

Examining the Politicization and Framing of HEA 117 in the US Between 2019 and 2021

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Abstract

In 2019, the U.S. Department of Education (DED) began increasing its enforcement of the Higher Education Act, Section 117 statute, which provides instructions for institutional reporting regarding foreign and contracts. The three questions guiding this article include: What were DED's stated premises for the investigations? How was international engagement characterized in the notices?

Received February 1, 2022; revised May 1, 2022; accepted August 1, 2022

And finally, what traits, characteristics, and/or qualities were attributed to different actors? After providing an overview of Section 117, this article examines the notices of investigation issued by DED between 2019 and 2021 to better understand how the Agency discursively characterized malign and/or undue foreign influence utilizing a discourse historical analysis approach. After exploring these questions, this article then discusses the problematic assumptions revealed by four frames which emerged from the notices of investigations and concludes with a brief reflection on the continued challenges for universities and their international engagement (broadly defined) moving forward.

Keywords: Higher Education Act, Section 117, foreign influence, malign influence, international partnerships

The Higher Education Act of 1965 has a number of regulations that delineate the U.S. Department of Education (DED) areas of oversight and higher education institutions' (HEIs) responsibilities related to international education and engagement. One regulation is Section 117, which focuses on institutional reporting responsibilities regarding foreign gifts and contracts. To mitigate the potential malign influence of foreign funding, Section 117 required HEIs to report on any foreign gifts that amount to \$250,000 USD in any given six-month period to DED. While DED did establish a reporting mechanism, it did not actively operationalize its oversight over HEIs regarding their compliance with this regulation.

However, this changed under Secretary of Education, Betsy DeVos, in 2019 (U.S. Department of Education, 2020). DED began actively utilizing Section 117 as part of a broader multi-Agency/Department effort under the Trump administration to mitigate malign and undue foreign influence—with a particular focus on China—in different sectors including higher education (Wray, 2020). As Long et al. (2021) noted, three underlying concerns regarding foreign influence on U.S. HEIs include “theft of proprietary research, promotion of propaganda and disinformation on campuses, and imposition of political or

cultural values through curricular and extracurricular programming” (p. 9). Subsequently, this article examines this recent enforcement of Section 117 (§1011f(a)) of the Higher Education Act, 20.U.S.C. §1001 et seq. (1965) in the United States between the period of 2019 and 2021. The article focuses on this period because DED was particularly active during this time, issuing 19 notices of investigation to U.S. universities; however, no new notices have been issued since the change in presidential administrations in late January 2021.

This is consistent with Lee’s (2021) observation that international education—and internationalization in education more broadly—is not “solely a traditional education pursuit... [a]nd yet international education tends to be narrowly understood by universities and professional organizations as an educational rather than a geopolitical endeavor” (p. 10). Yet, while the operationalization of HEA 117 could be understood as part of the Trump administration’s whole-of-government effort to sever ties with China, the DED notices of investigation reflect a less coherent set of underlying justifications, issues, and concerns in relation to foreign influence. As noted by Dollar and Hass (2021), despite the focus on China, the Trump administration overall did not have a coherent approach toward China. After dismantling the architecture that existed in engaging China, instead, the administration adopted a more reactive and “improvisational” approach. This article draws from political science scholarship focusing on “issue framing” or “issue definition” to capture the way DED’s discourse within the notices of investigation shifted between 2019 and 2021, most noticeably after the onset of the COVID-19 global pandemic.

Issue definition is considered the first stage of the policy production process and provides insight into what the perceived problem is (Weiss, 1989). Examining this phase of the policy development process is important because “how a policy is defined at the start of the process can affect whether and how it will be addressed” (Gilardi et al., 2021, p. 23). Moreover, these frames or definitions can change over time and in this way, this could be understood as a “storyline or [the] unfolding narrative about an issue” (Gamson et al., 1992, 385; as cited in Gilardi et al., 2021, p. 23). Not only can frames change over time, framing as a process can also be seen “from a constructivist vantage point, in

terms of how meanings arise through interactive processes” (Junk & Rasmussen, 2019, p. 486). Understanding DED’s shifting frames through an issue definition framework not only demonstrates the complexity of operationalizing policies within a fragmented policy landscape, but it also provides insight into the dynamic and exploratory process of creating a policy framework for further action (Weiss, 1989).

To examine DED’s oversight of HEA 117 through its 19 notices of investigation using an issue definition lens, this article broadly explores the following questions: What were DED’s stated justifications for the investigations? How was international engagement characterized in the notices? And finally, what traits, characteristics, and/or qualities were attributed to different actors? After providing a more detailed overview of Section 117, this article then outlines the conceptual framework—issue definition. To delineate the different frames within the delimitations of the aforementioned questions, I utilized “discourse-historical analysis,” which is a qualitative method within the critical discourse analysis tradition. The remainder of the paper then examines the 19 notices of investigation issued by DED by 2019 and 2021.

An Overview of HEA Section 117

Section 117 was introduced into the Higher Education Act of 1965 while undergoing reauthorization in 1986 during the 99th U.S. Congress, which was in session between January 3, 1985 to January 3, 1987 during the Reagan administration. Section 1206—now Section 117—was drafted and sponsored by the American Jewish Congress (AJC), revised after meetings with the American Association of American Universities and the American Council on Education, and was eventually passed as part of the reauthorization of HEA (1965) (Maslow, 1986). In his opinion piece, Will Maslow, the AJC General Counsel, stated two intentions why the AJC drafted this piece of legislation. First, the AJC “sought to protect academic integrity threatened by gifts or contracts with foreign entities containing all sorts of restrictive conditions” (para. 2). Maslow pointed to “huge gifts from Arab governments to Georgetown University creating a Center for Contemporary Arab Studies” (para. 2). The second intention was that regular disclosure would ensure compliance with the regulation (para. 7). Section 1206

was passed by the U.S. Congress as part of the amendments to HEA (1965) and was later operationalized through a reporting mechanism on the Federal Student Aid website.

