

Congress of the United States
Washington, DC 20510

September 18, 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 today to express our serious objections to the series of actions by the U.S. Department of Education (“Department”) to effectively suspend the implementation of the gainful employment rule. From cancelling contracts that support data collection, to failing to generate new gainful employment data, to undermining statistical survey standards, to extending deadlines for struggling and failing programs to submit appeals, the Department is clearly abandoning its responsibility to protect student borrowers from fraudulent and predatory schools. These actions will gut protections that would otherwise ensure high-cost and low-quality career training programs could not continue to enroll students if they consistently leave students and families with extensive debt they cannot repay. We are deeply concerned these steps are a part of a troubling pattern by the Department to put the financial interests of for-profit colleges ahead of students and taxpayers.

The gainful employment rule was created to terminate career training programs’ access to federal financial aid if they consistently and severely over-indebt their graduates compared to their post-enrollment earnings. The rule also required programs to provide prospective students key consumer information about the costs and employment outcomes among program graduates. Congress granted the Department this authority to provide students with integrated layers of protection from questionable practices and excessive student loan debt. First and foremost, students would receive key program outcome data before making any financial commitment. Second, students would seek out better options for career training because any program that repeatedly overloaded their students with unmanageable levels of debt relative to their earnings would be forced to shut down if they were no longer able to tap a nearly unlimited flow of revenue provided by federal taxpayers.

Early analyses showed that the regulation was working as intended. One analysis found that of the more than 500 failing programs that had not appealed their status, colleges already shut down a substantial majority of those programs even though they were not yet required to do so.^[1] Other career schools and colleges have announced intentions to close poorly performing programs or

^[1] Carey, K. “DeVos is Discarding College Policies that New Evidence Shows are Effective.” The New York Times. June 30, 2017. <https://www.nytimes.com/2017/06/30/upshot/new-evidence-shows-devos-is-discarding-college-policies-that-are-effective.html>

have introduced trial periods to help students make better decisions.^[2] These indicators of improving outcomes in career training could produce tremendously beneficial financial benefits for taxpayers. As fewer students from fewer failing programs take advantage of loan forgiveness from various income-driven repayment plans, the fiscal cost to taxpayers from financing discharged loans could drop by an estimated \$1.5 billion.^[3]

Under your direction, however, the Department has failed to comprehend its duty and obligation to protect the financial integrity of the student aid system and, more importantly, the economic livelihood of students and families who simply want a good job that helps them make ends meet. From the moment you took office, the Department has delayed and cancelled key elements of the gainful employment rule that reveal the Department does not intend to move forward with vigorously enforcing the law to protect student borrowers as it was intended to do. These actions include:

- March 6, 2017: The Department delays gainful employment disclosure requirements and the alternative earnings appeals deadline from April 3, 2017 to July 1, 2017.^[4]
- March 7, 2017: The Department cancels a contract modification with Briefcase Systems Development Inc. to calculate gainful employment program default rates.^[5]
- June 14, 2017: The Department announces a new negotiated rulemaking process will convene to revise gainful employment rules.^[6]
- June 23, 2017: The Department cancels a contract with Senture, LLC to provide gainful employment case processing and call center support.^[7]
- June 30, 2017: The Department announces a one-year delay in the requirement for programs to provide disclosures to prospective students prior to enrollment. It also announces a forthcoming extension for gainful employment programs to file appeals.^[8]

^[2] Cellini, S., Looney, A., et. Al. "Gainful Employment regulations will protect students and taxpayers. Don't change them." Brookings Institution Brown Center for Education Policy. August 4, 2017. <https://www.brookings.edu/blog/brown-center-chalkboard/2017/08/04/gainful-employment-regulations-will-protect-students-and-taxpayers-dont-change-them/>

^[3] Libassi, C.J., and Miller B. "How Gainful Employment Reduces the Government's Loan Forgiveness Costs." Center for American Progress. June 8, 2017.

<https://www.americanprogress.org/issues/education/reports/2017/06/08/433531/gainful-employment-reduces-governments-loan-forgiveness-costs/>

^[4] Federal Student Aid, Office of the U.S. Department of Education. Information for Financial Aid Professionals: Letter dated March 6, 2017 from Lynn Mahaffie, Acting Assistant Secretary for Postsecondary Education.

