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March 11, 2020  
(via [www.regulations.gov](http://www.regulations.gov))

Director  
Strategic Collections and Clearance Governance and Strategy Division  
U.S. Department of Education  
400 Maryland Avenue SW  
LBJ, Room 6W208B  
Washington, DC 20202-4537

Re: Docket ID Number [ED-2019-ICCD-0114], Agency Information Collection Activities;  
Comment Request; Foreign Gifts and Contracts Disclosures

Dear Director:

On behalf of the University of California (UC), thank you for the opportunity to comment on the U.S. Department of Education's proposed information collection requirements for implementing Section 117 of the Higher Education Act (HEA)(20 §U.S.C. 1011f), as published in the Federal Register on February 10, 2020 (Docket no. ED-2019-ICCD-0114) (the "Notice").

UC is committed to developing robust and innovative research collaborations while at the same time protecting our intellectual property and encouraging transparency with respect to our interactions with foreign entities. While we appreciate the Department's revisions to the previous recent information collection requests on this topic, made in response to public comments it has received, we remain concerned that the proposed information collection requirements expand the scope substantially beyond that currently required by statute, and thus respectfully continue to request that the Department of Education consider scaling back the requirements. As currently proposed, the expanded information collection and reporting requirements would still impose a significant administrative burden.

### **True Copies of Gift Agreements and Contracts**

We support and appreciate the Department's decision to engage in negotiated rulemaking regarding the submission of "true copies" of gift agreements and contracts. However, UC asks that the Department enter into this process in good faith, not only to discuss how such copies might be submitted, but indeed whether they should be submitted at all. Considerable concerns remain regarding this potential requirement, consistent with our previous comment letters. Specifically, providing a full copy of gift and contract agreements not only poses a significant administrative burden, but it potentially infringes on privacy and confidentiality as well. Under the previously proposed procedures, institutions would be required to submit to the Department a

copy of all applicable contracts and gifts, with no guarantee of confidentiality. Such agreements (particularly agreements with industry partners) may also include proprietary information that institutions may be contractually obligated not to disclose and which would otherwise be protected under the Freedom of Information Act (FOIA) or other similar state laws. Institutions, therefore, could potentially be placed in a position of having to breach contractual terms in order to comply with the Department's information collection requirements. Therefore, UC urges the Department, in the rulemaking process, to seriously reconsider the necessity of the provision of true copies.

### **Administrative Burden**

The "Supporting Statement for Paperwork Reduction Act Submission" ("Supporting Statement") accompanying the Notice indicates that purpose of the collection of information is enforcement of 20 §U.S.C. 1011f. However, even as revised, the University is concerned that the proposed information collection requirements would substantially expand the scope of HEA Section 117, extending well beyond statutory language and congressional intent, and would impose an administrative burden far exceeding the estimated twenty hours per response. For example, the "Paperwork Reduction Act (PRA) Burden Statement" ("Burden Statement") accompanying the Notice suggests that the following data would be required to be submitted, *none* of which is a statutory requirement under 20 §U.S.C. 1011f:

- Name and address of each foreign source, including substantial data concerning the legal or citizenship status of such foreign source
- "Domestic party" to an applicable gift or contract
- For a restricted or conditional gift or contract, a detailed description of *all* conditions or restrictions, *in addition to* the provision of information regarding the four types of conditions or restrictions specifically mentioned in 20 §U.S.C. 1011f.

We strongly believe that the collection of this extra data, in addition to that which is statutorily required by 20 §U.S.C. 1011f, for contracts or gifts to the University from foreign sources, would necessarily require a time and effort commitment far beyond the twenty hours that the Supporting Statement claims would be sufficient for the preparation of the required reporting. For example, requiring entities to submit "a detailed description of all conditions or restrictions" would require a review of the documents for such descriptions (at levels beyond what is appropriate for most administrative staff), and possibly typing long sections into the Department's systems, especially if OCR-ready (Optical Character Recognition) electronic copies are not available. Furthermore, the provision of such information would be redundant if, after the proposed negotiated rulemaking occurs, the Department retains the requirement for institutions to submit a "true copy" of the gift or donation agreement.