As of 2019, HEA Section 117 consisted of seven parts, which included the following:

1. **Disclosure report [definition].** HEIs need to report gifts or contracts with foreign sources that equal or are greater than \$250K USD. The total—\$250K USD—may be a one-time amount or in combination with other gifts/contracts from that same source in a calendar year. Universities submit information to DED semi-annually—in January and July.
2. **Contents of report.** Description of the information to be reported, which generally includes the aggregate dollar amount and the attributed source, which included (but was not limited to) individual, country, or foundation.
3. **Additional disclosures for restricted and conditional gifts.** Same information required as above, along with a description of the conditions or restrictions.
4. **Relation to other requirements.** Provides guidance in case documentation is provided by the HEI to other federal agencies.
5. **Public inspection [disclaimer].** All disclosure reports for Section 117 are public record.
6. **Enforcement.** If a HEI fails to comply with Section 117, a civil action may be brought by the Attorney General to request compliance, and all costs incurred as a result will be paid to the U.S. Treasury.
7. **Regulations.** Provides definitions. Of note, “contract” is defined as “any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties.” Also of note, “restricted or conditional gift or contract” is defined as “any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding” faculty hiring, establishment of university centers/departments, student admission, or

the “award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.”

As DED began investigating, their information requests frequently far exceeded the minimum reporting for Section 117. For example, Section 117 does require institutions to report for gifts and grants awarded or contracted for the previous six-month period. However, the general time frame for the additional reporting in the notices of investigation went as far back as 2010. Moreover, in addition to foreign grants and gifts, DED requested information regarding individual faculty members and information taken from institutions’ international partnerships agreements websites—for example, in the case of Rutgers, the contract/agreement search categories that were cited in the letter included: “General Cooperation Agreements,” “Abbreviated General Cooperation Agreements,” “To establish the Joint Research Laboratory for Advanced Electronic Materials and Sensors,” “Double Degree Programs,” “Research Collaboration,” and “Other”) from or with entities identified as “Partner Institutions.”

In 2019, after initiating a round of investigations, DED synthesized their findings in a letter to Rob Portman, then chairman of the Permanent Subcommittee on Investigations within the Homeland Security and Government Affairs Committee, and provided some recommendations regarding HEA 117 enforcement. The synthesis was a milieu of observations, findings, and interpretations including:

- HEIs are multi-national, multi-billion-dollar enterprises that use foundations, foreign branch campuses, and other structures to generate revenue, often foreign.
- Data were underreported and inaccurate and increased enforcement is necessary for DED to carry out Section 117’s statutory purpose.
- Although HEIs have deployed sophisticated systems for managing RSP-type grants and contracts, it appears that they do not use the same systems to collect data for Section 117 reporting.
- HEIs solicit money from different actors—governments, corporations,

people—in various ways.

- HEIs use foreign gifts to subsidize scholarships for foreign students but it is unclear what benefit this brings for American students, parents, and taxpayers.
- An acknowledgement that the investigation did not include examining cybersecurity but that HEIs engagement with foreign funders also poses a threat in this space because of the generally poor track record of HEIs regarding cybersecurity practices. (*Letter to Chairman Porter, 2019*)

The letter then proposed expanding the scope of the examination of the foreign money sources by recommending that

- Congress may wish to scrutinize more closely the goals and methods of foreign money sources, the significant efforts and corporate mechanisms some colleges and universities take and use to solicit and channel foreign money, the influence and effect foreign money may have on research and curricula, and the extent to which foreign money might provide the means for access to sensitive U.S. government research and/or create insider threats. (*Letter to Chairman Porter, 2019*)

DED concluded that they would (1) continue investigations as necessary and appropriate, (2) propose changes to the statute, and (3) expanded inter-agency consultation to unearth foreign money flows and institutional entanglements.

In addition to initiating investigations, DED concomitantly began proposing changes through the rulemaking process. In a statement submitted to the Office of Management and Budget on September 6, 2019, DED most notably proposed that if an HEI failed to comply with Section 117, that either “civil or criminal action may be brought by the Attorney General to request compliance, and all costs incurred as a result will be paid to the U.S. Treasury.” The key phrase being “criminal action” which was expanded from “civil action” in the enforcement section. As DED began its investigations, it also changed the operational definitions of terms utilized in the regulation. For example, DED expanded what constituted the HEI including all affiliations, making the scope of the regulation broader than it previously had been. The regulation itself historically did not state anything about reporting on separate tax entities that

have a university affiliation but are not part of the institution. Yet, the scope of the investigations—as deduced from the notification of investigation letters— included foundations, foreign branch campuses, other revenue generating structures, as well as solicitations of “foreign governments, corporations, and persons in a variety of ways, including institutional fundraising operations, quasi-entrepreneurial activities by professors and administrators, and foundations and alumni organizations” (*Letter to Chairman Rob Portman*, 2019), which far exceeded what any HEI had previously had to report on. Finally, there was a new database portal that was created for reporting which was to facilitate greater transparency regarding foreign gifts and contracts universities have received.

