Regulatory-Actions-111820.pdf>.

<sup>13</sup> Audrey Conklin, “US Colleges report fewer foreign gifts after Biden takes office, sparking concern from Rep. Gallagher,” *Fox News* (November 5, 2021), <https://sites.ed.gov/foreigngifts/>.

<sup>14</sup> Eric Tucker, “FBI director says the threat from China is ‘more brazen’ than ever before,” *Associated Press* (January 31, 2022), <https://www.npr.org/2022/01/31/1077174231/fbi-director-says-the-threat-from-china-is-more-brazen-than-ever-before>.

<sup>15</sup> Editorial Board Opinion, “China’s Xi promises the world ‘heads bashed bloody.’ He should be taken seriously,” *Washington Post* (July 5, 2021), <https://www.washingtonpost.com/opinions/2021/07/05/chinas-xi-promises-world-heads-bashed-bloody-he-should-be-taken-seriously/>.



and its ongoing efforts to leverage American higher education to its competitive advantage. DFI thus seeks records and information related to ED's enforcement of Section 117. In this context, anonymized foreign contributions to American universities, including UPenn, which received \$21,187,333 in reportable foreign gifts and contracts from China after announcing the formation of the Biden Center, are of particular concern.

According to its official website, the Office of Management and Budget ("OMB") oversees the implementation of the President's vision across the Executive Branch, which includes the U.S. Department of Education.<sup>16</sup> In overseeing implementation of the President's vision, OMB examines agency policies and procedures to ensure compliance with that vision. Accordingly, DFI has reason to believe that OMB personnel have been involved in reviewing ED's revisions of its enforcement of Section 117 statutory disclosure requirements by colleges and universities. For reasons identified *supra*, enforcement of Section 117 has potentially significant national security implications and has been a matter of intensely public opposition by President Biden's political allies. A change in ED's enforcement protocols for Section 117's foreign gift reporting requirements, as part of President Biden's vision, would therefore likely involve guidance from OMB personnel.

Therefore, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and 5 C.F.R. Part 1303 ("Public Information Provisions of the Administrative Procedures Act"), DFI makes the following request for records within your possession and/or control:

### **Requested Records**

DFI requests that OMB produce the following records within twenty (20) business days:

1. All records, including but not limited to electronic mail ("email"), texts, letters, memoranda, and other documentation from the following "higher education associations" to any and all OMB officials from January 20, 2021, through the date the search is conducted, which reference "Section 117" or "foreign reporting" or "reporting requirements" or "foreign donors" or "anonymized" or "Information Collection Request" or the "Notice of Interpretation (NOI) on Section 117":
  - a. American Council on Education ("ACE")
  - b. ACPA-College Student Educators International
  - c. American Association of Colleges of Nursing
  - d. American Association of Collegiate Registrars and Admissions Officers
  - e. American Association of Community Colleges
  - f. American Association of State Colleges and Universities
  - g. American Dental Education Association
  - h. American Indian Higher Education Consortium
  - i. APPA, "Leadership in Educational Facilities"

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<sup>16</sup> <https://www.whitehouse.gov/omb/>.



- j. Association of Governing Boards of Universities and Colleges
  - k. Association of American Colleges and Universities
  - l. Association of American Universities
  - m. Association of Catholic Colleges and Universities
  - n. Association of Community College Trustees
  - o. Association of Independent California Colleges and Universities
  - p. Association of Independent Colleges and Universities in Massachusetts
  - q. Association of Independent Colleges and Universities in Pennsylvania
  - r. Association of Independent Colleges and Universities in Rhode Island
  - s. Association of Jesuit Colleges and Universities
  - t. Association of Public and Land-grant Universities
  - u. Association of Research Libraries
  - v. Association of Vermont Independent Colleges
  - w. Coalition of Urban and Metropolitan Universities
  - x. College and University Professional Association for Human Resources
  - y. Connecticut Conference of Independent Colleges
  - z. Council for Advancement and Support of Education
  - aa. Council for Christian Colleges & Universities
  - bb. Council for Higher Education Accreditation
  - cc. Council for Opportunity in Education
  - dd. Council of Graduate Schools
  - ee. Council on Government Relations
  - ff. Council on Social Work Education
  - gg. EDUCAUSE
  - hh. ETS
  - ii. Higher Education Consultants Association
  - jj. Hispanic Association of Colleges and Universities
  - kk. NAFSA: Association of International Educators
  - ll. NASPA – Student Affairs Administrators in Higher Education
  - mm. National Association for College Admission Counseling
  - nn. National Association for Equal Opportunity in Higher Education
  - oo. National Association of College and University Business Officers
  - pp. National Association of Independent Colleges and Universities
  - qq. National Association of Student Financial Aid Administrators
  - rr. National Collegiate Athletic Association
  - ss. Phi Beta Kappa Society
2. All records, including but not limited to email, texts, letters, memoranda, and other documentation from any and all OMB officials to any and all of the entities listed in Item 1, from January 20, 2021, through the date the search is conducted, which reference “Section 117” or “foreign reporting” or “reporting requirements” or “foreign donors” or “anonymized” or “Information Collection Request” or the “Notice of Interpretation (NOI) on Section 117.”



3. All records, including but not limited to email, texts, letters, memoranda, and other documentation from any and all OMB officials and government contractors assigned to OMB (*i.e.*, independent personnel contracted by the federal government to provide professional expertise and support directly or indirectly to OMB officials) from January 20, 2021, through the date the search is conducted, which reference “UPenn” or “University of Pennsylvania” or “University of Pennsylvania’s Biden Center for Diplomacy and Global Engagement” or “Penn Biden Center” or “Biden Center” or “Center” or “Amy Gutmann” or “President of UPenn” or “Section 117” or “foreign reporting” or “reporting requirements” or “foreign donors” or “anonymized” or “Information Collection Request” or “Notice of Interpretation (NOI) on Section 117” or “China” or “PRC.”
4. All records, including but not limited to email, texts, letters, memoranda, and other documentation from any and all OMB officials and government contractors assigned to OMB (*i.e.*, independent personnel contracted by the federal government to provide professional expertise and support directly or indirectly to OMB officials) from January 20, 2021, through the date the search is conducted, which reference ED’s Section 117 foreign source contracts and gifts reporting portal, including but not limited to “Information Collection Request” or “ICR” or “<https://partners.ed.gov/ForeignGifts>” or “reporting portal” or “Section 117 portal” or “change in enforcement” or “Section 117 statutory reporting obligation” or “reportable contracts” or “IHE opposition” or “rescission of prior guidance” or “Dear Colleague Letter (DCL), GEN-04-11” or “20 U.S.C. § 1011f” or “Section 117 Report” or “Report on Institutional Compliance with Section 117 of the Higher Education Act of 1965” or “Section 117 investigations.”

## Definitions

Absent contrary statutory directives, words and phrases contained herein should be accorded their usual, plain, and ordinary meaning. Please note the following statutory definition:

“**Records**” are defined at 44 U.S.C. § 3301(a)(1-2) as including “all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them” and further “includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form, such as emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.



## Identification and Production of the Requested Records

FOIA imposes a burden on OMB, as a covered agency under 5 U.S.C. § 551(1), to timely disclose requested agency records to the requestor<sup>17</sup> if OMB (1) created or obtained the requested materials, and, (2) is “in control of the requested materials at the time the FOIA request [was] made.”<sup>18</sup> Upon request, OMB must “promptly” make the requested records available to the requester.<sup>19</sup> Notably, covered agency records include materials provided to OMB by both private and governmental organizations.<sup>20</sup> Upon receipt of a FOIA request that “reasonably” describes the records sought and is in compliance with OMB’s published rules regarding the time, place, any fees, and procedures to be followed,<sup>21</sup> OMB must conduct a search calculated to find responsive records in OMB’s control at the time of the request.<sup>22</sup> In addition, the records produced by OMB are required to be provided in “any form or format requested . . . if the record is readily reproducible by the agency in that form or format.”<sup>23</sup>

Upon receipt of this request, OMB has twenty business days to “determine . . . whether to comply with [the] request” and “shall immediately notify” the requester of its determination and the reasons therefor,” the right to seek assistance from the agency’s FOIA public liaison, and the requester’s right to appeal any “adverse determination” by OMB.<sup>24</sup>

Consistent with FOIA guidelines, DFI requests the following regarding the provision of the requested records:

- OMB should immediately act to protect and preserve all records potentially responsive to this request, notifying any and all responsible officials of this preservation request and verifying full compliance with the preservation request. This matter may be subject to litigation, making the immediate initiation of a litigation hold on the requested materials necessary.
- OMB should search all record systems that may contain responsive records, promptly consulting with its information technology (IT) officials to ensure the completeness of the records search by using the full range of OMB’s IT capabilities to conduct the search. To constitute an adequate search for responsive records, OMB should not rely solely on a

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<sup>17</sup> FOIA requires the disclosure of nonexempt agency records to any person, which includes an individual, partnership, corporation, association, or public or private organization other than an agency. 5 U.S.C. § 551(2).

