

Congress of the United States
Washington, DC 20515

April 8, 2025

Alan Garber, Ph.D
President
Office of the President
Harvard University
Massachusetts Hall
Cambridge, MA 02138

Dear Dr. Garber:

The U.S. House and Senate Committees on the Judiciary are conducting oversight of the adequacy and enforcement of U.S. antitrust laws. We are particularly concerned that Ivy League member institutions appear to collectively raise tuition prices while engaging in price discrimination by offering selective financial aid packages to maximize profit.¹ These institutions establish the industry standard for tuition pricing, creating an umbrella effect for all colleges and universities to justify higher tuition costs than they could otherwise charge in a competitive market.² By apparently engaging in anticompetitive pricing practices, Harvard University may be acting inconsistent with U.S. antitrust laws, and we appreciate your cooperation in our examination of whether legislative reforms are necessary to address this conduct.

Section 1 of the Sherman Antitrust Act makes certain agreements among competitors illegal.³ Agreements that limit competition on price, output, or quality of products and services can be illegal.⁴ This is true regardless of “whether the agreement is carried out at all.”⁵ New technologies, such as the use of a shared algorithm or software that uses competitors’ nonpublic data to coordinate decision making, can facilitate these potentially illegal agreements.⁶

¹ See Robert A. Lawson & Ann Zerkle, *Price Discrimination in College Tuition: An Empirical Case Study*, 5 J. ECON. & FIN. EDUC. 1, 1–2 (2006); see also DANIEL FRANCIS & CHRISTOPHER JON SPRIGMAN, ANTITRUST PRINCIPLES, CASES, AND MATERIALS 61 (2d ed., 2024) (“First-degree price discrimination is individually personalized pricing: the supplier knows the identity of each purchaser and sets an individualized price for everyone, which is higher for more inelastic purchasers.”).

² See PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION § 347 (5th ed. 2021).

³ See 15 U.S.C. § 1.

⁴ *Nat’l Soc’y of Pro. Eng’rs v. United States*, 435 U.S. 679, 692 (1978); *Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 109 (1984).

⁵ Brief for the United States as Amicus Curiae in Support of Plaintiffs-Appellants at 25, *Gibson v. Cendyn Grp.*, No. 24-3576 (9th Cir. Oct. 24, 2024).

⁶ *Id.* at 22, 24; see also *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 656 (7th Cir. 2002).

Coordinating with noncompetitor third parties to facilitate collusion can also be illegal under the antitrust laws.⁷

In addition to collusion, federal antitrust law makes certain actions illegal even absent the existence of market power. For example, it can be illegal to lock consumers into one market and then force the purchase of related goods and services in a secondary market.⁸ It is also *per se* illegal for certain members of boards of directors to sit on the boards of competitors.⁹ Federal antitrust law also states that it can be illegal to price discriminate, especially when information asymmetries enable businesses to charge the highest price the consumer could afford to pay.¹⁰

Elite higher education institutions have previously engaged in collusive pricing practices. In 1989, amid skyrocketing tuition prices, the Department of Justice (DOJ) launched a price fixing investigation into the eight Ivy League member institutions and the Massachusetts Institute of Technology, and subsequently filed a lawsuit against them in 1991.¹¹ The DOJ alleged that these institutions violated the Sherman Act by collectively determining the maximum price each admitted student could afford to pay, which denied students “the right to compare prices and discounts among schools” and eliminated competition in financial aid awards.¹²

After the DOJ lawsuit, Congress chose to carve out these elite institutions by enacting an antitrust exemption in 1994.¹³ The exemption allowed higher education institutions to lawfully collaborate on price fixing formulas.¹⁴ In effect, these institutions could legally eliminate competition that drove the price down for students to attend college as long as they did not consider an applicant’s financial need in their admissions decisions.¹⁵ According to one lawsuit filed in 2022, this exemption was not enough for some colleges and universities.¹⁶ The plaintiffs alleged that certain colleges and universities colluded to fix prices and did so in a way that considered a student’s ability to pay.¹⁷ As one college administrator wrote in complaining about being unable to find enough qualified students with well-off parents to pay inflated prices,

⁷ See, e.g., *Toys “R” Us, Inc. v. FTC*, 221 F.3d 928, 936 (7th Cir. 2000).

⁸ *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 461–62 (1992).

⁹ See 15 U.S.C. § 19.

¹⁰ See *id.* § 13(a).