Conceptual Framework

Underpinning this article adopts a fundamental assumption from within socio-legal theory regarding the relationship between the “Law” and “Society” (Creutzfeldt et al., 2020). Rather than starting with the law as an acontextual point of departure for scholarship, socio-legal theory research situates the law both in relation to and with society. As Creutzfeldt (2020) noted, “Socio-legal scholars embrace law as social, cultural, economic, linguistic and ideological” (p. 13). Arguably, the inclusion of Section 1206 (Section 117) into the HEA reauthorization in 1986 illustrates this. While the impetus for the AJC in proposing and negotiating Section 1206 was concern regarding the influx of money from Arab countries into U.S. higher education and its potential impacts, the specificity of the example they used indicates that the concern had particular ontological and ideological roots. In this case, the socio-cultural, ideological and geo-political coalesced to inform the proposed amendment.

If we accept this constructivist view of the law, the contextual reality that “all levels, branches, and units of government are accountable to different constituencies with competing agendas and heterogeneous preferences” (Weiss & Gruber, 1984, p. 226) informs not just the production but also the interpretation and implementation of the law as well. In the United States, after a bill becomes a law (or an Act), it is generally then interpreted and enforced by the Executive branch, which includes federal agencies like DED. The work of the federal agencies like DED is generally challenging because sectors like education are

such diffuse enterprises in the United States because they are dispersed across federal, state and local authorities (Weiss & Gruber, 1984).

Because of the heterogeneity of constituencies, issue framing then provides a useful conceptual lens to understand how actors like DED then justify their interpretation and enforcement of the law (Boydston et al., 2014; Entmen, 1993, 2010; Gilardi, 2021; Junk & Rasmussen, 2019; Koduah et al., 2016; Lasswell, 1950; Singh & Swanson, 2017; Weiss, 1989; Wood & Vedlitz, 2007). This is because

[f]raming essentially involves *selection* and *salience*. To frame is to *select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation* for the item described. (Entmen, 1993, p. 52, author italics)

Problem or issue frames call attention to certain aspects or facets of the problem and divert attention away from others (Entmen, 1993; Weiss, 1989). Relatedly, Weiss (1989) posited that “[p]roblem definitions must accommodate political realities, but they also help to create those realities. Although the pressures of institutional interests restrict the range of definitions that receive serious consideration, problem definitions carve new channels in institutional arrangements” (p. 114). While some scholars like Entmen (2010) assumed that strategies or higher-level priorities inform how issues are defined, others like Gilardi et al. (2021) acknowledged that there was and is a dynamicity to issue definition—the “unfolding narrative about an issue” (p. 23)—or pointed to the interactionist nature issue framing as both accommodating political realities and concurrently creating those realities (Weiss, 1989).

Subsequently, issue definition/framing affects how decision-makers themselves process the issue, which then introduces bias regarding what information is included, whose interests are represented/protected, and subsequently, what gets defined as salient choices moving forward (Baumgartner & Jones, 1993; Junk & Rasmussen, 2019). Or to use plain language, issue framing ultimately sets into motion, the process of determining “who gets what,

when and how” (Lassewell, 1950).

Methodology

Within political science scholarship focusing on issue framing and policy diffusion, there is a robust body of work around legislative text analysis (Hollibaugh, 2019; Jansa et al., 2019; Linder et al., 2020; Wilkerson et al., 2015). However, this approach toward text analysis generally focuses on large corpuses and utilizes different quantitative methods to ascertain frames, relationships, issues, etc. Alternatively, while discourse analysis is a research methodology that also relies on written texts as data for insights and judgments about policies, programs, events, and the like, it extends beyond textual data by including speech and other linguistic modalities and situates discourse within its sociolinguistic context.

Discourse historical analysis (DHA)—a qualitative method that is situated within the critical discourse analysis tradition—examines the interaction between different texts and artefacts across mediums to see how discourses are formed and spread (Krzyzanowski & Wodak, 2008; Wodak & Chilton, 2005). DHA is situated within the critical discourse analysis tradition, which is itself more broadly situated within critical theory and is underpinned by its assumptions regarding power, ideology, etc. As Fairclough (2012) stated “Critical discourse analysis (CDA) brings the critical tradition of social analysis into language studies and contributes to critical social analysis, a particular focus on discourse and on relations between discourse and other social elements (power relations, ideologies, institutions, social identities, and so forth)” (p. 9). Put another way, DHA is underpinned by a constructivist view of the law and essentially examines discourse diffusion. DHA is grounded in critical discourse analysis which is underpinned by the tenets of critical theory centering notions of power and the structuring of power, ideology, and “critique” (Reisgl & Wodak, 2009; Wodak & Meyer, 2009).

As Reisgl and Wodak (2009) and Wodak and Meyer (2009) outlined, within DHA, texts are organized by fields—action and control—and genres. Examples of fields of actions include law making political procedures, formation of public opinion and self-presentation, and political advertising, marketing and

propaganda. Fields of control can include political executive and administration. Genres include bills, laws, resolutions, magazines, white papers, memos, public statements/press releases among others. Discourse topics are then generated after examining the texts within fields and across genres (see Figure 1).

To be clear, this article focuses on a small subset of a broader research project that is looking at a number of different texts and artefacts that were produced by various Departments during the period between 2019 and 2021, as well as the subsequent “bandwagoning” that took place as similar laws were then either proposed or passed in state legislatures. The term “systematic bandwagoning” in reference to frame diffusion was used by Boydston et al. (2014) and captures the cascading or discourse diffusion that will be explored in future research. But because the three questions posed earlier in this article are exploratory—What were DED’s stated justifications for the investigations? How was international engagement characterized in the notices? And finally, what traits, characteristics, and/or qualities were attributed to different actors?

Because the textual data this article focuses are primarily the notices of investigation issued by DED, the field of action then is “political executive and administration.” The genre of the documents are “letters” since the notices of investigation could be considered its own type of artefact since they are used to initiate different procedures within the oversight process. These letters then were used to generate four discourse topics—frames—that became the point of departure for the aforementioned more extensive DHA project.