<sup>18</sup> *Department of Justice (DOJ) v. Tax Analysts*, 492 U.S. 136 at 144-45 (1989).

<sup>19</sup> 5 U.S.C. § 552(a)(3)(A).

<sup>20</sup> *Id.* at 144.

<sup>21</sup> 5 U.S.C. § 552(a)(3)(A)(i)

<sup>22</sup> *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004).

<sup>23</sup> 5 U.S.C. § 552(a)(3)(B).

<sup>24</sup> 5 U.S.C. § 552(a)(6)(A)(i).



search of a likely custodian's files by the custodian or representations by that likely custodian, but should conduct the search with applicable IT search tools enabling a full search of relevant agency records, including archived records, without reliance on a likely custodian's possible deletion or modification of responsive records.

- OMB should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding OMB's business operations. Responsive records include official business conducted on unofficial systems which may be stored outside of official recording systems and are subject to FOIA. OMB should directly inquire, as part of its search, if likely custodians have conducted any such official business on unofficial systems and should promptly and fully acquire and preserve those records as OMB's official records. Such unofficial systems include, but are not limited to, governmental business conducted by employees using personal emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack. Failure to identify and produce records responsive to this request from such unofficial systems would constitute a knowing concealment by OMB calculated to deflect its compliance with FOIA's requirements.
- OMB should timely provide entire records responsive to this request, broadly construing what information may constitute a "record" and avoiding unnecessarily omitting portions of potentially responsive records as they may provide important context for the requested records (*e.g.*, if a particular email is clearly responsive to this request, the response to the request should include all other emails forming the email chain, to include any attachments accompanying the emails).
- OMB should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.
- If OMB determines that any portions of otherwise responsive records are statutorily exempt from disclosure, DFI requests that OMB disclose reasonably segregable portions of the records.
- For any responsive records withheld in whole or part by OMB, OMB should provide a clear and precise enumeration of those records in index form presented with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA"<sup>25</sup> and provide a sufficiently detailed justification and rationale for each non-disclosure and the statutory exemption upon which the non-disclosure relies.

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<sup>25</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).





- Please provide responsive records in electronic format by email, native format by mail, or PDF or TIF format on a USB drive. If it helps speed production and eases OMB's administrative burden, DFI welcomes provision of the records on a rolling basis. Responsive records sent by mail should be addressed to the Defense of Freedom Institute for Policy Studies, 1455 Pennsylvania Avenue NW, Suite 400, Washington, D.C. 20004.

### **Fee Waiver Request**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), DFI requests a waiver of all fees associated with this FOIA request for agency records. Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and because disclosure of the information contained within the requested records is not primarily in the commercial interests of DFI. The subject of this request regards activities of OMB officials involved in OMB's implementation of President Biden's vision for Section 117 enforcement by ED and other federal agencies. Provision of the requested records will provide the public with a clearer understanding of President Biden's decisions regarding enforcement of Section 117 of the Higher Education Act of 1965.

DFI is an independent 501(c)(3) nonprofit organization without a commercial purpose primarily engaged in the dissemination of information about government policies to the public. DFI is engaged in the collection, analysis, and dissemination of information to educate the public about government policies that impact the civil and constitutional rights of American families, students, entrepreneurs, and workers. DFI actively publishes information and related analyses on its public website and promotes access to that information and analyses on social media platforms, including but not limited to distribution via Facebook and Twitter.

### **Conclusion**

DFI appreciates OMB's prompt attention to this request for records pursuant to FOIA, which will provide important information to the American people regarding Section 117 foreign disclosure reporting enforcement by the U.S. Department of Education and other federal agencies. Please contact me immediately if DFI's request for a fee waiver is not granted in full.

If you have any questions or I can further clarify DFI's request, please contact me at your earliest convenience at [jim.blew@dfipolicy.org](mailto:jim.blew@dfipolicy.org).

Sincerely yours,

/s/ James C. Blew  
James C. Blew  
Defense of Freedom Institute for Policy Studies, Inc.

## **Exhibit B-2**

**February 8, 2022 OMB's FOIA  
Acknowledgment Letter**





Paul Moore <paul.moore@dfipolicy.org>

**ACK -OMB FOIA 2022-177 - RE: [EXTERNAL] FOIA REQUEST**

2 me age

**MBX OMB FOIA** <MBX.OMB.FOIA@omb.eop.gov>

Tue, Feb 8, 2022 at 8:29 PM

To: Paul Moore <paul.moore@dfipolicy.org>, MBX OMB FOIA <MBX.OMB.FOIA@omb.eop.gov>

Good evening Paul:

This email acknowledges receipt of your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated and received in this office on February 7, 2022. Your request has been logged in and is being processed. For your reference, the OMB FOIA number is 2022-177.

Thank you,

OMB FOIA Team

**From** Paul Moore [paul.moore@dfipolicy.org](mailto:paul.moore@dfipolicy.org)  
**Sent:** Monday, February 7, 2022 9:05 AM  
**To:** MBX OMB FOIA <[MBX.OMB.FOIA@OMB.eop.gov](mailto:MBX.OMB.FOIA@OMB.eop.gov)>  
**Subject:** [EXTERNAL] FOIA REQUEST

Dear FOIA Officer Dionne Hardy:

Attached please find the Defense of Freedom Institute's request for records related to OMB's implementation of the President's policies pertaining to 20 U.S.C. 1011f

Please contact me if you have any question

Sincerely,

Paul Moore

[Redacted]

**Paul R. Moore, Senior Counsel**

Defense of Freedom Institute for Policy Studies

1455 Pennsylvania Avenue, NW, Suite 400

Washington, DC 20004

(617) 901-8343

[paul.moore@dfipolicy.org](mailto:paul.moore@dfipolicy.org)

>[www.dfipolicy.org](http://www.dfipolicy.org)<

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**Paul Moore** <[paul.moore@dfipolicy.org](mailto:paul.moore@dfipolicy.org)>  
To Robert Eitel [robert.eitel@dfipolicy.org](mailto:robert.eitel@dfipolicy.org)

Tue, Feb 22, 2022 at 6:10 PM

Bob,

Here's OMB's acknowledgement of our Sec. 117 FOIA request.

Thanks,  
Paul

[Quoted text hidden]

# **Exhibit C-1**

February 27, 2023 Third FOIA Request



February 27, 2023

**VIA ELECTRONIC MAIL**

U.S. Department of Education  
Office of the Executive Secretariat  
FOIA Service Center  
400 Maryland Ave. SW, LBJ 7W106A  
Washington, D.C. 20202-4536  
EDFOIAManager@ed.gov  
ATTN: FOIA Public Liaison

**Re: FOIA REQUEST: Records of the Department's Communications with Higher Education Industry Lobbyists and Investigated Universities**  
(DFI FOIA No. 100-3-23)

Dear FOIA Public Liaison:

The Defense of Freedom Institute for Policy Studies, Inc. ("DFI") is a 501(c)(3) nonprofit, nonpartisan organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting civil and constitutional rights at schools and in the workplace. DFI includes former U.S. Department of Education ("Department" or "ED") and other federal agency officials who are experts in education law and policy and the operation of the Department. For the benefit of the public, DFI's mission includes obtaining records related to the consideration and implementation of policies imposed by the federal government and its officials on the American people.

**Proposal to Shift Section 117 Enforcement from OGC to FSA**

On Dec. 27, 2022, the U.S. Department of Education ("Department" or "ED") published a data collection notice ("Notice") of its intent "to collect the required information from institutions regarding foreign gifts and contracts as specified in the Higher Education Act of 1965 (HEA), as amended. Section 117 of the HEA (codified at 20 U.S.C. 1011f) provides that institutions of higher education must file a disclosure report with the Secretary of Education on January 31 or July 31, whichever is sooner, under certain circumstances."<sup>1</sup> The Notice explained that "[w]ith this request for a new collection, the Department would be returning the collection of this information to FSA, which is the office with primary responsibility for the administration of Section 117 within the Department going forward."<sup>2</sup>

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<sup>1</sup> 87 Fed. Reg. 79,293 (Dec. 27, 2022).