¹¹ See Brent Bundick & Emily Pollard, *The Rise and Fall of College Tuition Inflation*, ECON. REV., Feb. 2019, at 57, <https://www.kansascityfed.org/documents/461/2019-The%20Rise%20and%20Fall%20of%20College%20Tuition%20Inflation.pdf>; see also *United States v. Brown Univ.*, 5 F.3d 658, 661 (3d Cir. 1993).

¹² Press Release, Dep’t of Just., Consent Decree Settles Charge of Conspiracy to Restrain Price Competition on Financial Aid Against Major Universities 2 (May 22, 1991); see also *Brown Univ.*, 5 F.3d at 661.

¹³ See Improving America’s Schools Act of 1994 § 568, Pub. L. No. 103-382 (1994).

¹⁴ See *id.*; Need-Based Educational Aid Antitrust Protection Act of 1997, Pub. L. No. 105-43 (1997); Need-Based Educational Aid Act of 2001, Pub. L. No. 107-72 (2001); Need-Based Educational Aid Act of 2008, Pub. L. No. 110-327 (2008); Need-Based Educational Aid Act of 2015, Pub. L. No. 114-44, 129 Stat. 472 (2015).

¹⁵ See Improving America’s Schools Act of 1994 § 568, Pub. L. No. 103-382 (1994).

¹⁶ See *Carbone v. Brown Univ.*, 621 F. Supp. 3d 878, 885–87 (N.D. Ill. 2022).

¹⁷ See *id.*; Susan Svrluga & Danielle Douglas-Gabriel, *Students Overpaid Elite Colleges \$685 Million, ‘Price-fixing’ Suit Says*, WASH. POST (Dec. 17, 2024), https://www.washingtonpost.com/education/2024/12/17/georgetown-elite-colleges-financial-aid-price-fixing-lawsuit/?_pml=1; see also S. 1482, 114th Cong. § 2(2) (2015) (extending the statutory exemption to expire in 2022); 15 U.S.C. § 1 note.

“[s]ure hope the wealthy next year raise a few more smart kids!”¹⁸ In 2022, after nearly 30 years of collusion, Congress allowed the exemption to expire.¹⁹

The House and Senate Committees are concerned that the Ivy League member institutions’ coordinated practices and alleged collusion violate the Sherman Act and that the institutions continue to benefit from their prior collusion, despite no longer having an antitrust exemption.²⁰ The structure and operation of the higher education market strongly suggests the market is not functioning properly and is subject to widespread violations of antitrust laws. For example:

- Despite consumer demand for college drastically increasing and massive endowments that grow yearly, elite institutions continue to limit output and drive prices higher.²¹
- The Council of Ivy League Presidents holds meetings to standardize the admissions process among Ivy League member institutions, which can have the effect of setting standards for the rest of the higher education market.²²
- The College Board, a nonprofit membership organization that provides higher education services, allegedly facilitated collusion among universities to reduce financial aid available to students, according to one ongoing lawsuit.²³
- The Common Application, a nonprofit membership organization that provides standard college application services to more than 1,000 higher education institutions, allegedly facilitated collusion among universities to charge a higher application fee than they otherwise could in a competitive market, according to one lawsuit.²⁴
- *U.S. News and World Report*’s college rankings provide a mechanism for elite colleges and universities to influence standards that drive output down and prices up.²⁵

¹⁸ Plaintiffs’ Memorandum of Law in Support of Their Motion for Class Certification, *Corzo v. Brown*, No. 1:22-cv-00125 (N.D. Ill. Dec. 19, 2024).

¹⁹ S. 1482, 114th Cong. § 2(2) (2015) (extending the statutory exemption to expire in 2022); 15 U.S.C. § 1 note.

²⁰ See 15 U.S.C. § 1.

²¹ See Emily Brehe-Gunter, *1995 vs. 2020: How College Admissions Has Changed over the Past 25 Years*, KD COLL. PREP (June 26, 2020), <https://kdcollegeprep.com/how-college-admissions-changed-last-25-years/>; *Ivy League Acceptance Rates in 2025: Why They Are Low and How to Approach College Applications*, INSPIRIT AI, <https://www.inspiritai.com/blogs/ai-blog/ivy-league-acceptance-rates-in-2025-why-they-are-low-and-how-to-approach-college-applications> (last visited Mar. 14, 2025).

²² See *Ivy Council*, COLUM. UNIV., https://www.columbia.edu/cu/ivc/info_main.html (last visited Mar. 14, 2025).

²³ Class Action Complaint ¶¶ 118–22, *Hansen v. Nw. Univ.*, No. 1:24-cv-09667 (N.D. Ill. Oct. 7, 2024).