Figure 1: Discourses as Social Practice Within DHA

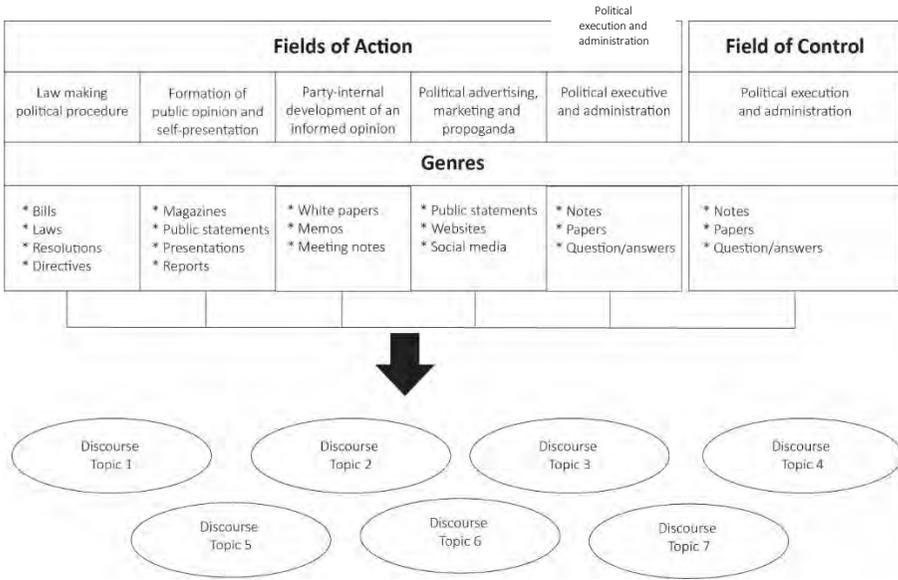
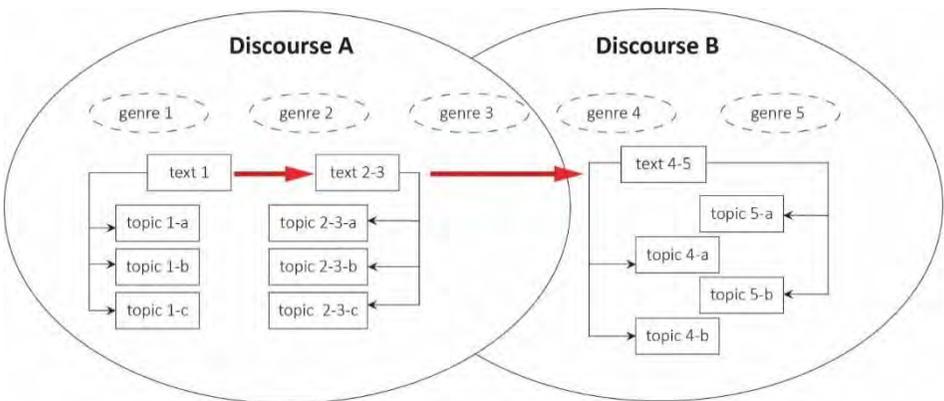


Figure 2 shows how different discourses are both formulated by a set of texts and across genres and also how they interact with other discourses.

Figure 2: Wodak’s Model for Intertextuality



For this article, I applied DHA coding principles as articulated in Wodak

and Meyer (2009) to the documents, which, in this article, were primarily the notices of investigation issued by the U.S. Department of Education to 19 different HEIs between 2019 and 2021 and focused on what types of topics emerged from these texts.

Findings

HEA 117 Enforcement Between 2019 and 2021

In 2019, DED—under then Secretary of Education, Betsy DeVos—began enforcing HEA Section 117. Among the first set of HEIs DED investigated were: Georgetown University and Texas A & M University (*Notice of 20 U.S.C. § 1011f... Georgetown and Texas A & M*, 2019), Cornell University and Rutgers, The State University of New Jersey (*Notice of 20 U.S.C. § 1011f... Cornell and Rutgers*, 2019), and MIT and the University of Maryland (UMD) (*Notice of 20 U.S.C. § 1011f... University of Maryland and MIT*, 2019). Between June 2019 and January 2021, DED sent notices of investigation to a total of 19 HEIs which were a combination of public and private institutions throughout the United States.

Each notice of investigation began with the premise that DED believed that their respective institutional “reporting [did] not capture all gifts, contracts, etc. that are under the auspices of Section 117 to all of the campuses and/or affiliated foundations and non-profit organizations.” In the earlier notices of investigations, DED was particularly interested in all records and references in relations to China, Qatar, Pakistan, Saudi Arabia, and Russia. The DED letters went on to request documentation that exceeded the minimum required Section 117 reporting. Requests included: information regarding individual faculty members, as well as specific details based on information from their institutional international partnerships agreements websites.

In the initial batch of notification of investigation letters indicated that if said institution appeared to be in violation of the regulation, that

1. The Secretary of Education would request the Attorney General to commence action that would enforce compliance and recover the full costs of obtaining the compliance, including all associated costs.
2. The institution had 30 days to provide all records of gifts and contracts...

(Notice of 20 U.S.C. § 1011f Investigation and Record..., 2019)

In addition to notes about records, the notification of investigation letters also stated

If you claim attorney-client or attorney-work product privilege for a given record, then you must prepare and submit a privilege log expressly identifying each such record and describing it so the Department may assess your claim's validity. Please note no other privileges apply here...

(Notice of 20 U.S.C. § 1011f Investigation and Record..., 2019)

If an institution did not comply with the Attorney General and presumably in a manner deemed acceptable by DED, the institution was threatened with civil charges.

