



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE GENERAL COUNSEL

January 5, 2021

The Honorable Rob Portman  
Chairman  
Permanent Subcommittee on Investigations  
Homeland Security and Government Affairs Committee  
United States Senate  
Washington, D.C. 20510

Dear Chairman Portman:

Following up on our letter of November 27, 2019, I write to update you on the U.S. Department of Education's ("Department's") activities under Section 117 of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1101f ("Section 117"). An identical letter is being transmitted to Ranking Member Carper, with copies to the Chair and Ranking Members of the Senate Homeland Security and Government Affairs Committee, the Senate Select Committee on Intelligence, the Health, Education, Labor, and Pensions Committee, the House Permanent Select Committee on Intelligence, House Committee on Oversight and Reform, and the House Education and Labor Committee.

Section 117 requires any institution of higher education that is owned or controlled by a foreign source, or that receives a gift from or enters into a contract with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, to file a disclosure report with the Department. A "foreign source" includes a foreign government, including an agency of a foreign government; a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states; an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; and an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source. *See* 20 U.S.C. §§ 1011f(a), (h)(2).

In February 2019, your Subcommittee released a Staff Report titled "China's Impact on the U.S. Education System." Important findings included: (1) Foreign government spending on U.S. schools generally "is effectively a black hole" because U.S. colleges and universities massively fail to report foreign money as required by law; (2) the Chinese Communist Party invests strategically in U.S. education through Confucius Institutes and other vehicles; (3) the public lacks an accurate or complete picture of China's overall spending because U.S. colleges and universities "routinely" fail to report foreign money (nearly 70% of colleges and universities failed to report in this case); and (4) the Chinese money comes with "strings that can compromise academic freedom." Specifically:

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The Chinese government approves all teachers, events, and speakers. Some U.S. schools contractually agree that both Chinese and U.S. laws will apply. The Chinese teachers sign contracts with the Chinese government pledging they will not damage the national interests of China. Such limitations attempt to export China's censorship of political debate and prevent discussion of potentially politically sensitive topics. Indeed, U.S. school officials told the Subcommittee that Confucius Institutes were not the place to discuss controversial topics like the independence of Taiwan or the Tiananmen Square massacre in 1989. As one U.S. school administrator explained to the Subcommittee, when something is "funded by the Chinese government, you know what you're getting."

See *CHINA'S IMPACT ON THE U.S. EDUCATION SYSTEM*, Staff Report, Permanent Subcommittee on Investigations, United States Senate at 1, 3, 5, 70, 71-76 (Feb. 2019) <https://www.hsgac.senate.gov/imo/media/doc/PSI%20Report%20China's%20Impact%20on%20the%20US%20Education%20System.pdf> ("China Report").

On February 28, 2019, the Department's Deputy Secretary Gen. Mitchell M. Zais testified before the Subcommittee.

In April 2019, to follow up on your findings and as part of President Trump's "whole of government" plan for protecting American national interests,<sup>1</sup> the Department developed and began executing a strategic plan to enforce Section 117 and thereby make publicly available important information regarding financial and possibly also other forms of collusion between America's largest and wealthiest taxpayer-supported institutions of higher education and hostile, repressive, and authoritarian foreign governments. See Appendix A. To date, the Department's efforts and accomplishments have included the following.

- Opening thirteen compliance investigations that have yielded actionable information.
- Compelling disclosure of \$6.5 billion in previously unreported foreign money.
- Modernizing the Section 117 information reporting portal to improve compliance and better carry out our statutory obligations. The new reporting portal, released in June 2020, recorded approximately 7,000 transactions and approximately \$3.8 billion of foreign gifts and contracts. Approximately sixty reporting entities are "new filers," meaning that between 1986 and June 2020 these institutions had not previously submitted any reports. These "new filers" disclosed more than \$350 million in foreign gifts and contracts during the July 31, 2020, reporting period.
- Preparing a notice of proposed rulemaking requiring regulated entities to submit true copies of foreign gift agreements and contracts. This information will ensure the Department may efficiently and cost-effectively enforce Congress's directive that institutions accurately

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<sup>1</sup>See generally Exec. Office of the President, [National Security Strategy of the United States of America](#) (Dec. 2017); Exec. Office of the President, [United States Strategic Approach to the People's Republic of China](#) (May, 2020).

report foreign money. We anticipate submission to the Federal Register on or about January 11, 2020.

