

April 4, 2019

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

Dear Secretary DeVos:

We, the undersigned Attorneys General of Colorado, New Jersey, Washington, California, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, and Virginia renew our call to the U.S. Department of Education (“the Department”) to reverse the limitations imposed on the Department’s routine disclosure of student loan information to state law enforcement agencies. Over the past year, the Department has rejected requests for student loan information by states, citing the Privacy Act of 1974 as one of the reasons for the denial.<sup>1</sup> As described in a July 13, 2018 letter to you from twenty State Attorneys General (the “July 13, 2018 Comment”) (copy enclosed), student loan information is vital to our efforts to protect consumers from illegal, unfair, abusive, or deceptive practices by actors in the higher education industry, in which the Department historically has been an important partner. However, the Department’s policy reversal impedes states’ ability to enforce the law and shields unprincipled industry actors from regulatory enforcement, harming student loan borrowers nationwide.

Dual oversight in the higher education arena by state and federal authorities historically has been the cornerstone of responsible regulation and policy-making. In furtherance of this principle, the Department has routinely disclosed student loan data to federal and state law enforcement agencies in connection with such agencies’ investigation of potentially illegal conduct. The Department’s

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<sup>1</sup> See, e.g., Complaint for Declaratory And Injunctive Relief, *Pennsylvania Higher Educ. Assistance Agency v. Perez, et al.*, 1:18-cv-00770-RJL (D.D.C. Apr. 4, 2018), ECF No. 1 at 11 (“On March 26, 2018, [the Department]’s Office of the General Counsel denied the Connecticut Defendants’ January 12, 2018 request for access to certain FSA records pertaining to student loan borrowers ...”); see also U.S. Department of Education, Memorandum re: Ownership of and Access to U.S. Department of Education Records and Data (Dec. 27, 2017), available at <https://static.politico.com/51/1f/0f805fd04c2eb035bcd79f9200be/december-27-2017-servicer-memo.pdf> (stating that “[a]ny request made from any third party for Department records to which a contractor has access must be made directly to the Department, where it will be evaluated for compliance with the requirements of the Privacy Act ....”).

recent rejection of requests from law enforcement agencies is a sharp departure from its long-standing practice.<sup>2</sup>

The Department contracts with multiple private companies to service student loans it owns and shares student loan data with these companies in the course of these commercial relationships. The activities of such private companies are subject to the police power of various state and federal law enforcement agencies. Dual oversight in this arena has become particularly important in recent years, as concerns mount about these companies' compliance with the requirements for servicing federal student loans and consumer protection laws enforced by State Attorneys General. For example, according to reports by the Consumer Financial Protection Bureau, student borrowers encounter obstacles when interacting with servicers about the most basic servicing tasks such as correctly processing loan payments.<sup>3</sup> Student borrowers also face difficulties when trying to enroll or renew enrollment in certain federal repayment programs, such as income-driven repayment plans.<sup>4</sup>

On February 12, 2019, the Department's Office of Inspector General reported that the Department's own oversight activities regularly identified instances of servicer non-compliance with federal requirements and identified concerns about shortcomings in federal oversight of servicers.<sup>5</sup> Moreover, a July 2018 report by the U.S. Department of the Treasury characterized the federal student loan program as "immensely complex" due to the variety of loan types offered and serviced; numerous repayment plans with different eligibility requirements and repayment structures; and unique product features that differ from nearly all other consumer financial products.<sup>6</sup> Because the programs are difficult to understand and servicing practices vary among servicers, borrowers rely on their loan servicers to answer questions about repaying their loans, help enroll them in an appropriate and sustainable repayment plan, and assist them when they struggle to make payments.<sup>7</sup>

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<sup>2</sup> *Privacy Act of 1974; System of Records*, 64 Fed. Reg. 72384, 72399 (Dec. 27, 1999); *Privacy Act of 1974; System of Records*, 81 Fed. Reg. 12081, 12083 (Mar. 8, 2016).

<sup>3</sup> Consumer Financial Protection Bureau, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2013), available at <http://www.consumerfinance.gov/reports/annual-report-of-the-cfpb-student-loan-ombudsman-2013/>.

<sup>4</sup> Consumer Financial Protection Bureau, *Midyear Update On Student Loan Complaints* (Aug. 2016), available at [https://files.consumerfinance.gov/f/documents/201608\\_cfpb\\_StudentLoanOmbudsmanMidYearReport.pdf](https://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf).

