



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

August 10, 2020

President Joseph M. McShane, S.J.
Fordham University
Office of the President
441 East Fordham Road
Bronx, NY 10458

Via Electronic Mail

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

Dear President McShane:

Section 117 of the Higher Education Act of 1965 (20 U.S.C. § 1011f) requires Fordham University (“Fordham”), to disclose and report statutorily defined gifts, contracts, and/or restricted and conditional gifts or contracts from or with a statutorily defined foreign source(s), to the U.S. Department of Education (“Department”). Reports are publicly available at <https://studentaid.ed.gov/sa/about/data-center/school/foreign-gifts>.

Fordham has an extensive presence abroad, much of which it appears to facilitate through its School of Business’s Global Finance Collaboration Program (“GFCP”). The GFCP identifies approximately 28 partner institutions around the world, including Shanghai University, China’s Southeast University, Wuhan University, Xiamen University, and its longtime association with Peking University in Beijing which Fordham identifies as the “first joint international MBA program in Beijing approved by the Chinese government.” See https://www.fordham.edu/info/25472/doctor_of_professional_studies_program and <https://news.fordham.edu/business-and-economics/building-ties-in-china/>. Fordham also has partnerships with universities in Belgium, Italy, Turkey, France, and India. See <https://bulletin.fordham.edu/gabelli-graduate/international-programs/>. In support of its international presence, Fordham has established the Center for International Policy Studies, the Institute of International Humanitarian Affairs, the Center for Research in International Finance, the Global Healthcare Innovation Management Center, the Center on European Union Law, and the Leitner Center for International Law and Justice.¹

¹ See [Center for International Policy Studies](#), [Institute of International Humanitarian Affairs](#), [Center for Research in International Finance](#), [Global Healthcare Innovation Management Center](#), [Center on European Union Law](#), [Leitner Center for International Law and Justice](#).

Despite Fordham's extensive international presence, a review of Department records reveals that since 1986 (when, pursuant to the reauthorization of the Higher Education Act, Section 117 reporting requirements began) Fordham has disclosed only two qualifying gifts, contracts, and/or restricted and conditional gift(s) or contract(s) with a statutorily defined foreign source, pursuant to the requirements of Section 117, 20 U.S.C. § 1011f(f).² It is the Department's experience that Fordham's extensive international operations are very likely concurrent with substantial foreign source gifts and/or contracts, despite the dearth of disclosures by Fordham. As a result, the Department is concerned that Fordham's reporting may not fully capture all qualifying gifts, contracts, and/or restricted and conditional gifts or contracts from or with all foreign sources.

Section 117(f) provides that whenever it appears an institution has failed to comply with the law, the Secretary of Education may request that 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. To meet the Department's statutory duty to verify compliance prior to any potential referral for enforcement action, the Department has opened an administrative investigation of Fordham and requests that it produce the following within sixty (60) days:

1. A list of all previously undisclosed statutorily defined foreign gifts, contracts, and/or restricted or conditional gifts or contracts from or with statutorily defined foreign sources to or with your Institution. The time frame for this request is January 1, 2010, through the present.
2. For each such foreign source provide: (a) full and complete name(s), address(es), and contact information (e.g. email address and phone number); (b) occupation and/or organizational description (nature of business, place of incorporation and point of contact); (c) true copies of every gift or donation agreement, pledge, contract, and restricted or conditional gift or donation agreement or contract including any modifications thereto, and full descriptions of any verbal or non-written agreements of a material nature regarding the purpose and/or application thereof; and (d) all records relating to agents and/or persons or entities acting on behalf of the foreign source(s). The time frame for this request is January 1, 2010, through the present.
3. All records of, regarding, or referencing gifts, contracts, and/or restricted or conditional gifts or contracts from, between, or with your Institution and (a) the government of the PRC and/or its agencies, departments, agents, employees and instrumentalities (whether domiciled in China, the United States, or elsewhere), (b) the Chinese Communist Party, the Central Committee of the Communist Party of China and/or their agents, employees, and instrumentalities (whether domiciled in China, the United States, or elsewhere), (c) the People's Liberation Army and/or its agents, employees, and instrumentalities (whether domiciled in China, the United States, or elsewhere), and (d) any China-based university or educational entity, and/or their agents, employees, and instrumentalities (whether domiciled in China, the United States, or elsewhere). All records shall include emails, contracts, written

² According to the Department's records, Fordham has disclosed only two reportable transactions (each of which was disclosed to the Department on July 16, 2020).

agreements, promises, and proposed modifications thereto. The time frame for this request is January 1, 2010, through the present.