Following the early notices of investigations then, DED subsequently issued 10 more notices of investigation—in 2020, this included: Harvard, Yale, Case Western Reserve, Fordham, and Stanford Universities, as well as the Universities of Texas and Alabama, respectively; in 2021, this included: Auburn, Florida State, and Georgia State University, as well as the Universities of Nevada, Las Vegas, New Mexico, and Wisconsin–Milwaukee, respectively. The general contours of the letters remained the same with some variation. For example, the number of days provided by DED for HEIs to respond varied between 21 and 60 days and the action points varied depending on the institution and when the notices were issued.

Digging Deeper: Emerging Topics/Frames

The first emerging topic or frame was drawn from the premise for investigations and could be described as the “university as a negligent actor.” Across the notices of investigation, DED articulated several reasons for opening investigations. The most frequently stated premise for the initiation of an investigation was that given the institution's self-described partnerships on their institutional websites (student mobility, memorandum of understanding (MOU), institutional partnerships), DED believed that the institution should have more to report than it had. The second premise DED investigators articulated was that the level of reporting was not commensurate with other institutions or that the

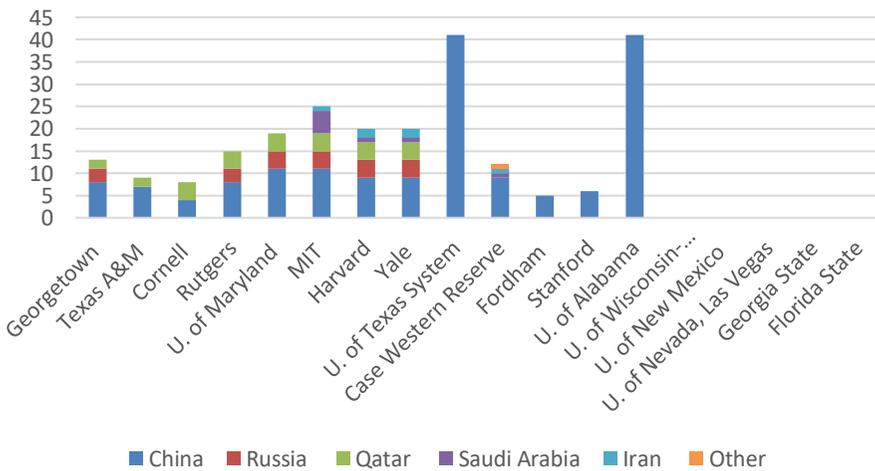
reporting submitted could not reasonably fully capture the institution's reporting. Relatedly, DED investigators alleged that because an institution had little to no history of reporting that they probably were not in compliance with the regulation. Finally, particularly in the case of Harvard University, DED alleged that it was "Harvard University lacks appropriate institutional controls and, as a result, its statutory Section 117 reporting may not include and/or fully capture all reportable gifts, contracts, and/or restricted and conditional gifts or contracts from or with foreign sources" (*Notice of 20 U.S.C. § 1011f Investigation and Record Request/Harvard University*, 2020, para. 2). In the case of Harvard, the evidence that DED was referencing was the Charles Lieber (U.S. Attorney's Office District of Massachusetts, 2020) and Jeffrey Epstein (Harvard, 2019) cases, respectively.

The DED's impetus for investigating the HEIs fell into three general categories—that there was an absence of reporting which seems incongruent with the institution's international engagement; that there was an absence of reporting that seemed incongruent given other (peer) institutions' reporting; and that there must be a poor institutional reporting infrastructure as exemplified in cases like the Charles Lieber case. But common across these three reasons is the underlying frame of the "university as a negligent actor."

The second emergent topic or frame revolved around what constituted "foreign" or "malign" in relation to Section 117's primary concern regarding malign and undue foreign influence. Looking at the notices of investigation then, the second frame regarding what constituted malign or foreign influence could be defined more narrowly as "any engagement with China and in descending order, Qatar, Russia, Saudi Arabia and Iran."

Although there were periodic references of countries like South Korea, Japan and Egypt, the countries that DED was clearly primarily concerned with—given the focus and occurrences—were China, followed by Qatar, then Russia and Saudi Arabia, respectively. Figure 3 provides a visual overview of the countries DED investigators specifically named in the notices of investigation as reflected in the stacked bars by U.S. HEI and in chronological order of investigation.

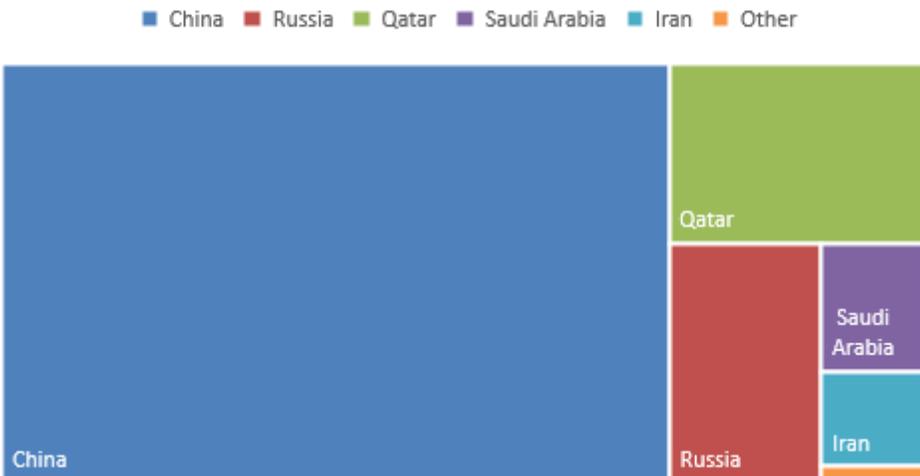
Figure 3: Overview of Countries Mentioned in the Notices of Investigation