<sup>5</sup> U.S. Department of Education, Office of Inspector General, *Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans*, ED-OIG/A05Q0008 at 2 (Feb. 12, 2019) (finding, *inter alia*, that the Department rarely used available contract accountability provisions to hold servicers accountable for instances of noncompliance, and that the Department did not incorporate a performance metric relevant to servicer compliance into its methodology for assigning loans to servicers).

<sup>6</sup> U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation* (July 2018) at 124, available at <https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financi....pdf>.

<sup>7</sup> *Id.*

The State Attorneys General are in a unique position to ensure that the servicers are conducting their businesses in compliance with consumer protection laws and have been active in enforcing state consumer protection laws against servicers. For example, the New York and Massachusetts Attorneys General have separately settled their claims against student loan servicer ACS/Conduent Education Services.<sup>8</sup> In addition, the State Attorneys General of California, Illinois, Mississippi, Pennsylvania, and Washington have brought enforcement actions against student loan servicer Navient.<sup>9</sup>

State Attorneys General also have secured significant protections and relief for student loan borrowers struggling in the face of other abusive and predatory industry practices. These include widespread fraud in the for-profit education sector and the student debt adjustment sector.<sup>10</sup> Indeed, the recent financial improprieties surrounding the financial collapse of Dream Center Education Holdings (“DCEH”), former owner of the Art Institutes, Argosy, and South University schools, highlight the need for law enforcement cooperation in this area. Millions of dollars in federal student aid owed to students was sent to DCEH by the Department but was never received by students.<sup>11</sup> Thirty-nine State Attorneys General have consent judgments governing DCEH’s conduct and the settlement administrator monitoring these judgments has intervened in DCEH’s receivership case.<sup>12</sup>

Information maintained by the Department can further these and many other types of law enforcement efforts on both the state and federal level. As previously expressed to you in the July 13, 2018 Comment, State Attorneys General were alarmed when the Department indicated it no longer intended to disclose certain records under the “routine use” exception for information “relevant to any enforcement, regulatory, investigative or prosecutorial responsibility” of a state

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<sup>8</sup> Press Release, Attorney General James and Superintendent Vullo Announce \$9 Million Settlement of Federal Student Loan Servicing Claims With ACS Educations Services (Jan. 4, 2019), *available at* <https://ag.ny.gov/press-release/attorney-general-james-and-superintendent-vullo-announce-9-million-settlement-federal>; Press Release, AG Healey Secures \$2.4 Million, Significant Policy Reforms in Major Settlement with Student Loan Servicer (Nov. 11, 2016), *available at* <https://www.mass.gov/news/ag-healey-secures-24-million-significant-policy-reforms-in-major-settlement-with-student-loan>.

<sup>9</sup> *State of Illinois v. Navient Corp., et al.*, No. 17-VH-00761 (Circuit Court of Cook County, Jan. 18, 2017) ; *State of Washington v. Navient Corp., et al.*, No. 17-2-01115-1 SEA (King County Superior Court, Jan. 18, 2017); *Commonwealth of Pennsylvania v. Navient Corp., et al.*, No. 3:17-cv-1814-RDM (M.D. Pa. Oct. 5, 2017); *State of California v. Navient Corp., et al.*, No. CGC-18-567732, (San Francisco Superior Court, Jun. 29, 2018); *State of Mississippi v. Navient Corp., et al.*, No. G2108-98203 (Hinds County Chancery Court, July 17, 2018).

<sup>10</sup> See Letter from the Attorneys General of New Jersey, Washington, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai‘i, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, and Virginia to The Honorable Betsy DeVos, Secretary of Education (July 13, 2018).

<sup>11</sup> See Letter from the Department to DCEH Receiver and DCEH Board Chair (Feb. 27, 2019), *available at* <https://studentaid.ed.gov/sa/sites/default/files/argosy-cio-denial-redacted.pdf> (denying change in ownership).

<sup>12</sup> Order Granting Intervention, *Digital Media Solutions, LLC v. South University of Ohio, LLC, et al.*, 1:19-cv-00145-DAP (N.D. Ohio Mar. 12, 2019), ECF No. 144.

or local agency.<sup>13</sup> Moreover, in recent months the Department has declined to share information with the states under other applicable “routine use” exceptions.