<sup>2</sup> *Id.*



The Department's shift of Sec. 117 data collection and related investigative responsibilities from the Office of the General Counsel ("OGC") to the Office of Federal Student Aid ("FSA") would:

- Jeopardize the Department's tremendous Sec. 117 enforcement successes that have occurred since 2019, including revealing billions of dollars in previously undisclosed foreign gifts and contracts to American colleges and universities;
- Task an agency component, FSA, with a critical enforcement task for which it is neither staffed nor for which it has legal expertise;
- Remove Sec. 117 enforcement responsibilities from OGC, which is staffed with attorneys, legal staff, and other regulatory experts, and has properly initiated and guided multiple civil investigations pursuant to Sec. 117;
- Lead to diminished foreign gifts and contracts records disclosures by non-compliant colleges and universities, which will be far less likely to voluntarily provide Sec. 117 data and records to FSA than to OGC;
- Undermine the national security interests of the country by reducing the availability of critical disclosures to the Department regarding foreign financial involvements in America's colleges and universities (and related dual-use research products);
- Give a dangerous green light to foreign adversaries to re-access critical research faculty and research products developed at our colleges and universities, despite the FBI's clear warnings about the continuing vulnerability of America's colleges and universities to espionage.

The Department's proposal would severely diminish the Department's Sec. 117 enforcement and investigatory capabilities by shifting relevant data collection to an agency component with extremely limited expertise, legal capacity, and related enforcement experience: FSA. FSA's self-identified role regards "policies on federal financial aid for education, and distributing as well as monitoring those funds"<sup>3</sup> and FSA's primary responsibility is "award[ing] more than \$120 billion a year in grants, work-study funds, and low-interest loans to approximately 13 million students."<sup>4</sup> In appointing the current Chief Operating Officer of FSA,<sup>5</sup> the Secretary correctly described FSA's limited role as "managing the student financial assistance programs authorized under Title IV...

<sup>3</sup> See [https://www2.ed.gov/about/landing\\_jhtml?src=ft](https://www2.ed.gov/about/landing_jhtml?src=ft).

<sup>4</sup> See <https://www2.ed.gov/about/offices/list/fsa/index.html>.

<sup>5</sup> See <https://www.ed.gov/news/press-releases/us-department-education-announces-richard-cordray-chief-operating-officer-federal-student-aid>.



including grants, work-study and loans for students attending college or career school.”<sup>6</sup> FSA reports directly to the Department’s Under Secretary, who reports to the Secretary.

The Department proposes to move control of this collection (as reflected by the Office of Management and Budget’s control number) from OGC to FSA. OGC reports directly to the Secretary, its leadership is Senate-confirmed, and it has the “broad statutory mission” to “provide legal assistance to the Secretary concerning the programs and policies of the Department” in “carrying out the duties of the Department” including “the provision of legal advice, litigation, and legislative services.”<sup>7</sup>

### **The Department’s Section 117 Enforcement Efforts Since 2019**

On its website, the Department continues to publicly describe the importance of Sec. 117:

Over 30 years ago, Congress enacted Section 117 of the Higher Education Act of 1965 (HEA) in light of concerns about the growing financial relationship between U.S. universities and foreign sources. Congress balanced academic freedom and national security by mandating financial transparency through required reporting of contracts with and gifts from a foreign source that, alone or combined, are valued at \$250,000 or more in a calendar year.<sup>8</sup>

Beginning in 2019, led by OGC attorneys, the Department initiated nineteen civil investigations<sup>9</sup> to determine compliance by particular universities with Sec. 117’s simple reporting requirements. Indicative of Congress’s resolve regarding the Department’s enforcement efforts, the statute authorizes civil action against non-compliant IHEs upon the Secretary’s request “[w]henver it appears that an institution has failed to comply with the requirements of [Sec. 117], including any rule or regulation promulgated under this section.”<sup>10</sup> OGC, unlike FSA, is comprised largely of attorneys and other staff with particular legal and regulatory expertise. FSA, in accord with its mission, is staffed with personnel trained in the execution of federal student aid programs – subject matter thoroughly apart from Sec. 117.

The Department reported to the U.S. Senate’s Homeland Security and Government Affairs Committee’s Permanent Subcommittee on Investigations that OGC’s investigations had quickly determined that compliance failures were widespread, resulting in Department efforts to clarify reporting requirements, establishment of a simplified reporting portal in June 2020,<sup>11</sup> issuance of

<sup>6</sup> See <https://www.ed.gov/news/press-releases/us-department-education-announces-richard-cordray-chief-operating-officer-federal-student-aid>.

<sup>7</sup> See <https://www2.ed.gov/about/offices/list/ogc/index.html>.

<sup>8</sup> See <https://www2.ed.gov/policy/highered/leg/foreign-gifts.html>.

<sup>9</sup> See <https://www2.ed.gov/policy/highered/leg/foreign-gifts.html>.

<sup>10</sup> 20 U.S.C. § 1011f(f)(1).

<sup>11</sup> See <https://sa.ed.gov/cas/CASWeb/pages/Authentication.faces>.



an information collection reporting requirement to improve reporting accuracy,<sup>12</sup> expansion of inter-agency consultation processes, and increased enforcement efforts.

OGC's actions were in direct response to a Staff Report entitled "CHINA'S IMPACT ON THE U.S. EDUCATION SYSTEM" issued by the U.S. Senate's Permanent Subcommittee on Investigations ("Senate Report").<sup>13</sup> The bipartisan Senate Report found that:

- *Foreign government spending on U.S. schools is "effectively a black hole" because U.S. colleges and universities fail to report foreign gifts and contracts as required by Sec. 117;*
- *The Chinese government, in particular, makes strategic investments to impact U.S. education through Confucius Institutes and other information-related vehicles;*
- *China had provided over \$158 million of funding to place and operate Confucius Institutes on American campuses, often coming with "strings that can compromise academic freedom;"*
- *Because U.S. colleges and universities "routinely" fail to report foreign gifts and contracts, the American people lack an accurate and complete picture of foreign influence, including from the Chinese government;*
- *Academic freedom at U.S. colleges and universities may be compromised by undisclosed foreign gifts and contracts.*<sup>14</sup>

In November 2019, the Department responsively informed the Senate Permanent Subcommittee of its concerns regarding widespread Sec. 117 compliance failures, describing its initial findings that IHE Sec. 117 "reporting has been generally underinclusive and inaccurate" and that, in response to OGC's inquiries, "[s]everal IHEs are correcting their non-compliance as a result" of investigations, "apparently anticipating that correcting current non-compliance carries no penalties under existing law."<sup>15</sup> OGC's investigations revealed the lengths to which many IHEs went to operate "through financially opaque captive foundations, foreign campuses, and other structures to generate revenue, including from foreign sources."<sup>16</sup>

Significantly, the Department's report to the Senate Permanent Subcommittee noted the compliance failures of IHEs despite extremely sophisticated IHE foreign financial tracking capabilities:

<sup>12</sup> 85 Fed. Reg. 72,567 (Nov. 13, 2020).

<sup>13</sup> "China's Impact on the U.S. Education System," U.S. Senate Permanent Subcommittee on Investigations (Feb. 2019), available at <https://www.govinfo.gov/content/pkg/CHRG-116shrg36158/html/CHRG-116shrg36158.htm>.

<sup>14</sup> *Id.* at 1-3, 5, 71-76.

<sup>15</sup> See <https://www2.ed.gov/policy/highered/leg/psi-nov27-2019.pdf>.

<sup>16</sup> *Id.* at 3.



Although IHEs investigated by the Department appear to have extremely sophisticated systems for managing, soliciting, and tracking contributions, grants, and contracts over time and from many thousands of sources, foreign and domestic, it appears they have not deployed similar systems with respect to Section 117 reporting.

The Department has received data from several IHEs at a very high level of granularity (*e.g.*, individual contributions from foreign sources of \$100 or less), suggesting IHEs certainly have the capability to track and transparently report all foreign sources of money. It does not appear that these IHEs, each financially sophisticated and well-resourced, followed basic American Institute of Certified Public Accountants (“AICPA”) guidance for Section 117 financial reporting (*e.g.*, independent third-party audits integrated with contracts, gift agreements and other relevant instruments).<sup>17</sup>

Senior Departmental officials were called to testify before the Senate Permanent Subcommittee. In February 2019, Deputy Secretary Dr. Mitchell M. “Mick” Zais testified regarding the ongoing threat to America’s education system posed by undisclosed foreign gifts and contracts, particularly from China, and the commensurate need to effectively enforce Sec. 117’s simple reporting requirements.<sup>18</sup>

The Department’s civil investigations and other enhanced enforcement efforts continued, revealing truly remarkable widespread Sec. 117 disclosure failures that were widely publicized by the Department as part of its ongoing effort to increase compliance by IHEs.<sup>19</sup>

In October 2020, the Department published a report by OGC entitled “Institutional Compliance with Section 117 of the Higher Education Act of 1965” (“Compliance Report”).<sup>20</sup> The Compliance Report revealed that the Department’s enhanced enforcement efforts, including the opening of its civil investigations, had produced stark results: records of more than \$6.5 billion in previously undisclosed foreign gifts and contributions (\$3.8 billion of which foreign gifts were reported by

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<sup>17</sup> *Id.* at 4.

