



February 27, 2023

Manager of the Strategic Collections and Clearance Governance and Strategy Division
Federal Student Aid
U.S. Department of Education
400 Maryland Avenue, SW
Room 6W203
Washington, DC 20202-8240

Re: Request for Comments; Agency Information Collection Activities; Comments Request; Foreign Gifts and Contracts Disclosures, Docket ID number ED-2022-SCC-0159

Dear Manager:

I am writing to provide comments on the proposed information collection request (ICR) titled *Foreign Gifts and Contracts Disclosures* on behalf of the Council for Advancement and Support of Education (CASE). A notice was published in the *Federal Register* by the Department on December 27, 2022, (Docket No. ED-2022-SCC-0159).

CASE is the global association for professionals in advancement – alumni relations, communications, fundraising, marketing and advancement services – who share the goal of championing education to transform lives and society. Today, CASE's membership includes more than 3,000 colleges and universities, primary and secondary independent and international schools, and nonprofit organizations in 82 countries around the world, with 2,335 of our member institutions located in the United States. CASE helps its members build stronger relationships with their alumni and donors, raise funds for campus projects, market their institutions to prospective students, and foster public support of education.

U.S. colleges and universities are fortunate to attract significant philanthropic support from a variety of sources, including philanthropists living abroad. U.S. higher education has a strong global reputation, and institutions have worked for many years to strengthen connections across borders to the benefit of the country. Donors around the world recognize the important role that U.S. higher education plays not just nationwide but also globally in transforming lives and society. Their philanthropic gifts help institutions achieve their critical teaching, research, and service missions, and should be a point of great pride.

As with our comments submitted to the Department on November 5, 2019¹ and December 27, 2019²

¹ CASE November 5, 2019 comments <https://www.regulations.gov/document?D=ED-2019-ICCD-0154-0031>

² CASE December 27, 2019 comments <https://www.case.org/system/files/media/file/CASE%20Comments%20on%20Revised%20Information%20Collection%20Request%20Docket%20No.%20ED-2019-ICCD-0154.pdf>

our focus is on the foreign gift disclosure portion of the ICR. CASE is a signatory to and strongly supports comments submitted to the Department by the American Council on Education (ACE) on February 27, 2023. This includes the areas ACE and signatories identify as issues they support and issues of concern. Our intention with these comments is to highlight two specific issues of concern we have with the proposed ICR.

Summary of Comments and Recommendations on Proposed ICR

While CASE strongly supports transparency around the philanthropic support that colleges and universities receive from foreign governments, individuals, and entities, we reiterate that **it is critical that any federal reporting or other requirements do not discourage reputable philanthropists who want to make a difference from making legitimate charitable gifts to U.S. educational institutions.**

CASE recommends the Department make the following changes to the proposed ICR:

- Ask institutions to only report information that is required by statute and eliminate the requirement to provide donor name and address information in the disclosure report, and
- Adhere to the definition of institution as outlined clearly in the statute in determining entities required to file disclosure reports.

If approved without further changes, the ICR could have a chilling effect on giving from foreign individuals and organizations to U.S. colleges and universities. If institutions cannot preserve anonymity or protect sensitive information, reputable donors may refrain from making gifts to U.S. institutions. This would, in turn, have direct impact upon these institutions, who are held in such high regard in the U.S. and globally, in their work to advance education.

Donor Names and Addresses and Donor Anonymity

Section 117 requires institutions to “report the aggregate dollar amount of such gifts and contracts attributable to a particular country. The country to which a gift is attributable is the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business, for a foreign source which is a legal entity.” Section 117 does not require institutions to provide the names and addresses of foreign donors.

The proposed ICR goes beyond this statutory language by requiring institutions to provide the name and address of the foreign source. This would violate institutions’ commitment to donor confidentiality and would preclude institutions from accepting anonymous gifts from foreign sources.

Institutions take the responsibility of protecting donor confidentiality very seriously. The Donor Bill of Rights, endorsed by CASE and the Association of Fundraising Professionals, Association of Healthcare Philanthropy, and the Giving Institute states that donors have the right “to be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law.”³ The CASE Principles of Practice for Fundraising Professionals at Educational Institutions includes a section on confidentiality, recognizing that fundraising professionals should, “safeguard and respect donor and prospective donor information.” Institutions protect donor information so that donors are not subject to unwanted recognition or publicity, solicitations, retribution, and fraud.

³ <https://www.case.org/resources/donor-bill-rights>

Many donors also request anonymity when making gifts to colleges and universities. An individual may request to remain anonymous for a variety of reasons, including a desire to avoid public recognition or publicity for their gift. If institutions lose the ability to preserve anonymity, these donors will likely refrain from making charitable gifts to U.S. colleges and universities.