- Formal and informal cooperation, collaboration, and information sharing with key Congressional committees and Executive Branch actors including the U.S. Department of Justice, Offices of Inspector General, the Department of State, and others as appropriate, to improve our understanding of and response to malign foreign activities.
- Publishing a Notice of Interpretation to provide regulated entities with constitutionally sufficient fair notice: (1) the failure to adequately report Section 117 gifts and contracts is a violation of the conditions for participation in the HEA programs and program participation agreements under 20 U.S.C. 1094(a)(17); (2) in addition to obtaining records and employee interviews under 34 CFR 668.24 in furtherance of any investigation about the sufficiency of an institution's Section 117 reporting, under 20 U.S.C. 1097a, "the Secretary is authorized to require by subpoena the production of information, documents, reports, answers, records, accounts, papers, and other documentary evidence pertaining to participation in any program under [Title IV of the HEA]"; and (3) consistent with applicable law, the Secretary is also authorized to share such evidence with other agencies of the U.S. Government for law enforcement and other lawful purposes.

See generally U.S. Dep't of Edu., Webpage, [Section 117 of the Higher Education Act of 1965](#).

In October 2020, the Department's Office of the General Counsel (OGC) issued an initial report summarizing our present assessment of the threat environment. See U.S. Dep't of Edu., [Institutional Compliance with Section 117 of the Higher Education Act of 1965](#) (Oct. 2020) (the "OGC Report"). Among other things, the Report noted:

1. The largest, wealthiest, and most well-known brands among America's institutions of higher education receive nearly all reported foreign funds. These "elite" or "prestige" operations have taken in billions of dollars using an assortment of related intermediaries, including functionally captive foundations, foreign operating units, and other structures. However, as we pointed out in 2019, the evidence strongly suggests their institutional decision-making is generally divorced from any sense of obligation to American taxpayers or concern for U.S. national interests, security, or values. See, e.g. OGC Report at 2 - 3, 7 - 11, 23 - 27.
2. For at least two decades, the education industry has been on direct notice that at least some of these foreign sources are hostile to the United States and are targeting their investments (i.e., "gifts" and "contracts") to project soft power, steal sensitive and proprietary research, and spread propaganda. OGC Report at 6. The Department is very concerned by the evidence that the industry's drive for foreign funds is not effectively balanced or checked by appropriate institutional controls to measure the risk and manage the threat posed by a given relationship, donor, or foreign venture. *Id.*
3. Section 117 reporting is systemically underinclusive and inaccurate. This is extremely troubling because the evidence shows that institutions have sophisticated systems for

managing, soliciting, and tracking contributions, grants, and contracts over time and from many thousands of sources, foreign and domestic. All investigative subjects have produced data at a very granular level (e.g., individual contributions from foreign sources of \$100 or less), demonstrating their capability to track donations from foreign sources. Therefore, it is hard to understand, for example, why Yale University failed to report any foreign gifts or contracts for four years, or why Case Western Reserve University failed to do so for twelve years, when both were rapidly expanding foreign funding streams, operations, and relationships. OGC Report at 5 - 6.

4. Congress and the public have real reason for concern that foreign money buys influence or control over teaching, research, and possibly even U.S. government policy. *See* OGC Report at 24 n 94. Assuming adequate and independent government and public oversight, transparency may mitigate risk. The evidence, however, is the industry generally opposes and obstructs transparency and oversight measures that might interfere with its valued foreign sources. For example, even as industry leaders profited from billions of dollars in partnerships with these hostile foreign governments and their instrumentalities, Section 117 reporting failed to keep pace. OGC Report at 3, 6; China Report at 70. Also, precisely as the wealthiest U.S. based colleges and universities massively expanded their foreign entanglements, industry representatives lobbied to repeal Section 117 and do away with foreign source reporting entirely.

