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# United States Senate

WASHINGTON, DC 20510 - 3505

August 7, 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 ask that you take immediate action to name a credible, well qualified, independent, and permanent Chief Enforcement Officer for the U.S. Department of Education ("Department"). This critical position should be appointed promptly and be freed of political constraints and conflicts so as to be able to take aggressive action against those who break the law or wish to undermine federal financial aid programs.

Access to a quality higher education opens the doors of opportunity and prepares students with the skills necessary for the jobs of the 21<sup>st</sup> century. Federal investment in higher education, including more than \$130 billion in financial aid to students each year, has been a key catalyst in expanding access to the benefits of a good job and a sustainable wage that comes with a postsecondary degree or credential. However, in recent years, too many institutions of higher education, especially for-profit colleges, have threatened this federal investment by defrauding their students, misusing taxpayer funds, and skirting state and federal law. Both Corinthian Colleges, Inc. ("Corinthian") and ITT Educational Services, Inc. ("ITT") left tens of thousands of students across the country stranded with mountains of debt and worthless credits after fleecing taxpayers of billions of dollars. So it is critical that the Chief Enforcement Officer at the Department is committed to putting students ahead of corporate interests, and will investigate predatory or fraudulent conduct by institutions.

Several recent events are cause for great alarm about the Department's absence of enforcement action. According to a February 2017 report by the Inspector General, the Department could have provided better oversight of Corinthian to safeguard taxpayers from the company's shaky finances.<sup>1</sup> Lawsuits by the Consumer Financial Protection Bureau (CFPB) and multiple State Attorneys General were a clear indication that there was suspicious conduct occurring at campuses around the country, and that such instances demand financial surety against the cost to taxpayers of potential discharges and refunds of fraudulently-issued federal student loan debt.

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<sup>1</sup> U.S. Department of Education. Office of Inspector General. "*Federal Student Aid's Processes for Identifying At-Risk Title IV Schools and Mitigating Potential Harm to Students and Taxpayers.*" February 24, 2017. <https://ed.gov/about/offices/list/oig/auditreports/fy2017/a09q0001.pdf>

The Department later uncovered evidence of falsified job placement rates at hundreds of Corinthian programs nationwide. A properly equipped, knowledgeable, and proactive Chief Enforcement Officer could have taken action to investigate potential wrongdoing and recommend corrective action. However, the Department has still not fully implemented the Inspector General's recommendations to protect students and taxpayers and avoid similar closures in the future.

The Department also allowed ITT to siphon off billions of taxpayer dollars to enrich their corporate executives despite charges of fraud and deception against the company from both the Securities and Exchange Commission and the CFPB. While it is appropriate to discharge students' debts in cases of school closure, the cost of such discharges to former ITT students could total half a billion dollars—the company should have been ordered to correct its improper behavior or shoulder much more of this cost to taxpayers.<sup>2</sup> ITT's misconduct was apparent to the previous Administration, which led to the discharge of some former students' debt. On top of these high profile instances of fraud at Corinthian and ITT, we have seen a myriad of predatory institutions violating federal law, including schools using exotic dancers to recruit students, lying about the amount of revenue received from the Department, falsifying claims for financial aid, fraudulently marketing to students, and stealing from institutional funds after abrupt closure.

The Department's Student Aid Enforcement Unit was established in February 2016 in response to widespread demands for the Department to take more aggressive action against bad actors in higher education. It is a core responsibility of the Department to protect grant recipients and student loan borrowers from widespread misconduct or institutional closure. However, without the necessary resources, qualified personnel and leadership, and political independence needed to investigate allegations that institutions of higher education are engaged in unfair, deceptive, or illegal acts, the existence of the Student Aid Enforcement Unit is effectively meaningless. In particular, the apparent obstruction of both the Investigations and Borrower Defense Groups—clearly evidenced by the absence of any new investigations or approved borrower defense claims this year—is extremely concerning. Under your watch, the Department has failed to ensure that students have an advocate on their side to prevent similar abuses now and in the future and to provide relief for past abuses. This situation must be corrected immediately.