<sup>18</sup> Zais, Mitchell “Mick” M., <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/2019-02-28%20Zais%20Testimony%20-%20PSI.pdf>.

<sup>19</sup> Aruna Viswanatha and Melissa Korn, “Top Universities Took Billions in Unreported Foreign Funds, U.S. Finds,” THE WALL STREET JOURNAL (Oct. 20, 2020), <https://www.wsj.com/articles/top-universities-took-billions-in-unreported-foreign-funds-u-s-finds-11603226953>.

<sup>20</sup> “Institutional Compliance with Section 117 of the Higher Education Act of 1965,” U.S. Department of Education, Office of the General Counsel (Oct. 2020), available at <https://www2.ed.gov/policy/highered/leg/institutional-compliance-section-117.pdf> (Compliance Report).





IHEs via the Department’s new reporting portal between June and October 2020 [created under the direction of OGC]).<sup>21</sup>

The Compliance Report found that since June 2020, approximately \$350 million in foreign gifts and contracts were disclosed to the Department by IHEs that had no prior history of submitting Sec. 117 transactions – indicating a tremendous *increase* in compliance following the Department’s enforcement efforts.<sup>22</sup> It noted patterns of extremely evasive reporting behavior by particular IHEs:

[O]ur investigations confirm a Senate subcommittee’s finding that Section 117 reporting is systemically underinclusive and inaccurate.[] This is extremely troubling because the evidence shows that institutions have sophisticated systems for managing, soliciting, and tracking contributions, grants, and contracts over time and from many thousands of sources, foreign and domestic.

All investigative subjects have produced data at a very high level of granularity (e.g., individual contributions from foreign sources of \$100 or less), demonstrating their capability to track from foreign sources exists. Therefore, it is hard to understand, for example, how Yale University could have simply failed to report any foreign gifts or contracts for four years or Case Western Reserve University for 12 years, precisely when both were rapidly expanding their foreign operations and relationships – including with China and Iran.<sup>23</sup>

The Department noted that “[h]istorically, fewer than 300 of the approximately 6,000 U.S. institutions self-report foreign money each year” and that the “risk to academic freedom, integrity, and independence posed [by] such contributions has been historically ignored by regulators and overlooked or downplayed by the beneficiaries of foreign largess.”<sup>24</sup>

### **The Department’s Complex Investigations Revealed Widespread Compliance Failures by IHEs**

The Department’s investigations revealed that the “Chinese Communist Party sends students ‘under the guise of international scientific collaboration to systematically target critical technologies to advance China’s national security interests’[]” and that it “also lures international scholars to advance its causes through the Thousand Talents Program designed to attract foreign scholarship by providing them research funding, salaries, and laboratory space, among other perks.”<sup>25</sup>

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<sup>21</sup> *Id.* at 1.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 2-3.

<sup>24</sup> *Id.* at 7.

<sup>25</sup> *Id.* at 11.



The Department’s findings regarding the vulnerability of research and development technologies at colleges and universities were alarming, noting that “foreign adversaries are likely targeting specific institutions for their [research and development] and technologies.”<sup>26</sup> The Department warned:

American universities, commonly those with research prowess, often house licensing offices. These offices assess compliance with U.S. domestic and international laws and regulations, such as export and import controls. While the Department appreciates these compliance efforts, foreign governments may be strongly motivated to recruit former university licensing officers to gain insider knowledge of American licensing processes.

A former senior employee at one of the investigated universities’ licensing offices now holds a senior position in a Chinese company where he works on international licensing matters...university staff could eventually provide insider knowledge to foreign actors like the Chinese government, in effect increasing foreign government access to American research...American professionals possessing experience in regulating American institutions’ research and development projects may be recruited and hired by the Chinese government (or its intermediaries) to serve the Chinese government’s research interests.<sup>27</sup>

Citing several ongoing U.S. Department of Justice investigations of undisclosed foreign government access to faculty and research products at several prominent IHEs, the Department noted that “robust enforcement” of Section 117’s disclosure requirements are “*essential because hostile governments and their instrumentalities have targeted the higher education sector for exploitation to infiltrate cutting-edge American research projects, influence curricula, and gain access to systems and information....*”<sup>28</sup>

The Department cautioned that “America’s adversaries have long exploited the openness of American society, our deeply held belief in free inquiry and academic freedom, and the misjudgments of some higher education industry leaders to advance their institutional interests at the risk to American security.”<sup>29</sup>

Thanks to the Department’s (OGC’s) enhanced enforcement efforts, the University of Pennsylvania (“UPenn”) was required to report a stunning increase in its receipt of reportable foreign gifts and contracts – up 389% between 2018 and 2019 alone,<sup>30</sup> although it failed to identify

<sup>26</sup> *Id.* at 27.

<sup>27</sup> *Id.* at 27.

<sup>28</sup> *Id.* at 7 (emphasis added).

<sup>29</sup> *Id.* at 11.

<sup>30</sup> On Feb. 1, 2017, the University of Pennsylvania announced the formation of the “Penn Biden Center for Diplomacy & Global Engagement (“Biden Center”), which subsequently opened a Washington, D.C. office in June 2018. *See* “Vice President Joe Biden to lead the Penn Biden Center for Diplomacy and Global Engagement,” *Penn Today* (Feb. 1, 2017),



the donors for approximately \$27.1 million of those gifts and contracts.<sup>31</sup> Foreign source gifts and contracts to UPenn amounted to at least \$258 million during the same period.<sup>32</sup> This is merely one of hundreds of examples of proper Sec. 117 enforcement by OGC leading to greater IHE transparency for the consideration of the American people and its elected officials – although UPenn’s foreign transactions were particularly notable because of the timing in the increase of anonymous and other contributions from China.

The Department’s findings regarding compliance failures included a description of an IHE (name redacted in the public version of the Compliance Report) which had “admitted that its disclosures to the Department failed to document more than \$760 million in funding” and noted that university officials used the word “dumbfounded” to explain their disclosure obligations and failures and that this typified “broader reporting errors across institutions.”<sup>33</sup>

Department officials described the complexity of their investigations as including the review of massive IHE financial records, including contracts, financial records, and institutional practices,” including reporting inconsistencies between Sec. 117 reports to the Department and information obtained through IHE IRS Form 990s (“Generally, institutions are well-funded, influential research producers, very often with opaque foreign gift and contract reporting practices...Incoming and outgoing institutional dollars recorded by Form 990s demonstrate that foreign influence on institutions is measured by millions and billions of dollars”<sup>34</sup>).

In addition to instituting multiple civil investigations of IHEs, modernizing the reporting portal, and working closely with IHEs to enable accurate, fulsome, and timely Sec. 117 disclosures, the Department issued guidance that reflected both the Department’s enforcement obligations and the seriousness with which the Department viewed Sec. 117 compliance. For example, in November 2020, it issued a Notice of Interpretation (“NOI”) to “clarify the Department’s enforcement authority for failure to adequately report under [Sec. 117].”<sup>35</sup> The NOI indicated that Sec. 117 compliance is part of an IHE’s program participation agreement and that disclosure failures could result in “fines, limitations, suspensions, or termination of the institution’s Title IV participation” pursuant to 20 U.S.C. § 1094(a)(17) (“Institutions Are Required Under Their Program Participation Agreements (PPA) To Report Section 117 Data”<sup>36</sup>).

<https://penntoday.upenn.edu/spotlights/vice-president-joe-biden-lead-penn-biden-center-diplomacy-and-global-engagement>.

<sup>31</sup> “Penn received 389% more foreign donations in 2019 than in 2018, DP analysis finds,” THE DAILY PENNSYLVANIAN (Apr. 20, 2021), <https://www.thedp.com/article/2021/04/foreign-donations-penn-analysis-china>.

<sup>32</sup> Catherine Dunn, “Penn got \$258 million in foreign money, and there may be more it hasn’t disclosed,” THE PHILADELPHIA INQUIRER (Feb. 24, 2020), <https://www.inquirer.com/business/university-pennsylvania-foreign-donations-china-saudi-arabia-20200224.html>.

<sup>33</sup> Compliance Report at 15.

