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COMMITTEE ON
EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

October 28, 2019

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The Honorable Betsy M. DeVos
Secretary
Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary DeVos:

I write to invite you to appear before the House Committee on Education and Labor on Tuesday, November 19, 2019 to discuss the status of the nearly 60,000 outstanding borrower defense claims from defrauded Corinthian College students at the U.S. Department of Education (Department). The Committee on Education and Labor has oversight and investigation authority over the Department of Education under House Rule X. Committee staff has been in contact with Department staff requesting your appearance for nearly two weeks, since October 15th, but the Department has yet to respond to my request affirmatively or negatively. This letter serves to reiterate those requests.

Though Corinthian Colleges have been found to have defrauded students, the Department has failed to discharge any of the nearly 60,000 pending claims. This inaction has raised questions about the Department's implementation of borrower defense.

In 2015 Corinthian Colleges closed operations following years of fraudulent misrepresentations to students and related legal challenges by states and federal agencies. In response, the Department promulgated regulations ensuring procedural fairness to students, while also holding institutions of higher education (IHE) accountable.¹ The final rule, published in November 2016, was scheduled to go into effect on July 1, 2017.² Recognizing the urgency of discharging these defrauded borrowers' loans, the Department created a Borrower Defense Unit to handle the rapid influx of claims. Even before the rule went into effect, the Unit processed more than 28,000 claims from Corinthian College students, providing approximately \$558 million in debt relief.³ The Unit projected to resolve all pending claims by Spring 2017.⁴

When you took office, approximately 54,000 borrower defense claims were pending⁵ and the number was growing. Under your leadership the Department has not discharged a borrower defense claim in over a year.⁶ Currently, defrauded Corinthian students account for approximately 60,000⁷ of the more than 210,000 pending claims.⁸

The Committee expects answers from you regarding the Department’s inaction on pending claims, despite a court order requiring it to implement the borrower defense rule.

One month before the borrower defense rule was scheduled to go into effect, the Department announced it would rewrite the rule and, in the interim, delay the Obama-era rule’s implementation.⁹ You defended the delay stating that the 2016 rule was “rushed through” and that “all one had to do was raise his or her hands to be entitled to so-called free money.”¹⁰

In accordance with the Department’s regulatory delay, the Department ceased approving any borrower defense claims. However, in September 2018 a federal district court judge ruled that your implementation delay was unlawful.¹¹ The following month the judge ordered the 2016 borrower defense rule to take effect immediately.¹²

In apparent disregard of that court’s order, the Department has not processed a single claim since that order.¹³ Defending this policy, Undersecretary Diane Auer Jones inaccurately testified that the Department is “not able to determine the level of harm or the level of relief that a borrower should get because the methodology we now use is now being challenged by the California courts.”¹⁴ In reality, the decision she referenced stated: “Nothing in this Order prohibits the Secretary from fully discharging the loans of any borrower who successfully completed or who successfully completes an attestation form.”¹⁵ Simply put, the Department is able to adjudicate these claims; however, you appear unwilling to do so. The Department’s continued inaction raises serious questions regarding whether your Department is faithfully implementing the court’s order and carrying out its duty to defrauded students.

The Department unlawfully seized defrauded borrowers’ tax refunds and garnished their wages, raising serious questions regarding Secretary DeVos’s ability to manage this program.

After years of waiting for relief, defrauded Corinthian students collectively sued you for your refusal to discharge their loans.¹⁶ That case is ongoing, but in March 2018, the Court ordered the Department to stop collecting payments on these loans. Yet the Department continued collecting payments from thousands of students. The Department even referred some defrauded borrowers to the U.S. Department of Treasury to seize their tax refunds and garnish their wages. After reviewing the relevant evidence, the court found that “there is no dispute that [the Department has] violated” this court order. Ultimately, the court sanctioned the Department \$100,000 for taking “only minimal efforts to comply with the [order]”.¹⁷

Downplaying the severity of this violation, you recently tweeted, “Loan servicers made an error on a small # of loans. We know and we’re fixing it.”¹⁸ But the Department filed court documents reporting that more than 16,000 former Corinthian students “were incorrectly informed at one time or another ... that they had payments due on their federal student loans”.¹⁹ The characterization in your tweet is in stark contrast to the very real emotional and financial harm faced by 16,000 defrauded borrowers. Accordingly, you must explain to Congress and the public how this occurred and how you will prevent it from re-occurring.

You are the only appropriate Department witness.

The Secretary is the only appropriate Department official for the Committee’s hearing on the Department’s treatment of defrauded Corinthian students. You personally review and sign borrower defense decision memos.²⁰ You have spoken publicly on your contempt for the Obama-era rule that your Department continues to refuse to implement²¹, despite a court order requiring it to do so.²² As noted above, you have

personally and publicly defended your violation of a court order. And the Department recently indicated that you were personally overseeing the correction of errors committed by loan servicers.²³ Finally, you are the only high-level Department official who has remained at the agency across the relevant time span.