Feedback that we have received from several University of California campuses has provided further evidence that the Department's estimate of twenty hours per report is a substantial underestimate. For the recently submitted January 31, 2020 reports, campuses reported that it took up to approximately 100 hours to collect, collate and submit the required information. Further, this information typically had to be collected from multiple diverse offices across large and administratively complex institutions. It is also important to note that these burden estimates were a result of using the existing e-App system to collect the data points that were required by

that system, which we estimate to be three times less than the proposed data collection. Under the new collection requirements as proposed in the Notice, it is clear that the administrative time burden will only increase. We therefore continue to urge that the Department reconsider the expansion of the required data collection and adopt requirements that are consistent with the plain language of 20 §U.S.C. 1011f.

The requirement to report gifts and contracts from *subsidiaries or affiliates* of foreign sources, which could include entities incorporated in the United States, is also problematic and contrary to other common federal regulatory approaches, such as the Department of Commerce and Department of State export control regulations. Because such entities are normally considered “U.S. Persons” for other regulatory purposes, universities may not currently identify them as foreign and may not be able to accurately capture these for Department of Education reporting purposes. Overall, information about a sponsor/donor relationship to a foreign entity may not be readily known, available or obtainable.

Moreover, the definition of “foreign source” in 20 §U.S.C. 1011f suggests that such gifts or contracts should only be reported in cases where the subsidiary/affiliate is *acting as an agent on behalf of* its parent foreign source. UC requests that the Department confirm that this is the case – that is, a subsidiary/affiliate acting entirely on its own behalf, and not as an agent of its foreign parent, would not be reported. We feel that this question was not clearly addressed in the “Summary of Public Comments with Responses” that accompanied the current Notice.

### **Privacy**

The Department’s latest proposed information collection requirement still raises a number of privacy-related concerns. Under the current proposal, personal identifiers such as the name and address of individual donors, including those that choose to donate anonymously, would have to be disclosed. While the Department asserts that it will keep this information confidential, we continue to strongly urge that this information not be required to be submitted, especially given that it is not a statutory obligation under 20 §U.S.C. 1011f. UC believes that if there is doubt that such personal information is not required under the statute, the default position should be to avoid the unnecessary transfer of that information. Further, the Department has indicated that in the case of anonymous parties, names and addresses must be shared “to the extent that the institution has or could reasonably obtain the donor’s identity”. However, this is a subjective standard and it is not clear how it would be applied, nor how compliance could reasonably be evaluated by the Department. UC therefore requests that names and addresses of anonymous parties will not be required in the disclosure reports.

The knowledge that detailed, often personal or proprietary, information about such sources – including potentially an actual copy of a donor agreement or other contract – will be provided to the Department and perhaps made publicly available, will likely result in a reduction of the number of such gifts and contracts. As noted in previous comment letters, this will be detrimental to institutions’ continued successful and positive engagement with the international community and the advancement of science and education.

### **Method of Implementation**

Currently, the information required to be delivered to the Department under 20 §U.S.C. 1011f is submitted as part of the institution's "Application to Participate in Federal Student Financial Aid Program (e-App)." However, the Department has indicated that a new online collection instrument will be developed specifically for the 20 §U.S.C. 1011f information submission. The increased information collection, together with the implementation of a new submission portal, represents a considerable change from current practice. Institutions will need time to adjust. We also believe that it is important that reporting institutions are consulted on and participate in the development and testing of the new collection instrument before its use becomes mandatory. UC therefore asks that the Department allow sufficient time for this user input and testing. This would help ensure that the portal functions as efficiently and smoothly as possible both for the institutions submitting information and for the Department in meeting its statutorily mandated HEA Section 117 collection requirements.

We again thank the Department of Education for the opportunity to provide comments and are available for further consultation.

Sincerely,



Lourdes G. DeMattos

Associate Director

Research Policy Analysis & Coordination

University of California, Office of the President