

United States Senate

WASHINGTON, DC 20510

February 23, 2017

Ms. Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos,

We were extremely concerned to learn through media reports that President Trump has asked Jerry L. Falwell, Jr., President of Liberty University, to lead a new “task force” to recommend changes to federal regulations, policies, and procedures in higher education. As your agency will be the primary convener of the “task force,” we ask that you can provide clarity about how it will operate and how the Department intends to ensure fairness and transparency at every stage of the task force’s work.

We are also very troubled that there has been no public explanation by the President or the Administration about what will be under the formal purview of this task force. Mr. Falwell was recently quoted saying that he was selected to lead this work in response to what he claimed was “overreaching regulation” by the U.S. Department of Education (“Department”) in areas such as accreditation, recruitment of students, and rules providing defrauded borrowers with loan discharges. However, many of the current laws and regulations in these areas have been put in place to protect students and taxpayers from abuse, and it would be very problematic if a task force were formed to weaken or consider changes to any of these rules unless the goal was helping students and borrowers. Additionally, unless the task force is comprised of members from diverse backgrounds and perspectives, including students and consumer advocates, we are concerned about conflicts of interests that may be created by taxpayer-subsidized entities writing the rules for their own access to federal dollars.

If these reports are true, and he is appointed to this position, Mr. Falwell and his task force may have a chance to make recommendations on the federal requirements that colleges and universities must meet in exchange for nearly \$150 billion in federal student aid provided to their students each year. Through the Higher Education Act and implementing regulations, policies have been enacted to protect the millions of Americans seeking opportunities for themselves and their families through postsecondary education and training. Unfortunately, these policies have become all the more necessary after far too many institutions have not acted in the best interests of their students.

However, in an interview with the *Washington Post* about the task force, Mr. Falwell said “there’s too much intrusion into the operation of universities and colleges. I’ve got a whole list of concerns. It mainly has to do with deregulation.”¹ In a related interview with the *Chronicle of Higher Education*, Mr. Falwell was asked how the task force would assist you in the execution of

your duties as Secretary. He noted “the task force will be a big help to [you]. It will do some of the work for [you].”ⁱⁱ During your confirmation hearing, you also noted that “the individuals with whom I work in the Department will ensure that federal monies are used properly and appropriately.” If the new task force and civil servants at the Department are to play a central role in developing and executing policies for you to guard against waste, fraud, and abuse in higher education, it is critically important that they take a thoughtful and balanced approach to their work. It is also crucial that some of the task force members contribute ideas on how to make colleges and universities more accountable to the students they serve and that the task force does not consist only of advocates of failed deregulatory approaches.

Obtaining the input of college and university leaders is certainly one part of any comprehensive review of federal policy in higher education. However, it is critical to guard against potential conflicts of interest where they exist. For example, last year Liberty University received \$766 million in grants and loans under Title IV of the Higher Education Act, and was the third-largest recipient of federal student loans in the United States.ⁱⁱⁱ Liberty University also has the largest enrollment of any non-profit institution in the country, having grown rapidly in recent years by recruiting a substantial number of students to their online programs.^{iv}

Mr. Falwell’s personal and financial interests on issues affecting student loan debt, recruitment, and distance education are extensive, and his perspectives must be viewed appropriately in this context. Similarly, the record of other members who are appointed to the task force should be closely examined for potential conflicts of interest.

We would like to know how you will set forth the scope of the task force’s responsibilities, balance the composition of the task force members, ensure compliance with the *Federal Advisory Committee Act*, and implement the 2011 Administrative Conference of the United States recommendations to enhance the transparency and public access of federal advisory committees. Please provide answers to the following requests and questions in advance of formally announcing any such task force and no later than March 9th, 2017:

- a) Please confirm whether you intend to form the aforementioned task force and that the Administration intends to have Mr. Falwell lead this task force.
- b) Please indicate the mission, scope, and agenda for the task force and the specific questions it will seek to answer.
- c) Please describe the specific responsibilities of Mr. Falwell as the leader of the task force.
- d) Please provide a copy of the Department’s administrative guidelines and management controls for advisory committees and make such guidelines available on the Department’s website.
- e) Please provide the decision making process that will be used by the task force.
- f) Please provide the timeline for the task force’s work and the type and amount of notice that will be provided regarding future meetings of the task force.