The Department must enforce current laws and regulations for federal student aid to colleges and universities, regardless of what plans political appointees may have for modifying agency positions now or in the future. Hiring a strong and independent Chief Enforcement Officer and giving that individual the staff necessary to provide meaningful oversight and enforcement is critical to fulfilling this obligation. Recent events make it obvious why the public must know that there is someone qualified, experienced, and focused on the task of looking out for students in this position. In abruptly resigning in May, the former FSA Chief Operating Officer, Jim Runcie, raised concerns about "*significant constraints being placed on [FSA's] ability to allocate and prioritize resources, make decisions and deliver on the organization's mission.*"<sup>3</sup> Given the potential for continued political interference, it is incumbent upon the Department to select a

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<sup>2</sup> Stratford, M. & Hefling, K. Politico. "ITT Tech shutdown could cost taxpayers nearly \$500M." September 6, 2016. <http://www.politico.com/story/2016/09/itt-tech-closes-its-doors-227765>

<sup>3</sup> Stratford, M. & Hefling, K. Politico. "Top Education Dept. official resigns after clash with DeVos" May 24, 2017. <http://www.politico.com/story/2017/05/24-james-runcie-education-department-resigns-238762>

highly capable individual with the ability to oversee the essential functions of student aid enforcement.

The previous Chief Enforcement Officer, Robert Kaye, left the Department in March of this year. The duties of the Chief Enforcement Officer were then delegated to Ms. Robin Minor, who also serves as the Chief *Compliance* Officer at the Office of Federal Student Aid (FSA).<sup>4</sup> Although the title may appear similar, compliance involves other responsibilities associated with verifying that certain rules are being met, rather than actively investigating. More recently Kaye's deputy, Laura Kim, has also left the Department indicating a true vacuum of leadership at the Student Aid Enforcement Unit. The Department needs a Chief Enforcement Officer devoted to uncovering illegal actions and risky behavior by institutions of higher education. This individual must be well qualified to serve in this critical role, and they must be politically independent and insulated from the rest of the Department's leadership. They must also have relevant experience in consumer protection or litigation, managing attorneys, and conducting investigations with the highest ethical standards.

Students across the country must be able to rely on the Department to take aggressive and timely action to investigate complaints, respond to instances of abuse and misconduct, and recommend debt relief where appropriate. Simply put, laws must be enforced, bad actors must be held accountable, and students cannot be left holding the bag for fraud. In order to ensure a fair and transparent process for hiring a Chief Enforcement Officer at the Department, we ask for your response to the following questions in writing:

1. By what date do you intend to hire a permanent Chief Enforcement Officer?
2. In addition to relevant consumer protection experience, what are the minimum qualifications you will set out in your search for a qualified individual to lead enforcement activities at the Department?
3. To which political appointee or appointees does the Student Aid Enforcement Unit currently report for decision-making purposes?
4. How many referrals for investigation from the Investigations Group of the Student Aid Enforcement Unit are currently pending action by any senior Department official?
5. Is the Investigations Group of the Student Aid Enforcement Unit currently required to obtain approval from a senior political appointee or appointees before coordinating with other federal agencies, interviewing school officials, or requesting documents from institutions of higher education?
6. How many full-time equivalent employee positions in the Student Aid Enforcement Unit are filled by permanent staff, and how many are currently vacant, disaggregated by the unit's four divisions?

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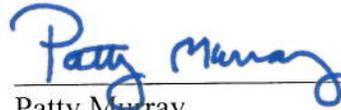
<sup>4</sup> U.S. Department of Education. "Memo by Jim Runcie: Delegation of Authority to Perform the Functions and Duties of the Chief Enforcement Officer." April 17, 2017.  
<https://www2.ed.gov/about/offices/list/om/docs/delegations-functions-duties-ceo.doc>

Given the urgent need to protect students and taxpayers, we request your response by August 21, 2017. If you have any questions, you may contact Leah Hill of the Office of Senator Sherrod Brown at (202) 224-2315. We look forward to your prompt response.

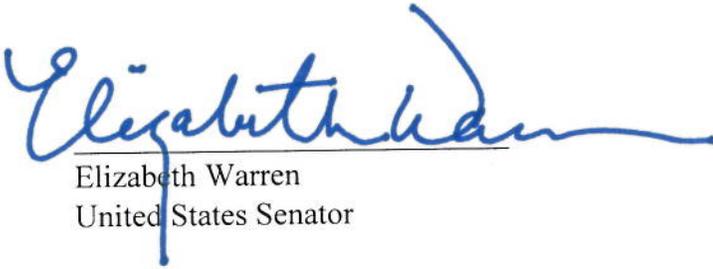
Sincerely,



Sherrod Brown  
United States Senator



Patty Murray  
United States Senator



Elizabeth Warren  
United States Senator



Richard J. Durbin  
United States Senator