The Department has failed defrauded students across America, preventing them from obtaining statutorily entitled relief, while compounding their financial difficulties by attempting to collect on some of these loans in violation of a court order. Tens-of-thousands of these students turned to the courts for help, but your actions raise serious questions about your willingness to obey court orders. Given these concerns, students are relying on Congress to fulfill its constitutional oversight function. Accordingly, the Committee expects you to testify.

In arranging your appearance before the Committee, please reserve sufficient time in order for each Committee Member to have the opportunity to engage in five minutes of questioning, as provided in Rule XI of the House Rules. As a practical matter, this may require a commitment of up to five hours to accommodate opening statements, testimony, and Member questions.

I look forward to your acceptance of this invitation. Please send a notice of acceptance of this invitation to Tylease Alli, Chief Clerk, at Tylease.Alli@mail.house.gov by November 1, 2019. To submit written testimony in advance of your appearance, please also contact Tylease Alli.

Thank you in advance for your agreement to appear before the Committee.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman

cc: The Honorable Virginia Foxx, Ranking Member

¹ As of October 28, 2016 82,000 Corinthian students had submitted Borrower Defense claims.

<https://www2.ed.gov/documents/press-releases/borrower-defense-report.pdf>

² Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant, 81 Fed. Reg. 75926 (Finalized Nov. 1, 2016).

³ <https://www.ed.gov/news/press-releases/american-career-institute-borrowers-receive-automatic-group-relief-federal-student-loans>

⁴ *Federal Student Aid Enforcement Office Report on Borrower Defense*, October 28, 2016. Accessed:

<https://www2.ed.gov/documents/press-releases/borrower-defense-report.pdf>.

⁵ Complaint at 22, *Sweet v. DeVos* (N.D.C.A.) (case 5:19-cv-03674). Accessed: <https://predatorystudentlending.org/wp-content/uploads/2019/06/Complaint.pdf>

⁶ See U.S. Dep't of Education, *Borrower Defense Quarterly Report* (Sept. 19, 2018)(indicating that the Department had, in total, approved 47,942 borrower defense claims as of the Department's first report transmitted on September 19, 2018); see also U.S. Dep't of Education, *Borrower Defense Quarterly Report* (Oct. 2, 2019)(indicating that the Department had, in total, approved 47,942 borrower defense claims as of the Department's most recent report transmitted on October 2, 2019).

⁷ Compliance Report at 27, *Manriquez et al. v. DeVos* (N.D.C.A.) (Case No. 17-cv-07210-SK).

⁸ U.S. Dep't of Education, *Borrower Defense Quarterly Report* (Oct. 2, 2019).

⁹ Education initially delayed the rule in reaction to a lawsuit from the California Association of Private Postsecondary Schools (CAPPS). <https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-12562.pdf>. It also announced negotiated rulemaking to rewrite the rule.

¹⁰ <https://www.detroitnews.com/story/news/politics/2017/09/22/mackinac-devos-romney-mcdaniel/105897636/>

¹¹ *Bauer v. DeVos*, 332 F. Supp. 3d 181, 186 (D.D.C. 2018).

¹² *Id.*

¹³ U.S. Dep't of Education, *Borrower Defense Quarterly Report* (Oct. 2, 2019).

¹⁴ Diane Auer Jones Testimony before Committee on Oversight and Government Reform Subcommittee on Economic and Consumer Policy, "Examining For Profit College Oversight and Student Debt." May 22, 2019.

¹⁵ *Calvillo Manriquez v. DeVos*, 345 F. Supp. 3d 1077 (N.D. Cal. 2018) accessed:

<https://studentaid.ed.gov/sa/sites/default/files/june-19-2018-clarifying-order.pdf>. See also, Danielle Douglas-Gabriel, *Judge Rejects DeVos's Interpretation of Order to Halt Partial Student Debt Relief Plan*, Washington Post (June 20, 2018),

<https://www.washingtonpost.com/news/grade-point/wp/2018/06/20/judge-rejects-devoss-interpretation-of-order-to-halt-partial-student-debt-relief-plan/>.

¹⁶ Complaint, *Manriquez et al. v. DeVos*, (N.D.C.A.) (Case No. 17-cv-07210-SK).

¹⁷ <https://www.washingtonpost.com/education/2019/10/09/federal-judge-slams-devos-education-department-violating-order-weighs-sanctions/>

¹⁸ <https://twitter.com/betsydevosed/status/1182439020774731776?lang=en>.

¹⁹ Compliance Report at 5, *Manriquez et al. v. DeVos* (N.D.C.A.) (Case No. 17-cv-07210-SK).

²⁰ Document 65-3 ("Action Items on Borrower Defense"), *Manriquez et al. v. DeVos* (N.D.C.A.) (Case No. 17-cv-07210-SK).

²¹ <https://www.detroitnews.com/story/news/politics/2017/09/22/mackinac-devos-romney-mcdaniel/105897636/>

²² *Bauer v. DeVos*, 332 F. Supp. 3d 181, 186 (D.D.C. 2018).

²³ <https://twitter.com/usedgov/status/1187558162968272896>.