

TOM HARKIN, IOWA, CHAIRMAN

BARBARA A. MIKULSKI, MARYLAND  
JEFF BINGAMAN, NEW MEXICO  
PATTY MURRAY, WASHINGTON  
BERNARD SANDERS (I), VERMONT  
ROBERT P. CASEY, JR., PENNSYLVANIA  
KAY R. HAGAN, NORTH CAROLINA  
JEFF MERKLEY, OREGON  
AL FRANKEN, MINNESOTA  
MICHAEL F. BENNET, COLORADO  
SHELDON WHITEHOUSE, RHODE ISLAND  
RICHARD BLUMENTHAL, CONNECTICUT

MICHAEL B. ENZI, WYOMING  
LAMAR ALEXANDER, TENNESSEE  
RICHARD BURR, NORTH CAROLINA  
JOHNNY ISAKSON, GEORGIA  
RAND PAUL, KENTUCKY  
ORRIN HATCH, UTAH  
JOHN MCCAIN, ARIZONA  
PAT ROBERTS, KANSAS  
LISA MURKOWSKI, ALASKA  
MARK KIRK, ILLINOIS

## United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

DANIEL E. SMITH, STAFF DIRECTOR  
FRANK J. MACCHIAROLA, REPUBLICAN STAFF DIRECTOR

<http://help.senate.gov>

May 2, 2011

Robert Khuzami  
Director  
Division of Enforcement  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Dear Mr. Khuzami:

I am writing to direct your attention to documents obtained from the U.S. Department of Education (DOE) in response to several Freedom of Information Act (FOIA) requests. These documents raise a number of questions about the propriety of communications between DOE officials and individuals with a potential financial interest in an ongoing rulemaking, which I believe warrant further review by the Securities and Exchange Commission (SEC).

The Higher Education Act (HEA) specifies the types of institutions of higher education eligible to receive Title IV federal student aid. In particular, institutions that offer short-term, non-degree programs are eligible to receive Title IV funds if they "prepare students for gainful employment in a recognized occupation." Beginning in the summer of 2009, the DOE began a negotiated rulemaking process to promulgate a regulatory definition of "gainful employment" as it is used to define these institutions in the HEA. A proposed regulation was published in the *Federal Register* on July 26, 2010; however, a final rule has yet to be published.

A large number of institutions that qualify for Title IV funding under the gainful employment provision are for-profit institutions of higher education, many of which are owned and operated by publicly-traded corporations. Consequently, the DOE rulemaking drew a significant amount of interest from investor groups with a financial interest in these institutions.

Since issuing the proposed regulation, allegations have been made that DOE officials may have engaged in inappropriate communications with some investors with a financial interest in the outcome of the rulemaking process. These allegations have been bolstered by DOE documents released in response to several FOIA requests. In particular, the documents indicate that several investors contacted the DOE and met with officials involved in the development of the proposed rule while the rulemaking

Robert Khuzami  
May 2, 2011  
Page Two

process was ongoing. Additionally, these documents suggest that non-profit groups advocating in support of the DOE's proposed rule were in regular contact with DOE officials, as well as investors interested in the outcome of the rulemaking.

The documents released by the DOE consist mostly of e-mails received or sent by officials directly involved in the development of the proposed rule. Very few of the documents include any communication received or sent by individuals with the Office of the Secretary. Therefore, I have requested the DOE to release all documents related to the development of the gainful employment regulation, including those maintained by the Office of the Secretary.

I strongly support the constitutional right of all Americans to petition their government. However, I also believe that it is imperative that federal regulations are developed through an open and transparent process that is not improperly influenced by those seeking to realize a financial gain from the outcome. While these documents do not provide conclusive evidence of any wrongdoing, they do raise a number of troubling questions about the involvement of investor groups in the development of a pending regulation. Therefore, I urge you to review these materials and determine if further action by the SEC is warranted.

If you need additional information, please contact Frank Macchiarola, Republican Staff Director of the Senate HELP Committee at 202-224-6770. Thank you for your attention to this important matter.