<sup>34</sup> *Id.* at 14.

<sup>35</sup> 85 Fed. Reg. 72,567 (Nov. 13, 2020).

<sup>36</sup> *Id.* at 72,568.



More recently, in July 2022, the Department issued additional guidance<sup>37</sup> further clarifying when “contracts” are to be valued (at the time of execution), when gifts are to be valued (the amount received by the IHE), which arms-length transactions are reportable, the efforts IHEs are required to make to determine whether a gift or contract came from a foreign source (“good faith effort”) and that the Department requires IHEs to report transactions involving intermediaries where the intermediary operates substantially for the benefit or under the auspices of the IHE (e.g., foundation).

According to the Department, the webinar at which it first presented these additional guidelines was organized by the American Council on Education (“ACE”),<sup>38</sup> the largest higher education trade association and one which has long adamantly opposed the Department’s Section 117 enforcement efforts (discussed *infra*) on behalf of its IHE members.<sup>39</sup>

### **FBI Director Wray’s Warnings on China’s Growing Threat to American Universities**

In April 2021 testimony before the Senate Select Committee on Intelligence, after noting that the FBI opens a new investigation linked to China’s government “every 10 hours” and has more than 2,000 ongoing investigations that are related to China, Federal Bureau of Investigation (“FBI”) Director Christopher Wray warned that:

I don’t think there is any country that presents a more severe threat to our innovation, our economic security and our democratic ideas. And the tools in their toolbox to influence our businesses, *our academic institutions*, our governments at all levels are deep and wide and persistent.<sup>40</sup>

Dir. Wray spoke in further detail about the ominous foreign threat again in January 2022:

Much of the battleground we’re [the FBI] contesting lies outside government’s control: companies whose technology we’re helping protect, *universities whose students and research we’re helping protect*, local governments we’re warning

<sup>37</sup> See <https://www2.ed.gov/policy/highered/leg/section117-webinar-202206.pdf>.

<sup>38</sup> ACE identifies itself as “the major coordinating body for the nation’s colleges and universities” and is well-known as the foremost lobbying organization for IHEs against the Department’s Section 117 compliance enforcement efforts. See <https://www.acenet.edu/About/Pages/default.aspx>.

<sup>39</sup> See <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2022-07-08/reminder-reporting-deadline-section-117-higher-education-act-1965-updated-july-22-2022>.

<sup>40</sup> See <https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats-1>; see also Patrick Tucker, “FBI Opens a Case on Chinese Activity ‘Every 10 Hours,’ Intel Chiefs Say,” DEFENSE ONE (Apr. 14, 2021), <https://www.defenseone.com/threats/2021/04/fbi-opens-case-chinese-activity-every-10-hours-intel-chiefs-say/173376/> (emphasis added).



about foreign threats. None of them are equipped to deal with a threat this complex alone...<sup>41</sup>

In October 2022, at a press conference discussing indictments against Chinese intelligence officers, Dir. Wray noted that:

10 of the 13 individuals we're discussing today are Chinese intelligence officers and Chinese government officials. They're charged in three different cases that might seem at first glance to be about unrelated issues. However – and this is something I've been talking about for years – each of these cases lays bare the Chinese government's flagrant violation of international laws, as they work to project their authoritarian view around the world, including within our own borders....[they] lie, cheat, and steal their way into unfairly dominating entire technology sectors, putting competing U.S. companies out of business....The FBI has been reaching out to and warning...the communities that the Chinese government targets [including]...*Academia*.<sup>42</sup>

Dir. Wray has made remarkably clear through his words and the FBI's investigations that hostile actions against the U.S. by China are increasing, pose a critical threat to our national security, and that the Chinese government uses soft targets, *including American colleges and universities*, to acquire critical technologies and research products and to intimidate speech that is inconsistent with the Chinese Communist Party's policy dictates.

### **The Department's Proposal Ignores Bipartisan Alarm Regarding China's Threat to America**

Responding to the emerging threat described frequently by Dir. Wray, a large bipartisan majority of the U.S. House voted to establish the "Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party"<sup>43</sup> to "expose the [Chinese Communist Party's] coordinated whole-of-society strategy to undermine American leadership and American sovereignty while working on a bipartisan basis ... to identify long-overdue, commonsense approaches to counter CCP aggression."<sup>44</sup>

China's increased hostility to the U.S. was clearly demonstrated by its direct threats against then-Speaker of the House Nancy Pelosi, in response to her trip in 2022 to Taiwan: "We are closely following the itinerary of Speaker Pelosi. A visit to Taiwan by her would constitute a gross

<sup>41</sup> See <https://www.fbi.gov/news/speeches/countering-threats-posed-by-the-chinese-government-inside-the-us-wray-013122> (emphasis added).

<sup>42</sup> See <https://www.fbi.gov/news/speeches/director-wrays-remarks-at-press-conference-announcing-actions-to-disrupt-criminal-activity-by-individuals-associated-with-the-government-of-the-peoples-republic-of-china-102422> (emphasis added).

<sup>43</sup> See <https://clerk.house.gov/committees/ZS00>.

<sup>44</sup> Connor O'Brien and Gavin Bade, "House establishes tough-on-China select committee," POLITICO (Jan. 10, 2023), <https://www.politico.com/news/2023/01/10/house-china-select-committee-00077312>.



interference in China’s internal affairs...and lead to a very serious situation and grave consequences.... As for what measures exactly we will take...let’s wait and see if she dares making [sic] the visit.”<sup>45</sup>

U.S. Secretary of State Antony Blinken recently described China as the “most serious long-term” threat to “the world’s progress over the past 75 years,” noting that “[u]nder President Xi, the ruling Chinese Communist Party has become more repressive at home and more aggressive abroad” and that “we cannot rely on Beijing to change its trajectory.”<sup>46</sup>

In the face of this perilous and growing threat and despite the FBI’s clear warnings, the Department appears to have largely ceded control over its Sec. 117 enforcement policies to the lobbying organization that represents all of the IHEs the Department investigated and most of America’s remaining IHEs, as further demonstrated by the Notice.

Why would the Department diminish its now proven Sec. 117 enforcement capabilities despite the increasing threat to our colleges and universities by nefarious foreign governments, including China?

### **Implementing the Sec. 117 Enforcement Agenda of the Regulated Colleges and Universities**

On behalf of its IHE members, the American Council on Education has objected repeatedly and vociferously over many years to the Department’s previous efforts to enforce Sec. 117’s simple reporting requirements, despite the urgency of the Senate Report’s findings and the Department’s responsive investigations,<sup>47</sup> to which OGC patiently responded by noting that, ACE’s protestations aside, “Congressional intent and [Section 117’s] reporting obligations are plainly evident in the statutory text and that “all foreign monies flowing or funneled to [IHEs]...must be reported.”<sup>48</sup>

On November 18, 2020, in a letter to President-elect Biden, ACE instructed the incoming administration act “quickly” to “[h]alt the expanded reporting requirements, including the new Information Collection Request (ICR) and Notice of Interpretation (NOI) on Section 117 imposed by the Department of Education in its effort to expand those reporting requirements...”<sup>49</sup> In its letter, ACE claimed to represent the demands of approximately forty-six (46) higher education associations (identified in its letter).

<sup>45</sup> Jack Dutton, “China Threats Over Nancy Pelosi’s Muted Taiwan Visit – In Full,” NEWSWEEK (Aug. 1, 2022), <https://www.newsweek.com/china-threats-nancy-pelosi-taiwan-visit-in-full-1729716>.

<sup>46</sup> See <https://www.state.gov/the-administrations-approach-to-the-peoples-republic-of-china/>.

<sup>47</sup> See [https://www.higheredcompliance.org/wp-content/uploads/2019/08/Letter-ActingEDGCRubenstein.Section-117.final\\_.8.9.19.pdf](https://www.higheredcompliance.org/wp-content/uploads/2019/08/Letter-ActingEDGCRubenstein.Section-117.final_.8.9.19.pdf).

<sup>48</sup> See <https://www2.ed.gov/policy/highered/leg/ace-3-sept6-2019.pdf>.

<sup>49</sup> Letter to Joe Biden, President-Elect and Kamala Harris, Vice President-Elect, from the American Council on Education (ACE), <https://www.acenet.edu/Documents/Letter-Biden-Administration-Regulatory-Actions-111820.pdf>.





