

INDIANA UNIVERSITY

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1820-2020



THE PRESIDENT

December 20, 2019

Paul Ray
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street N.W.
Washington, DC 20500

Dear Acting Administrator Ray,

I am writing to express deep concern with the Department of Education's request for emergency review of the new proposed Information Collection Request (ICR) on Foreign Gifts and Contracts Disclosures, published in the Federal Register December 17, 2019, Docket No. ED-2019-ICCD-0154.

The Paperwork Reduction Act (PRA) provides for the waiver of the statutorily-required public comment period for Information Collection Requests (ICR) only if specified emergency conditions exist. The allowable criteria include when public harm is reasonably likely if the normal clearance procedures are followed; an unanticipated event has occurred; or the use of the normal clearance procedures is likely to disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed. In this situation, none of those conditions are present and the request to approve the proposed ICR using the emergency clearance authority should be rejected.

Approval of this request would shorten the public comment period substantially and ensure that the Department receives very little substantive feedback on this matter. Moreover, the Department is requesting approval of the ICR by January 2, 2020, forcing universities to follow the new collection requirements for the next submission deadline of January 31, 2020. It will be difficult for universities to reformat their current systems to align with the expanded set of reporting requirements by January 31.

Thank you for considering this request.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael A. McRobbie", with a stylized flourish at the end.

Michael A. McRobbie
President

MAM/sbt

cc: Doug Wasitis, Assistant Vice President for Federal Relations, IU

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Fri 12/20/2019 5:21 PM

I write in strong opposition to the Department of Education's request for emergency processing of the new proposed Information Collection Request concerning Foreign Gifts and Contracts Disclosures published in the Federal Register by the Department on December 17, 2019, Docket No. ED-2019-ICCD-0154. The 10 day comment window, surrounding a major federal holiday, simply is not enough time for a major public university, like Arizona State University (ASU), to provide substantive feedback on how the proposal will impact our university. I encourage you to extend the comment period for an additional 20 days to ensure that ASU and other universities around the country are able to provide a proper analysis of the proposal – ensuring that OMB is armed with accurate information when deciding whether or not to move forward with the proposal.

If you have any questions or need additional information, please contact whitney.riggs@asu.edu.

Thank you for the consideration of my request.

Matt Salmon
ASU Vice President Government Affairs
480-532-9434

December 23, 2019

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

**RE: Agency Information Collection Request – Foreign Gift and Contracts Disclosure –
Docket No. ED-2019-ICCD-0154**

Dear Ms. Valentine:

We write as universities subject to the foreign gift and contract reporting requirements set out in Section 117 of the Higher Education Act. We concur with the recent comments of the American Council on Education, the Association of American Universities, and the Council on Governmental Relations. We also support the comments those associations made in early November. In addition, we write today to urge that any new reporting requirements not take effect before the July 2020 reporting deadline.

The proposed information collection posted on December 17, 2019 mandates the reporting of information not required previously and calls for the submission of gift agreements and contracts. The additional data elements will require each institution to develop new and more expansive data collection and review procedures, which in the case of large and complex universities will also mean training additional personnel from throughout the institution to collect this data. It is unrealistic to expect that institutions will be able to compile and verify the additional information and documents needed to meet a January 31, 2020 reporting deadline.

Congress recognizes that such a late change in required disclosure is inconsistent with the intent of the Paperwork Reduction Act. The joint explanatory statement to Division A of the “Further Consolidated Appropriations Act” states, “As the Department [of Education] provides guidance on this issue or modifies reporting methods or

requirements, [institutions of higher education] should be given adequate time to ensure proper reporting.” We believe July 2020 is the earliest date that would provide adequate time to prepare for a significant change in reporting.

Sincerely,

Brown University
Dartmouth College
Emory University
New York University
University of Oregon
University of Pennsylvania
Rutgers University
Tulane University
University of Washington
Washington University in St. Louis

Columbia University
Duke University
Harvard University
The Ohio State University
Oregon State University
Rice University
Stanford University
Vanderbilt University
Washington State University
Yale University

cc: Paul Ray
Shelley Thompson
Alexander Hunt

Thu 12/19/2019 6:20 PM

On behalf of the members of the Association of Independent California Colleges and Universities, I write to express our concern regarding the use of an expedited emergency process by the Office of Management and Budget to review the proposed regulations from the U.S. Department of Education on foreign gifts and contracts disclosure by higher education institutions (ED-2019-ICCD-0154-0004).

The 10-day comment period is unreasonable and the use of an expedited process is unnecessary to effectuate the regulation. Additionally, institutions will not be able to meet the January 31, 2020 deadline of creating and employing new systems to report new information, and given the dramatic expansion of information that must be reported using a new—and currently unavailable—portal.

