

# Management Alert



## Higher Education Institutions are Beginning to Get an Education in the FCPA

By Andrew S. Boutros and Craig B. Simonsen

**Seyfarth Synopsis:** No differently than companies doing business overseas—especially in high-risk markets—American colleges and universities who do business overseas face real risks of violating the Foreign Corrupt Practices Act and must be mindful of the enforcement landscape that applies to these criminal violations. Robust and effective compliance programs remain the antidote to the corruption scourge.

As reported in its recent SEC filing, Laureate Education, Inc., is under scrutiny for potential Foreign Corrupt Practices Act (FCPA) violations after it disclosed FCPA related conduct to the statute's twin enforcers, the U.S. Department of Justice and the Securities and Exchange Commission. Seyfarth Shaw's White Collar, Internal Investigations, and False Claims Team blogged previously about "[FCPA Compliance-Recent Department of Justice Initiatives](#)," and how the DOJ had initiated a one-year pilot program to encourage entities to self-report violations of the FCPA and cooperate fully with federal prosecutors.

Set to expire in April 2017, any entity—whether public or private, for-profit or not-for-profit, a company or some other business organization, such as a higher education institution—contemplating self-reporting an FCPA violation to the DOJ needs to carefully consider participating in the pilot program. As part of that analysis, an organization naturally will need to weigh the pros and cons of voluntary self-disclosure, as well as the government's expectation of full institutional cooperation, including complying with Department policies regarding the decision to prosecute business organizations (as reflected in [United States Attorneys' Manual](#)) as well as the still fairly recent and high-profile [Yates Memorandum](#), which addresses individual accountability for corporate wrongdoing.

Here, we note an [FCPA Professor blog](#) about a [Wall Street Journal article](#) titled "American Colleges Pay Agents to Woo Foreigners Despite Fraud Risk." These pieces discuss the applicability of the FCPA to higher education institutions. Specifically, the blog notes that in recent years, several U.S. higher education institutions have opened foreign campuses (either directly or through affiliates) in places such as China, India, and the Middle East—all regarded as high-risk regions for public and commercial corruption. To open up campuses and do business in these parts of the world, the entities required relevant government approvals, licenses, permits, and certifications—no differently than a company needing government approvals to establish a manufacturing presence in a foreign country. These government approvals require colleges and universities to interface with foreign government officials, which in turn increases the risk that higher education institutions will fold to pressures of commission or kickback requests, or hidden payments for expediency.

Opening foreign campuses is not the only area of FCPA risk that colleges and universities face. According to the WSJ article, American colleges and universities also face corruption risks when they interface with overseas third-party agents, again, no

differently than any other traditional business organization. Specifically, according to the *WSJ*:

Like many U.S. colleges, Wichita State University wants more foreign students but isn't a brand name abroad. So the school . . . , in late 2013[,] started paying agents to recruit in places like China and India. The independent agents assemble candidates' documents and urge them to apply to the Kansas school, which pays the agents \$1,000 to \$1,600 per enrolled student. Overseas applications "shot up precipitously," says Vince Altum, Wichita State's executive director for international education. But there is a down side: Wichita State rejected several Chinese applications this year from an agency it suspected of falsifying transcripts, Mr. Altum says, adding that it terminates ties with agencies found to violate its code of conduct by faking documents. Paying agents a per-student commission is illegal under U.S. law when recruiting students eligible for federal aid—that is, most domestic applicants. But paying commissioned agents isn't illegal when recruiting foreigners who can't get federal aid. So more schools like Wichita State are relying on such agents, saying the intermediaries are the most practical way to woo overseas youths without the cost of sending staff around the world. No one officially counts how many U.S. campuses pay such agents, most of whom operate abroad, but experts estimate at least a quarter do so.

Although few higher education institutions are for-profit companies, Laureate Education, Inc., is, and earlier this month the company made an eye-catching disclosure in an [SEC Form S-1 filing](#) about an \$18 million (US) "charitable donation" in Turkey.

The disclosure states:

We are conducting an internal investigation of one of our network institutions for violations of the Company's policies, and possible violations of the U.S. Foreign Corrupt Practices Act and other applicable laws....

As previously disclosed, during the fourth quarter of 2014, we recorded an operating expense of \$18.0 million (the value of 40.0 million Turkish Liras at the date of donation) for a donation by our network institution in Turkey to a charitable foundation. We believed the donation was encouraged by the Turkish government to further a public project supported by the government and expected that it would enhance the position and ongoing operations of our institution in Turkey. The Company has learned that the charitable foundation which received the donation disbursed the funds at the direction of a former senior executive at our network institution in Turkey and other external individuals to a third party without our knowledge or approval.

In June 2016, the Audit Committee of the Board of Directors initiated an internal investigation into this matter with the assistance of external counsel. The investigation concerns the facts surrounding the donation, violations of the Company's policies, and possible violations of the FCPA and other applicable laws in what appears to be a fraud perpetrated by the former senior executive at our network institution in Turkey and other external individuals. This includes an investigation to determine if the diversion was part of a scheme to misappropriate the funds and whether any portion of the funds was paid to government officials. As of the date of this prospectus, we have not identified that any other officers or employees outside of Turkey were involved in the diversion of the intended donation....

We have been advised by Turkish counsel that, under Turkish law, a Foundation University may not make payments that cause a decrease in the university's wealth or do not otherwise benefit the university. Given the uncertainty of recovery of the diverted donation and to mitigate any potential regulatory issues in Turkey relating to the donation, certain Laureate-owned entities that are members of the foundation that controls our network institution in Turkey have contributed an amount of approximately \$13.0 million (the value of 40.0 million Turkish Liras on November 4, 2016, the date of contribution) to our network institution in Turkey to reimburse it for the donation.

As a result of the investigation, which is ongoing, we took steps to remove the former senior executive at our network institution in Turkey. Because of the complex organizational structure in Turkey, this took

approximately one month and during that period our access to certain aspects of the business including the financial and other records of the university was interrupted. The former senior executive is now no longer affiliated with our network institution and we again have access to the financial and other records of the university. In September 2016, we voluntarily disclosed the investigation to the [DOJ] and the SEC. The Company intends to fully cooperate with these agencies and any other applicable authorities in any investigation that may be conducted in this matter by them. The Company has internal controls and compliance policies and procedures that are designed to prevent misconduct of this nature and support compliance with laws and best practices throughout its global operations.... If we are found to have violated the FCPA or other laws governing the conduct of our operations, we may be subject to criminal and civil penalties and other remedial measures, which could materially adversely affect our business, financial condition, results of operations and liquidity.

Long gone are the days where the FCPA was viewed as practically applying only to large multinational companies with significant overseas business activity. As the FCPA matures—and the FCPA bar and government enforcers continues to evolve alongside with it—a growing number of entities can expect to see the FCPA applied more widely to “non-traditional” organizations otherwise subject to the FCPA’s reach. In the FCPA world, proactive compliance, monitoring, and risk-appreciation applies with equal vigor to educators, administrators, and trustees as it does to C-suite executives and corporate boards. The old adage that “an ounce of prevention is worth a pound of cure,” should guide American colleges and educators in the same way it guides American businesses. As higher education institutions teach and train our next generation of leaders, they, themselves, must lead by example in this ever-expanding fight against public and commercial corruption.

Seyfarth Shaw is a full-service firm with leading FCPA, white collar, and higher education practitioners. Those with questions about any of these issues or topics are encouraged to reach out to the authors, your Seyfarth attorney, or any member of the Seyfarth Shaw’s [White Collar, Internal Investigations, and False Claims Team](#).

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