²⁴ First Amended Complaint ¶ 46, *Collegenet, Inc. v. The Common Application, Inc.*, 355 F. Supp. 3d 926 (D. Or. 2018) (No. 14-771).

²⁵ By heavily weighing criteria such as “student selectivity,” “class-size index,” and “financial resources per student,” *U.S. News* has long incentivized elite colleges to increase revenue by driving up tuition costs and minimize enrollment to create “a system-wide artificial scarcity of elite college seats” rather than investing in “[q]uality of instruction.” See SAHAJ SHARDA, *THE COLLEGE CARTEL* 147 (2023) (calculating “that at least 26 percent of the

- The widespread use of enrollment management software (EMS) and nonpublic algorithms for admissions and financial aid by colleges and universities indicates that these institutions have the ability to engage in algorithmic collusion.²⁶
- Institutions' use of binding early decision programs may eliminate students' ability to receive and compare competing financial aid offers.²⁷
- Directors or trustees concurrently serving on the boards of multiple higher education institutions or other organizations such as the College Board or *U.S. News* create conflicts of interest.²⁸
- Institutions requiring students to purchase on-campus housing and meal-plan packages in addition to course tuition after they have secured students' enrollment for the year undermines consumer choice and restricts competition in secondary markets.²⁹
- Lack of clarity regarding how higher education institutions calculate and allocate the funding for indirect costs in federally funded research projects suggest a lack of competition for public funding among colleges and universities.³⁰

We are examining the adequacy of existing antitrust laws as they relate to institutions of higher education. Accordingly, to advance the Committees' oversight, please produce the following documents and information for the period January 1, 2019, to the present:

weighting of these influential rankings currently incentivizes low enrollment"); *id.* at 153–54 (describing a 2021 economic model “which found that the only way to explain the bafflingly high rejectivity of elite colleges is by adding prestige consideration into their economic model”); *see also* James Monks & Ronald G. Ehrenberg, *The Impact of U.S. News & World Report College Rankings on Admissions Outcomes and Pricing Policies at Selective Private Institutions* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 7227, 1999), https://www.nber.org/system/files/working_papers/w7227/w7227.pdf; SHARDA, at 149–151 (identifying the “[h]ub-and-[s]poke [s]tructure of The College Cartel” with *U.S. News* as the “hub” and the elite higher education institutions as the “spokes”); *see also*, e.g., Jack Stripling, *Yale Sparked a U.S. News Rankings Revolt. Here's What Happened Next.*, WASH. POST (Dec. 4, 2023), <https://www.washingtonpost.com/education/2023/12/04/us-news-law-school-revolt-yale/>.

²⁶ *See* Alex Engler, *Enrollment Algorithms Are Contributing to the Crises of Higher Education*, BROOKINGS INST. (Sept. 14, 2021), <https://www.brookings.edu/articles/enrollment-algorithms-are-contributing-to-the-crises-of-higher-education/>; Lilah Burke, *Why Colleges Are Using Algorithms to Determine Financial Aid Levels* (Sept. 5, 2023), HIGHER ED DIVE, <https://www.highereddive.com/news/colleges-enrollment-algorithms-aid-students/692601/>; *see also*, e.g., Complaint, *United States v. RealPage* ¶¶ 15–17, 130–31, 225–28, No. 1:24-cv-00710 (M.D.N.C. Aug. 23, 2024).

²⁷ *See* Rebecca Safier, *Early Decision Schools: Complete List of ED Colleges*, PREPSCHOLAR, <https://blog.prepscholar.com/early-decision-schools-and-colleges-complete-list> (last visited Mar. 14, 2025).

²⁸ *See* 15 U.S.C. § 19.

²⁹ *See* Tara Garcia Mathewson, *A Tough-to-swallow Reason College Keeps Costing More: The Price of Meal Plans*, HECHINGER REP. (Jan. 18, 2017), <https://hechingerreport.org/tough-swallow-reason-college-keeps-costing-price-meal-plans/>.

³⁰ *See* Jay P. Greene & John Schoof, *Indirect Costs: How Taxpayers Subsidize University Nonsense* 3–4 (Heritage Found., Backgrounder No. 3681, 2022), <https://www.heritage.org/sites/default/files/2022-01/BG3681.pdf> (suggesting that high indirect cost rates show lack of competition).