Thank you for the consideration. Please let me know if you have any questions.

Tom Vu | Vice President for Policy

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Thu 12/19/2019 4:21 PM

Ms. Thompson and Mr. Hunt,

I am writing on behalf of 51 Ohio nonprofit colleges and universities to request a delay in the deadline for receipt of comments on the U.S. Department of Education data-collection and disclosure regulation under section 117, Docket ID number ED-2019-ICCD-0154.

The response period requested, which is 10 business days that include two federal holidays, at a period of time when many of my religious-affiliated and non-religious-affiliated higher education institutions are completely closed, is a wholly unreasonable time period for allowing institutions to respond in a meaningful way. Though I intend to file comments on behalf of those institutions before the ridiculous deadline, I assure you that my comments will lack the kinds of specificity that will make my comments fully responsive.

Further, the suggestion that this is an action requiring emergency implementation is laughable. I say this as someone who previously served as a senior, appointed official in the U.S. Department of Education, whose responsibilities included reviewing every single regulatory request and public comment request, excluding FSA, for almost three years from 2002 to 2005. ED has been working on this for months, and yet the notice is for an emergency over a period with eight business days. Then, OMB is going to respond four working days later, because January 1 is also a federal holiday.

This administration has distinguished itself from the previous administration, which implemented serious, detailed requirements of law with little public notice through letter interpretations – Obama-era Title IX letters and Dear Colleagues come immediately to mind. This request is little different. The 10-day request for comments is a sham, and will justifiably be seen as such.

There is no question that this request is being intentionally timed to minimize comments from interested members of the public. It was filed at 4:15 p.m., on Friday, December 13 and extends over a period that ED and OMB officials know colleges cannot react. OMB should publish a notice to withdraw the request for comments immediately, with a more reasonable period for comment being issued in the future.

Cordially,

C. Todd Jones
President and General Counsel
Association of Independent Colleges and Universities of Ohio

Fri 12/20/2019 6:01 PM

The University of California San Diego is expressing our urgent concern with the Department of Education's request for emergency review of the new proposed information collection request (ICR) on foreign gifts and contracts disclosures published in the Federal Register by the Department on Dec. 17, 2019, Docket No. ED-2019-ICCD-0154. Not only does the Department's request fail to meet the criteria for emergency review, as laid out in detail by the American Council on Education in their comments submitted on Dec. 17, 2019 (attached), but shortening the period for comments in combination with the timing of that comment period, does not allow for the sufficient engagement of our university community to produce as careful of a consideration to the department's latest proposed changes in foreign gifts and contracts disclosures as they deserve, given their importance. We take this reporting requirement very seriously and believe it warrants the statutorily required public 30-day comment period.

We also have serious concerns that giving universities such a short timeframe to respond to this new, and greatly expanded, list of reporting requirements ahead of the Jan. 31, 2020 reporting deadline comes with a serious risk that universities may fall out of compliance. As noted below, universities will not be able to assemble the required information systems needed to accommodate the expanded reporting requirements. We disagree with the Department's response that given that HEA Section 117 reporting obligations have been around for decades that this need for adequate new information systems signals internal deficiencies of universities' existing financial reporting systems. Many existing universities' information systems weren't originally designed to track the financial information that is now expected to be provided to the Department, nor to provide reports in the format that the Department is now requiring, and it will take universities more time to accommodate the new requirements.

We want to bring to your attention several specific, significant impacts to UC San Diego if OMB were to approve this emergency clearance request from the Department of Education and preclude due consideration of substantive comments:

- **We understand that wholly owned US subsidiaries of foreign entities need to be included. This would then include almost every pharmaceutical company – as they are foreign owned as US subsidiaries.**
- **The requirements (see attachment 190906), starting on page 3 and going to page 8 of the pdf, are potentially huge, and we interpret those to be required for each reportable transaction. UC San Diego's administrative effort to comply with current reporting requirements indicates that the proposed new requirements would result in a dramatic and untenable increase in our administrative burden.**

In compliance with current requirements (based on the \$425K threshold), we report approximately 5-10 gifts, and 25-30 contract and grants in each 6-month period. This requires a minimum of 6-8 hours of effort across multiple offices for pulling, reviewing, validating, compiling, and routing for approval. Under the proposed requirements, we anticipate that we would be required to report approximately 400 gifts and 125-150 contracts and grants in each reporting period and estimate that this would require at least 2.0 FTE (approximately 4,000 effort hours). We would also have to develop new IT systems to enable us to compile and record responses for each foreign gift/grant/contract – at a minimum initial cost of \$250K, with ongoing costs to maintain and upgrade that system. Given the short

timeline, however, we cannot yet be confident that we fully understand the impact of meeting the proposed new requirements, which is why having time to assess fully the proposal is crucial.