We find it particularly troubling that the Department stopped sharing information with state and federal law enforcement agencies without formally providing any reason for its decision or consulting with the affected agencies. We also are troubled that the Department did not appear to consider the July 13, 2018 Comment, did not respond to the concerns outlined therein, and declined to engage with impacted law enforcement agencies; rather, it simply allowed the changes to go into effect without further discussion. This inexplicable move by the Department impedes the efforts of law enforcement agencies to protect the students the Department exists to serve. These concerns remain unaddressed.

The same concerns are shared by the United States Congress, which directed the Department to respond to enforcement disclosure requests and to publish an explanation of the policy that governs such disclosures.<sup>14</sup> In their letter dated February 19, 2019, Senator Patty Murray and Representative Rosa DeLauro noted the Department’s failure to comply with this directive with alarm given “the Department’s historically poor oversight and management of student loan companies and contractors....”<sup>15</sup>

The same issues were raised in a hearing held by the U.S. House of Representatives Appropriations Subcommittee on the Departments of Labor, Health and Human Services, Education, and Related Agencies on March 6, 2019. In that hearing, Chair DeLauro noted that our country is facing a student loan servicing crisis, and that the conduct of federal student loan servicers needs continued and vigorous oversight. Chair DeLauro also observed that compliance with state law—as well as federal law—is an obligation expressly imposed upon federal loan servicers by their contracts with the Department. By including this obligation in its servicing contracts, the Department correctly recognized that state law enforcement agencies have an interest in protecting consumers from deceptive, misleading, unfair, and unconscionable practices that contravene state law as servicers carry out their contracts.

At a time when the Department struggles to keep up with its oversight of loan servicers charged with handling millions of student loan accounts, protecting student loan borrowers from unfair or deceptive practices is more important than ever. These protections are advanced by mutual support and cooperation among state and federal agencies. Now is the time to bolster, not curtail, our joint oversight and enforcement efforts.

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<sup>13</sup> *Privacy Act of 1974; System of Records*, 83 Fed. Reg. 27587 (June 13, 2018).

<sup>14</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>15</sup> Letter from U.S. Senator Patty Murray and U.S. Representative Rosa DeLauro to The Honorable Betsy DeVos, Secretary of Education (Feb. 19, 2019).

The Department's abandonment of its policy of disclosing records to law enforcement agencies represents a significant step away from the interests of consumers and toward the interests of corporate actors, who seek to use the Privacy Act as a shield as they resist being held accountable for their actions. We again urge the Department to return to its previous policy of disclosing student loan information to State Attorneys General and other law enforcement agencies.

Sincerely,



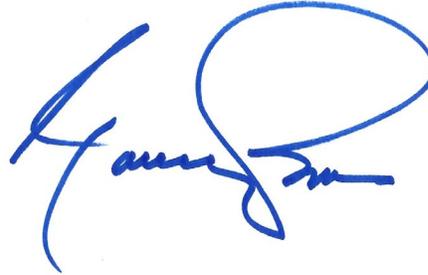
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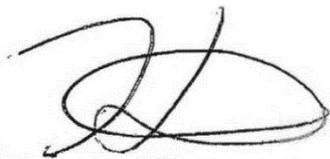
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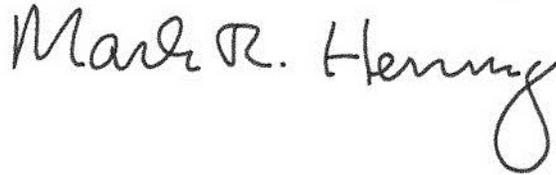
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Enclosure

Cc: U.S. Senate Committee on Health, Education, Labor and Pensions  
U.S. House of Representatives Appropriations Subcommittee on the Departments of  
Labor, Health and Human Services, Education, and Related Agencies



July 13, 2018

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

RE: Docket ID ED-2018-FSA-0053

Dear Secretary DeVos:

We, the undersigned Attorneys General of New Jersey, Washington, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai'i, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, and Virginia, urge the U.S. Department of Education to reverse its decision to limit the Department's disclosure of certain student loan information to law enforcement agencies, including our offices, for use in protecting their constituents from illegal, unfair, abusive, or deceptive practices by actors in the higher education industry. No good reason exists for this abrupt policy change, which can only leave student loan borrowers worse off.