Thanks to the Department's enforcement actions and our new reporting portal compliance has seemingly improved. This, in the end, is our goal. Nevertheless, we remain concerned by conduct and statements suggesting leading institutions and industry associations are committed to expanding and deepening financial and operational cooperation with malign foreign sources such as China and Qatar; protecting the anonymity of foreign sources funding "public policy" or "cultural study" centers that may purchase influence, disseminate propaganda, and project soft-power;<sup>2</sup> and restoring "blind eye" policies of regulator neglect to frustrate statutorily-mandated

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<sup>2</sup>Recently, the largest post-secondary education trade association, the American Council on Education, affirmed concern for Section 117 compliance and declared "we take seriously the risk to our institutions, and to the country, from illicit technology transfer and undue foreign influence." *See, e.g.,* [Letter](#) from Ted Mitchell received by Leon Schlichter at 1 (Dec. 14, 2020); [Letter](#) from Terry Hartle received by the Honorable Carolyn Maloney et al at 2 (June 9, 2020); [Letter](#) from Terry Hartle received by Deputy Secretary Mitchell M. Zais at 2 (July 12, 2019). However, decades of disregard for the law, relentless anti-transparency lobbying, and vigorous support for anonymous foreign funding suggest otherwise. *See, e.g.,* OGC Report at 2 - 3, 7 - 11, 23 - 27; China Report at 1, 3, 5, 70, 71-76; [Letter](#) from Council for Advancement and Support of Education received by Stephanie Valentine at 4 (Mar. 11, 2020) (the Department should "*eliminate the requirement to provide donor name and address information in the disclosure report.*") (emphasis added); [Letter](#) from Ted Mitchell received by Stephanie Valentine at 2 (March 9, 2020); [Letter](#) from the Association of Governing Boards of Universities and Colleges received by Hilary Malawer at 3 (Nov. 5, 2019) (disclosing foreign source name and address "would preclude any anonymous gifts from foreign individuals...which is likely to have a chilling effect on the willingness of such donors to make charitable contributions").

transparency, avoid accountability, and obstruct the American public's right to know whether taxpayer-supported colleges and universities elevate the interests of hostile foreign governments over the interests of the United States. Accordingly, it may be appropriate for Congress to question government and industry leaders and to scrutinize more closely issues such as:

1. The commitment of (a) the Department's political leaders to diligently and independently investigate and enforce under Section 117; (b) the political leaders at the Departments of Justice, Treasury, Defense, State, Commerce, and Homeland Security to diligently investigate and enforce their respective authorities governing the higher education industry's foreign sources, ventures, and operations;<sup>3</sup> and (c) the Executive Office of the President to creating a coordinating council modeled after the National Counter-terrorism Center protecting our research enterprise. Notably, Congress may find career civil servants in the above-cited Departments and other agencies supportive of more intensive regulatory oversight of the higher education industry.
2. The reasons for and risks of the industry's practice of anonymizing gifts from, and contracts with, *inter alia*, the governments, instrumentalities, and agents of China, Iran, Qatar, and Russia, particularly gifts and contracts funding (directly or laundered through donor or recipient intermediaries) (a) policy or international relations "centers" employing former U.S. political and career officials who subsequently re-enter government service, and/or (b) foreign propaganda and influence platforms such as Confucius Centers.
3. The institutional controls industry players use to vet contributions from the governments, instrumentalities, and agents of, *inter alia*, China, Iran, Qatar, and Russia.
4. Foreign sources' influence on research and curricula in higher education and in K-12 schools.
5. Whether foreign source gifts, contracts and/or U.S.-based college or university branded foreign operations might create insider threats.

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<sup>3</sup>For example, 26 U.S.C. § 999(a)(1) requires U.S. taxpayers to report operations in or related to a country, or with the government, a company, or a national of a country, which is on the list published by the Secretary of the Treasury of countries which require or may require participation in or cooperation with an international boycott. Reporting is also required for operations in or related to a country, or with the government, a company, or a national of that country, if the taxpayer knows or has reason to know that participation in or co-operation with a boycott is required as a condition of doing business. Section 999 does not exclude nonprofit corporations or institutions of higher education from reporting. Notably, the Department of the Treasury's § 999(a)(1)(A) list includes Qatar. *See* Dept. of the Treas., *List of Countries Requiring Cooperation With an International Boycott*, 85 Fed. Reg. 64615 (Oct. 13, 2020). Also, based on plain statutory text, China's pressure campaign against persons and businesses doing business with Taiwan seems to raise § 999(a)(1)(B) concerns.