Therefore, *we request that you not approve the Department of Education's request to expedite the process* to shorten the statutorily required public 30-day comment period for HEA Section 117 foreign gift reporting.

We are grateful for your consideration and sustained support of UC San Diego, the UC system, and US higher education. If you have any questions, please don't hesitate to contact me.

Sincerely,

Sandra A Brown, PhD
Vice Chancellor for Research, Research Affairs
Distinguished Professor
University of California, San Diego
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Fri 12/20/2019 1:01 PM

I am writing to follow up the Dec. 19 meeting between the American Council on Education (ACE) and the Office of Management and Budget (OMB) regarding the Department of Education's (ED) proposed information collection request related to Section 117 of the Higher Education Act. We appreciated your time, and I wanted to provide the insight you requested about how long it might take institutions to develop the information systems needed to come into compliance with the proposed information collection request, which as I noted represents a massive expansion of the requirements for foreign gift and contract reporting.

I am happy to provide the following information with full awareness that it may become part of the public record, and that is fine with me.

I should note that these comments are not meant to overlook or minimize the substantive concerns we raised with you yesterday—specifically, the serious problems related the proposal to require submission of un-redacted “true copies” of grants and contracts and the requirement to provide the names and addresses for individual donors. Both of these go well beyond the statute and, since this is an information collection request and not a proposed regulation, we believe that the government should only collect the information that is clearly required by the statute.

I will respond to your query about the time needed to develop information systems in two ways. First, I have spoken with a number of campus officials and discussed the timetable issues with them. I will summarize what I have learned. Second, with the help of another organization—one that represents research administrators—I have obtained information directly from a few campuses that I will forward to you. I have deleted institutional identifying information from those notes. If you or the Department would like to talk directly with any of these people, I would be happy to try to arrange that.

General Comments from Institutions

- 1) At present, few institutions have robust information collection systems to collect, review and submit the information required by Section 117. It is, in short, more like handicraft rather than mass production. Therefore, for

many schools it is less of a matter of revising systems than constructing them.

- 2) The institutions I consulted are fully aware of the need to (and are prepared to) systematize their internal reporting protocols as necessary to provide the information the Department will request. There are no outside vendors who offer such information systems at present, and they will have to be put together on a campus-by-campus basis. Some schools anticipate hiring designated staff people to collect, review, compile and submit the data.
- 3) There is fairly universal agreement that ED does not appreciate how much work will be involved to do this and therefore is underestimating the time that will be required. Not all of the information can be automated and thus will need to be collected and reviewed individually. For example, describing “conditions and restrictions” of grants and contracts as called for under the current reporting protocol and under the proposed request has to be done manually after reviewing each grant and contract because conditions and restrictions often vary from one grant/contract to another. For a school with several hundred grants and contracts, this will be a time consuming, labor-intensive undertaking because there is no automated way to do it.
- 4) Some campuses will find this easier to do than others will. In general, smaller schools and institutions that are more centralized will find this easier to accomplish. Larger schools with more complex and semi-independent research institutions and other related entities will find it more challenging.
- 5) Some of the information in the December proposed information collection request CAN be collected and submitted quickly. Much of it cannot – but some data points are readily available. ED could consult directly with research administrators to identify such data and it might be that a “Phased in” implementation allows some of the additional data to be provided very quickly.
- 6) All of the schools we consulted with understand that more reporting will be required. The major concerns are what is to be required, the complexity of

collecting, analyzing and submitting it, and the amount of time to prepare for being able to come into full compliance.

- 7) The schools note that they will need—especially in the first year or two—a point of contact within ED who can answer questions and provide advice in response to questions. It is important that those answers be consistent and offer a “safe harbor” if schools do as advised. Some schools are reluctant to ask ED for advice at present because at least one school that did so this year has found itself under investigation for having asked a question. Institutions need to know that asking a question in good faith will not spark an investigation.
- 8) When Section 117 was enacted in 1986, few campuses had widespread international activities. Today, as a result of globalization, internationalization is the rule rather than the exception. Indeed, some institutions—Georgetown, Yale, and NYU, for example—currently have fully functioning campuses that are located in foreign countries where American and foreign funds are almost completely intermingled. Determining how to address such complexities is necessary to ensure compliance and something schools are committed to doing. However, it will take time and a constructive relationship with ED to address myriad technical issues.

Providing more time for schools to comment would enable schools to provide technical advice to ED and OMB about compliance—what can be collected and supplied quickly and what cannot be done so easily. As noted above, this might lead to a phasing in of requirements. ED has been reluctant to meet in person with campus officials and many schools (for the reason noted in 7) above) have been reluctant to ask questions. But there is widespread recognition on campus that more information must be provided and that schools will have to revise (best case) and develop new and better internal collection processes. I believe it would be a great help to ED and OMB to discuss these issues with campus research administrators to better understand what is doable quickly and what will take a little more time.