Since at least 2000, it has been the Department's policy to permit routine disclosures of student loan information to State Attorneys General and other authorities responsible for investigating and prosecuting crimes and civil frauds when that information is relevant to their enforcement, regulatory, investigative, or prosecutorial responsibilities.<sup>1</sup> In 2016, the Department amended its policy to expand law enforcement agencies' access to relevant student loan information by removing the limitation that disclosures could only be made for possible violations of criminal laws and civil fraud.<sup>2</sup>

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<sup>1</sup> See *Privacy Act of 1974; System of Records*, 64 Fed. Reg. 72384, 72399 (Dec. 27, 1999) ("Disclosure for Use by Other Law Enforcement Agencies Concerning Possible Violations of the Criminal Laws or Actions Initiated for Civil Fraud. The Department may disclose information to any Federal, State, local or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of the criminal laws or actions initiated for civil fraud, if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity's jurisdiction.").

<sup>2</sup> See *Privacy Act of 1974; System of Records*, 81 Fed. Reg. 12081, 12083 (Mar. 8, 2016) ("Disclosure for Use by Other Law Enforcement Agencies. The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.").

Information sharing allowed under the routine use exception recognized the important role that State Attorneys General play in protecting the nation’s student loan borrowers from unfair, deceptive, and predatory practices in the higher education field, as well as state regulators’ roles in licensing and supervising schools. Regulations developed by the Department have consistently acknowledged and encouraged a vigorous role for States in overseeing and policing the activities of federal contractors originating, servicing, and collecting on student loans. *See, e.g.*, 34 C.F.R. § 682.401 (“The [student loan] guaranty agency shall ensure that all program materials meet the requirements of Federal and State law”).

Last month, the Department quietly eliminated its policy on disclosures of consumer complaints and related information for use by law enforcement agencies, including disclosures for use in criminal and civil fraud investigations. *See Privacy Act of 1974; System of Records*, 83 Fed. Reg. 27587 (June 13, 2018). The Department also eliminated its policy on disclosures of records related to borrowers’ requests for relief under the borrower defense regulations. The Department offered no justification for abandoning its long-standing practice, stating merely that it “no longer intends to disclose any records under this routine use.” *Id.* at 27588; *see also id.* (“The Department is removing former routine use (2) entitled ‘Disclosure for Use by Other Law Enforcement Agencies’ . . .”).

The Department’s Notice renames the Department’s Office of the Student Loan Ombudsman Records system the Customer Engagement Management System (CEMS), and expands the CEMS to include borrower defense to repayment claims and those records contained in the Common Services for Borrowers (CSB) system concerning the eligibility of individuals for relief under the Department’s borrower defense regulations, as well as records used by the Department to determine the appropriate amount of relief for successful borrower defense requests. Denying state agencies access to information in the new CEMS has the potential to hamper States’ ability to identify unlawful conduct and bring enforcement actions.

The higher education industry requires vigilance and vigorous enforcement from state law enforcement agencies. We are particularly concerned by predatory practices in the for-profit schools industry. Over the past five years, our offices have taken a number of actions to stop unlawful practices by for-profit schools:

- The New York Attorney General obtained an Assurance of Discontinuance with Career Education Corporation (including Sanford Brown schools) for inflation of job placement rates to attract students;
- The Massachusetts Attorney General obtained a consent judgement against The Career Institute, LLC for a number of violations of state consumer protection laws<sup>3</sup>;
- After investigations by several State Attorneys General and federal agencies, Corinthian Colleges, Inc. closed and filed for bankruptcy;

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<sup>3</sup> <https://www.mass.gov/files/documents/2016/08/sf/aci-amended-complaint.pdf>

- The New York and Massachusetts Attorneys General obtained restitution for former students at DeVry University who were misled about job placement rates and salary prospects after graduation<sup>4</sup>;
- The Illinois Attorney General’s Office settled its lawsuit with Westwood College for various deceptive practices, including misrepresenting the accreditation and cost of its criminal justice program;
- In a suit filed by the Minnesota Attorney General against the Minnesota School of Business, Inc. and Globe University, Inc., a Hennepin County District Court found systemic deception related to the marketing and recruitment of students into its criminal justice program; and
- Attorneys General in 39 States and the District of Columbia reached a settlement with Education Management Corporation (EDMC) (including The Art Institutes and Brown Mackie College) over unlawful practices including misrepresenting job placement rates to potential students.<sup>5</sup>

We respectfully submit that the Department is making a mistake. The Department’s action reverses a long tradition of federal-state cooperation in protecting students and student loan borrowers from unfair and deceptive practices. State Attorneys General and other state law enforcement authorities have long maintained productive working relationships with the Department and other federal agencies. Routine information sharing has been key to the success of these partnerships, which have endured multiple changes in federal and state administrations.