On Dec. 14, 2020, in a fourteen-page letter to OGC, ACE complained bitterly of the Department's civil investigations and related enforcement efforts and informed it of its preferred return to reduced compliance enforcement efforts that would be far less burdensome to IHEs, notwithstanding Sec. 117's simple requirements.<sup>50</sup>

Following ACE's November and December 2020 post-election demands, the Department's enforcement of Sec. 117's disclosure requirements appeared to weaken,<sup>51</sup> with IHEs reporting barely more than \$4 million in foreign gifts and contracts during the first reporting period of 2021 – compared with over \$1.5 billion during the previous reporting period (July 2020-January 2021).<sup>52</sup>

ACE's anti-transparency lobbying efforts focused on the Department's new political leadership have borne spectacular results for ACE (and particular IHEs, including several still under investigation) as grotesquely demonstrated by ACE's announcement regarding the Department's pending Sec. 117 enforcement policies.

In August 2022, the Department left it to ACE's Senior Vice President to announce *to the Department* the Department's cessation of its then-outstanding Sec. 117 investigations (to his member IHEs, including those under investigation) and that "Section 117 management will be transferred back to Federal Student Aid (FSA)."<sup>53</sup> The Department's official Notice did not occur for another four months, on December 27, 2022.<sup>54</sup> Despite its many victories, ACE continued to object to the Department's ongoing "Section 117 reporting requirements, similar to what was proposed in the November 2019 and December 2019 'Information Collection Request.'"<sup>55</sup>

Regrettably, the Department's Notice merely proposes to formalize an important part of ACE's transformative, anti-transparency August 2022 agenda.

On few previous occasions in modern American history has a federal agency with such a simple but critical enforcement task invited the chief lobbying organization opposing the Department's enforcement efforts to host events at which the Department would announce its evolving Sec. 117 enforcement policies and, stunningly, announce the Department's shifting of enforcement responsibilities from OGC to the ill-equipped FSA.

The Department's proposal, if implemented, would sabotage a foreign gift and contract reporting system that, after neglect through multiple administrations, has finally produced far more accurate data for the benefit of the American people and elected officials, according to the Department's

<sup>50</sup> See <https://www.acenet.edu/Documents/Comments-memo-ED-Section-117-121420.pdf>.

<sup>51</sup> Audrey Conklin, "US Colleges report fewer foreign gifts after Biden takes office, sparking concern from Rep. Gallagher," *Fox News* (Nov. 5, 2021), <https://sites.ed.gov/foreigngifts/>.

<sup>52</sup> See <https://sites.ed.gov/foreigngifts/>.

<sup>53</sup> See

<https://www.cogr.edu/sites/default/files/081622%20FINAL%20August%202022%20ED%20letter%20on%20117%20follow%20up.pdf>.

<sup>54</sup> 87 Fed. Reg. 247 (Dec. 27, 2022).

<sup>55</sup> *Id.*



own public reports on its Sec. 117 enforcement efforts to combat previously widespread non-compliance and anti-transparency efforts by particular IHEs and industry lobbyists.

This proposal occurs at a time when gathering foreign threats to the United States are perhaps greater than in recent memory, particularly including well-documented threats from the Chinese Communist Party, which controls the Chinese government. Despite the Department's own public findings and repeated warnings from FBI Director Wray regarding the vulnerability of America's colleges and universities to Chinese espionage and influence, the Department now proposes to blithely ignore the utterly minimalist role it is obligated to play in regulating the receipt of foreign gifts and contracts by our colleges and universities.

Despite the Chinese government's direct threats to the safety of then-House Speaker Nancy Pelosi and recent bipartisan congressional determination to investigate China's ongoing threats to America's security interests, the Department appears unconcerned and apparently intends to proceed as if it bears no responsibility to the American people, in whose name it channels massive amounts of taxpayer dollars to American students and colleges and universities.

The proposal to move data collection and investigative responsibilities from OGC to FSA is remarkable for its disingenuousness. As the Secretary is fully aware, FSA is utterly unsuited to the task. FSA is no better able or professionally suited to lead the Department's Sec. 117 enforcement efforts than OGC is to administer student loans, grants, and work-study programs.

As vividly described in the Department's own Compliance Report and in its responses to inquiries by the U.S. Senate, IHEs have often sought to conceal qualifying foreign transactions from disclosure. Only through careful examination of tax records, contracts, and other financial documents by OGC attorneys did the Department successfully force exponential increases in IHE Sec. 117 compliance. There is simply no reason for the Department to transfer these important responsibilities to an agency component so utterly lacking in Sec. 117 expertise and enforcement capabilities.

Moving Sec. 117 enforcement responsibilities to FSA is an incongruent match at best and one that, by appearances, may have been made by higher education lobbyists who have long opposed the Department's effective enforcement of the law's transparency requirements. No matter how willing FSA as an agency component may be to take on this role, it is incapable of effectively leading enforcement efforts – and that appears to be precisely the point of the Department's proposed action.

The Department was correct in making vast improvements to its Sec. 117 enforcement obligations, beginning in 2019. Widespread compliance appears to have been replaced with considerably greater foreign gifts and contracts disclosures by IHEs. The Sec. 117 data collection system was successfully improved, reporting obligations substantially clarified, and yet the Department now proposes measures that would undermine critical Sec. 117 enforcement.

The foreign threat to academia has increased, not decreased, particularly from the Chinese government, as noted by Dir. Wray and the bipartisan U.S. Senate's Permanent Subcommittee on





Investigations. With its proposal, the Department defiantly and inexplicably ignores this peril without explanation or apology, despite its own published findings in Oct. 2020.

These unnecessary and imprudent proposed changes to the Department's Sec. 117 enforcement obligations are of tremendous concern to the American people and may undermine the national security interests of the United States. Precisely because of the brazenness of the higher education lobby in announcing these changes and the Department's apparent acquiescence to those proposed diminished enforcement efforts, DFI believes the American people have a particularly high interest in better understanding the Department's motivation and reasoning underlying its Notice.

Therefore, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of ED, 34 C.F.R. Part 5 ("Availability of Information to the Public"), DFI makes the following requests for the provision of records within your possession and/or control:

### **Requested Records**

DFI requests that ED produce the following records within **twenty (20) business days** as required by statute:

1. All decision memoranda, directives, policy interpretations, or policy guidance related to the Department's "Notice" (identified *supra*), to include the Department's policy decision to move Sec. 117 data collection responsibilities from OGC to FSA, which were signed, approved, adopted, or implemented by any of the following Departmental officials (see Custodians, *infra*) beginning on or after January 20, 2021, through the date the search for the records is conducted.
2. All records, including but not limited to electronic mail ("email"), texts, letters, memoranda, and other documentation, which other documentation should include communications regarding the Department's June 2022 slide presentation presented at a webinar hosted by ACE and led by General Counsel Lisa Brown and FSA COO Richard Cordray, identified *supra*, between Departmental officials (see Custodians, *infra*) and the following higher education industry representatives from January 20, 2021, through the date the search is conducted:
  - a. Email addresses ending in "acenet.edu"
  - b. Terry Hartle, ACE Senior Vice President; ACE Senior Fellow
  - c. Ted Mitchell, ACE President
  - d. Steven Bloom, ACE Assistant Vice President
  - e. Jessie Brown, ACE Vice President and Chief of Staff
  - f. Jonathan Fansmith, ACE Senior Vice President
  - g. Anne Meehan, ACE Assistant Vice President
  - h. Peter McDonough, ACE Vice President and General Counsel
  - i. Sarah Spreitzer, ACE Assistant Vice President and Chief of Staff



- j. Any other person representing himself or herself to have been employed by ACE
3. All records, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation between Departmental officials (see Custodians, *infra*) and the following colleges and universities previously under investigation by the Department as part of the Department’s Sec. 117 enforcement efforts which reference “Section 117” or “Investigation” or “Foreign Gifts and Contracts” or “20 U.S.C. 1011f” or “Information Collection” or “Donor Anonymity” or “Anonymous Donors” or “Foreign Sources” or “34 CFR Part 668” or “Notice of Interpretation” or “NOI” or “Information Collection Request” or “ICR”, from January 20, 2021, through the date the search is conducted:
- a. Georgetown University (including email addresses ending in “georgetown.edu”)
  - b. Texas A&M University (including email addresses ending in “tamu.edu”)
  - c. Cornell University (including email addresses ending in “cornell.edu”)
  - d. State University of New Jersey (a/k/a Rutgers University) (including email addresses ending in “rugers.edu”)
  - e. Massachusetts Institute of Technology (including email addresses ending in “mit.edu”)
  - f. University of Maryland (including email addresses ending in “umd.edu”)
  - g. Harvard University (including email addresses ending in “harvard.edu”)
  - h. Yale University (including email addresses ending in “yale.edu”)
  - i. University of Texas (including email addresses ending in “utexas.edu”)
  - j. Case Western Reserve University (including email addresses ending in “case.edu”)
  - k. Fordham University (including email addresses ending in “fordham.edu”)
  - l. Stanford University (including email addresses ending in “stanford.edu”)
  - m. University of Alabama (including email addresses ending in “ua.edu”)
  - n. Auburn University (including email addresses ending in “auburn.edu”)
  - o. Florida State University (including email addresses ending in “fsu.edu”)
  - p. Georgia State University (including email addresses ending in “gsu.edu”)
  - q. University of Nevada, Las Vegas (including email addresses ending in “unlv.edu”)
  - r. University of New Mexico (including email addresses ending in “unm.edu”)
  - s. University of Wisconsin – Milwaukee (including email addresses ending in “uwm.edu”)