In Figure 3, Georgetown through MIT received notices of investigation in 2019, Harvard through the University of Alabama in 2020, and the University of Wisconsin–Milwaukee through Florida State University in 2021. Although HEA 117 does not specify a foreign country or countries of specific concern, the

enforcement of HEA 117 provides the contours of who the regulation was being interpreted by DED investigators. Across the HEIs which received notices of investigation between 2019 and 2020, in all instances, DED specifically identified Chinese entities (government offices, private sector companies, higher education institutions, etc.). What is striking visually in Figure 3 is after the declaration of the COVID-19 global pandemic is the almost singular focus on HEIs' partnerships and engagements with China. Although five notices were issued in 2021—starting with the University of Wisconsin–Milwaukee in Figure 3—all five received broad and brief notices of investigation, with no specifically named countries of interest. Figure 4 illustrates the disproportionate focus on China.

Figure 4: Treemap of the Named Countries in the DED Notices of Investigation



When drilling down deeper, not only did DED shift to focus almost singularly on China after March of 2020, the number of named Chinese organizations greatly expanded to include multinational companies in China or Chinese company branches. This included Huawei Technologies Co. Ltd and Huawei Technologies U.S.A., specific government agencies and organizations, as well as numerous Chinese higher education institutions, among others.

Throughout the investigation period, DED expanded the scope for information regarding engagement with particular countries beyond the HEIs being investigated themselves to also include other affiliated institutions including those registered in other countries. One example of the types of affiliated entities that were also named is the Cornell Foundation U.K., Ltd. In the case of MIT, DED asked for information for satellite sites/branch campuses, research partnerships, and partner institutions that are separate legal entities such as Skolkovo Institute of Science and Technology in Russia. Additionally, the expanded scope also included individuals with any Chinese affiliations, U.S. companies, U.S. citizens, employees of the HEIs who were responsible for reporting and collecting different types of data, as well as specific named research centers such as the Kerry Institute at Yale University (*Notice of 20 U.S.C. § 1011f Investigation and Record Request/Yale University, 2020*).

While DED stated a general concern regarding university engagement with foreign influences, despite its stated interest in international engagement globally, DED—particularly after the onset of the COVID-19 global pandemic—was primarily focused on China. In this way, the malign and foreign influence could be rearticulated as influence from China.

In addition to framing the aforementioned countries as foreign and malign influences, adjacent to the second topic was the third topic or frame which DED also seemed to be exploring through the use of racist language and assumptions in relation to China and people of Chinese descent. Not only did the nature and aggressiveness toward Chinese institutions shift and increase after March of 2020, the use of language such as the “Chinese coronavirus pandemic” was referenced by DED in letters issued in 2020. Moreover, in addition to the use of racist language, in a number of letters, DED did not distinguish between

Chinese and Chinese-Americans named in the letters as persons of interest despite the nature of the legislation, which focused on malign and undue foreign influence. More specifically then, this third frame could be described as untrustworthy people of Chinese descent, whether because of their nationality or because they were somehow singularly responsible for the COVID-19 pandemic.

Finally, the fourth topic that emerged from the notices was in relation to institutional liability and individual responsibility. Within some of the notices of investigation, DED requested lists of individuals and/or named specific individuals who may have received funds or had affiliations with foreign governments and/or lists of people who was involved with the information collection process for the institution. As an example of such a request, in the case of the University of Maryland, DED requested:

a list of all persons at your Institution supported by a gift, contract, and/or restricted or conditional gift or contract with or from a foreign source (e.g., a research scientist working on a project developing artificial intelligence or engineering systems funded in whole or in part by a foreign source, a foreign graduate student studying physics under a scholarship or other contractual arrangement with a foreign government, a fellow in a cultural studies program created by endowment or other gift from a foreign source). The relevant foreign source should be specified for each such person. (*Notice of 20 U.S.C. § 1011f... University of Maryland, 2019*)

The expansion of what fell under the per view of the investigation was particularly striking, as was noted by different HEIs and related professional organizations in their letters to DED.

However, not only were the institutional information requests much broader than what seemed to fit within the criteria of Section 117 itself (as mentioned earlier), in several notices of investigations, DED also asked for the names of those in the institution who were responsible either for the contract under question such as anyone who was connected to the Wuhan Institute of Virology research, foreign or otherwise) and/or people who were responsible for general financial reporting. This request to name individual employees of the

university who work in finance and/or awards was startling when considering the institutional focus of the legislation itself. In this case, rather describe this in terms of a more specific frame, I propose that this topic is illustrative of DED's attempt to concomitantly investigate these HEIs while also fishing for the empirical information they need to understand how to sharpen their issue frames for further action.

Discussion

Using the notices of investigation then as a field of action within DHA, what frames did an examination of HEA 117 enforcement between 2019 and 2021 reveal? In this discussion, *issue framing*, *issue definition*, and DHA "topics" are used interchangeably. Returning to the three questions this article set out to explore then, first, what were DED's stated justifications for the investigations? The first and fourth frames provide insight into this. First, DED characterized universities as negligent (frame one)—through lack of due diligence or either intentional or unintentional negligence. If universities are negligent, then this would warrant DED's increased oversight over "bad" actors. Relatedly, the fourth frame on information fishing, which is arguably more of a focus than a frame, is necessary to further reinforce the first frame.

Regarding the second and third questions—how was international engagement characterized in the notices? And what traits, characteristics, and/or qualities were attributed to different actors?—given the first frame, generally, international engagement was portrayed through a negative lens with the U.S. universities being portrayed almost as complicit actors in opening the door for malign foreign influences with little or no reference made to the robust historical contribution of international education through areas like student migration, faculty and student mobility, research collaboration, etc.