Under its past information-sharing policies, the Department routinely disclosed information about student loan borrowers to State Attorneys General working to protect students and student loan borrowers from predatory practices and to secure relief for those victimized by fraud and other unlawful conduct. Most prominently, the Department collaborated with forty-seven State Attorneys General in a massive effort to secure debt relief for former students of Corinthian Colleges, Inc. after the Department and several State Attorneys General uncovered widespread fraud across the company’s programs. State Attorneys General pooled their resources through the National Association of Attorneys General and used information provided by the Department to notify students of their eligibility for loan forgiveness.

Additionally, in 2015, the California Attorney General’s Office worked with the Department to make findings entitling former Corinthian Colleges student borrowers to federal student loan relief.<sup>6</sup> Former students of DeVry University received more than \$100 million in refunds and debt relief as a result of action by the Federal Trade Commission, New York State

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<sup>4</sup> <https://ag.ny.gov/press-release/ag-schneiderman-obtains-settlement-devry-university-providing-225-million-restitution>; <http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-07-05-refunds-for-students-deceived-by-online-for-profit-school.html>

<sup>5</sup> [http://www.illinoisattorneygeneral.gov/pressroom/2015\\_11/20151116.html](http://www.illinoisattorneygeneral.gov/pressroom/2015_11/20151116.html)

<sup>6</sup> <https://www.ed.gov/news/press-releases/department-education-and-attorney-general-kamala-harris-announce-findings-investigation-wyotech-and-everest-programs>

Attorney General and other state regulators.<sup>7</sup> In August 2017, a coalition of state and federal agencies reached a nationwide settlement with Aequitas Capital Management, which provided loans to former students of the now-defunct Corinthian Colleges.<sup>8</sup>

Unfortunately, the Department has stopped sharing the information that State Attorneys General have used in these efforts without providing any rationale for its decision. And now, with the formal elimination of its policy on routine disclosures of information for use by law enforcement agencies, the Department risks further hampering the ability of State Attorneys General and other law enforcement officials to protect students from predatory practices and to secure relief for students victimized by fraud and other unlawful activities. The Department's policy change seems to send a signal: law enforcement agencies working to combat crime, fraud, and other unlawful conduct can no longer count on the Department as a reliable partner.

Finally, we are concerned that the effective date of these changes is June 13, the date of publication in the Federal Register. This does not allow the Department to review public comments provided during the 30-day public comment period with the appropriate consideration, and make adjustments to the final action. We are disappointed that law enforcement agencies affected by this change were not consulted in advance.

We hope that the Department does not actually intend to impede law enforcement agencies' access to student loan information relevant to matters within their jurisdiction. But we are concerned that may be the result of the Department's policy change. We ask the Department to recommit to its historic law enforcement partnerships by restoring its policy on routine disclosures of student loan information for use by State Attorneys General and other law enforcement agencies.

Thank you for your consideration of our views.

Sincerely,



Gurbir S. Grewal  
New Jersey Attorney General



Bob Ferguson  
Washington State Attorney General

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<sup>7</sup> <https://www.ftc.gov/news-events/press-releases/2016/12/devry-university-agrees-100-million-settlement-ftc>; <https://ag.ny.gov/press-release/ag-schneiderman-obtains-settlement-devry-university-providing-225-million-restitution>

<sup>8</sup> <https://www.atg.wa.gov/news/news-releases/ag-obtains-7-million-debt-relief-nearly-2000-washington-student-borrowers>

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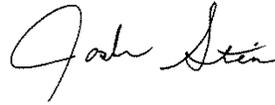
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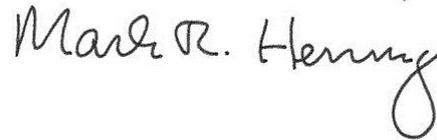
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