1. All documents and communications between or among employees or representatives of your institution, or between or among any employee or representative of your institution and any employee or representative of any higher education institution, referring or relating to the Council of Ivy League Presidents' Committee on Financial Aid and Committee on Admissions;
2. All documents and communications between or among employees or representatives of your institution, or between or among any employee or representative of your institution and any employee or representative of any higher education institution, referring or relating to the calculation or creation of tuition rates, legacy admissions, admissions based on ability to pay or donate, or policies or practices on financial aid distribution or student admissions;
3. All documents and communications between or among employees or representatives of your institution, or between or among any employee or representative of your institution and any employee or representative of any higher education institution, referring or relating to 568 Presidents Working Group, including but not limited to records, meeting notes, summaries of discussion, and agendas;
4. All documents and communications between or among employees or representatives of your institution, or between or among any employee or representative of your institution and any employee or representative of the College Board or any higher education institution, referring or relating to services rendered by the College Board or the College Board membership commitments;
5. All documents and communications between or among employees or representatives of your institution, or between or among any employee or representative of your institution and any employee or representative of the Common Application or any higher education institution, referring or relating to services rendered by the Common Application or the Common Application membership commitments;
6. All documents and communications between or among employees or representatives of your institution, or between or among any employee or representative of your institution and any employee or representative of *U.S. News* or any higher education institution, referring or relating to college ranking criteria or methodologies;
7. All documents and communications referring or relating to the policies or practices on your institution's early decision program, including but not limited to information sharing among higher education institutions;
8. All documents and communications between or among employees or representatives of your institution, or between or among any employee or representative of your institution and any employee or representative of a third-party company, referring or relating to policies or practices on EMS services or any software or algorithms used

to calculate acceptance, tuition, financial aid, or ability for a student or family to pay for education, or the use of EMS services or any software or algorithms by any higher education institution to calculate acceptance, tuition, financial aid, or ability for a student or family to pay for education;

9. All documents and communications between or among employees or representatives of your institution, or between or among any employee or representative of your institution and any individual affiliated with the Executive Branch of the United States Government, referring or relating to how your institution calculates, applies, or negotiates its indirect cost rates for each grant it has been awarded, including but not limited to each indirect cost proposal with all attachments and Negotiation Agreements;
10. All documents and communications by or to any current or former director or trustee on any board of or in any leadership role at your institution who also serves or has served on the board of or in any leadership role at any other higher education institution, *U.S. News*, the College Board, the Common Application, or any financial institution that refers or relates to the other higher education institution, *U.S. News*, the College Board, the Common Application, or any financial institution at which the current or former director, trustee, or leader served on any board of or in any leadership role; and
11. All documents and communications between or among employees or representatives of your institution referring or relating to your institution's decision to require students to purchase secondary service packages, including but not limited to on-campus housing and meal plans.

Please produce this information as soon as possible but no later than 5:00 p.m. EDT on April 22, 2025. To be clear, in making these requests, we are not seeking and do not wish to receive personally identifiable information about current or former students. To the extent that a complete response requires the production of such information, we ask that you redact the students' identities to respect their privacy.

Pursuant to Rule X of the Rules of the House of Representatives and Rule XXV of the Rules of the Senate, the Committees are authorized to conduct oversight of and legislate on matters relating to the "[p]rotection of trade and commerce against unlawful restraints and monopolies."³¹ If you have any questions about this request, please contact Committee staff at (202) 225-6906 and (202) 224-6762.

³¹ Rules of the House of Representatives, 119th Cong., R. X (2025); Rules of the Senate, 119th Cong., R. XXV. (2025).

Dr. Alan Garber

April 8, 2025

Page 7

Thank you in advance for your prompt attention to this matter.

Sincerely,



Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives



Scott Fitzgerald
Chairman
Subcommittee on the Administrative
State, Regulatory Reform, and Antitrust
U.S. House of Representatives



Charles Grassley
Chairman
Committee on the Judiciary
U.S. Senate



Mike Lee
Chairman
Subcommittee on Antitrust,
Competition Policy, and Consumer Rights
U.S. Senate

cc: The Honorable Jamie Raskin, Ranking Member, Committee on the Judiciary, U.S. House of Representatives

The Honorable Richard Durbin, Ranking Member, Committee on the Judiciary, U.S. Senate

The Honorable Jerrold Nadler, Ranking Member, Subcommittee on the Administrative State, Regulatory Reform, and Antitrust, U.S. House of Representatives

The Honorable Cory Booker, Ranking Member, Subcommittee on Antitrust, Competition Policy, and Consumer Rights, U.S. Senate