### **Custodians**

The search for records in Items 1-4 should be limited to Department officials within the Office of the Secretary, Office of the Deputy Secretary, Office of the Under Secretary, Office of Legislation and Congressional Affairs, Office of Communications and Outreach, Office of Postsecondary



Education, Office of Federal Student Aid, and Office of the General Counsel, who are classified as any of the following or referenced with the following job titles:

- a. “PAS” (Presidential Appointments Requiring Senate Confirmation)
- b. “PA” (Presidential Appointments Not Requiring Senate Confirmation)
- c. “NC-SES” (Non-Career Senior Executive Service)
- d. “SES” (Career Senior Executive Service)
- e. “SC” (Schedule C Confidential or Policymaking Positions)
- f. Chief Operating Officer, Federal Student Aid
- g. Deputy Chief Operating Officer, Federal Student Aid
- h. Chief Financial Officer, Federal Student Aid
- i. Executive Assistant to the Chief Operating Officer, Federal Student Aid
- j. Chief of Staff, Federal Student Aid
- k. Senior Advisor for Management, Federal Student Aid
- l. Senior Advisor, Federal Student Aid
- m. Ombudsman, Federal Student Aid
- n. Congressional Team Lead, Federal Student Aid
- o. General Counsel, Office of the General Counsel
- p. Principal Deputy General Counsel, Office of the General Counsel
- q. Chief of Staff, Office of the General Counsel
- r. Deputy General Counsel, Office of the General Counsel
- s. Senior Counsel for Information and Technology, Office of the General Counsel
- t. Special Counsel, Office of the General Counsel
- u. Senior Counsel, Office of the General Counsel
- v. Confidential Assistant, Office of the General Counsel

### Statutory Disclosure Requirements

FOIA imposes a burden on ED, as a covered agency under 5 U.S.C. § 551(1), to timely disclose requested agency records to the requestor<sup>56</sup> if ED (1) created or obtained the requested materials, and, (2) is “in control of the requested materials at the time the FOIA request [was] made.”<sup>57</sup> Upon request, ED must “promptly” make the requested records available to the requester.<sup>58</sup> Notably, covered agency records include materials provided to ED by both private and governmental organizations.<sup>59</sup> Upon receipt of a FOIA request that “reasonably” describes the records sought and is in compliance with ED’s published rules regarding the time, place, any fees, and procedures to be followed,<sup>60</sup> ED must conduct a search calculated to find responsive records in ED’s control

<sup>56</sup> FOIA requires the disclosure of nonexempt agency records to any person, which includes an individual, partnership, corporation, association, or public or private organization other than an agency. 5 U.S.C. § 551(2).

<sup>57</sup> *Department of Justice (DOJ) v. Tax Analysts*, 492 U.S. 136 at 144-45 (1989).

<sup>58</sup> 5 U.S.C. § 552(a)(3)(A).

<sup>59</sup> *Id.* at 144.

<sup>60</sup> 5 U.S.C. § 552(a)(3)(A)(i).



at the time of the request.<sup>61</sup> In addition, the records produced by ED are required to be provided in “any form or format requested . . . if the record is readily reproducible by the agency in that form or format.”<sup>62</sup>

Upon receipt of this request, ED has **twenty business days** to “determine . . . whether to comply with [the] request” and “shall immediately notify” the requester of its determination and the reasons therefor,” the right to seek assistance from the agency’s FOIA public liaison, and the requester’s right to appeal any “adverse determination” by ED.<sup>63</sup>

Consistent with FOIA guidelines, DFI requests the following regarding the provision of the requested records:

- ED should immediately act to protect and preserve all records potentially responsive to this request, notifying any and all responsible officials of this preservation request and verifying full compliance with the preservation request. This matter may be subject to litigation, making the immediate initiation of a litigation hold on the requested materials necessary.
- ED should search all record systems that may contain responsive records, promptly consulting with its information technology (IT) officials to ensure the completeness of the records search by using the full range of ED’s IT capabilities to conduct the search. To constitute an adequate search for responsive records, ED should not rely solely on a search of a likely custodian’s files by the custodian or representations by that likely custodian, but should conduct the search with applicable IT search tools enabling a full search of relevant agency records, including archived records, without reliance on a likely custodian’s possible deletion or modification of responsive records.
- ED should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding ED’s business operations. Responsive records include official business conducted on unofficial systems which may be stored outside of official recording systems and are subject to FOIA. ED should directly inquire, as part of its search, if likely custodians have conducted any such official business on unofficial systems and should promptly and fully acquire and preserve those records as ED’s official records. Such unofficial systems include, but are not limited to, governmental business conducted by employees using personal emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ,

<sup>61</sup> *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004).

<sup>62</sup> 5 U.S.C. § 552(a)(3)(B).

<sup>63</sup> 5 U.S.C. § 552(a)(6)(A)(i).



and shared messages systems such as Slack. Failure to identify and produce records responsive to this request from such unofficial systems would constitute a knowing concealment by ED calculated to deflect its compliance with FOIA's requirements.

- ED should timely provide entire records responsive to this request, broadly construing what information may constitute a “record” and avoiding unnecessarily omitting portions of potentially responsive records as they may provide important context for the requested records (*e.g.*, if a particular email is clearly responsive to this request, the response to the request should include all other emails forming the email chain, to include any attachments accompanying the emails).
- ED should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.
- If ED determines that any portions of otherwise responsive records are statutorily exempt from disclosure, DFI requests that ED disclose reasonably segregable portions of the records.
- For any responsive records withheld in whole or part by ED, ED should provide a clear and precise enumeration of those records in index form presented with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA”<sup>64</sup> and provide a sufficiently detailed justification and rationale for each non-disclosure and the statutory exemption upon which the non-disclosure relies.
- Please provide responsive records in electronic format by email, native format by mail, or PDF or TIH format on a USB drive. If it helps speed production and eases ED's administrative burden, DFI welcomes provision of the records on a rolling basis. Responsive records sent by mail should be addressed to the Defense of Freedom Institute for Policy Studies, 1455 Pennsylvania Avenue NW, Suite 400, Washington, D.C. 20004.

### **Fee Waiver Request**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.33 and 34 C.F.R. § 5.32(b)(1)(ii), DFI requests a waiver of all fees associated with this FOIA request for agency records.

### **Disclosure of the requested records is in the public interest.**

Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and because

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<sup>64</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).



disclosure of the information contained within the requested records is not primarily in the commercial interests of DFI.

The disclosed materials are likely to contribute significant information to the public's understanding of the Department's proposed Sec. 117 enforcement policies that are highly relevant to the interests of American students, families, teachers, and taxpayers. Disclosure of the requested materials will illuminate ED's policies and planning considerations. Further, the requested information does not otherwise appear to be in the public domain (in duplicative or substantially identical form).

Provision of the requested records will not commercially benefit DFI (a nonprofit, nonpartisan organization interested in the transparency of ED operations and governance), but will benefit the general public and other groups and entities with non-commercial interests in ED's operations and governance.

DFI will review and analyze the requested records and make the records and analyses available to the general public and other interested groups through publication on DFI's website and social media platforms such as Facebook and Twitter (distribution functions it has already demonstrated a capacity to provide since its formation in September 2021, including a detailed news story on ED policies widely distributed by one of the nation's largest news providers in February 2022, a March 2022 analysis of DOJ policies distributed by a leading news magazine, and multiple widely-published analyses and news stories involving recent ED policy announcements regarding the student loan repayment program and Title IX proposed rulemaking. DFI personnel also frequently offer commentary and analyses on radio and television news programs and in various public forums.

Federal law makes clear that when the disclosure is in the public interest and the information contained within the disclosed records is not primarily in the commercial interests of the requester (here, DFI), statutory fee waiver is appropriate.

### **DFI is a representative of the news media.**

In addition to the fee waiver request based upon the public interest, DFI also requests a fee waiver on the basis that DFI is a **representative of the news media**, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.32(b)(1)(ii).