Sincerely,



Michael B. Enzi  
United States Senator

Enclosures

TOM HARKIN, IOWA, CHAIRMAN

BARBARA A. MIKULSKI, MARYLAND  
JEFF BINGAMAN, NEW MEXICO  
PATTY MURRAY, WASHINGTON  
BERNARD SANDERS (I), VERMONT  
ROBERT P. CASEY, JR., PENNSYLVANIA  
KAY R. HAGAN, NORTH CAROLINA  
JEFF MERKLEY, OREGON  
AL FRANKEN, MINNESOTA  
MICHAEL F. BENNET, COLORADO  
SHELDON WHITEHOUSE, RHODE ISLAND  
RICHARD BLUMENTHAL, CONNECTICUT

MICHAEL B. ENZI, WYOMING  
LAMAR ALEXANDER, TENNESSEE  
RICHARD BURR, NORTH CAROLINA  
JOHNNY ISAKSON, GEORGIA  
RAND PAUL, KENTUCKY  
ORRIN HATCH, UTAH  
JOHN MCCAIN, ARIZONA  
PAT ROBERTS, KANSAS  
LISA MURKOWSKI, ALASKA  
MARK KIRK, ILLINOIS

# United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

DANIEL E. SMITH, STAFF DIRECTOR  
FRANK J. MACCHIAROLA, REPUBLICAN STAFF DIRECTOR

<http://help.senate.gov>

May 2, 2011

Preet Bharara  
United States Attorney  
Southern District of New York  
86 Chambers St.  
New York City, NY 10007

Dear Mr. Bharara:

I am writing to direct your attention to documents obtained from the U.S. Department of Education (DOE) in response to several Freedom of Information Act (FOIA) requests. These documents raise a number of questions about the propriety of communications between DOE officials and individuals with a potential financial interest in an ongoing rulemaking, which I believe warrant further review by the U.S. Attorney's office.

The Higher Education Act (HEA) specifies the types of institutions of higher education eligible to receive Title IV federal student aid. In particular, institutions that offer short-term, non-degree programs are eligible to receive Title IV funds if they "prepare students for gainful employment in a recognized occupation." Beginning in the summer of 2009, the DOE began a negotiated rulemaking process to promulgate a regulatory definition of "gainful employment" as it is used to define these institutions in the HEA. A proposed regulation was published in the *Federal Register* on July 26, 2010; however, a final rule has yet to be published.

A large number of institutions that qualify for Title IV funding under the gainful employment provision are for-profit institutions of higher education, many of which are owned and operated by publicly-traded corporations. Consequently, the DOE rulemaking drew a significant amount of interest from investor groups with a financial interest in these institutions.

Since issuing the proposed regulation, allegations have been made that DOE officials may have engaged in inappropriate communications with some investors with a financial interest in the outcome of the rulemaking process. These allegations have been bolstered by DOE documents released in response to several FOIA requests. In particular, the documents indicate that several investors contacted the DOE and met with officials involved in the development of the proposed rule while the rulemaking process was ongoing. Additionally, these documents suggest that non-profit groups

Preet Bharara  
May 2, 2011  
Page Two

advocating in support of the DOE's proposed rule were in regular contact with DOE officials, as well as investors interested in the outcome of the rulemaking.

The documents released by the DOE consist mostly of e-mails received or sent by officials directly involved in the development of the proposed rule. Very few of the documents include any communication received or sent by individuals with the Office of the Secretary. Therefore, I have requested the DOE to release all documents related to the development of the gainful employment regulation, including those maintained by the Office of the Secretary.

I support the constitutional right of all Americans to petition their government. However, I also believe that it is imperative that federal regulations are developed through an open and transparent process that is not improperly influenced by those seeking to realize a financial gain from the outcome. While these documents do not provide conclusive evidence of any wrongdoing, they do raise a number of troubling questions about the involvement of investor groups in the development of a pending regulation. Therefore, I urge you to review these materials and determine if further action by your office is warranted.

If you need additional information, please contact Frank Macchiarola, Republican Staff Director of the Senate HELP Committee at 202-224-6770. Thank you for your attention to this important matter.

Sincerely,

  
Michael B. Enzi  
United States Senator

Enclosures