



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

February 11, 2020

Lawrence S. Bacow, President
Harvard University
Massachusetts Hall
Cambridge, MA 02138

Re: Notice of 20 U.S.C. § 1011f Investigation and Record Request/Harvard University

Dear President Bacow:

Section 117 of the Higher Education Act of 1965, 20 U.S.C. § 1011f, requires institutions including Harvard University to report all gifts, contracts and/or restricted and conditional gifts or contracts from or with a foreign source to the U.S. Department of Education, and to make those reports available to the public. These reports are posted at <https://studentaid.ed.gov/sa/about/data-center/school/foreign-gifts>.

Section 117(f), 20 U.S.C. § 1011f(f), provides that whenever it appears an institution has failed to comply with the law, the Secretary of Education may request the Attorney General commence an enforcement action to compel compliance and to recover the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement. The Department is aware of information suggesting Harvard University lacks appropriate institutional controls and, as a result, its statutory Section 117 reporting may not include and/or fully capture all reportable gifts, contracts, and/or restricted and conditional gifts or contracts from or with foreign sources. See, e.g., <https://www.justice.gov/usao-ma/pr/harvard-university-professor-and-two-chinese-nationals-charged-three-separate-china>; see also <https://www.harvard.edu/president/news/2019/message-to-community-regarding-jeffrey-epstein>. To obtain the information required to meet our statutory enforcement duty, the Department has opened an administrative investigation of Harvard and now requests that your institution produce the following within sixty days:

1. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source. For each such gift, contract, and/or restricted or conditional gift or contract, please: (a) List the name and address of the foreign source; (b) identify the subsection of 20 U.S.C. § 1011f(h)(2) applicable to such foreign source; and (c) produce true copies thereof. The time frame for this request is August 1, 2013 to the present.

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2. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with (i) the government of the People's Republic of China, Huawei Technologies Co. Ltd., Huawei Technologies USA, Inc., ZTE Corp, and their respective agents; (ii) the government of Qatar, the Qatar Foundation for Education, Science and Community Development *aka* the Qatar Foundation *aka* the Qatar National Research Fund, Qatari nationals, and their respective agents; (iii) the government of Russia, the Skolkovo Foundation, Kaspersky Lab and Kaspersky Lab US, Russian nationals, and their respective agents; (iv) the government of Saudi Arabia, Saudi nationals, and their respective agents; and (v) the government of the Islamic Republic of Iran, the Alavi Foundation, Iranian nationals, and their agents. For each such gift, contract, and/or restricted or conditional gift or contract, please: (a) List the name and address of the foreign source; (b) identify the subsection of 20 U.S.C. § 1011f(h)(2) applicable to such foreign source; and (c) produce true copies thereof. The time frame for this request is August 1, 2013 to the present.
3. All records regarding or referencing: (i) The "Thousand Talents Program" and/or its agents; (ii) "Hanban" or the Office of Chinese Language Council International and/or its agents; (iii) Wuhan University of Technology and/or its agents; (iv) the "Wuhan University of Technology-Harvard Joint Nano Key Laboratory" and/or its agents; and (v) any university, school, or other education or research entity domiciled in or organized under the laws of China, Qatar, or Russia and/or their agents. The time frame for this request is January 1, 2012 to the present.
4. All records of, regarding, or referencing conditions imposed or influence on any of the Institution's curriculum, programs, or activities by any foreign source. The time frame for this request is August 1, 2013 to the present.
5. All records of, regarding, or referencing the Institution's solicitation of gifts, contracts, and/or restricted or conditional gifts or contracts with or from a foreign source. The time frame for this request is August 1, 2013 to the present.
6. The name and address of each person responsible for the Institution's 20 U.S.C. § 1011f reporting and compliance. The time frame for this request is August 1, 2013 to the present.
7. All records of, regarding, or referencing the Institution's compliance obligations or duties with and/or under 20 U.S.C. § 1011f. The time frame for this request is August 1, 2013 to the present.
8. A detailed narrative explaining, and all records of, regarding, or referencing, the Institution's actions taken and/or the institutional controls established to determine and/or verify: (a) Whether and how the Institution determines a given person is a foreign source under each of 20 U.S.C. § 1011f(h)(2)'s four enumerated categories; and (b) whether and how the Institution complies with Executive Order 13224 with respect to every gift, contract, and/or restricted or conditional gift or contract that it solicits, receives, or signs. The time frame for this request is August 1, 2013 to the present.

