



U.S. Department of Justice
United States Attorney
Southern District of Ohio

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Dayton, Ohio 45402

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November 16, 2018

Wright State University
3640 Colonel Glenn Hwy.
Dayton, Ohio 45435

Re: Non-Prosecution Agreement – Wright State University

Dear Wright State University President, Chair of the Board of Trustees, and General Counsel:

On the understandings specified below, to resolve and settle this matter, the United States Attorney's Office for the Southern District of Ohio ("this Office") will not bring any criminal action against Wright State University, or any of its schools, colleges, departments or research centers ("WSU"), for any crimes related to the conspiracy to commit visa fraud from at least December 2010 through 2015. These crimes include, but are not limited to, offenses arising under Title 18, United States Code, Section 1546 "Fraud and Misuse of Visas, Permits, and Other Documents," Title 18, United States Code, Section 1001 "Statements or Entries Generally," and Title 18, United States Code, Section 1621 "Perjury Generally," Title 18, United States Code, Section 371 "Conspiracy to Commit Offense or Defraud United States," and Title 18, United States Code, Section 1956 "Laundering of Monetary Instruments." This Non-Prosecution Agreement ("NPA" or "Agreement") applies only to conduct that occurred prior to the date of its execution and expressly does not cover any criminal tax violations (of which this Office does not make any agreement).

This Agreement does not provide any protection against prosecution for any crimes except as set forth above and as described in the attached Agreed Statement of Facts, and applies only to WSU. This Agreement does not apply to any other entities (other than those identified above as being part of WSU) or individuals. WSU expressly understands that the protections provided to it by this Agreement shall not apply to any businesses or agencies that are merely affiliated with WSU. Additionally, this Agreement does not provide any protection against criminal prosecution of any present or former trustee, officer, employee, agent, or consultant of WSU for any violations committed by them.

It is understood that WSU: (a) shall truthfully and completely disclose all information with respect to the activities of WSU, including its present and former officers and employees concerning all matter about which this Office inquires of it; (b) shall cooperate fully with this Office and any other law enforcement agency associated with this Office; (c) shall, at this Office's request, use its best efforts promptly to secure the attendance and truthful statements or testimony of any officer, agent, or employee at any meeting or interview, before the grand jury, or at any trial

or any court proceeding; (d) shall use its best efforts promptly to provide this Office, upon request, any document, record, or other tangible evidence to matters or conduct about which this Office or any designated law enforcement agency inquires; and (e) shall bring to this Office's attention all criminal conduct by or criminal investigations of WSU or its respective senior managerial employees that comes to the attention of its Board of Trustees or senior management, as well as any administrative proceeding or civil action brought by any governmental authority that alleges immigration violations by WSU.

It is understood that WSU accepts and acknowledges responsibility for the acts as set forth in Exhibit A, which is incorporated herein by reference. WSU further agrees that it will not through its present or future Board of Trustees, attorneys, officers, or senior management employees, who are employees that hold a position of Vice President or higher, make any public statements contradicting any of the facts as set forth in Exhibit A. Any such contradictory public statement by WSU, its present or future Board of Trustees, attorneys, officers, or senior management employees shall constitute a breach of this Agreement, and WSU would be subject to prosecution by this Office pursuant to the terms of this Agreement. The decision whether any public statement by a member of WSU's Board of Trustees, its attorneys, officers, or senior management employees contradicting a fact contained in Exhibit A will be imputed to WSU for the purpose of determining whether WSU has breached this Agreement shall be at the sole discretion of this Office. Upon this Office's determination that such a contradictory statement has been made by WSU, this Office shall notify WSU and its counsel. WSU may avoid a breach of this Agreement by publicly repudiating such statement within forty-eight hours after notification by this Office. This paragraph is not intended to apply to any statement made by an individual in the course of any criminal, regulatory, or civil case initiated by the United States against such individual unless the individual is speaking on behalf of WSU.

WSU accepts and acknowledges responsibility for the acts of its current and former employees who were involved in the conduct set forth in the Agreed Statement of Facts in Exhibit A. WSU further agrees that the factual statements set forth in the Agreed Statement of Facts are accurate. WSU condemns and does not condone criminal conduct, including the improper conduct set forth in the Agreed Statement of Facts, and has undertaken and completed substantial changes throughout WSU to prevent such conduct from occurring in the future, including, but not limited to the remediation measures set forth below.

