

White House Proposes “Compact” With Nine Universities, Seeking Administrative Concessions for Access to Federal Funds

by Caitlin L.D. Hull, Eric Weisenburger, Chris DeLong, and Matthew Gillespie

According to public reporting, the White House recently proposed a Compact for Academic Excellence in Education (“Compact”) to nine universities, promising a closer relationship with the White House, preferential access to federal funds, and other benefits in exchange for aligning policies and practices with Administration priorities. The Compact outlines the various forms of legal and financial support the nine universities (and virtually all other research institutions, colleges, and universities) currently receive, including:

1. Access to student loans, grant programs, and federal contracts;
2. Funding for research directly or indirectly;
3. Approval of student and other visas in connection with university matriculation and instruction; and
4. Preferential treatment under the tax code.

The proposed Compact provides that this framework of legal and financial support for the nine universities will continue subject to alignment with a set of Administration priorities. Although the Compact was reportedly issued only to a select number of institutions,^[1] it provides a warning for all institutions: “Institutions of higher education are free to develop models and values other than those below, if the institution elects to forego federal benefits.”

What does the Compact require?

The Compact outlines eight categories of requirements that “represent[] the priorities of the U.S. government in its engagements with universities”:

1. Equality in Admissions. The Compact forbids consideration of “sex, ethnicity, race, nationality, political views, sexual orientation, gender identity, religious associations, or proxies for any of those factors” in admissions and financial support decisions. Instead, decisions must be “based upon and evaluated against objective criteria published on the University’s website and available to all prospective applicants and members of the

Related People

- Caitlin L.D. Hull
- Eric Weisenburger
- Chris DeLong
- Matthew Gillespie

Related Capabilities

- Government Enforcement & Corporate Investigations
- Higher Education & Academic Research Institutions
- Government Contracts Counseling & Litigation

public. "Undergraduate applicants must take a "widely-used standardize test[s]" or other "program-specific measures of accomplishment in the case of music, art, and other specialized programs of study." Consideration of *any* subjective criteria, such as the traditional personal statement, could run afoul of these requirements. Finally, the Compact requires institutions to publicly publish anonymized data related to admitted and rejected students by race, national origin, and sex.

2. Marketplace of Ideas & Civil Discourse. The Compact requires revision of "governance structures" to ensure "institutional units that purposefully punish, belittle, and even spark violence against conservative ideas" are transformed or abolished. The Compact does not define "conservative ideas." Signatories must also assess the institutions' viewpoints, and publicly share the results of that self-assessment, prohibit a "heckler's veto" at events (including through use of "lawful force"), and prohibit "support for entities designated by the U.S. government as terrorist organizations." These requirements likely implicate First Amendment concerns, including by singling out "conservative ideas" for protection but not others.

3. Nondiscrimination in Faculty and Administrative Hiring. The Compact requires that signatories commit not to consider "sex, ethnicity, race, national origin, disability, or religion" in hiring decisions, and instead rely upon "meritocratic selection based on objective and measurable criteria."

4. Institutional Neutrality. Employees, acting "in their capacity as university representatives," must abstain from "actions or speech relating to societal and political events in cases in which external events have a direct impact upon the university." The Compact does not define the parameters of this prohibition, including when a member of academic faculty is speaking in their personal capacity or as a "university representative."

5. Student Learning. The Compact prohibits inflating or deflating grades "for any non-academic reason." The Compact requires "public accountability mechanisms" that demonstrate "commitment to grade integrity, such as publishing grade distribution dashboards with multiyear trendlines, public statements that explain student outcomes and any unusual upward trends, and comparisons with peer institutions."

6. Student Equality. Consistent with other executive actions, the Compact requires adoption of the Administration's view on gender identity by "commit[ting] to defining and otherwise interpreting 'male,' 'female,' 'woman,' and 'man' according to reproductive function and biological processes," and "requires single-sex spaces, such as bathrooms and locker rooms, and fair competition, such as in sports." The Compact does not address intersex individuals. In addition, the Compact prohibits "favor[ing] or disfavor[ing]" any student during the disciplinary process based on membership in a racial, ethnic, national, or religious group, or a group based on sex, sexual orientation, or gender identity.

7. Financial Responsibility. The Compact requires a tuition freeze for American students for five years, refunds to undergraduate students that drop out during their first

academic term and public posting of statistics about graduates' incomes by each academic program. Tuition for students pursuing hard sciences must be waived if the institution's endowment exceeds \$2 million per student, though exceptions may be made for students from "families of substantial means." The Compact also requires full transfer credits from the Joint Service Transcript for military service members and veterans.

8. Foreign Entanglements. The Compact requires anti-money laundering and Know Your Customer programs, as well as foreign gift and contract disclosures. Admission of students from the Student Visa Exchange Program must be capped at 15% of the institution's undergraduate student population, with a 5% cap for any one country.

Notably, the proposed Compact provides the following exceptions: "a religious institution may maintain preferences for religious affiliation or belief in hiring and admissions, a single-sex institution may maintain sex-based preferences, and any institution may maintain preferences in admissions for American citizens."

How would the Compact be enforced?

The Compact requires annual certifications of compliance and independent polling of faculty, students, and staff to measure compliance with the principles outlined in the Compact, with results to be publicly reported.

The Department of Justice will review compliance with the Compact and an institution found to have "willfully or negligently" violated the Compact may result in a loss of access to "benefits" of the Compact for one year. Repeat violations may result in loss of access for two years. Further, the Compact requires that for any year in which a violation is found: (1) return of funds to the federal government; (2) return of any private contributions to the grantor upon the grantor's request.

What does this mean for other institutions of higher education?

The Compact, for now, is an unexecuted proposal to nine universities. But the Compact may be a roadmap for the Administration's expectations of other institutions of higher education. The Administration seems likely to continue to leverage access to federal funding to push colleges and universities to adhere to the Administration's view of federal civil rights obligations and related authorities. Institutions of higher education should review internal policies and develop response plans for potential future allegations of noncompliance with federal priorities.

[1] The White House reportedly proposed the Compact to Brown University, Dartmouth College, Massachusetts Institute of Technology ("MIT"), the University of Arizona, the University of Pennsylvania, the University of Southern California, the University of Texas at Austin, the University of Virginia, and Vanderbilt University. MIT has already responded that it will not sign the Compact.