



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

February 11, 2020

Dr. Peter Salovey, President
Yale University
3 Prospect Street
New Haven, CT 06511

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

Dear President Salovey:

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

It appears Yale University failed to report a single foreign source gift or contract in 2014, 2015, 2016, and 2017. However, Yale University says it “has a considerable presence abroad, represented by sites in dozens of cities and countries...[some] operated by Yale or a closely affiliated entity”, claims “considerable success” in setting up “jointly run laboratories with Chinese universities...funded by Chinese granting agencies...”, and has solicited and received directed foreign contributions advancing specific religious and ideological priorities. See https://world.yale.edu/sites/default/files/files/International_Affairs_Report_Final.pdf; see also <https://web.archive.org/web/20180321012214/http://www.thenation.com/article/why-are-us-colleges-collaborating-with-saudi-arabia/>.

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 now concerned Yale University’s reporting may not fully capture all gifts, contracts, and/or restricted and conditional gifts or contracts from or with all foreign sources. To meet our statutory duty to verify compliance prior to any potential referral for enforcement action, the Department has opened an administrative investigation of Yale University and requests that you produce the following within sixty days:

1. A list of all foreign sites “operated by Yale or a closely affiliated entity” as described at https://world.yale.edu/sites/default/files/files/International_Affairs_Report_Final.pdf. For each such foreign site, please: (a) Specify the location; (b) specify the operating “entity” (e.g., the name of the “closely affiliated entity”) and describe in detail its financial and legal

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relationship with “Yale”; (c) report the “foreign site’s” annual budget; (d) list the name and address of every non-tuition revenue source in excess of \$250,000 to each such “foreign site” during each relevant calendar year; (e) produce true copies of all gifts, contracts, and/or restricted or conditional gifts or contracts relevant to each such foreign site during each relevant calendar year; and (f) for each such foreign site, produce all records of, regarding, referencing, or relating to (i) governance, accounting, auditing, and reporting standards, (ii) Section 117 compliance, and (iii) conditions on curriculum and/or academic freedom. The time frame for this request is August 1, 2013 to the present.

2. Please (a) list all gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to or for the substantial benefit of the Paul Tsai China Center at Yale Law School, the Jackson Institute for Global Affairs a/k/a the Yale Jackson School of Global Affairs, and the “Kerry Initiative”; (b) provide the name and address of the foreign source for each such gift, contract, and/or restricted or conditional gift or contract; and (c) produce a true copy thereof. The time frame for this request is August 1, 2013 to the present.
3. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source to the Institution. This includes, but is not limited to, true copies of pledge, donation, contribution, and/or contracts and agreements. The time frame for this request is August 1, 2013 to the present.
4. A list of all gifts, contracts, and/or restricted or conditional gifts or contracts from or with a foreign source that were not contemporaneously reported to the U.S. Department of Education by the Institution between August 1, 2013 and August 1, 2019. 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) explain in a detailed narrative why the Institution failed to report such gift, contract, and/or restricted or conditional gift or contract; and (c) produce a true copy thereof.
5. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from or with: (i) The government of Saudi Arabia, Saudi nationals, and their agents; (ii) the government of People’s Republic of China, the Central Committee of the CPC, Huawei Technologies Co. Ltd., Huawei Technologies USA, Inc., ZTE Corp, Yenching Academy, Yale-NUS College, the National University of Singapore, and their agents; and (iii) 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 agents. The time frame for this request is June 1, 2014, to the present.
6. All records of, 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; and (iii) any university, school, or other education or research entity domiciled in or organized under the laws of China, Qatar, Russia, Saudi Arabia, and/or their agents. The time frame for this request is January 1, 2012 to the present.

7. A list of each program, activity, and/or person at the Institution (*e.g.*, an Islamic law program, a Confucius Institute, a research scientist funded in whole or substantial part by a foreign corporation, a foreign graduate student studying physics under a scholarship or other contractual arrangement with a foreign government, a fellow in a cultural studies program created by endowment or other gift by a foreign national) that is in whole or in substantial part directly funded or supported by and/or employed due to a gift, contract, and/or restricted or conditional gift or contract with or from a foreign source. The relevant foreign source, dates of support or benefit, and amount 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.
8. All records of, regarding, or referencing conditions imposed or influence on any of the Institution's curriculum, programs, or activities by any foreign source of a gift, contract, and/or restricted or conditional gift or contract. The time frame for this request is August 1, 2013 to the present.
9. 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.
10. 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.
11. 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 (b) ensure (i) 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.
12. 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.

13. All records of, regarding, or referencing the Institution's compliance obligations or duties with and/or under 20 U.S.C. §§ 1011f(a), (b), (c), and (e). The time frame for this request is August 1, 2013 to the present.
14. 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 January 1, 2015 to the present.
15. 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.
16. All IRS Form 990s and schedules, including Schedules F and R, for tax years 2014, 2015, 2016, 2017, and 2018.
17. A verified statement by a duly authorized Yale 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 statutorily-defined foreign source gifts, contracts, and/or restricted or conditional gifts or contracts 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 foreign 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 plain and 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 Yale-NUS College, the Yale-China Association, the China-Yale Advanced University Leadership Program, the Yale Asia Development Council, the Yale Center Beijing, and the Paul Mellon Centre in London, England) 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

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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).