

United States Senate

WASHINGTON, DC 20510

December 13, 2017

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

Dr. A. Wayne Johnson
Chief Operating Officer
Federal Student Aid
U.S. Department of Education
400 Maryland Ave, S.W.
Washington, D.C. 20202

Dear Secretary DeVos and Dr. Johnson:

We write to inquire about the U.S. Department of Education's ("Department") plans to change monitoring and enforcement tactics for federal student aid programs.ⁱ Effective monitoring, enforcement, and risk management are critical to ensuring that approximately \$140 billion in federal financial aid disbursed each year is well spent. Without proper oversight of colleges' use of federal financial aid, the Department would jeopardize the future of more than 12 million students and families accessing higher education and preparing for the jobs and opportunities of tomorrow. Throughout the history of the federal student aid programs, bad actors have taken advantage of students, borrowers, and taxpayers, which have led to accountability and enforcement measures designed to protect students—several measures that are now being rolled back under this Administration. We urge you to continue aggressive enforcement to ensure colleges and universities using taxpayer dollars are complying with federal law and to ensure that serious college misconduct does not reemerge.

The Department's August 31, 2017 announcement on enforcement stated that the Office of Federal Student Aid (FSA) has "a stronger approach" to holding colleges accountable and has *"established an integrated system of complementary oversight functions to ensure compliance by all participating parties... These efforts are bolstered by comprehensive communications and executive outreach to ensure parties and their leadership understand their responsibilities, the consequences of non-compliance, and appropriate remedies."* New staff were also announced in the areas of risk management, compliance, enforcement, communications, customer experience, and executive-level outreach.

Many of us have previously written to express our concerns regarding the Department's appointment of a former executive of a for-profit college chain that has been subject to multiple investigations to lead FSA's enforcement work.ⁱⁱ Our accompanying questions about Dr. Julian Schmoke's appointment have still not been fully answered. Now, with a new "integrated system of complementary oversight functions" in place, we have additional questions about what specifically the Department has changed or will change about its approach to oversight of institutions of higher education.

Our questions have taken on a new urgency as the Department has rolled back or refused to properly implement rules that were designed to protect students, borrowers, and taxpayers. Even

more concerning, the Department's own Office of Inspector General (OIG) disagreed with these actions, as detailed in its November 2017 Semiannual Report to Congress.ⁱⁱⁱ For example, with respect to the Department delaying the disclosure requirements under the gainful employment rules, the OIG said: "granting what would effectively be an 18-month extension of regulatory requirement negatively impacts program integrity."^{iv} The OIG went on to note, "oversight and monitoring of Title IV program participants [is] one of the Department's *most serious* management challenges."

As an independent watchdog, the OIG's assessment of weaknesses in the Department's oversight work underscores a necessity for the Department to act in a thorough, aggressive, and impartial manner when investigating misconduct. Federal enforcement officials should not establish close relationships with the same institutions they are tasked with regulating, which have a financial incentive to hide any wrongdoing. It is for these reasons that we are concerned about the Department's plan for additional "comprehensive communications and executive outreach" to institutions that are under review or investigation by the Department now or in the future.

The Department's August announcement also suggested a more industry-friendly approach to enforcement. The federal government should never provide corporate executives with advance opportunities to shield themselves from accountability. Few things discourage improper or criminal behavior like the prospect of individual decision makers being held publically accountable for their wrongdoing. The Student Aid Enforcement Unit was created in February 2016 to investigate and bring actions against colleges that break federal law. We urge the Department to avoid steps that would reduce the deterrent effect of aggressive oversight.

We cannot stress enough that compliance with student aid eligibility standards—frequently a box-checking exercise—is distinct from rooting out unfair, deceptive, or abusive acts or practices. We request that the Department provide clarity on how the roles of compliance and enforcement will be delineated. We also urge, as FSA assembles its new strategy, that you address the recommendations included in the OIG's *FY 2018 Management Challenges* report, which identified several areas FSA needs to address serious flaws in college oversight and accountability, including:^v

- **Program Reviews:** The OIG found that FSA Program Compliance division managers did not consider high annual dropout rates when prioritizing schools for program reviews as required by the HEA, and further that such failures provide "limited assurance that program reviews are appropriately identifying and reporting all instances of noncompliance."^{vi}
- **Financial Responsibility:** The OIG noted that FSA needed to implement controls to prevent schools from manipulating financial composite scores to avoid sanctions or increased oversight.^{vii} This conclusion was reinforced by a Government Accounting Office (GAO) report in August 2017 that found schools, including Corinthian Colleges, Inc. had inflated their composite scores to avoid sanctions.^{viii} The GAO noted that about 30 percent of for-profit schools received composite scores in 2014-15 that were close to the passing threshold and may have incentives to manipulate their scores.