6. The Internal Revenue Code implications of foreign source gifts and contracts, including inurement, and the audit and other enforcement measures and resources devoted by the Internal Revenue Service to ensure industry compliance with the law.
7. The systemic inequality between the resources devoted by U.S.-based institutions to solicit foreign sources and the resources devoted by U.S.-based institutions to compliance with applicable federal laws and regulations applicable to foreign sources, including, *inter alia*, Section 117, 18 U.S.C. §§ 2339A, 2339B, and 2339C; 22 U.S.C. § 611 *et seq*, 28 CFR Part 5, 15 CFR Subchapter C, and 22 CFR Subchapter M.
8. Mandating American Institute of Certified Public Accountants (“AICPA”) guidance for Section 117 reporting requiring independent third-party audits integrated with contracts, gift agreements and other relevant instruments.

Please feel free to contact Jordan Harding, Office of Legislation and Congressional Affairs, at 202-401-0020 if you have any questions.

Sincerely,

**Reed  
Rubinstein**

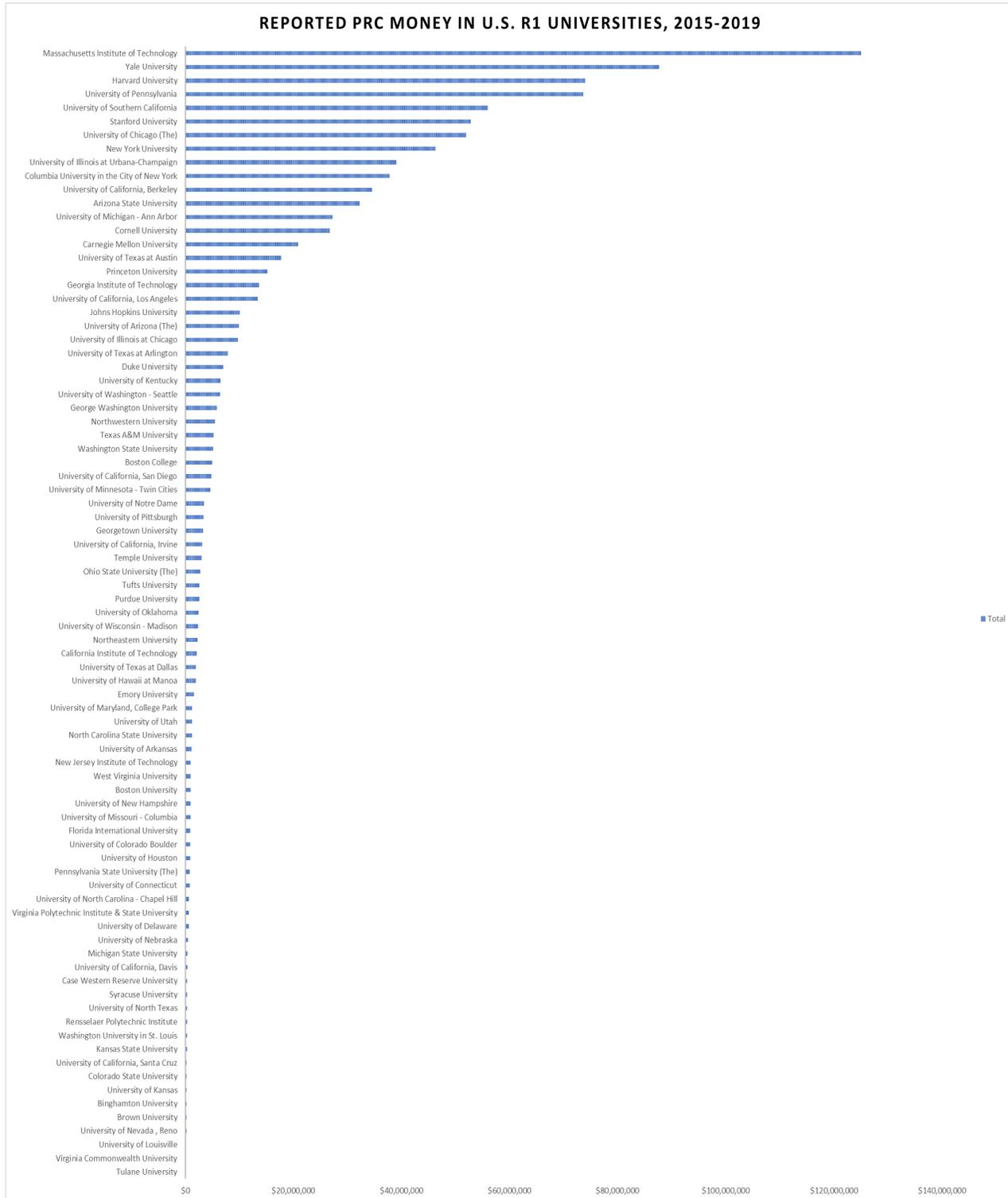
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Reed D. Rubinstein  
Principal Deputy General Counsel delegated  
the Authority and Duties of the General Counsel