4. A list of all Fordham personnel (and/or agents), identified by name and official position, responsible for compliance with 20 U.S.C. § 1011f during the period January 1, 2010, through the present.
5. A detailed narrative explaining, and all records of, regarding, or referencing, Fordham's actions taken and/or the institutional controls established to determine and/or verify: (a) whether and how it determines if 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 Fordham 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 January 1, 2010, through the present.
6. All IRS Form 990s (and schedules, including Schedules F and R) and IRS Form 3520s for tax years 2010-2020.

Your production should utilize the following procedures:

- Responsive records should be sequentially numerically indexed (a.k.a. Bates stamping) and reference should be made to the request to which the records are responsive (e.g., Item 1).
- Searches for records in electronic form should include searches of all relevant mobile devices, hard drives, network drives, offline electronic folders, thumb drives, removable drives, records stored in the cloud, and archive files, including, but not limited to, backup tapes. Do not time stamp or modify the content, the create date, or the last date modified of any record and do not scrub any metadata (other than to numerically index, as described above). Electronic records should be produced in native format. For e-mails, please place responses in one .pst file per employee. For .pdf files, please provide searchable file format and not image file format.
- All email searches should be conducted by the agency's information technology department, or its equivalent, and not by the individuals whose records are being searched. Please provide the name and contact information of the individual(s) who conducted the search, as well as an explanation of how the search was conducted.
- To the extent practicable, please produce all records in a searchable electronic format and not hardcopies. Should you have any questions about the method or format of production please contact the undersigned to coordinate.

As used in this Notice of Investigation and Information Request:

“Agencies” include any organizations or entities providing services or performing functions or tasks on behalf of another organization, entity, or individual.

“Agent” has its plain and ordinary meaning, indicating that a person, organization, or entity, is acting on behalf of another person, organization, or entity, whether that agency is disclosed or undisclosed.

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

“Faculty” refers to all teaching positions at the university (including professors of all ranks, teachers, lecturers, and/or researchers whether in a classroom, laboratory, or other educational environment – whether physically or electronically present).

“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 for the purposes of this request includes Fordham University, its employees, tenured faculty, non-tenured faculty and lecturers, researchers, fellows, graduate students, and all affiliated entities operating substantially under its control or for its benefit (*e.g.*, centers, schools, boards, foundations, research facilities, laboratories, branches, partnerships, or non-profit organizations).

“Record” means all recorded information, regardless of form or characteristics, made or received, 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).

“Staff” refers to all members of the university involved in administration of the university and its obligations and commitments (including deans of all ranks, administration officials, and support personnel).

If Fordham asserts attorney-client or attorney-work product privilege for a given record, then it must prepare and submit a privilege log expressly identifying each such record and describing it so the Department may assess the claim’s validity. Please note that no other privileges apply here. Your record and data preservation obligations are outlined at Exhibit A.

Joseph M. McShane, S.J., President
Fordham University
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The Department recognizes that the ongoing impact of the Chinese coronavirus pandemic on your Institution's operations may be significant. Nonetheless, your timely response to this Record Request is essential.

This investigation is being directed by the Department's Office of General Counsel with support from the Federal Student Aid Office. To arrange transmission of the requested information, or should you have any other questions, please contact:

Paul R. Moore
Chief Investigative Counsel
Office of the General Counsel
U.S. Department of Education
400 Maryland Ave., S.W., Room 6E304
Washington, D.C. 20202
Paul.Moore@ed.gov

Sincerely yours,

**Reed
Rubinstein**

 Digitally signed by Reed
Rubinstein
Date: 2020.08.10 11:46:08
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Reed D. Rubinstein
Principal Deputy General Counsel delegated
the Authorities and Duties of the General Counsel

Enclosure (Exhibit A)

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 accompanying 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).