



November 4, 2019

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

Re: **Docket No. ED-2019-ICCD-0114**
Agency Information Collection Request – Foreign Gift and Contracts Disclosure

Dear Ms. Valentine,

The Council on Governmental Relations (COGR) is an association of 185 research universities and affiliated academic medical centers and research institutes. COGR concerns itself with the impact of federal regulations, policies, and practices on the performance of research conducted at its member institutions.

COGR and its member institutions understand the importance of assuring accurate disclosure of the information required by Section 117 of the Higher Education Act. We share the commitment to seek to avoid undue foreign influence in the conduct of vital research and education at U.S. institutions of higher education, and to transparency in the conduct of such activities. Working with our member institutions, we are striving to find the necessary balance between maintaining an open academic research culture and adapting to evolving disclosure practices. However we are concerned that the Department of Education's (ED) proposed information collection will not enhance accomplishment of these goals, and unfortunately may have the opposite effect.

We appreciate that ED is seeking to facilitate the collection of the statutorily required information through development of a separate information collection instrument that will be submitted electronically. We also appreciate that although ED sought to use the e-App application for Approval to Participate in Federal Student Aid Programs for this purpose, it now recognizes that the application is unsuitable. We encourage ED to work with the regulated community to develop an electronic system for the collection of information that minimizes administrative burden associated with the submission of the information. Such a system should include the capability to upload information via csv or similar formats that facilitate bulk Section 117 submissions, and to make corrections or updates to previously submitted reports.

We note that the documents published by ED related to the information collection request are inconsistent with regard to the statutorily mandated \$250,000 threshold for reporting foreign gifts and contracts. The Federal Register Notice and the second paragraph of Part 1 in the Supporting Statement reference the \$250,000 threshold. However Part 2 of the Supporting Statement states that "The plain language and Congressional purpose of Section 117 is for the institutions subject to this information request to disclose fully **all** (emphasis added) foreign

money funneled to them, and for this information to be made readily available to the public.” We urge ED to clarify this inconsistency. If in fact the intent is to collect information on all foreign gifts and contracts regardless of amount, ED needs to cite the legal authority for departing from the statutorily mandated threshold.

We share many of the concerns expressed in the comment letter submitted to ED by the American Council on Education and other higher ed. associations. Of particular concern to our member institutions is the requirement in the Burden Statement for “true copies” of gift or contract agreements to be uploaded to the ED website for public posting. Part 10 of the Supporting Statement states that ED makes no pledge about the confidentiality of the data. In addition to the concerns this raises with respect to disclosure of personally identifiable information, it will result in the potential disclosure of proprietary information that will have a chilling effect on the ability of institutions to form partnerships with foreign entities or multinational corporations for research collaborations and technology transfer. (It also will adversely affect anonymous donations.) Some of the terms and conditions of a contractual relationship often are viewed as proprietary information by commercial organizations. To the extent that posting of these contracts does indeed create a chilling effect, it runs counter to the government’s goal of encouraging greater commercialization of federally funded R&D. It also contradicts the response to the last bullet in #7 of the Supporting Statement that states it will not require respondents to submit proprietary trade secrets or other confidential information. The effects could be far-reaching, as the Burden Statement implies that the disclosure requirement extends to U.S. entities that are subsidiaries of affiliates of foreign entities.

The posting of contract agreements also will result in public disclosure of a great deal of information about U.S. technologies and research priorities. We share the commitment to transparency where appropriate. However, government funding and security agencies have expressed increasing concern about the need to protect critical U.S. technologies from foreign appropriation. The proposed information collection appears counter to this purpose, and will not enhance our national security or ability to protect information that may aid foreign adversaries, nor will it protect against foreign influence on curricula and academic freedom.

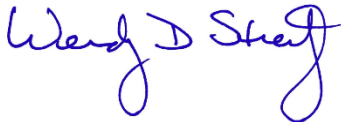
As an alternative to the upload of “true copies” of gift or contract agreements, we suggest that ED consider including the audit of the accuracy of institutional reporting for Section 117 as part of the annual single audit process. This would provide ED assurance that institutions are complying with reporting requirements while protecting confidential information and minimizing routine administrative burden. (In fairness, any such audit should be delayed for a year after implementation of new reporting requirements to give institutions time to adjust.)

This leads to another of our main concerns, which is the burden of the proposed enhanced information collection particularly with regard to the posting requirement. The ED estimate of 10 hours to complete the required reporting is an extreme underestimate. We understand from our member institutions that the **existing** hour burden of Section 117 filing is at least several times that. Hundreds, and up to tens of thousands of gift and contract agreements typically are received by our members institutions annually. We believe that the cost burden of compiling and uploading the relevant agreements to ED will be orders of magnitude greater than the ED estimate. The cost and resource implications are substantial. This again appears to run counter

to the government's goal of reducing administrative burdens.

We believe the goal of streamlining and modernizing Section 117 reporting would benefit greatly from stakeholder input; it would not only improve ED's understanding of the types of foreign funding coming to institutions, but also provide institutions with more clarity regarding the types of arrangements that must be reported under Section 117. We urge ED to consider deferring the proposed information collection and consulting more widely with representatives of the higher education community. The Federal Demonstration Partnership (<http://thefdp.org/default/>) is one forum that could be helpful. We stand ready to participate in this process.

Sincerely,

A handwritten signature in blue ink that reads "Wendy D. Streit". The signature is fluid and cursive, with the first name "Wendy" and last name "Streit" clearly legible.

Wendy D. Streit
President