It is understood that WSU: (a) shall continue to operate the Office of University Compliance and guarantee the Director of the Office of University Compliance has authority to directly communicate any and all visa-related compliance issues directly to the University President, the Board of Trustees, or the University General Counsel. In addition, the Director of Compliance must report, annually and in-person, to the University President and Board of Trustees the status of all H-1B visa-related compliance matters at the University [such in-person report may be completed with the assistance of the General Counsel or outside counsel], (b) shall continue to comply with WSU's visa application procedures, implemented in 2016, and shall continue to retain and consult with outside counsel regarding H-1B visa applications, (c) shall provide formal H-1B visa-related training to all WSU employees involved with applying for H-1B visa applications and all employees who supervise University H-1B visa employees, (d) shall terminate and/or discipline all individuals responsible for failing to comply with WSU's adopted H-1B visa application procedures, and (e) shall have outside counsel audit, on an annual basis, all University sponsored H-1B visa applications for a period of two years, which said period shall begin upon the execution

of this Agreement; outside counsel shall report their findings of each audit directly to the University President, Board of Trustees, Director of Compliance, and General Counsel.

This Agreement and WSU's obligations hereunder, shall remain in effect as follows: (a) for a term of twenty-four months from the date this Agreement is executed or (b) the date upon which the full monetary payment is made, whichever is later.

It is understood that WSU agrees to make a monetary payment of \$1,000,000 to the United States to resolve the criminal investigation. The monetary payment shall be paid in three equal installments via certified checks made payable to the United States Department of Treasury. The first installment payment shall be paid within 60 days of executing this Agreement. The second installment payment shall be paid within twelve months of the execution of this Agreement with the third installment payment paid no later than twelve months after the second installment payment. WSU stipulates that the tendered funds are a fair and reasonable settlement given the conduct outlined in the attached Agreed Statement of Facts.

It is understood that should this Office, in its sole discretion, determine that: (1) WSU has committed any crimes during the term of this Agreement, (2) WSU or any of its representatives have given false, incomplete, or misleading testimony or information, or (3) WSU has otherwise violated any provision of this Agreement, WSU will be deemed to be in breach of this Agreement. WSU shall thereafter be subject to prosecution for any federal violation of which this Office has knowledge, including perjury and obstruction of justice. Furthermore, WSU waives any potential defense based on the statute of limitations for the time period starting at the commencement of the agreement and continuing for the twelve-month period after the date this Office notifies WSU of a breach of this Agreement. This provision is true even if the statute of limitations would have otherwise expired during such time.

It is understood that if this Office concludes that WSU has breached this Agreement, then: (a) all statements made by WSU representatives to this Office or other designated law enforcement agents, and any testimony given by WSU representatives before a grand jury or other tribunal, whether prior to or subsequent to the signing of this Agreement, and any leads from such statement or testimony, shall be admissible as evidence in any criminal proceeding brought against WSU; (b) WSU shall assert no claim under the United States constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed; and (c) WSU waives any claim or defense that an indictment filed as a result of breach of this agreement is barred by 18 U.S.C. § 3282. It is the intent of this Agreement to waive all rights in the foregoing respects.

Nothing in this Agreement shall be construed as a waiver of any attorney-client or work product privileges.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office. This Office will, however, bring the cooperation of WSU to the attention of other prosecuting and other investigative officers, including but not limited to Department of Defense, Department of the Air Force, Department of Labor, Department of Homeland Security, Department of Health and Human Services, National Security Agency, United States Secret Service and National Institutes of Health, as requested by WSU and to the extent any federal, state or local prosecuting authority submits a request for information to WSU as a result of this Agreement or the federal investigation.

It is further understood that WSU, this Office, and any other law enforcement agency associated with this Office may disclose this Agreement to the public.

With respect to this matter, from the date of the signing of this Agreement forward, the Agreement supersedes all prior, if any, understandings, promises, and/or conditions between this Office and WSU. No additional promises, agreements, and conditions have been entered into other than those set forth in this letter and none will be entered into unless in writing and signed by all parties.

Sincerely,


Benjamin C. Glassman
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF OHIO

AGREED AND CONSENTED TO


Cheryl B. Schrader
President
Wright State University

11/16/18
Date


Douglas A. Fecher
Chair – Board of Trustees
Wright State University

11/16/18
Date


Larry Y. Chan
Vice President for Legal Affairs/General Counsel
Secretary to the Board of Trustees
Wright State University

11/16/18
Date

APPROVED:


D. Michael Crites
Dinsmore & Shohl LLP
Attorney for Wright State University

11/16/18
Date

EXHIBIT A

Agreed Statement of Facts

Wright State University ("WSU") is a public educational institution of higher learning located in Fairborn, Ohio. It has nearly 16,000 students enrolled in undergraduate, graduate, doctoral, and professional degree programs through eight colleges and three schools. WSU regularly awards degrees in these programs to its students. For purposes of 20 U.S.C. § 1001(a) and 8 CFR 214(g)(5)(A), WSU is an Institution of Higher Education.