Comments from campus officials are below. I am happy to connect you to these individuals if you would like more detail (thought that might be hard to do next week as some campuses are closed). I am also happy to provide additional

information to you and the Department of Education if this would be at all helpful.

Thank you for your consideration.

1) Comment from a multi-campus university system

Some of our issues have to do with identification of foreign parents. We don't currently collect this information in sponsored programs, development or technology transfer data. We know our direct foreign contractors and can pull reports on them, but not their up line. In the system, they maintain a sponsor database called REMS that all 10 of our campuses utilize. I don't know how much time might be necessary to recode entities for this purpose or if we must then modify codes in each of our campus systems. This could take significant time and effort- potentially months, to look at each sponsor to identify foreign upline and then recode. Also, in the past, our licensing and royalty agreements were never captured for this reporting purpose, we are trying to ascertain how difficult it might be to pull what needs to be reported out of their databases or if they even capture the foreign parent information in their datasets.

Additionally, having to provide true copies of agreements is going to be difficult. Our system data doesn't necessarily have copies of the agreements themselves. Depending on how they are received, some of them only reside as hard copies that would need to be imaged. The 250k cut off helps with volume but with people from graduate school, sponsored programs, technology transfer, clinical trials, development and the registrar as well as coordination with and our data analyses group, we could spend 20 hours just in preparatory meetings alone without including actual implementation. We are hoping for a minimum of six months to evaluate and adopt new data/systems/imaging to support this endeavor.

2) From a major research university

I agree with all of his comments. At _____, we don't have a centralized location for this information now but given the expansion of questions, scope of what ED is considering a gift or contract, and number of offices on campus that could be involved in providing data, it's my opinion that we will need to create a centralized database. Ensuring that the \$250k trigger has/hasn't been met will require adding up all of the information from potentially dozens of

sources and that shouldn't be done by me looking at a bunch of spreadsheets. A simple mistake could be interpreted as an intentional omission.

For example, it was clarified on the call that tuition payments (which most consider payments for a service, not a gift) are to be included. That involves every exec ed program and the DCE sending me data as they bill for their own programs. We have dozens, and alone none of them might trigger \$250k, but when combined with other *gifts* from the same country they probably would have to be included.

That said, I don't know how long it would take to create this kind of database or repository, but I doubt it would be in time to report for January 31. Being an issue related federal compliance would certainly make it a higher priority. I have worked with (my university IT department) building 2 things from scratch and this seems simpler than those. If we could at least initially have one place to upload a completed excel template from every office, have a process that combines the data, determines what meets the reporting threshold, and organize it in a way that presents what needs to be entered into the new portal we can get more complex later.

3) From a major research university

For the new data collection portal, it seems like you will have to manually type in the answer to every question for every gift and contract. If that's true, the data entry will just move from one website to another. There is a significant risk of error in keying in so much data manually. The burden will increase significantly for _____ (my best guess is what took 4 or 5 hours will take a couple of weeks), and the burden for all of those providing the data to _____ will likely increase significantly as well. I'm basing my time estimate on the fact that I used to provide 6 entries per country, and now I'll be providing 13 or 19 entries per gift/contract, depending on whether or not it has conditions and restrictions. What was about 250 entries will be 4,000-6,000 entries. And all of PDFs have to be uploaded, that was just under 300 unique gifts/contracts in the last reporting period. I understand it's a requirement and needs to be done, it just seems a bit overwhelming today.

4) Question from a campus official about how their system will interact with ED

And this says nothing of the system that DOEd will create for this. Their system will obviously take time to figure out. Do we know anything about what Ed is doing?

5) From a major research university

So I think the points identified are good—maybe you want to recommend that they analogize to other major regulatory changes and the lead times that proper rulemaking had for implementation—the new Common Rule had a year after adoption before we had to comply (recognizing that IRB systems would have to be revised and education and policy changes were required). Can (a higher education organization) look at the last half dozen regulatory/grant changes and how much time was typically provided before a new rule was effective as an example?

What also resonated with me from the call, as I've been in the trenches on what this data collection would look like and speaking to the various groups that will be tasked with this in January, is the idea that without real clear guidance, definitions on certain terms (for scope), specifications, or even an understanding of what the portal will actually look like (i.e., will it be drop down menus, free text, will you be able to save submissions, what will the 1001 certification look like, will it be outside of the Title IV submission), we are being asked to completely reinvent the wheel and gather 3 times the amount of data per agreement/contract. This is completely unreasonable. The idea that in theory all of this will be crystal clear by January 3 is unlikely, but also (in a best case scenario) this leaves us only about 25 days to create new systems, IT protocols, etc. We are working on these items now, but are still working with so much uncertainty that it is difficult to implement new absolute protocols.