9. A list of all gifts, contracts, and/or restricted or conditional gifts or contracts from or with a person who is a “foreign source” as defined at 20 U.S.C. § 1011f(h)(2)(D). For each such gift, contract, and/or restricted or conditional gift or contract please: (a) List the name and address of the 20 U.S.C. § 1011f(h)(2)(D) foreign source; (b) list the name and address of the foreign source’s principal; and (c) provide true copies thereof. The time frame for this request is August 1, 2013 to the present.
10. All records of, regarding, or referencing communications between the Institution and a foreign source listed as or resident or domiciled in a nation requiring cooperation with an international boycott under 26 U.S.C. § 999(a)(3), or that is an agent thereof. For each gift, contract, and/or restricted or conditional gift or contract from or with such a foreign source please: (a) List the name and address of the foreign source; (b) identify the subsection of 20 U.S.C. § 1011f(h)(2) applicable to such foreign source; and (c) produce true copies thereof. The time frame for this request is August 1, 2013, to the present.
11. A list of each program, activity, and/or employee, faculty member, or student directly funded or supported by a gift, contract, and/or restricted or conditional gift or contract with or from a foreign source to the Institution. The relevant foreign source, dates of funding or support, and amount and/or nature of support or benefit should be specified for each listed program, activity, and/or person. The time frame for this request is August 1, 2013 to the present.
12. All records of, regarding, or referencing the Institution’s audit and accounting practices and/or other institutional controls used to: (a) Capture, track, report, and verify gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source; and/or (b) ensure (i) that there is substantial compliance with the Single Audit Act, OMB Circular A-133, and 34 C.F.R. § 75.730 with respect to foreign funds, foreign campuses, and other covered foreign facilities, and (ii) that all financial records are kept in a manner facilitating an effective audit. The time frame for this request is August 1, 2013 to the present.
13. All IRS Form 990s and schedules, including Schedules F and R, for tax years 2014, 2015, 2016, 2017, and 2018.
14. A verified statement by a duly authorized Harvard University official: (a) Affirming that the Institution solicits and accepts gifts from, contracts with, and/or comingles or intermingles funds from foreign sources with funds from domestic sources, only in material compliance with all applicable federal laws, regulations, and executive orders and generally accepted and applicable accounting standards; (b) affirming that for the calendar years 2013, 2014, 2015, 2016, 2017, 2018, and 2019 (each a “reporting year”) the Institution’s Section 117 reports were accurate, complete and timely filed; (c) describing for each reporting year the specific accounting and institutional controls in place to ensure all gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign

source were (i) appropriately kept separate and auditable, and (ii) recognized, tracked, controlled, and accounted for in the Institution's Section 117 reports and federally-required audits; (d) affirming (i) that the Institution has materially complied with the Single Audit Act, OMB Circular A-133, and 34 C.F.R. § 75.730 with respect to foreign funds, foreign campuses, and other covered facilities for each reporting year, and (ii) that all relevant financial records are kept in a manner facilitating an effective audit and that foreign funds are not intermingled or comingled with domestic funds; and (e) describing the records reviewed and individuals consulted in preparing the requested statement. If the Institution is unable to make the affirmation requested in subparts (a), (b), or (d) above, then please provide, in detailed narrative form, an explanation for such failure.

As used in this Notice of Investigation and Information Request:

"Agent" has its ordinary meaning and includes, solely by way of example and not limitation, the U.S.-domiciled donor advised funds and foundations of a foreign source.

"Contract" has the meaning given at 20 U.S.C. § 1011f(h)(1).

"Foreign source" has the meaning given at 20 U.S.C. § 1011f(h)(2).

"Gift" has the meaning given at 20 U.S.C. § 1011f(h)(3).