The H-1B visa program allows companies in the United States to temporarily employ foreign workers in occupations that require the theoretical and practical application of a body of highly specialized knowledge and a bachelor's degree or higher in the specific specialty, or its equivalent. H-1B specialty occupations may include fields such as science, engineering and information technology. By congressional mandate, the H-1B visa is limited per year to a certain number. 8 U.S.C. § 1184. By virtue of WSU's status as an Institution of Higher Education, WSU was not subject to the H-1B visa numerical limitation during all relevant times. 8 CFR 214(g)(1)(A) & 214(g)(5)(A). Because WSU was exempt from the numerical limitation, also known as "cap exempt," for H-1B visa applications, WSU was permitted to obtain H-1B visas for qualified individuals who would be employed by WSU, unlike other individuals or companies, so long as WSU complied with the other provisions of the Immigration and Nationality Act.

Between 2010 and 2013, WSU entered into several sponsored research agreements ("Contracts") with Webyoga, Inc. ("Webyoga"), a privately held company based in Dayton, Ohio. The Contracts provided that WSU would perform computer software development and deployment for Webyoga, including a software program called SpiderXchange that was described as a business-to-business labor work force exchange that aided companies in identifying and managing labor contractors and staffing vendors. Pursuant to the Contracts, WSU would employ software engineers, obtain H-1B visas for the employees (as necessary), and pay their respective salary and benefits as employees of WSU. The Contracts provided that WSU would invoice Webyoga for the fees associated with the employees' visas and, on a quarterly basis, for payment of the visa employees' salaries, benefits and WSU's general administrative costs, which is known as a "wrap rate." Collectively, the salaries, benefits and the wrap rate are referred to as a "fully burdened" rate. Although, the wrap rate varied per contract, it was typically between 15 or 26 percent.

WSU, through certain senior management employees and entities, employed 24 foreign employees, who were selected and approved by Webyoga. WSU had used its "cap exempt" status to apply for and obtain the H-1B visas for these employees to work for WSU on the Webyoga contracts. The visa applications for the 24 H-1B employees were submitted by WSU under penalty of perjury to the United States Citizenship and Immigration Services ("USCIS") and the Department of Labor ("DOL"). As part of the H-1B visa applications, WSU submitted a signed employment offer letter from WSU indicating the H-1B visa employee would be working as a software developer for WSU and under the supervision of a WSU employee. WSU did not disclose in the H-1B visa applications that it knew the employees would be working for Webyoga or WSU's contractual agreement with Webyoga. WSU also provided a statement of proposed duties as part of the employees' I-129 Petition for a Nonimmigrant Worker to USCIS, which included the implementation of SpiderXchange. On the I-129, WSU further specified the H-1B visa employees would not be working off-site and certified that it would "maintain a valid employer-employee relationship" with the H-1B visa employees at all times. On the Labor Condition Application

Form 9035 & 9035E (LCA) filed with the Department of Labor, WSU stated the H-1B visa employees would be physically working on WSU's campus in Fairborn, Ohio. USCIS granted the 24 H-1B visas sought by WSU based on the applications, as submitted.

From 2010 through 2013, Webyoga entered into labor leasing/staffing contracts with different companies and government entities across the United States. Webyoga utilized the WSU H-1B visa employees to fulfill its IT related leasing/staffing contracts. Rather than developing or implementing the software for SpiderXchange or other programs called for in the Contracts, the 24 H-1B visa employees worked as consultants on behalf of Webyoga in various cities throughout the United States, including Atlanta, Georgia, Orlando, Florida and New York, New York.

As set forth in the Contracts, WSU paid the salaries and benefits of the H-1B visa employees and invoiced Webyoga the fully-burdened rate provided for in the Contracts. Over the course of the Contracts, WSU invoiced and received from Webyoga over \$1.8 million dollars based on the fully-burdened rate associated with the employment of the 24 H-1B visa employees.

Between 2010 and 2015, WSU also entered into similar arrangements with other companies wherein it would apply for H-1B visas for individuals, knowing the individuals were going to work on a routine basis for another company that would reimburse WSU at a fully burdened rate (salaries, benefits, and the wrap rate) to employ the H-1B visa workers. WSU acknowledges that the placement of WSU H-1B visa employees with other companies and in locations other than Fairborn, Ohio violated the terms of their H-1B visa applications as the employees would not be working for WSU. As a result, the companies who were subject to the numerical H-1B visa limitation were able to utilize H-1B employees through their contracts with WSU. Additionally, by virtue of their employment as "university employees," the H-1B visa employees did not receive the appropriate prevailing wage for their city and place of employment.

Upon being notified by this Office of the federal investigation, WSU's Board of Trustees immediately addressed the H-1B visa employment issues. WSU removed the faculty and employees responsible for the contracts and completed substantial remedial measures. This included restructuring key departments such as the General Counsel's Office and the Department of Compliance in order to insure all existing and future H-1B employee applications comply with all federal laws and regulations.