In addition to the Common Rule implementation example, are there other examples? NIH changes to COI comes to mind.

6) From a major research university

The problem is that the most difficult parts are not solved by automation. Preparing a narrative about the restrictive terms of an individual

contract or grant cannot be automated—someone has to write this after reviewing the agreement terms.

Also, verifying the origins and connections of a foreign sponsor cannot be automated. This research requires multiple online searches that cannot be programmed or easily automated.

We can start collecting some of this data in real time going forward, so it is not such a concentrated effort at the end of the reporting period, but we will have to add data elements to our data collection and data warehouse and then add the elements that require individual preparation. It will take multiple reporting rounds before such elements will be available to report systematically

Thanks again for asking for this information. I hope it gives you some idea of the compliance complexity that campuses are facing. I reiterate that institutions realize that more information needs to be provided, and that many schools will have to increase their reporting and compliance efforts. We do not in any way disagree with the goal, but it is a complex task and there are many questions that cannot be answered at this point. If given the chance, campus officials will work with ED to find a way to move forward as quickly as possible.

Sincerely,

Terry Hartle
Senior Vice President, ACE

Terry W. Hartle
Senior Vice President
Government Relations and Public Affairs
American Council on Education
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Thu 12/19/2019 7:10 PM

We are reaching out to object to the Department of Education's request for emergency review of its proposed "information collection request" relating to the reporting of gifts from and contracts with foreign sources pursuant to 20 U.S.C. Sec. 1011f.

The DoED proposal is problematic in a number of respects, and Georgetown will be working with higher education associations (ACE, COGR, NAICU, etc.) and others to provide input if OMB agrees to provide appropriate time to review the current version. Among other things, we are concerned about the ramifications of the proposed requirement to provide "true copies" of gift agreements and contracts and the less than complete confidentiality protections for those sensitive documents proposed by DoED. At this point, however, we would urge you to reject the request for emergency review for two principal reasons:

1. The timing of the request for expedited emergency review, leaving a mere 10 days for review and comment during the holiday season when Georgetown and other colleges and universities are closed, leaves little realistic opportunity for the higher education community to respond to DoED's proposal to make dramatic changes to existing reporting requirements. There is no "emergency" here that justifies expedited review and the burden of these changes and potential consequences for higher education institutions are significant.
2. Georgetown has developed, and utilizes, a carefully designed and thorough process for identifying and reviewing transactions in its financial systems to determine what gifts and contracts to report pursuant to 20 U.S.C. 1011f. As Georgetown explained in its response to DoED questions about its reporting, the process involves a number of steps, involves a number of people and offices at Georgetown, and has resulted in appropriate reporting for many years. The expansion of the reporting requirements reflected in the proposed ICR would necessitate a careful review of, and changes to, our process that would be extremely difficult or impossible to implement by January 31, 2020 when the next foreign gift and contract submission is due.

Thank you, and happy holidays.

Jim Ward, Associate Vice President for Compliance and Ethics and Associate General Counsel
Katy Button, Associate Vice President for Federal Government Relations

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Jim Ward
Associate Vice President for Compliance and Ethics
Associate General Counsel
Georgetown University
(202) 687-3833 (phone)
(202) 687-3853 (fax)

Mon 12/23/2019 10:23 AM

This email is sent on behalf of the George Washington University in response to the Department of Education's request for emergency processing of the newly proposed Information Collection Request concerning Foreign Gifts and Contracts Disclosures published in the Federal Register by the Department on December 17, 2019, Docket No. ED-2019-ICCD-0154. We are concerned with the expedited time frame, both for commenting on and implementing the revised information collection request.

The abbreviated comment period of 10 days does not allow adequate time for institutions to fully review and evaluate the updated information request proposal, particularly given that the 10 days in question include a weekend and a holiday period. GW, like many colleges and universities, is closed for winter break after December 20, 2019, so our ability to evaluate the proposal, consider its impact, and, if deemed appropriate, prepare and secure institutional review and approval of a comment letter by the requested deadline of December 27, 2019, is not feasible.

Publishing the proposed regulation in early January with an expected implementation by January 31, 2020, is similarly impracticable. GW began the information collection process to comply with the current reporting mechanism in early November to meet the January 31 deadline. Our process requires gathering input from several offices throughout the university due to a multitude of possible avenues for receipt of foreign gifts and contracts. Changing the requirements at this late date will require a significant amount of additional work in an already tight schedule.