## Appendix A - PRC Money in Major U.S. Research Universities

As of December 31, 2020, unaudited, self-reported data on funds received by major U.S. research institutions ([“Research 1” universities](#) as defined by the Carnegie Foundation) from sources identified as being physically located in the People’s Republic of China during the years 2015-2019. Note: Some institutions anonymized actual sources of funds.



Massachusetts Institute of Technology	\$125,008,331
Yale University	\$87,655,523
Harvard University	\$74,017,354
University of Pennsylvania	\$73,605,192
University of Southern California	\$55,975,219
Stanford University	\$52,832,545
University of Chicago (The)	\$51,941,861
New York University	\$46,270,509
University of Illinois at Urbana-Champaign	\$39,095,205
Columbia University in the City of New York	\$37,777,547
University of California, Berkeley	\$34,541,428
Arizona State University	\$32,295,455
University of Michigan - Ann Arbor	\$27,298,052
Cornell University	\$26,743,899
Carnegie Mellon University	\$20,892,044
University of Texas at Austin	\$17,749,583
Princeton University	\$15,167,006
Georgia Institute of Technology	\$13,679,702
University of California, Los Angeles	\$13,430,095
Johns Hopkins University	\$10,077,526
University of Arizona (The)	\$9,911,421
University of Illinois at Chicago	\$9,765,877
University of Texas at Arlington	\$7,874,521
Duke University	\$7,009,321
University of Kentucky	\$6,525,083
University of Washington - Seattle	\$6,406,492
George Washington University	\$5,840,594
Northwestern University	\$5,548,047
Texas A&M University	\$5,264,930
Washington State University	\$5,150,734
Boston College	\$5,025,000
University of California, San Diego	\$4,842,092
University of Minnesota - Twin Cities	\$4,664,189
University of Notre Dame	\$3,500,100
University of Pittsburgh	\$3,423,645
Georgetown University	\$3,285,925
University of California, Irvine	\$3,113,976
Temple University	\$3,021,646
Ohio State University (The)	\$2,821,936
Tufts University	\$2,646,110
Purdue University	\$2,641,807
University of Oklahoma	\$2,429,981
University of Wisconsin - Madison	\$2,338,865

Northeastern University	\$2,254,475
California Institute of Technology	\$2,090,468
University of Texas at Dallas	\$1,966,735
University of Hawaii at Manoa	\$1,952,923
Emory University	\$1,626,825
University of Maryland, College Park	\$1,279,321
University of Utah	\$1,251,160
North Carolina State University	\$1,231,090
University of Arkansas	\$1,203,165
New Jersey Institute of Technology	\$1,040,423
West Virginia University	\$1,022,190
Boston University	\$1,000,000
University of New Hampshire	\$984,129
University of Missouri - Columbia	\$973,993
Florida International University	\$947,956
University of Colorado Boulder	\$927,498
University of Houston	\$917,426
Pennsylvania State University (The)	\$859,850
University of Connecticut	\$799,970
University of North Carolina - Chapel Hill	\$675,562
Virginia Polytechnic Institute & State University	\$647,000
University of Delaware	\$624,904
University of Nebraska	\$519,980
Michigan State University	\$440,000
University of California, Davis	\$383,359
Case Western Reserve University	\$345,000
Syracuse University	\$301,529
University of North Texas	\$300,000
Rensselaer Polytechnic Institute	\$297,000
Washington University in St. Louis	\$292,959
Kansas State University	\$281,792
University of California, Santa Cruz	\$279,250
Colorado State University	\$265,540
University of Kansas	\$256,222
Binghamton University	\$250,000
Brown University	\$250,000
University of Nevada, Reno	\$250,000
University of Louisville	\$187,945
Virginia Commonwealth University	\$177,056
Tulane University	\$162,500
Grand Total	\$1,000,623,564

[END]