<https://ifap.ed.gov/eannouncements/030617GEAnnounce105AddtlSubTimeAEAandGEDisReq.html>

^[5] Contract Information for Briefcase Systems Development Inc from [USASpending.gov](https://www.usaspending.gov) (EDFSA14C0014). Contract modification for supplemental agreement for work within scope, effective March 7, 2017.

<https://www.usaspending.gov/transparency/Pages/TransactionDetails.aspx?RecordID=4268DE50-42DB-4E01-91AA-1446F1C73DE6&AwardID=40404635&AwardType=C>

^[6] U.S. Department of Education. "Secretary DeVos Announces Regulatory Reset to Protect Students, Taxpayers, Higher Ed Institutions." June 14, 2017. <https://www.ed.gov/news/press-releases/secretary-devos-announces-regulatory-reset-protect-students-taxpayers-higher-ed-institutions>

^[7] Contract Information for Senture, LLC from [USASpending.gov](https://www.usaspending.gov) (0010). Contract modification for close out, effective June 23, 2017.

<https://www.usaspending.gov/transparency/Pages/TransactionDetails.aspx?RecordID=233ACAC8-C8BA-461D-A929-CDAD5ECBA2A3&AwardID=53646968&AwardType=C>

- August 3, 2017: The Department admits it has “no timetable” to produce a new round of annual program debt-to-earnings rates.^[9]
- August 18, 2017: The Department allows failing and zone programs until February 1, 2018 to submit alternate earnings appeals and allows programs to submit nearly any earnings data they prefer and without any minimum standards for response rates or sample sizes. The Secretary will consider the validity of appeals using state data systems on a “case-by-case basis.” These programs are not required to post warnings until their appeals are resolved.^[10]

Given the Department’s record of repeated efforts to stall and delay this rule, the legitimacy of the Department’s entire regulatory process is called into question. By allowing for the consideration of appeals on a “case by case” basis without any minimum standards for survey sample sizes or response rates to guarantee statistical rigor, the Department is effectively suspending the implementation of existing gainful employment regulations. Few, if any, program sanctions will occur under this framework. Students will also go without the disclosures they need to make informed decisions about the programs that will give them the best shot at their desired career. In addition, key data and indicators on the performance of gainful employment programs that have already been collected from colleges are being hidden from public disclosure as required by law. These steps will have severely negative consequences for students.

State attorneys general have also concluded that the Department’s actions to delay implementation of disclosure requirements and the deadlines for programs to file alternate earnings appeals violate the Administrative Procedures Act.^[11] The safeguards included in federal law exist to protect students and taxpayers from unilateral decisions that favor special interests. The Department has chosen to set aside these protections and subvert the rule of law in the rulemaking process. These actions are unacceptable and we request that you reverse course and enforce the gainful employment rule immediately.

^[8] Federal Student Aid, Office of the U.S. Department of Education. Information for Financial Aid Professionals: Letter dated June 30, 2017 from Kathleen A. Smith, Acting Assistant Secretary for the Office of Postsecondary Education. <https://ifap.ed.gov/eannouncements/063017GEEA106ExtensionCompDateEnhancDisclosures.html>

^[9] Durbin, D. “Durbin to DeVos: Why Won’t You Stand Up for Students and Hold For-Profit Colleges Accountable?” August 3, 2017. <https://www.durbin.senate.gov/newsroom/press-releases/durbin-to-devos-why-wont-you-stand-up-for-students-and-hold-for-profit-colleges-accountable->

^[10] U.S. Department of Education. Program Integrity: Gainful Employment, announcement of applicable dates: 82 FR 39362. August 18, 2017. <https://www.federalregister.gov/documents/2017/08/18/2017-17423/program-integrity-gainful-employment>

^[11] Frosh, B.E, Ferguson, B., Healy, M., and Rosenblum, E.F. Comment Letter to the U.S. Department of Education from the Attorneys General of Maryland, Massachusetts, Washington State, and Oregon. August 4, 2017. <https://www.regulations.gov/document?D=ED-2017-OPE-0090-0035>