Beyond the institutional commitment to protecting donor confidentiality and anonymity, both state and federal law recognize the importance of protecting donor information. While institutions and their affiliated entities, such as a college or university foundation, must list the names, addresses, and gift amounts of donors who contribute \$5,000 or more on the Internal Revenue Service Form 990, the IRS is not authorized to disclose donor names and addresses when making the form open for public inspection. Institutions are also permitted to redact name and address information when they post or make their Form 990s available for public inspection. At the state level, many states exempt donor identity and information from freedom of information act and/or public records laws for public colleges and universities.⁴

Institutions also must be compliant with data privacy laws and regulations outside of the United States, particularly when it comes to engaging with foreign individuals and organizations. The European Union's General Data Protection Regulation (GDPR) outlines rights for EU data subjects, including the right to know how personal data is being used and disclosed by an institution.

Most importantly, Section 117 is unambiguous and clearly does not require disclosure of the name and address of a foreign source except in cases where an institution is owned or controlled by a foreign source. Even where Congress specifically asked institutions to provide additional information on restricted and conditional gifts, they did not require institutions to provide name and address information in the statute.

While the Department states in its supporting statement under #10 that it will not make donor name and address information part of the publicly available disclosure report, we remain concerned that such information could be subject to legal challenges under the Freedom of Information Act.⁵ Section 117 plainly states "all disclosure reports required by this section shall be public records open to inspection and copying during business hours."

Through the proposed ICR, the Department is exceeding statutory authority and putting institutions at risk of violating institutional commitments and legal requirements to protect donor confidentiality and anonymity. The Department's actions would also discourage foreign individuals and organizations from making legitimate charitable gifts to U.S. colleges and universities.

Recommendation: The Department should ask institutions to only report information that is required by statute and eliminate the requirement to provide donor name and address information in the disclosure report.

⁴ For example, the State of Florida law protects the identity of donors who desire to remain anonymous. Florida Statutes Section 1004.28(5)

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=1000-1099/1004/Sections/1004.28.html

⁵ Answer to Question 10 in supporting statement <https://www.regulations.gov/document/ED-2022-SCC-0159-0002>

Definition of Institution

Section 117 specifically defines an institution as “any institution, public or private, or, if a multicampus institution, any single campus of such institution, in any State, that—

- (A) is legally authorized within such State to provide a program of education beyond secondary school;
- (B) provides a program for which the institution awards a bachelor’s degree (or provides not less than a 2-year program which is acceptable for full credit toward such a degree) or more advanced degrees; and
- (C) is accredited by a nationally recognized accrediting agency or association and to which institution Federal financial assistance is extended (directly or indirectly through another entity or person), or which institution receives support from the extension of Federal financial assistance to any of the institution’s subunits.”

The statutory definition does not include nor reference college or university foundations⁶, alumni associations, real estate foundations, university hospitals/health centers, athletic foundations/clubs, or other research organizations. These affiliated organizations typically have separate 501(c)3 charitable status and are governed by their own boards.

We disagree with the Department that institutions are required under statute to report gifts made to separate legal entities for two main reasons.

First, as we noted above, Section 117 includes a specific three-pronged definition of institution that does not reference nor mention college and university foundations, alumni associations, real estate foundations, university hospitals/health centers, athletic foundations/clubs, or other research organizations. There is a clear definition of the entity that is required to file disclosure reports and related entities are not mentioned.

Second, and most importantly, the Department is asking colleges and universities to compel separate legal entities (third parties) to share gift data so that the institution can meet its reporting obligation. As we noted in previous comments, while some colleges and universities may be able to obtain this information, many institutions will likely not have this authority, particularly if the Department requires names and addresses to be submitted. In the case of college and university foundations, donors, whether foreign or domestic, typically make gifts to the foundation, not to the college or university.

Recommendation: The Department should adhere to the definition of institution as clearly outlined in the statute in determining entities required to file disclosure reports.

Conclusion

Once again, we urge the Department to make the following changes to the ICR:

- Ask institutions to only report information that is required by statute and eliminate the requirement to provide donor name and address information in the disclosure report, and

⁶ College and university foundations are the separately incorporated organizations that accept charitable gifts and manage institutional endowments on behalf of most public colleges and universities.

- Adhere to the definition of institution as outlined clearly in the statute in determining entities required to file disclosure reports.

We appreciate the opportunity to share our comments on the ICR and would welcome the opportunity to meet with appropriate staff to discuss our comments in further detail. Thank you for your thoughtful consideration of the points made herein.

Yours sincerely,

A handwritten signature in black ink that reads "Sue Cunningham". The signature is written in a cursive, flowing style.

Sue Cunningham
President & CEO