

Congress of the United States

Washington, DC 20510

November 14, 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 are writing to express our strong concerns and to obtain more information regarding reports that the U.S. Department of Education (“Department”) is considering limiting the amount of student loan debt relief to defrauded students. Such an effort would be financially devastating to thousands of student loan borrowers and their families who have been cheated by their colleges or career training programs. These reports continue a pattern of concerning decisions by the Department that put corporate profits ahead of students and borrowers, such as delaying protections for students and leaving defrauded and mistreated borrowers stranded by refusing to process their claims.

Today, a Department official announced at a public rulemaking session that there are approximately 95,000 pending applications for relief from student loan borrowers, most of whom attended schools that engaged in deceptive, misleading, and fraudulent conduct. Top officials in the Offices of Federal Student Aid (FSA) and the General Counsel are also reportedly exploring whether to offer these students only partial forgiveness of the student loan debt they incurred at these institutions.ⁱ Moreover, it seems the Department plans to use earnings data collected under a rule the Department leadership opposes, and is currently re-writing, to assert that some borrowers have earnings sufficient to repay the fraudulently-issued loan debt they incurred.ⁱⁱ

Students should not be stuck with the bill when predatory institutions of higher education provide false or misleading information that leaves their borrowers with high levels of debt, poor job prospects, useless degrees and credentials—and in many cases, no degree at all. Last year, the Department took steps to enhance the relief and protections provided to student loan borrowers in these situations by updating a 1995 rule for how to process claims and deal with situations when colleges commit unfair, abusive, or deceptive acts or ultimately collapse on their students.ⁱⁱⁱ

Unfortunately, the Department subsequently delayed this urgently-needed borrower defense regulation.^{iv} We have previously asked that you reverse these delays, which are improper and legally dubious under the Administrative Procedures Act. This delay was also ill-advised and harmful to states, taxpayers, and student loan borrowers. Moreover, in addition to refusing to

implement the rule properly, the Department has failed to process any pending claims since taking office almost ten months ago. Corinthian Colleges, Inc. (“Corinthian”) collapsed more than two and a half years ago, but students in hundreds of career training programs where job placement rates were falsified are still waiting for relief. In total, at least 45,000 Corinthian students are still waiting for an answer on their borrower defense applications despite the fact that the Department possesses all the data it needs to automatically provide relief, including student-level data submitted by a bipartisan group of state attorneys general. For the tens of thousands of students and families still waiting for help, being stuck in limbo is causing tremendous mental and financial anguish. The idea that borrowers may continue to be saddled with at least some of the debt they incurred to attend institutions that misrepresented information to them is simply unacceptable and does not pass the most basic test of fairness.

We have consistently advocated for the Department to establish a process that ensures students who have been subject to unfair or deceptive conduct at the hands of their school will have their outstanding loan balances discharged and receive refunds for any and all amounts paid—in other words, full relief. Any scheme that seeks to limit debt relief is likely to be complex, administratively time-consuming, and subjective, and would further delay the relief these students are entitled to receive. Additionally, a process that fails to provide students with the opportunity to effectively challenge the determination would be another violation of the basic fairness that these students are entitled to receive.

Reports that the Department is considering using the earnings information it collects on students in career training programs and for-profit colleges as a justification to cut back on debt relief to students is also concerning. The existing data exchange with the Social Security Administration produces mean and median earnings for students under 34 CFR § 668.405 of the gainful employment rule. This information was never intended to harm borrowers or limit assistance to them. Instead, the gainful employment data are intended to protect students from programs that leave them with debt they cannot repay. Further, the type of data collected confirms that the data were not intended to be used for the purposes under consideration. Earnings are produced only for those federal aid recipients who have completed their programs. In contrast, applicants for relief under the borrower defense rule may not have completed their programs at all, particularly at schools that collapsed and left their students stranded.

If the Department seeks to change the purpose of the gainful employment data, this process cannot be adopted unilaterally. Pursuant to the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circular Number A-108, “*a change that modifies the purpose(s) for which the information in the system of records is maintained*” requires the Department to publish a notice in the Federal Register and solicit public comment.^v The Department would also be required to prepare reports to Congress on this proposal.

The Department should not punish borrowers who overcome the odds and happen to succeed at finding work despite the failings or fraud of their schools or programs. For these reasons, earnings data—including any other federal earnings information—should not be used to reduce relief to borrowers. This action would arbitrarily create situations where similarly situated borrowers receive different levels of relief, either as a result of the program in which they

enrolled, or relative to borrowers who received relief under the previous Administration—resulting in unequal protection under the law.

Instead, the Department should embrace the basic consumer protection principle that loans obtained under fraudulent circumstances or misconduct should be fully cancelled and refunded. The Department should additionally utilize the same approach it uses for false certification and closed school discharges by providing full relief for all valid claims. Because defrauded student borrowers can never get back the wasted time—or full opportunity and auxiliary costs—of enrolling in predatory schools, a full discharge of borrowers' federal student loans is itself limited relief in the context of the full range of harm experienced by students. Therefore, it would be extremely inappropriate for the Department to consider any remedy short of a full and complete discharge of these loans and refund of amounts paid.

