

ALERT

Government Scrutiny of Relationships with China Continues with Department of Education Investigations

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WHAT: Two new investigations by the U.S. Department of Education (DOE), one against Harvard University and another against Yale University, demonstrate that federal agencies are extending their clampdown on unreported foreign influence at American universities. Recently, we wrote about criminal charges brought against professors from Harvard University and the University of Kansas for allegedly misleading federal grant administrators about their participation in Chinese talent programs.

Now, in letters sent to Harvard and Yale, DOE's Office of the General Counsel stated that it suspected them of failing to report hundreds of millions of dollars in foreign gifts and contracts. Pursuant to Section 117 of the Higher Education Act of 1965, American colleges and universities that receive federal financial aid must report to the Secretary "contracts with or gifts from the same foreign source that, alone or combined, have a value of \$250,000 or more for a calendar year," and "to make those reports available to the public." As detailed in the letters, Section 117(f) also provides that "whenever it appears an institution has failed to comply with the law," DOE can request that the U.S. Department of Justice (DOJ) initiate an enforcement action and recover the costs associated with compelling compliance.

In its letter to Harvard, DOE stated that it "was aware of credible information" that Harvard lacked the infrastructure and controls required to track and report foreign gifts and contracts, citing to DOJ's announcement of the Lieber arrest and to an open letter published by Harvard's president, Lawrence Bacow, in the wake of

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the Jeffrey Epstein revelations, where Bacow raised concerns with how Harvard “review[s] and vet[s]” donors. Among other documents, DOE requested that Harvard provide records related to any gifts or contracts from or with the governments of China (including associated technology companies Huawei and ZTE Corp.), Qatar, Russia, Saudi Arabia, and Iran.

In the letter sent to Yale, DOE stated its concern that the university’s reporting did not “fully capture” the extent of its foreign connections. DOE noted that the university “had failed to report a single foreign source gift or contract” from 2014 through 2017, even though it also publicly touted its “considerable presence abroad,” claimed “considerable success” establishing “jointly run laboratories with Chinese universities . . . funded by Chinese granting agencies,” and was reported to have “solicited and received directed foreign contributions advancing specific religious and ideological priorities.” DOE’s letter to Yale also referenced Chinese talent programs and, among other documents, requested records related to any gifts or contracts from or with the governments of China (including Huawei and ZTE Corp.), Saudi Arabia, and Qatar.

WHAT DOES IT MEAN FOR INDUSTRY: The announcement of these investigations should be most concerning for other American colleges and universities that receive substantial foreign gifts or contracts. Any such institution should proactively audit its compliance infrastructure and consider whether it has received any foreign gifts or contracts that should be reported to DOE pursuant to Section 117 of the Higher Education Act. Indeed, in its press release announcing the investigations, DOE noted that its “enforcement efforts have triggered the reporting of approximately \$6.5 billion in previously undisclosed foreign money” since July 2019.

More generally, all federal grantees and government contractors should view these investigations as another reminder that the federal government is prioritizing enforcement of the regulatory regimes that require disclosure of financial connections to foreign entities and governments. Further, the fact that both investigations highlight the Chinese talent programs, as well as the fact that DOE’s letter to Harvard specifically referenced Dr. Lieber’s recent arrest, indicates that the U.S. government continues to closely scrutinize how American companies and universities do business with China. Accordingly, now is a good time to review any representations or certifications to the government regarding affiliations with foreign governments and consider whether it is necessary to amend those disclosures proactively.