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December 23, 2019  
(via [www.regulations.gov](http://www.regulations.gov))

Stephanie Valentine  
PRA Coordinator  
Director of the Information Collection Clearance Division  
Department of Education  
550 12<sup>th</sup> Street, SW, PCP, Room 9089  
Washington, DC 20202-0023

Paul J. Ray  
Acting Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
Eisenhower Executive Office Building  
1650 Pennsylvania Avenue, NW  
Washington, DC 20503

Re: Docket ID Number [ED-2019-ICCD-0154] Agency Information Collection Request - Foreign Gifts and Contracts Disclosures

Dear Ms. Valentine and Mr. Ray:

On behalf of the University of California (UC), I write to you to in response to the new proposed Information Collection Request (ICR) on Foreign Gifts and Contracts Disclosures, as published in the Federal Register on December 17, 2019 (Docket No. ED-2019-ICCD-0154). Our comments address two main issues: i) the appropriateness of the Department of Education's request for emergency review, and ii) the substance of the revised ICR.

### **Use of Emergency Review**

We strongly object to the use of the emergency review process with regard to this ICR and urge the Office of Management and Budget to deny the Department of Education's request for approval of this process. The Department's request fails to meet any of the following required criteria for emergency review, in accordance with the information found at <https://pra.digital.gov/clearance-types>:

- “Public harm is reasonably likely to result if normal clearance procedures are followed
- An unanticipated event has occurred
- The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed”

UC concurs with the American Council on Education’s (ACE) detailed analysis of why these criteria have not been met (see ACE comments submitted on December 17, 2019). The effect of emergency review is to shorten the period for comments. Ten days (especially overlapping with the winter holidays) does not allow sufficient time for proper internal consultation, careful consideration, and the development of meaningful comments to the Department’s latest proposed changes.

The Department of Education intends that the expanded data elements and requirements be in place by the January 31, 2020 reporting deadline. We take seriously the subject matter of the ICR, but universities need more time to develop and implement updated procedures and information systems, to train employees, and to learn the Department’s new collection portal (which is still under development). This is compounded by the fact that many institutions are decentralized and will need to collect information and train staff from multiple departments and offices. We disagree with the Department’s opinion, expressed in the Summary of Public Comments found in this ICR, that any need for adequate new information systems merely signals an internal deficiency in universities’ existing financial reporting systems. Many such systems were not originally designed to track the information as expanded in the ICRs (in either content or format). It would be unfeasible to establish fully updated systems by the January 31, 2020 reporting deadline; indeed, 2022 is much more realistic. This notwithstanding, we request that the Department delay implementation of the requirements in this ICR until the July 31, 2020 reports.

We urge the Office of Management and Budget to deny the Department’s request for emergency review. We strongly believe that this ICR merits the usual OMB review process with the regular timelines for meaningful, considered public comment. UC also requests that implementation of any new requirements be delayed until institutions have been afforded time to provide detailed and meaningful comments, for further clarifications by the Department, and sufficient time for the implementation.

### **Comments on the Substance of the Revised ICR**

We recognize and appreciate that the Department of Education has made changes and provided some clarifications in response to concerns raised in response to the initial ICR of September 6, 2019. However, we highlight here several issues of particular concern we hope are further addressed by the Department.

#### **The proposed information collection requires that institutions submit true copies of gift, contract, and restricted or conditional gift agreements.**

The revised ICR still contains the mandate that institutions upload “true copies” of gift instruments and contract agreements to the Department’s information collection portal for all reportable gifts and contracts. We continue to hold that this condition far exceeds the requirements of 20 §U.S.C. 1011f, and is a fully unnecessary administrative burden. The Department has stated such copies are necessary “to determine whether it appears an institution has failed to comply with 20 U.S.C. 1011f (f)”. However, if an institution is providing copies, it stands to reason that they have also reported such gift or contract.

Such compliance check seems to be much more appropriate as an audit function. Further, the submission of these copies, without the opportunity for prior redaction, continues to raise serious concerns regarding privacy and the protection of intellectual property and proprietary information. While the Department has stated that it will not make the copies publicly available, to the extent permitted by law, and will redact agreements as necessary in accordance with the Freedom of Information Act (FOIA), we do not believe this sufficiently addresses our concerns. This is borne out by a statement in the September 2019 ICR in which the Department specifically notes that it “makes no pledge about the confidentiality of the data because the authorizing statute makes no provision for same”. It is far from clear that this has changed, nor is it clear that the Department has the necessary expertise or resources to redact documents appropriately in response to FOIA requests, which may be numerous. Finally, this requirement is duplicative for restricted or conditional gifts or contracts, for which the ICR also requires a narrative description of the terms and conditions.

We urge the Department to reconsider the requirement that institutions produce true copies of gift, contract, and restricted or conditional gift agreements.

**The revised proposed ICR retains the requirement for detailed disaggregated information for each gift or contract, including the date received, recipient (including any and all intermediaries), contract start and end dates, and the names and addresses of all donors or contracting entities, including requiring universities to make an effort to identify even the anonymous donors.**

20 §U.S.C. 1011f mandates only the reporting of aggregate amounts of gifts or contracts from individual foreign sources in excess of \$250,000. The name of the donor or contracting entity is *only* required under 20 §U.S.C. 1011f when that donor or entity is a foreign government. However, the revised proposed ICR continues to require the submission of detailed disaggregated information for each reportable gift or contract, including personal information such as the names and addresses. Not only does this represent an estimated threefold expansion in required data points, but it also raises significant privacy concerns. The Department has indicated that it will not make names and addresses part of the public disclosure record; however, this statement plainly conflicts with the public inspection requirements in the statute (20 §U.S.C. 1011f(e)). There are also insufficient exceptions in FOIA to prevent the release of this information by the Department if a request is made through the FOIA mechanism.

If the Department retains these requirements, it would fall on universities to reach out to all foreign sponsors and donors in order to inform them that their personal identifying information (and copies of corresponding contracts or gift agreements) may be entering the public domain with no guarantee that confidentiality would be maintained. UC strongly believes that it is inevitable, notwithstanding the Department’s assurances of confidentiality and privacy, that this will have a chilling effect on institutions’ current and future relationships with foreign partners, and especially with donors.

We urge the Department to limit HEA Section 117 reporting of foreign gifts and contracts to what is specifically required by the statute.

## **Summary**

As discussed above, UC objects to the inappropriate use of the emergency review mechanism for this ICR and urges the Office of Management and Budget to deny the Department of Education’s request to use this mechanism. Allowing institutions a mere ten days to comment on a significant expansion of

long-standing reporting practices, where most of the comment period falls over a holiday when most institutions are likely closed or unable to gather appropriate stakeholder input, is simply unacceptable. Similarly, UC believes that requiring institutions to put systems and process in place to comply with significant new reporting requirements by the January 31, 2020 is unreasonable. We remain concerned about the expansion of the HEA Section 117 reporting requirements beyond what is statutorily required by 20 §U.S.C. 1011f. While the time afforded for thorough analysis and comment on the new ICR has been much truncated due to the Department's request for emergency review, UC has outlined at least a few remaining concerns.

The University of California also concurs with and supports the comment letters submitted in response to this ICR by the American Council of Education, the Association of American Universities, the Association of Public & Land-Grant Universities, and the Council on Governmental Relations.

Sincerely,

A handwritten signature in cursive script that reads "Lourdes G. DeMattos".

Lourdes G. DeMattos  
Associate Director  
Research Policy Analysis & Coordination  
University of California, Office of the President