Looking at the individual frames within the issue definition framework provided earlier in this article, regarding the "university as a negligent actor" frame, DED's concern regarding institutional underreporting, as well as the identified need to update the way the data was collected—through a new data entry portal—was supported by the increase in filings during this time and in subsequent reporting periods. The overall impact of the enforcement of HEA 117 did have a significant impact on institutional reporting with observable increases

in filing in June 2020 (*Letter to Chairman Rob Portman*, 2020)—both in terms of number of new filers (60) and monetary amount. Moreover, within and among HEIs, there was a general agreement regarding the need for more robust data collection structures to ensure compliance.

However, this frame is problematic for several reasons. Widening the aperture, by grouping all international activity as potential cause for suspecting that institutions were intentionally obfuscating foreign funds at their institution itself (at worst) or were negligent (at best) revealed a lack of understanding of the commitment to comprehensive internationalization at many U.S. HEIs (American Council on Education, n.d.). Yet, anyone working at the intersection of higher and international education will state that all engagements are not the same and just characterizing them by their lowest common denominator—that there was an international component—is reductionistic. As Weiss and Gruber (1984) noted, the field of education in the U.S. context is an example *par excellence* of a fragmented policy arena and that the lack of robust reporting to the federal government could be explained by the decentralized nature of data collection at the local level.

Second, in framing universities as being generally negligent, DED did not acknowledge the lack of guidance it failed to provide in Section 117's 30+ year history to help ensure and inform HEI compliance. Again, Weiss and Gruber (1984) observe that the lack of (robust) compliance may frequently be attributed to “the absence of effective administrative links among agencies and governments working in the same arena... the administrative links tend to be too coercive to use or too weak to be effective” (p. 227). While DED seemed to acknowledge the need for more coercive mechanisms to be ensure more effective oversight by changing the punishment for being non-compliant from civil to criminal, there was no dialogue or acknowledgement of its own ineffectiveness of historic de facto disinterest in providing more robust guidance regarding HEA 117.

Third, DED was using the Paperwork Reduction Act as a way of making changes to Section 117 and stated that it was unclear why HEIs were not compliant with the regulation given how easy it was to collect the data once the

investigations were initiated. Again, an alternative explanation for the perceived lack of reporting (instead of the “university as a negligent actor” frame) could be in the inherently aforementioned fragmented nature of the education sector in the US. In a study on K–12 school reporting to the federal government, Weiss and Gruber (1984) noted that “Much information is difficult to pull together from the scattered, hidden recesses where it resides. When confronted with a new form, many school districts, large and small, rely on existing information produced for internal use” (p. 233), which could be extended to many HEIs as well.

Regarding the second frame—malign and foreign influence referring specifically and (almost) singularly to China—I am not arguing that there are no real and present concerns regarding technology and knowledge transfer, along with cybersecurity risks. The bipartisan support regarding increasing U.S. economic and technological competitiveness against China demonstrates the persuasiveness of this particular frame. However, as Dollar and Hass (2021) noted, “China is not purely a partner, competitor, or challenger: it is all of them at once.” This type of understanding requires a more nuanced approach and collaboration with HEIs to determine clearer terms of engagement, which many HEIs have been working to do, alongside numerous federal agencies.

The third frame could be seen as a subset of the second frame—by utilizing racist language which reflected neo-racist ideologies (Lee, 2021), it was building out the broader frame of China as a malign influence and threat by then expanding that to the pandemic and individuals. As noted earlier, the increased HEA 117 enforcement was part of the Trump administration’s whole of government strategy to specifically “protect” the United States from China. Unsurprisingly as seen in Figures 3 and 4, the preponderance of DED’s information requests was focused on Chinese institutions and Chinese nationals. Keeping in mind that HEA 117 was intended to focus on foreign nationals, DED’s inclusion of Chinese Americans and Chinese-American owned enterprises reveals a blatant and brazen overextension of the regulation and reinforces the criticism that numerous individuals and organizations have raised regarding the continued prevalence of anti-Chinese and anti-Asian sentiment in the U.S. government (*Xiaoxing Xi, et al. v. Andrew Haugen, et al.*, 2022).

Language like the “Chinese coronavirus pandemic” has been widely decried by numerous civil liberties groups and reflected a long history of “Othering” Asians and Asian Americans in the United States (Holt et al., 2022). While this frame was more limited across the notices of investigation and also situated against the backdrop of rising discrimination toward people of Asian descent during the global COVID-19 pandemic, it does demonstrate what Gilardi et al. (2021) posited regarding how frames or frame storylines change over time and how those shifts may or may not then ultimately impact policy implementation discourses as well as agenda setting later in the future.

Finally, the fourth topic that emerged from the notices was in relation to institutional liability and individual responsibility. I propose that this topic is illustrative of DED’s attempt to concomitantly investigate these HEIs while also fishing for the empirical information they need to understand how to sharpen their issue frames for further action. In this sense, this fourth topic was not so much a frame as it was an intention. Again, Weiss and Gruber (1984) provide insight into this, observing that “[p]olicymakers are often more interested in knowledge that increases their control over others than in knowledge that informs or enlightens them” (p. 226). However, to do this, “federal officials... must have knowledge about local circumstances to guide their efforts. But they have no direct access to knowledge about local circumstances and must therefore ask local and state education officials to provide the information they want” (p. 232). In the case of HEIs, this then requires them to request that information from local and state institutions. This tension between the first frame—characterizing universities as negligent—and the need to have data that supports this frame that is constrained by a federalist structure, then explains this tension reflected in almost all of the notices of investigation.