If the Department is interested in limiting the cost of debt relief, it should instead utilize the taxpayer protections provided by the November 1, 2016 final borrower defense rule and implement this regulation immediately, as required by law, which included processes to ensure limited costs to the federal government. The rule also prohibited the use of forced arbitration, class action bans, or gag orders that frequently prevent fraud and abuse from coming to light and divert students away from holding their own schools accountable for fraud in court. If more students are able to use their legal rights to force colleges to pay for their misconduct, the Department will be responsible for fewer claims.

In order to obtain more clarity regarding the Department's reported considerations of limiting relief to borrowers, we ask that you provide us with the following information:

1. Is the Department considering limiting relief to student loan borrowers who have pending borrower defense claims? If so, please provide all documentation for the proposal regarding how determinations would be made, including any formulas or any evaluation of completion rates or earnings rates of other students who were enrolled in programs at the same institutions.
2. Is the Department considering steps to establish more robust policies to recoup funds for the cost of debt relief from the institutions?
3. Has the Department been advised or directed to reduce the budgetary impact of borrower defense relief from senior officials within the Office of Management and Budget, U.S. Department of the Treasury, or the White House?
4. Does the Department believe using the earnings information from the Social Security Administration (SSA) provided pursuant to the gainful employment regulation to limit relief to students is permissible under the existing data sharing agreement established with SSA?
5. What steps has the Department taken to comply with the requirements of the Privacy Act of 1974 and OMB Circular No. A-108 regarding a change in the purpose for a system of records and data collection?

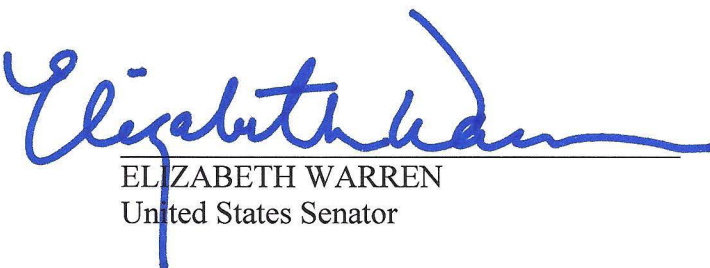
6. If the Department proposes a significant change to the purpose of existing federal data collection, will the agency provide the required reports to Congress pursuant to the Privacy Act of 1974 and OMB Circular No. A-108?
7. How does FSA's authority to process borrower defense claims compare with granted authority to this office to process other administrative discharges without interference from political appointees?

We request your answers to these questions as soon as possible and no later than November 28, 2017. Thank you for your prompt attention to this matter.

Sincerely,

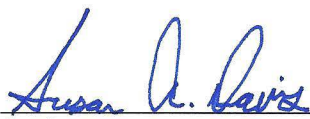

PATTY MURRAY
United States Senator

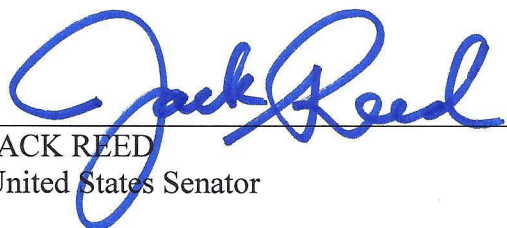

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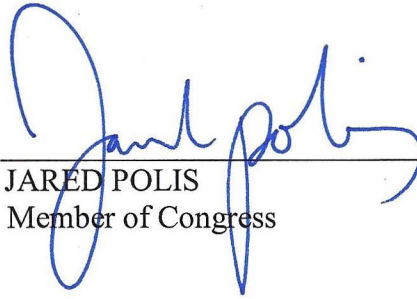
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ⁱ Douglas-Gabriel, Danielle. "DeVos calls for another delay of rule to protect students from predatory colleges." *The Washington Post*. October 24, 2017. <https://www.washingtonpost.com/news/grade-point/wp/2017/10/24/devos-calls-for-another-delay-of-rule-to-protect-students-from-predatory-colleges>

ⁱⁱ Danilova, Maria. "AP Sources: Education Department Could Scale Back Help on Loans." *Associated Press*. October 30, 2017. <https://www.apnews.com/bfc1cfa1c7ae42f6a4489373be5b9262>

ⁱⁱⁱ U.S. Department of Education. Final regulations: 81 FR 75926. November 1, 2016. Bookmark: <https://www.federalregister.gov/d/2016-25448/p-1553>

^{iv} U.S. Department of Education. Final rule; notification of partial delay of effective dates. 82 FR 27621.

^v Office of Management and Budget. "OMB Circular No. A-108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act." Originally issued November 28, 200. Reissued December 23, 2016. https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A108/omb_circular_a-108.pdf