We respectfully request that The Office of Management and Budget allow sufficient time for institutions to analyze the impact of the revised information collection requirements, both for purposes of commenting on the proposal and modifying systems and procedures to comply with the revised requirements.

Thank you for your attention to this important matter.

Sincerely,
Ryan McDevitt

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Ryan McDevitt
Director of Federal Government Relations
External Relations
The George Washington University
o 202-994-0452 m 202-738-8282



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December 20, 2019

Mr. Alexander T. Hunt
Office of Management and Budget
Executive Office of the President
Washington D.C. 20503

Foreign Gifts and Contracts Disclosures: Docket No. ED-2019-ICCD-0154

Dear Mr. Hunt:

I am writing on behalf of George Mason University, the largest public research university in the Commonwealth of Virginia, with over 38,000 students from 50 states and 130 countries. Mason is very concerned about the Department of Education's request for emergency review of the Information Collection Request on Foreign Gifts and Contracts Disclosure, published in the Federal Register on December 17, Docket No. ED-2019-ICCD-0154. Let me state upfront that Mason is fully committed to fulfilling its obligation to report foreign gift and contract information consistent with Sec. 117 of the Higher Education Act of 1965.

We are now in the process of undertaking a thorough review of the impact of the proposed changes. However, the shortened period for comment from 30 to 10 days significantly challenges our ability to provide a meaningful response. Moreover, publishing the proposed regulation in early January with an expected implementation for the January 31, 2020 report, is similarly problematic, as we began the information collection process in early November to comply with the current reporting mechanism to meet the January 31 deadline.

Mason is not unlike other large, public research universities with a decentralized administrative structure. In our case, there are 10 different schools or colleges with a certain degree of autonomy and flexibility for developing programs and partnerships for the benefit of our students. Hence, our process requires gathering input from several offices throughout the university due to a multitude of possible avenues for receipt of foreign gifts and contracts. A ten-day abbreviated comment period for such an effort is not feasible.

We respectfully request that OMB allow sufficient time for institutions to analyze the impact of the revised information collection requirements, both for purposes of commenting on the proposal and modifying systems and procedures to comply with the revised requirements.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Deb Dickenson", followed by a long horizontal flourish.

Deb Dickenson
Vice President for Finance
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December 20, 2019

Shelley L. Thompson
Alexander T. Hunt
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

via email: shelley.l.thompson@omb.eop.gov
[Alexander T. Hunt@omb.eop.gov](mailto:Alexander.T.Hunt@omb.eop.gov)

RE: Information Collection Request (ICR) published in the Federal Register by the Department of Education on December 17, 2019, Docket No. ED-2019ICCD-0154

William & Mary (W&M) is committed to an open intellectual culture where collaboration is encouraged across disciplines, institutions, and the world while also protecting our institution from illicit technology transfer and undue foreign influence. We understand our obligation to report foreign gift and contract information under Section 117 of the Higher Education Act of 1965 but also offer the below urgent concerns related to this ICR.

DOE's use of OMB's emergency declaration requiring response within 7 days does not appear to meet the necessary criteria for emergency review under the Paperwork Reduction Act. In addition, the timing of a response falls within a timeframe when many IHEs are closed starting next week.

Without statutory authorization, the proposed ICR significantly increases mandatory disclosures, including potentially confidential and proprietary "disaggregated information from each gift." Limitations in the exception provisions of the federal FOIA mean that DOE may not be able to protect donor, foundation, and propriety business information from disclosure to the public.

The proposed ICR is unprecedented in that it requires the upload of "true copies" of underlying documents a requirement that exceeds the authority granted by Congress and which would significantly increase DOE receipt of voluminous documents from across the country without sufficient confidentiality measures in place. Additionally, W&M would incur the additional burden of notifying said donors of the requirement prior to release of this confidential data.

The proposed significant increase in data collection points (from 18 to 69) by the next reporting deadline of January 31, 2020 would require that W&M develop and launch a new system to capture required data within a very unrealistic time period and with significant institutional burden.

W&M requests a full 30-day review of these proposed changes. Thank you for your consideration.

Sincerely,

Dennis M. Manos
CSX Professor of Physics and Applied Science
Director, Applied Research Center, W&M
Vice Provost for Research and Graduate/Professional Studies

Stephen E. Hanson
Vice Provost for International Affairs
Director Reves Center for International Studies

Fri 12/20/2019 2:17 PM

I am writing to share my concerns about the Department of Education's request for emergency processing of the new proposed Information Collection Request (ICR) concerning foreign gifts and contracts. It is not at all clear that the Department has satisfied the requirements for emergency review, and I request that OMB assure that the recipient community will have an adequate period of time to respond to the proposal.

