

Congress of the United States
Washington, DC 20515

November 13, 2017

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Ave, S.W.
Washington, D.C. 20202

Dear Secretary DeVos:

We write to express our concern regarding what we believe to be unprecedented action by the U.S. Department of Education (“Department”) to close a part of federal rulemaking off from the public. Given the Trump Administration’s repeated efforts to undermine protections for defrauded students, we are deeply concerned by the lack of full transparency surrounding the borrower defense rule, which is intended to aid students who were cheated out of their education and savings

When the Department announced in the Federal Register its intention to rewrite the borrower defense rules, it established a subcommittee on financial responsibility and solicited nominations for individuals with expertise in financial accounting standards.¹ The notice also stipulated, without any stated reason or legal rationale, that subcommittee meetings will not be open to the public.

Discussion about how to protect taxpayers and evaluate colleges’ financial conditions should not take place in private. Federal taxpayers provide a \$130 billion investment each year in student aid for higher education, and the Department is required to obtain stakeholder and public feedback on the rules for administering this funding.² As the first negotiated rulemaking session under your Administration gets underway, we urge the Department to respect the spirit of the negotiated rulemaking statute and to follow established practices and protocols for these important meetings.

In the past, subcommittee meetings and their representatives and protocols have been announced at the direction of the full committee members. For example, when a subcommittee was created on higher education issues during the negotiated rulemaking session for the Violence Against Women Act, it was the full negotiated rulemaking committee—not the Department—that voted to establish in its organizational protocols to open committee meetings, but not subcommittee meetings, to the public.³

¹ 82 FR 41194, August 30, 2017, <https://www.gpo.gov/fdsys/granule/FR-2017-08-30/2017-18510>

² Higher Education Act, Section 492

³ 78 FR 57571, September 19, 2013, <https://www.gpo.gov/fdsys/pkg/FR-2013-09-19/pdf/2013-22868.pdf>

The fact that the Department created a private subcommittee to address the rules measuring the financial health of institutions of higher education is extremely problematic given a recent Government Accountability Office (GAO) report that found problems with the Department's transparency in measuring financial responsibility.⁴ That report found the agency does not fully explain the way that it calculates certain components of the composite score and fails to publicly disclose composite scores for all for-profit colleges that are owned by the same parent company. Making meetings about the financial stability of colleges private and closed to the public—with representatives and protocols largely under your Department's control—only raises further questions about the Department's intentions in the forthcoming rulemaking process.

We request the Department allow members of the public to observe all subcommittee meetings. Additionally, we request all analysis and rationale for why the Department is attempting to make subcommittee meetings private. Given that the subcommittee meetings begin on Thursday, November 16, we request a response to these requests by no later than Wednesday, November 15. Thank you for your prompt attention to this matter.

Sincerely,



PATTY MURRAY
United States Senator
Ranking Member
U.S. Senate
Committee on Health, Education, Labor and
Pensions



ROSA L. DELAURO
Member of Congress
Ranking Member
U.S. House of Representatives
Labor, Health and Human Services, Education ,
and Related Agencies Subcommittee on
Appropriations

⁴ U.S. Government Accountability Office. "Higher Education; Education Should Address Oversight and Communication Gaps in its Monitoring of the Financial Condition of Schools." *Sept. 20, 2017*. <https://www.gao.gov/products/GAO-17-555>