

**Congress of the United States**  
**Washington, DC 20515**

February 19, 2019

The Honorable Betsy DeVos  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202

Dear Secretary DeVos:

We are writing to express great concern about the Department's failure to implement the *Department of Education Appropriations Act, 2019*. In particular, we are concerned that lack of timely action by the Department undermines efforts to protect student loan borrowers from unfair, deceptive, and abusive acts and practices that can put their entire financial stability at risk, and from illegal acts that unjustly enrich student loan companies at both borrowers' and taxpayers' expense.

As you are aware, the Department is required to publish a public "System of Records Notice" (SORN) on how it handles student loan data governed by the *Privacy Act of 1974*. The Department maintains data that accompany key aspects of the federal student aid programs under federal law.<sup>1</sup> Since the Department's student loan records may encompass information handled by private companies performing commercial functions under contract with the Department, the agency has historically and appropriately facilitated access to information about these functions by other federal and state law enforcement agencies.

However, recent steps by the Department suggest your agency's previous commitment to information-sharing with law enforcement may no longer be your policy or practice. Last year, the Department indicated that it was removing from one of its principal data policies a provision entitled "Disclosure for Use by Other Law Enforcement Agencies" because the Department "no longer intends to disclose any records under this routine use."<sup>2</sup> In response, 20 state attorneys general urged the Department to reverse its decision, noting that denying state agencies access to such information "has the potential to hamper States' ability to identify unlawful conduct and bring enforcement actions."<sup>3</sup>

Although the Department later backtracked and stated it had not changed its policy of sharing relevant information with law enforcement, the attorneys general noted at the time that the

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<sup>1</sup> U.S. Department of Education, *Privacy Act System of Record Notice Issuances (SORN)*, <https://www2.ed.gov/notices/ed-pia.html#fsa>

<sup>2</sup> Federal Register / Vol. 83, No. 114 / Wednesday, June 13, 2018. Docket ID ED-2018-FSA-0053. Customer Engagement Management System (CEMS), 18-11-11. <https://www.federalregister.gov/documents/2018/06/13/2018-12700/privacy-act-of-1974-system-of-records>

<sup>3</sup> State Attorneys General July 13, 2018 letter, <https://nj.gov/oag/newsreleases18/NJ-WA-Privacy-Act-Letter.pdf>

Department had already stopped sharing information with them for some time but “without providing any rationale for its decision.”<sup>4</sup> To date, it remains unclear how or whether last year’s notice by the Department to remove routine sharing with law enforcement is reflected in current policy, including a related document known as the Common Services for Borrowers (CSB), 18-11-16, which covers records administered by the Department’s student loan servicing and debt collection contractors.<sup>5</sup> The Department has not published any revised versions of this policy following its 2018 notice and public comment—creating unnecessary confusion.

The Senate has noted the Department’s actions with alarm. In Senate Report 115-289 accompanying the *Department of Education Appropriations Act, 2019*, the Committee directed **“the Secretary to respond to “Enforcement Disclosure” requests under the Statement of Records Notice for the Direct Loan Program (Common Services For Borrowers, 18–11–16) within 10 days of receipt and to publish and post on a publicly accessible website a detailed explanation of the policy that governs such a disclosure.”**<sup>6</sup> However, it is not clear what, if any, steps the Department has taken to follow this directive. The Department has ignored multiple requests from staff over a period of more than four months to affirm that the directive has been implemented.

This lack of responsiveness is particularly troubling because the Department indicated that it “can and will continue to share information for law enforcement purposes pursuant to 5 USC § 552a(b)(7) and the routine use governing ‘enforcement disclosure.’”<sup>7</sup>

Given our concerns about the Department’s historically poor oversight and management of student loan companies and contractors, we request that you provide us by no later than March 5, 2019:

1. A copy of its revised procedures for responding to “enforcement disclosure” requests under the Statement of Records Notice for the Direct Loan Program (Common Services for Borrowers, 18-11-16) made pursuant to the *Privacy Act of 1974* and consistent with directives from Congress;<sup>8</sup>
2. For the current fiscal year to date, a list of all data requests submitted by federal, state, local, tribal, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, criminal law, or regulation, including the name of the requesting agency, and:
  - a. The total number of such requests by law enforcement agencies;

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<sup>4</sup> *Ibid.*

<sup>5</sup> Federal Register / Vol. 81, No. 171 / Friday, September 2, 2016. Common Services for Borrowers (CSB), 18-11-16. <https://www.federalregister.gov/documents/2016/09/02/2016-21218/privacy-act-of-1974-system-of-records>

<sup>6</sup> Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2019 (Public Law No. 115-245); Senate Report 115-289 <https://www.congress.gov/115/crpt/srpt289/CRPT-115srpt289.pdf>

<sup>7</sup> Senate Subcommittee on Labor, Health and Human Services, and Education, and Related Agencies Appropriations hearing with Secretary of Education DeVos, June 5, 2018, Page 56: <https://www.govinfo.gov/content/pkg/CHRG-115shrg89104815/pdf/CHRG-115shrg89104815.pdf>


<sup>8</sup> *Ibid.*

- b. An indication of which requests by law enforcement agencies it has fulfilled and the corresponding number of days after receiving such request that the request was fulfilled;
    - c. An indication of which requests by law enforcement agencies it has denied and the corresponding number of days after receiving such request that the request was denied; and
    - d. An indication of which requests by law enforcement agencies it has not yet responded to and the corresponding number of days that the request has been pending;
3. A copy of any Department policies, procedures, guidance, or other communication related to the handling of requests for information or documents sent by a state or federal regulator or law enforcement agency to a company providing student loan servicing or debt collection to the Department under a contract awarded pursuant to 20 USC 1087f, including:
  - a. Civil subpoenas or investigative demands;
  - b. Requests for information related to consumer complaints; and
  - c. Any other requests for information made directly by any federal or state regulator or law enforcement agency.

In our roles on the appropriations subcommittees that fund the Department, we expect that you and the Department will be responsive to Congress.

We appreciate you taking this matter seriously and providing full and prompt responses. If you have any questions regarding our request, please contact Bryce McKibben on the Minority Staff of the Senate Committee on Health, Education, Labor, & Pensions, Mark Laisch on the Minority Staff of the Subcommittee on Labor, Health and Human Services, and Education and Related Agencies Appropriations in the Senate and Jared Bass on the Majority Staff of the Subcommittee on Labor, Health and Human Services, and Education and Related Agencies Appropriations in the House.

Sincerely,



PATTY MURRAY  
United States Senator



ROSA L. DeLAURO  
Member of Congress