"Institution" has the meaning given at 20 U.S.C. § 1011f(h)(4) and includes all campuses. Section 117 requires that when an institution receives the benefit of a gift from or a contract with a foreign source in the applicable amount, even if by an agent (e.g., employee) and through an intermediary (e.g., non-profit organization), it must disclose the gift or contract to the Department. Where a legal entity (e.g., centers, boards, foundations, research groups, partnerships, or non-profit organizations, whether or not organized under the laws of the United States and including, by way of example and not limitation, the "Harvard Management Company", "Harvard China Fund", the "Harvard Center Shanghai", the "Lieber Research Group at Harvard", the "Harvard Foundation for Intercultural and Race Relations", and the "Harvard Kennedy School of Government") operates substantially for the benefit or under the auspices of an institution, there is a rebuttable presumption that when that legal entity receives money or enters into a contract with a foreign source, it is for the benefit of the institution, and, thus, must be disclosed.

"Record" means all recorded information, regardless of form or characteristics, made or received by you, and including metadata, such as email and other electronic communication, word processing documents, PDF documents, animations (including PowerPoint™ and other similar programs) spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, animations, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of

personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term “recorded information” also includes all traditional forms of records, regardless of physical form or characteristics.

“Restricted or conditional gift or contract” has the meaning given at 20 U.S.C. § 1011f(h)(5).

Your record and data preservation obligations are more particularly described at Exhibit A. If you claim attorney-client or attorney-work product privilege for a given record, then you must prepare and submit a privilege log expressly identifying each such record and describing it so the Department may assess your claim’s validity. Please note no other privileges apply here. Finally, this investigation will be directed by the Department’s Office of the General Counsel with support from Federal Student Aid. To arrange transmission of the requested information, or should you have any other questions, please contact:

Patrick Shaheen, Office of the General Counsel
U.S. Department of Education
400 Maryland Ave., S.W., Room 6E300
Washington, D.C. 20202
Patrick.Shaheen@ed.gov

Sincerely,



Reed D. Rubinstein
Principal Deputy General Counsel
delegated the Authority and Duties of the
General Counsel

EXHIBIT A

RECORD PRESERVATION REQUIREMENTS

This investigation requires preservation of all information from your institution's computer systems, removable electronic media, filing systems, and other locations relating to the matters that are the subject of the Notice of Investigation. You should immediately preserve all data and information about the data (i.e., backup activity logs and document retention policies) relating to records maintained in the ordinary course of business and that are covered by the Notice of Investigation. Also, you should preserve information available on the following platforms, whether in your possession or the possession of a third party, such as an employee or outside contractor: databases, networks, computer systems, including legacy systems (hardware and software), servers, archives, backup or disaster recovery systems, tapes, discs, drives, cartridges and other storage media, laptops, personal computers, internet data, personal digital assistants, handheld wireless devices, mobile telephones, paging devices, and audio systems (including voicemail). You should also preserve all hard copies of records regardless of location.

The laws and rules prohibiting destruction of evidence apply to electronically stored information in the same manner that they apply to other evidence. Accordingly, you must take every reasonable step to preserve relevant records. "Reasonable steps" with respect to these records include:

- Notifying in writing all potential custodians and IT personnel who may have relevant records of their preservation obligations under this investigation.
- Discontinuing all data and document destruction policies.
- Preserving all metadata.
- Preserving relevant records and/or hardware unless an exact replica of the file (a mirror image) is made.
- Preserving passwords, decryption procedures (and accompany software), network access codes, ID names, manuals, tutorials, written instructions, decompression or reconstruction software.
- Maintaining all other pertinent information and tools needed to access, review, and reconstruct necessary to access, view, and/or reconstruct all requested or potentially relevant electronic data.

You have an obligation to preserve all digital or analog electronic files in electronic format, regardless of whether hard copies of the information exist, with all metadata. This includes preserving:

- Active data (i.e., data immediately and easily accessible today).
- Archived/journaled data (i.e., data residing on backup tapes or other storage media).
- Deleted data (i.e., data that has been deleted from a computer hard drive but is recoverable through computer forensic techniques).
- Legacy data (i.e., data created on old or obsolete hardware or software).