- ***Noncompliance and Fraud among Individual Program Participants:*** Over the years the OIG has found numerous instances where individual program participants fraudulently obtained federal funds by falsifying documentation to enroll ineligible students, implementing schemes to falsely remain eligible for aid, and stealing identities to retrieve federal aid funds in distance education fraud rings.^{ix}

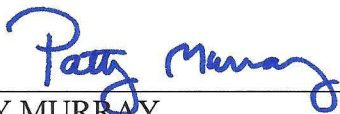
In order to understand how your new plan for college oversight and enforcement will address these and other issues, we request responses to the following questions:

1. Please describe in further detail the Department's plans for "proactive risk management."
2. Please describe the specific changes the Department envisions to its current policies and practices that will shift to "executive outreach" in compliance and enforcement.
3. When does the Department estimate that all of the elements of its new risk management strategy, including identifying said risk factors, will be completed?
4. Is the Investigations Group required to obtain approval from any senior political appointee or group of appointees before pursuing basic tasks, such as coordinating with federal agencies, interviewing school officials, or requesting documents from institutions of higher education?
5. What enforcement actions have been initiated from investigations conducted by the Student Aid Enforcement Unit since January 20, 2017?
6. Is the Investigations Group still receiving cases referred from Program Compliance or Administrative Actions and Appeals Service Group?
7. Has the Department's new approach to risk management involved any temporary or permanent halt to investigations that were open as of January 20, 2017?
8. Please provide an organizational chart, titles, and detailed descriptions of the job responsibilities for the senior executives leading FSA's oversight work, including Michael Dean, Charles Patterson, Julian Schmoke, and Chris Greene.
9. Please provide the number of full-time equivalent employee positions assigned to each of the functions headed by the senior executives listed above, disaggregated by employee hiring authority and listing any current or expected staff vacancies.
10. What is the number of filled and vacant spots disaggregated by the Enforcement unit's four staff groups: Investigations, Borrower Defense, Administrative Actions and Appeals, and Clery, and who are the senior managers for each of those staff groups?
11. Please provide a list of all contractors employed by FSA for any oversight, compliance, or risk management activity and the description and scope of work for each contract.

12. Who is FSA's Senior Fraud Advisor, and what FSA's plan to implement the GAO Fraud Framework, as indicated in the OIG's FY 2018 Management Challenges report?
13. How does FSA plan to respond to all the issues raised by the annual OIG Management Challenges report and GAO reports on oversight, and will this include incorporating such feedback into annual risk assessments?
14. How does the Department plan to utilize complaints and allegations from students filed with the FSA Feedback System, Consumer Financial Protection Bureau, Federal Trade Commission, accrediting agencies, and state authorizers in enforcement activities?

These questions will help us to ascertain what goals the Department hopes to achieve with its new oversight plan. We request that a response to our questions be provided no later than January 3, 2018. Thank you for your attention to this important issue of college accountability for the use of taxpayer-funded federal financial aid.

Sincerely,


PATTY MURRAY
United States Senator


SHERROD BROWN
United States Senator


RICHARD J. DURBIN
United States Senator


ELIZABETH WARREN
United States Senator


RICHARD BLUMENTHAL
United States Senator

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- ⁱ U.S. Department of Education. “U.S. Department of Education Expands Focus on Enforcement and Consumer Protections for Students, Parents and Borrowers.” August 31, 2017. <https://www.ed.gov/news/press-releases/us-department-education-expands-focus-enforcement-and-consumer-protections-students-parents-and-borrowers>
- ⁱⁱ Letter from U.S. Senator Sherrod Brown, Patty Murray, Elizabeth Warren, and Richard J. Durbin to the Honorable Betsy DeVos and Dr. A. Wayne Johnson. August 7, 2017. <https://go.usa.gov/xnX9p>
- ⁱⁱⁱ U.S. Department of Education, Office of Inspector General. “Semiannual Report to Congress, No. 75.” November 2017. Link: <https://www2.ed.gov/about/offices/list/oig/semiann/sar75.pdf>
- ^{iv} *Ibid.*
- ^v U.S. Department of Education, Office of Inspector General. “FY 2018 Management Challenges.” November 2017. <https://www2.ed.gov/about/offices/list/oig/managementchallenges.html>
- ^{vi} *Ibid.*
- ^{vii} *Ibid.*
- ^{viii} U.S. Government Accountability Office. “Higher Education; Education Should Address Oversight and Communication Gaps in its Monitoring of the Financial Condition of Schools.” September 20, 2017. <https://www.gao.gov/products/GAO-17-555>
- ^{ix} U.S. Department of Education, Office of Inspector General. “FY 2018 Management Challenges.” November 2017. <https://www2.ed.gov/about/offices/list/oig/managementchallenges.html>