I concur with the December 18, 2019 letter from the Council on Government Relations to Mr. Paul Roy at OMB regarding why the Department of Education's request does not meet the requirements for emergency review. The request does not appear to align with the intended use of this authority.

Further, the timing of this December 17, 2019 Federal Register request only provides seven working days for my institution to provide comments. This is simply not enough time to coordinate feedback and thoughtful analysis from the multiple offices across our institution who are responsible for the information being considered for the report.

Additionally, if the requirements were put in place for a reporting submission date of January 31, it is not possible to put the necessary information systems in place to accommodate the new reporting protocol by the end of January. New processes that involve multiple offices would need to be developed and refined. Those information systems would require the development of new processes for collecting internal data and a new electronic system capable of capturing roughly three times more data elements than we are currently required to report. Training on the new requirements would be required for staff across multiple work units within our institution and at outside affiliated organizations. Also, there will be a need to authorize and train users on a new federal submission portal (yet to be released).

The request for emergency processing under the Paperwork Reduction Act should be denied.

Thank you for the opportunity to comment.

Robert Andresen
Director of Research Financial Services
Research and Sponsored Programs
University of Wisconsin-Madison

December 20, 2019

Paul Ray
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th St NW
Washington, DC 20500

SUBJECT: ED ICR HEA Section 117 Foreign Gift Reporting (new Docket #ED-2019-ICCD-0154)

Dear Acting Administrator Ray:

We are writing to request that the comment period for the information collection described in Agency Information Collection Activities; Comment Request; Foreign Gifts and Contracts Disclosures, 84 Fed. Reg. 68,911 (Dec. 17, 2019) be extended to a full 45 days; that the Department of Education's request to use emergency clearance procedures under the Paperwork Reduction Act be withdrawn or declined; and that the Department work collaboratively with stakeholders to develop a realistic schedule for implementing changes.

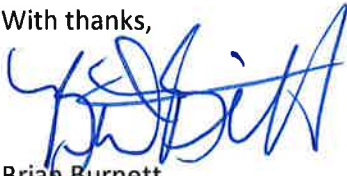
We appreciate the Department's efforts to review and respond to the comments this University and other stakeholders filed in connection with the original September information collection notice, and look forward to having the opportunity to analyze the changes you made in response to those comments. Nevertheless, we respectfully request that the Department's request for emergency clearance be withdrawn or rejected for the following reasons:

- (1) We, like many organizations, submitted extensive comments to the Department of Education in November 2019 about its proposed changes in requirements. The Department has on December 17th responded to those requests for alterations with an updated information collection package. A ten day working period (from the December 17th release of the *Federal Register* notice though the deadline of December 27th) is an unreasonably short time frame to both analyze the updated proposed requirements and to provide a thoughtful response. This is particularly difficult given that this ten day period includes the winter holidays and, for many universities, the end of the fall semester.
- (2) We do not feel that there is a compelling rationale for this request to meet the intent of the "emergency clearance," and cannot discern any such justification from the Department in its December 17 *Federal Register* notice and associated documents. Section 117 reporting is a continuing issue fully deserving of serious attention, but with no short-term or immediate deadline that would warrant moving this process to emergency status.
- (3) The Department appears to want emergency clearance and a truncated comment period in order to implement the updated requirements for the reporting period due January 31, 2020. We believe

this schedule would be both impractical and ill-advised. First, to ensure the adequacy and effectiveness of the proposed new requirements, adequate time should be provided for discussion with all impacted stakeholders prior to their finalization. Second, after there is clear understanding of the new requirements, we recommend the development and dissemination of a reasonable implementation schedule that furnishes all parties sufficient time to update their data collection, processing and reporting mechanisms. An abbreviated implementation schedule is likely to entail problematic unintended consequences—universities might not be able to report all the new data elements, and the Department’s system might not be able to accept them. Specifically, organizations have collected data on their foreign gifts and contracts received since July 2019 based on the Department’s **current** requirements. It is neither practical nor realistic to expect organizations to “pivot on a dime” and submit reports containing novel data within such an abbreviated implementation period, when such data were not necessarily collected in existing processes, and indeed may in some cases not even be knowable to universities. In addition, some of the proposed new obligations would require an Education reporting system that does not so far exist (including the upload of documents). We feel that at this late date, there is insufficient time to test and learn a new system and adapt grantee business processes to achieve the expanded requirements.