FOIA (as amended) provides that a representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that to an audience."<sup>65</sup> DFI provides exactly this service to the general public and other audiences with an interest in those materials and

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<sup>65</sup> See *Cause of Action v. FTC*, 799 F.3d 1108, at 1115-16 (D.C. Cir. 2015).





analyses. Upon receipt of the requested materials from ED, DFI will review and analyze those materials and will extract and otherwise distill particularly useful information from those materials for the benefit of the general public and other interested audiences.

DFI will provide its analyses to the general public and other interested audiences through publication on DFI's website and social media platforms such as Facebook and Twitter (distribution functions it has already demonstrated a capacity to provide since its formation in September 2021, including a detailed news story on ED policies widely distributed by one of the nation's largest news providers in February 2022 and more recently, a March 2022 analysis of DOJ policies, and several more recent published and widely distributed news stories regarding DFI's analyses of ED's Title IX rulemaking and student loan debt cancellation program, among other news stories. DFI personnel also frequently appear as guests or panelists to offer commentary and analyses on radio and television news programs and in various other public forums.

As a qualified non-commercial public education and news media requester with demonstrated ability to review and analyze publicly-available information and to provide insight regarding that information, DFI is thus entitled to a fee waiver under FOIA as a representative of the news media.

## **Conclusion**

The subject of this request regards the decision memoranda related to the Department's Sec. 117 enforcement policies, records of Sec. 117-related communications with higher education's largest industry advocacy organization and its officers, and records of Sec. 117-related communications with universities that have been under Sec. 117 investigation by the Department. The proposed Sec. 117 enforcement policies are highly relevant to the interests of American students, families, teachers, and taxpayers. Provision of the requested records will meaningfully inform the general public about the Department's Sec. 117 enforcement policies which affect millions of American students, families, and taxpayers. The requested records concern significant Departmental policies with national security implications for all Americans and are worthy of transparency in service of the public's right to know.

DFI is an independent 501(c)(3) nonprofit organization without a commercial purpose primarily engaged in the dissemination of information about government policies to the public. DFI is engaged in the collection, analysis, and dissemination of information to educate the public about government policies that impact the civil and constitutional rights of American families, students, entrepreneurs, and workers. DFI actively publishes information and related analyses on its public website and promotes access to that information and analyses on social media platforms, including but not limited to distribution via Facebook and Twitter.

DFI appreciates ED's prompt attention to this request for records pursuant to FOIA, which will provide important information to the American people regarding the Department's Sec. 117 enforcement policies which are of tremendous interest to students, families, and taxpayers.



Please contact me immediately if DFI's request for a fee waiver is not granted in full.

If you have any questions or I can further clarify DFI's request, please contact me at your earliest convenience at [paul.moore@dfipolicy.org](mailto:paul.moore@dfipolicy.org).

Sincerely yours,

*/s/ Paul R. Moore*

Paul R. Moore, Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.



## **Exhibit C-2**

February 28, 2023 Department's  
FOIA Acknowledgment Letter



Paul Moore <paul.moore@dfipolicy.org>

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## Request Acknowledgement by Department of Education

1 message

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**EDFOIManager@ed.gov** <EDFOIManager@ed.gov>  
To: paul.moore@dfipolicy.org

Tue, Feb 28, 2023 at 7:05 AM

Dear Paul Moore,

Your request has been received by the Department of Education and forwarded to the primary responsible office(s) for action. The request has been assigned tracking #23-01128-F, please log into your account and review your submission.

The application address is <http://foiaexpress.pal.ed.gov/>

Please refer to the tracking number to check the status of your FOIA request at the link provided below:

<https://foiaexpress.pal.ed.gov/app/CheckStatus.aspx>

For any future correspondence, status updates or questions regarding your request, please contact the FOIA Public Liaison via email to [EDFOIManager@ed.gov](mailto:EDFOIManager@ed.gov)

Thank you,

Department of Education

## **Exhibit C-3**

February 28, 2023 Department's FOIA  
Status Update Notification



Paul Moore <paul.moore@dfipolicy.org>

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## Status Update for Request #23-01128-F

1 message

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**EDFOIManager@ed.gov** <EDFOIManager@ed.gov>  
To: paul.moore@dfipolicy.org

Tue, Feb 28, 2023 at 2:24 PM

Dear Paul Moore,

The status of your FOIA request #23-01128-F has been updated to the following status 'In Process'. To log into the DoEd FOIA Portal click on the Application URL below.

<https://foiexpress.pal.ed.gov/>

Sincerely,  
Department of Education

## **Exhibit C-4**

February 28, 2023 Fee Waiver Granted



**UNITED STATES DEPARTMENT OF EDUCATION**

OFFICE OF THE SECRETARY

FOIA Service Center

February 28, 2023

Paul R Moore  
Senior Counsel  
Defense of Freedom Institute for Policy Studies  
1455 Pennsylvania Ave NW  
Suite 400  
Washington, DC 20004

FOIA Request No. 23-01128-F

Dear Paul R Moore:

This letter is in response to your request dated February 27, 2023, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on February 28, 2023. Your request was assigned to the appropriate office(s) within the Department to search for documents that may be responsive to your request.

You have asked for a waiver of all fees, including duplication fees, associated with processing your request based on your requester category as Other/Special Interest Group requester. Based on the information you submitted for a fee waiver, that request is granted.

You have the right to seek further assistance from the Department's FOIA Public Liaison, Robert Wehausen. The Department's FOIA Public Liaison can be reached by:

Mail: FOIA Public Liaison  
Office of the Secretary  
U.S. Department of Education  
400 Maryland Ave., SW, LBJ 7W104  
Washington, DC 20202-4500

E-mail: [Robert.Wehausen@ed.gov](mailto:Robert.Wehausen@ed.gov)

Phone: 202-205-0733

Fax: 202-401-0920

If you have any questions or would like the original signed copy of this letter, please contact the FOIA Requester Service Center at (202) 401-8365 or via e-mail at [EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov).

Sincerely,

*Elise Cook*

Government Information Specialist

**Exhibit C-5**  
**March 28, 2023 20-Day**  
**Status Notification**



**UNITED STATES DEPARTMENT OF EDUCATION**

**OFFICE OF THE SECRETARY**

**FOIA Service Center**

March 28, 2023

Mr. Paul R Moore  
Senior Counsel  
Defense of Freedom Institute for Policy Studies  
1455 Pennsylvania Ave NW  
Suite 400  
Washington, DC 20004

**RE: 20 –DAY NOTIFICATION 23-01128-F**

Dear Paul R Moore:

This is the Department of Education’s (the Department) initial determination letter to your request dated, February 27, 2023, seeking information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was forwarded to the Office of the Under Secretary (OUS), Office of the Secretary (OS), Office of Postsecondary Education (OPE), Office of Legislation & Congressional Affairs (OLCA), Office of the General Counsel (OGC), Office of the Deputy Secretary (ODS), Office of Communications and Outreach (OCO), and Federal Student Aid (FSA) within the Department for any responsive documents they may have.

Due to the unusual circumstances that exist with your FOIA requests as defined by U.S.C. § 552(a)(6)(B)(i)(ii), the Department will not be able to respond by the 20 day statutory requirement. The scope of your FOIA requests requires the Department to conduct a vast search across multiple program offices, which we anticipate will result in a large amount of responsive records.

You can check on the status of your FOIA request at the link provided below:  
<https://foiaexpress.pal.ed.gov/app/CheckStatus.aspx>

You have the right to seek assistance and/or dispute resolution services from the Department’s FOIA Public Liaison or the Office of Government Information Services (OGIS). The FOIA Public Liaison is responsible, among other duties, for assisting in the resolution of FOIA disputes. OGIS, which is outside the Department of Education, offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation.

They can be contacted by:

|      |  |   |
|------|--|---|
| Mail | FOIA Public Liaison<br>Office of the Secretary<br>U.S. Department of Education<br>400 Maryland Ave., SW, | Office of Government Information Services<br>National Archives and Records Administration<br>8601 Adelphi Road<br>College Park, MD 20740-6001 |
|------|--|---|



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FOIA Request No. 23-01128-F

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|--------|--|--|
|        | LBJ 7W104<br>Washington, DC 20202-4500                             |  |
| E-mail | <a href="mailto:robert.wehausen@ed.gov">robert.wehausen@ed.gov</a> | <a href="mailto:OGIS@nara.gov">OGIS@nara.gov</a> |
| Phone  | 202-205-0733   | 202-741-5770; toll free at 1-877-684-6448        |
| Fax    | 202-401-0920   | 202-741-5769                                     |

Sincerely,

ED FOIA Manager  
FOIA Service Center  
U.S. Department of Education