Sincerely,



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United States Senator



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Member of Congress



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United States Senator



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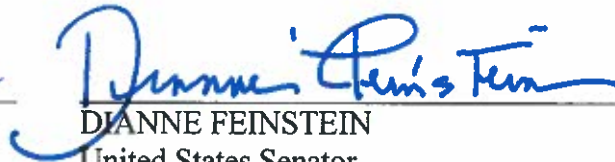
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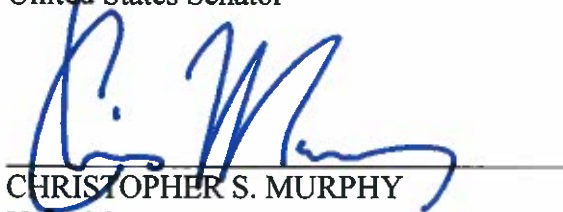
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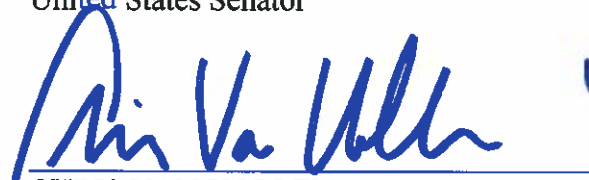

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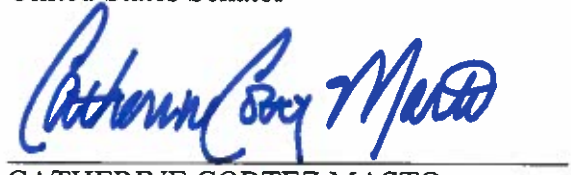

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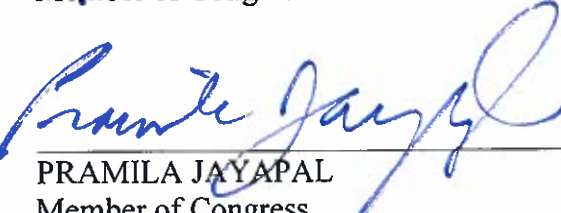

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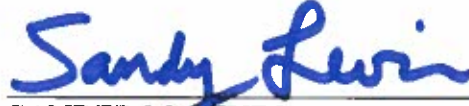
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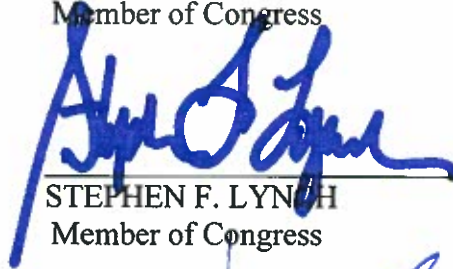
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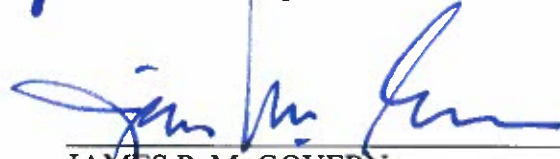
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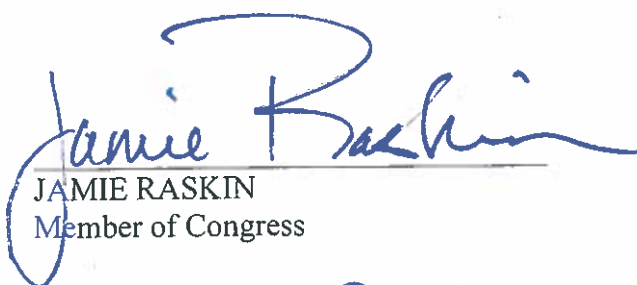
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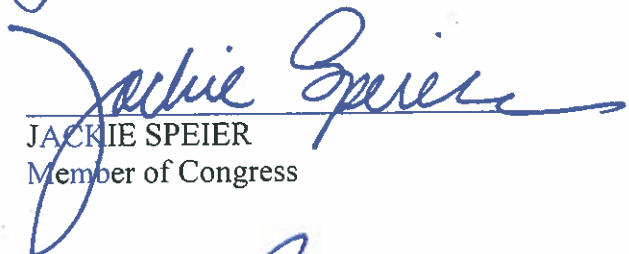
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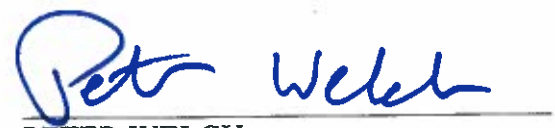

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CC: Dr. A. Wayne Johnson, Chief Operating Officer of Federal Student Aid