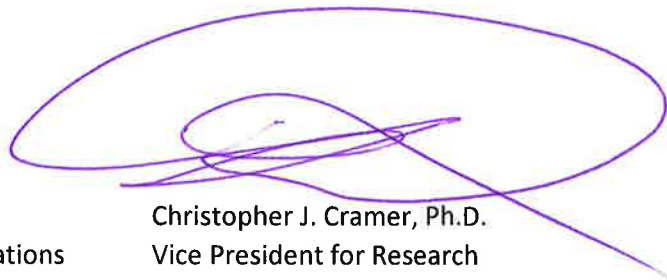
For these reasons, we recommend that you provide at least a 45 day comment period (sufficient to bridge the winter holidays and allow at least 30 days for comment), and that the Government collaboratively develop and announce a reasonable implementation period for the imposition of new data requirements.

With thanks,



Brian Burnett

Senior Vice President for Finance and Operations



Christopher J. Cramer, Ph.D.

Vice President for Research

Cc: Department of Education (via www.regulations.gov)

Fri 12/20/2019 5:25 PM

Season's greetings and I hope this message finds you well. I am writing to you on behalf of the University of California, Davis in regard to the Department of Education's significant proposed changes to the Section 117 reporting requirements and subsequent request to OMB for an "emergency review" of its information request. Given the extremely short and over the Christmas Holiday comment period, I am writing you directly to please ask that OMB not use the emergency review process.

We have urgent concern regarding the Department of Education's request for emergency review of the new proposed information collection request (ICR) on foreign gifts and contracts disclosures published in the Federal Register by the Department on Dec. 17, 2019, Docket No. ED-2019-ICCD-0154. Not only does the department's request fail to meet the criteria for emergency review, as laid in detail by the attached American Council on Education in their comments submitted on Dec. 17, 2019, but shortening the period for comments in combination with the timing of that comment period, does not allow for the sufficient engagement of our university community to produce as careful of a consideration to the department's latest proposed changes in foreign gifts and contracts disclosures as they deserve, given their importance.

Moreover, we have our serious concern that such short timeframe given to universities to respond to this new, and greatly expanded, list of reporting requirements ahead of the Jan. 31 reporting deadline comes with a serious risk that universities may fall out of compliance since they will not be able to put together in such a short time the information systems that they would need to accommodate the expanded reporting requirements. We disagree with the department's response that given that HEA Section 117 reporting obligations have been around for decades that this need for adequate new information systems signals internal deficiencies of universities' existing financial reporting systems. Many existing universities' information systems weren't originally designed to track the financial information that is now expected to be provided to the department, nor to provide reports in the format that the department is now requiring, and it will take universities more time to accommodate the new requirements.

Please don't hesitate to reach out with any questions or concerns.

Thank you and Happy Holidays!

Prasant

Prasant Mohapatra
Vice Chancellor for Research
Distinguished Professor, Department of Computer Science
University of California, Davis
Tel. (530) 754-7764
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Tue 12/24/2019 9:13 AM

As Interim President of the Oregon Alliance of Independent Colleges & Universities and on behalf of the 16 private, independent colleges and universities in Oregon, I am writing to express concerns about the proposed information collection and reporting in the [Section 117 notice](#). I would like to express that (1) a 10 day comment period is unreasonable, (2) an expedited emergency process is unnecessary, and (3) our institutions will not be able to meet the January 31, 2020 deadline for creating and employing new systems to report new information. Additionally, I have concerns about reporting anonymous gifts – including foreign paid tuition – and requiring true copies of contracts.

Thank you for allowing me to express these concerns.

Sincerely,

Brent Wilder

Interim President

Oregon Alliance of Independent Colleges & Universities

(o) [503.342.0004](tel:503.342.0004)
>www.oaicu.org<



Mon 12/23/2019 3:19 PM

*101 North Front Street
Harrisburg, PA 17101*

We are writing today on behalf of the 91 schools that the Association of Independent Colleges & Universities of Pennsylvania represents to urge you to extend the comment period as well as the implementation timeline of the new section 117 rule. A 10-day comment period seems unreasonable (especially over the Christmas holiday) and pushing through as an emergency seems unwarranted. This shortened comment period (announced December 17th) makes it all but impossible for institutions to put together substantive comments to the language. There are also many practical concerns regarding the implementation and content.

Giving institutions only until January 21, 2020 to implement new systems for the reporting given the significant increase in reporting requirements is unmanageable. As we look to implement these new requirements it is imperative to give all institutions the much needed time to properly put systems in place. In addition the increase in reportable items will cause significant administrative costs and burdens on schools, taking time and resources away from students.

Again we are asking that you extend the timelines regarding comments and implementations in order to give institutions the ability to provide meaningful suggestions regarding the final rule. It is our hope that these comments will be thoroughly read and the overall burden and cost can be reduced. Thank you for your hard work on this issue. We hope that an extension can be granted.

Sincerely,

Dr. Kent C. Trachte
President, Lycoming College
Chairman, AICUP

Tom Foley
President, AICUP

*Tom Foley
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