- g) Please confirm that detailed minutes and a full transcript of all meetings of the task force will be prepared, retained, and made publicly available on the Department's website.
- h) Please indicate how many members the task force will have, the intended process for identifying prospective members, and the metrics for ensuring balance of viewpoints and expertise among all stakeholders in higher education, including students and consumers.
- i) Please confirm that a request for comments and recommendations for members will be published in the Federal Register prior to making appointments to the task force.
- j) Please state who the Committee Management Officer (CMO) and Designated Federal Officer (DFO) for any such task force will be.
- k) Please provide the procedures that will be put in place to assure that the expression of views, deliberation, advice, and recommendations of the task force will be the result of the independent judgment of each member and will not be inappropriately influenced by the appointing authority or by any special interest.
- l) Please state the steps that will be taken to assure that the interests and affiliations of all task force members are reviewed for conflicts of interest, applicable regulations and requirements issued by the U.S. Office of Government Ethics (OGE), and other federal ethics rules.
- m) Please state all steps that will be taken to ensure that the committee meetings of the task force remain fully public in accordance with the *Government in the Sunshine Act*, 5 U.S.C. 552b(c).
- n) Please provide all steps that will be taken to ensure that there is an opportunity for reasonable participation by the public in the task force's meetings and activities.
- o) Please confirm that all task force meetings will be broadly accessible to the public in multiple geographic areas, including through online technologies such as live webcasting.
- p) Please provide the steps that will be taken to accommodate people with disabilities, and people who require information in a language other than English, so that they can fully participate in and effectively communicate with the task force.
- q) Please provide the rate(s) of compensation for members, if any, as well as staff of, and experts and consultants to, the task force.

While we have many differences, we share a commitment to transparency in government, and we look forward to working together to ensure that any task force makes unbiased and informed recommendations. Thank you for your prompt attention to this matter.

Sincerely,



PATTY MURRAY
United States Senator



ELIZABETH WARREN
United States Senator



RICHARD J. DURBIN
United States Senator



SHELDON WHITEHOUSE
United States Senator



TAMMY BALDWIN
United States Senator



MARGARET WOOD HASSAN
United States Senator

ⁱ Bailey, Sarah Pulliam, and Nick Anderson. "Falwell says Trump administration has tapped him to lead a higher-ed panel." *The Washington Post*. January 31, 2017. Accessed February 8, 2017.

https://www.washingtonpost.com/news/grade-point/wp/2017/01/31/falwell-says-trump-administration-has-tapped-him-to-lead-a-higher-ed-panel/?utm_term=.1f44f40933a5.

ⁱⁱ Blumenstyk, Goldie. "Jerry Falwell Jr. Says He Will Lead Federal Task Force on Higher-Ed Policy." *The Chronicle of Higher Education*. January 31, 2017. Accessed February 8, 2017.

http://www.chronicle.com/article/Jerry-Falwell-Jr-Says-He-Will/239062?cid=trend_right_a.

ⁱⁱⁱ Senate HELP Committee Analysis of data from the U.S. Department of Education, Federal Student Aid Data Center, Title IV Program Volume by School. Accessed February 8, 2017. <https://studentaid.ed.gov/sa/about/data-center/student>

^{iv} Stripling, Jack. "An Online Kingdom Come: How Liberty U. Became an Unexpected Model for the Future of Higher Education." *The Chronicle of Higher Education*. February 23, 2015. <http://www.chronicle.com/article/How-Liberty-U-Became-an/190247>