However, this frame casts light onto some problematic issues. Given the decentralized data structure and governance of institutions, DED could have adopted a learning or dialogic stance toward the local institutional contexts. However, even when eliciting feedback, this did not characterize the nature of the interactions. For example, while DED held the required public comments period, issues raised by HEIs and different affiliated professional organizations were

frequently dismissed and/or elicited responses that did not necessarily correspond to the questions asked. Not only did DED not meaningfully engage key constituencies before starting its enforcement process but it also generally demonstrated a lack of familiarity with how international engagement is structured on university campuses. This is to say, again, a characteristic of the U.S. universities broadly—and R1 institutions specifically—is that they are extremely decentralized entities. The idea that different parts of an R1 institution would be unfamiliar with international engagement in other parts of the same institution is unsurprising. This is not to say that this is a good characteristic of U.S. institutions; on the contrary, anyone working in international education could articulate numerous reasons why campuses should engage in more robust data collection. However, to attribute this to universities engaging in behavior that is intentionally and strategically malicious, as noted by DED (2021), that seemingly “leading institutions and industry associations are committed to expanding and deepening financial and operational cooperation with malign foreign sources such as China and Qatar” demonstrates a lack of awareness of how U.S. HEIs are fundamentally organized (*Letter to Chairman Rob Portman*, 2021).

Conclusion

In 2019, the U.S. DED began increased enforcement of HEA Section 117, which provides instructions for institutional reporting regarding foreign gifts and contracts, by submitting an amendment under the Paperwork Reduction Act of 1995. What is striking about the information request was how DED characterized not only international engagement that could exemplify potential malign and/or undue foreign influence but who (or what actors) were potentially involved. Not only were foreign governments characterized as malign, but DED’s approach toward enforcement signaled that U.S. universities themselves were bad faith actors as seen in their international engagement.

In one sense, rather than seeing more recent iterations of the intersection between politics and education as new or emergent, these events should be seen considering the constant focus and concern with foreign influence in the U.S. throughout the 20th century. This is particularly evident when looking at the

almost massification of higher education with the passing of the G.I. Bill (War Department, 1944) and the acceleration of the space race and the Cold War with the passing of the National Defense Education Act (U.S. Congress, 1958). It is important then that claims that the protectionist discourses that have (re)emerged in political discourse are somehow novel in relation to a more altruistic history should themselves be problematized (Lee, 2021). Yet, as Rumbley et al. (2021) noted, “[a]lthough internationalization has been achieving greater prominence in education policy development across the global throughout the last decade, the coronavirus pandemic, nationalism, and international tensions are potential setbacks” (p. 19). In this way, if we accept that political protectionism has been latent in the U.S. higher education-related policies and political discourse, the question then becomes, is there something novel about this newest iteration? In this sense, while not new, it is clear that contemporary geopolitics and phenomena are undoubtedly rupturing the norms and assumptions around the “balance” between internationalization and globalization and nationalist protectionism.

Using an issue definition/framing lens to examine the operationalization of HEA Section 117 provides some insight in seeing how DED was essentially message testing in real time to see which frames were more or less effective in persuading different decision-makers regarding a more parochial interpretation of the regulation. Although outside the scope of this article, it is worth noting that frames one and two have also been utilized in similar legislation at the state level. For example, in the Florida state legislature, the Foreign Influence Bill (2021) was passed, which speaks to the persuasiveness of those frames from a policy diffusion perspective. Relatedly, the continued scrutiny regarding foreign influence as demonstrated in a letter to Secretary of Education Miguel Cardona (2021) and the incorporation of HEA 117 language into new proposed legislation (America COMPETES Act, The, 2022; Higher Education Act, 2021) makes it clear that frames one and two were particularly effective in persuading different decision-makers as well. In a sense, while HEA 117 did not substantively change as a result of these investigations, the framings have been more and less effective in defining the problems. As Weiss (1989) noted:

Problem definition creates language for talking about problems and non-problems that draws attention to some features of social life at the expense of others, locates responsibility for problems, putting some groups on the defensive and others on the offensive, widens and deepens public or elite interest in particular social phenomena, and mobilizes political participation around issues or symbols highlighted by the problem definition. (p. 115)

This article aims to contribute to emerging scholarship examining the regulatory architecture in the United States which structures different facets of international education (Crumley-Effinger, 2021; Lee, 2021). It is also an initial attempt to explore how “national power can surface in international higher education policy and practices” (Lee, 2021, p. 13) and is operationalized through the different phases of policy diffusion, starting with issue framing and definition. From a methodological standpoint, DHA was utilized in a limited fashion because it does fundamentally require comparing texts and artefacts of a variety of times and this article was limited by its focus on the one set of texts—the notices of investigation. However, the future expansion of this work will focus on comparing across the artefacts produced during this time to examine the interaction between the frames and which frames could be seen as more effective in which domains. Though this article is limited by the narrowness of its focus, future research using a policy diffusion framework could also then help elucidate how policy diffusion is also taking place outside the United States as countries like Singapore and Australia, as well as regions like European Union have also been adopting similar types of legislation around foreign influence.

For international education practitioners and administrators, this initial examination of the enforcement of HEA Section 117 raises concerns regarding the potential such approaches may have in disincentivizing HEIs from engaging internationally teaching, learning and research because of the potential punitive misconstruing of that engagement by DED. In particular, given the ongoing bipartisan support for anti-China regulations and greater oversight of HE international engagement, it is critical for international education scholar-practitioners to develop this body of scholarship around the operationalization

and oversight of international education. By examining how existing regulations like HEA 117 are being operationalized and what similar laws are emerging, scholar-practitioners need to engage to ensure that higher education voices are represented in these discussions and engaging in making the case for why the U.S. HEIs should and could be engaging in comprehensive internationalization in ways that do not undermine the interests of the U.S. government.

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