

Congress of the United States
Washington, DC 20510

June 16, 2020

Ms. Sandra D. Bruce
Acting Inspector General
Delegated the Duties of Inspector General
Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Acting Inspector General Bruce:

Given the economic strains caused by the coronavirus pandemic, it is more important than ever that the Department of Education protect student borrowers who have been defrauded by for-profit colleges. We are writing to urgently request that your office conduct an independent review to inform Congress and the public about the Department's decision to change its treatment of "borrower defense" claims, undermining a key legal protection for borrowers.

Federal law provides that student borrowers may apply for borrower defense to seek forgiveness of federal student loans used to attend schools that misled them or engaged in misconduct. We are concerned that under the Trump Administration, the Department has applied a "partial relief" formula that drastically limits the assistance available to students who have been defrauded, typically by for-profit colleges. This partial relief formula is arbitrarily short-changing struggling borrowers when they can least afford it. As a result of the coronavirus pandemic, the economy is in free-fall, and millions of Americans are out of work. Student debt already places significant strains on individual borrowers and the economy as a whole, and in this time of widespread suffering, the Department should be working to provide additional relief to borrowers rather than applying a new formula that limits their relief based on inaccurate assumptions. Accordingly, we ask that your office review the Department's decision to adopt this partial relief formula.

On December 8, 2017, your office issued a report, *Federal Student Aid's Borrower Defense to Repayment Loan Discharge Process*, which urged the Department to make progress in processing pending claims from students who attended the defunct for-profit college chain Corinthian Colleges, Inc. and other colleges and who alleged substantial misrepresentations by these colleges.¹ These borrower defense claims already had been approved by the Department during the previous Administration, but under Secretary of Education Betsy DeVos, the Department halted debt relief for borrowers who already qualified.

¹ Department of Education, Office of Inspector General, *Federal Student Aid's Borrower Defense to Repayment Loan Discharge Process* (Dec. 8, 2017) (online at www2.ed.gov/about/offices/list/oig/auditreports/fy2018/i04r0003.pdf).

Secretary DeVos then authorized a new “partial relief” methodology for calculating the amount of relief for those borrowers. This new methodology was based on the average earnings of students in the program compared to students who attended other schools (“first partial relief formula”). The Department began processing limited loan discharges under this formula for borrower defense claims that already had been approved under the previous Administration.² Secretary DeVos wrote that she approved these discharges “[w]ith extreme displeasure.”³

In applying the first partial relief formula, the Department misused the personal information of the students in the program and violated the Privacy Act of 1974.⁴ The Department sent personal information on 61,717 former Corinthian students to the Social Security Administration (SSA) and requested aggregate earnings information for these students.⁵ Your predecessor, Inspector General Kathleen Tighe, raised concerns about the Department’s use of SSA data in February 2018, noting the Department’s “lack of clear authorization.”⁶ Given the potential misuse of sensitive personal data, the matter was also referred to SSA’s Data Integrity Board.⁷

A federal court held that the Department’s misuse of the students’ data violated the Privacy Act and issued a preliminary injunction suspending use of the first partial relief formula. The court also found that the data exchange violated the terms of a memorandum of understanding between SSA and the Department. The Department also may have failed to comply with Office of Management and Budget Circular Number A-108, which requires the Department to publish a notice in the Federal Register and solicit public comment when it

² The memorandum approving the first partial relief formula was signed by Secretary DeVos on December 15, 2017, and announced via press release on December 20, 2017. *See Manriquez v. DeVos* (No. 3:17-cv-7210-SK), Order Granting in Part and Denying in Part Plaintiff’s Motion for Preliminary Injunction (May 25, 2018) (online at www.courtlistener.com/recap/gov.uscourts.cand.320628/gov.uscourts.cand.320628.60.0.pdf).

³ *Appeals Court Nominee Shaped DeVos’s Illegal Loan Forgiveness Effort*, New York Times (Nov. 6, 2019) (online at www.nytimes.com/2019/11/06/us/politics/steven-menashi-confirmation.html).

⁴ 5 U.S.C. §552a.

⁵ *Manriquez v. DeVos* (No. 3:17-cv-7210-SK), Order Granting in Part and Denying in Part Plaintiff’s Motion for Preliminary Injunction (May 25, 2018) (online at www.courtlistener.com/recap/gov.uscourts.cand.320628/gov.uscourts.cand.320628.60.0.pdf).

⁶ Memorandum from Inspector General Kathleen S. Tighe, Department of Education, to Acting Chief Operating Officer James F. Manning, Federal Student Aid, Department of Education (Feb. 6, 2018) (online at <https://subscriber.politicopro.com/f/?id=00000170-64be-dd4e-a974-7fbf2b9a0000>).

⁷ Letter from Acting Inspector General Gale Stallworth Stone, Social Security Administration, to Senator Elizabeth Warren (Jan. 30, 2018) (online at <https://subscriber.politicopro.com/f/?id=00000170-64be-dd4e-a974-7fbf2b9a0000>).

changes a system of records.⁸ SSA subsequently terminated its data-sharing memoranda of understanding with the Department.⁹

Internal Department memos have raised questions about the Department's decision-making process that led to the adoption of the first partial relief formula. For example, several memos show that career experts at the Department determined that the value of degrees from certain now-defunct for-profit colleges was "likely either negligible or non-existent" and that students defrauded by these schools should receive "full relief."¹⁰

A memo released from the Department's Office of General Counsel raised additional troubling questions.¹¹ The memo readily acknowledged that the Department would be using "actual earnings data for borrowers maintained by the Social Security Administration" in its first partial relief formula, but did not address whether this data use was legally permissible. The memo also claimed erroneously that "the Secretary's resolution of borrower defense claims is not subject to judicial review."¹²

On December 10, 2019, the Department announced another partial relief methodology ("second partial relief formula"), which also uses data about borrowers to limit relief under the Department's borrower defense authority.¹³ After it was announced, the second partial relief formula immediately faced scrutiny because, like the previous formula, it would limit many defrauded borrowers to only a small fraction of the debt relief they are seeking.¹⁴ These concerns of basic fairness have grown as a result of the impact of the coronavirus pandemic.

⁸ Office of Management and Budget, *OMB Circular No. A-108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act* (Dec. 23, 2016) (online at www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A108/omb_circular_a-108.pdf).

⁹ *Agencies at Loggerheads Over Gainful-Employment Data, Inside Higher Ed* (Dec. 6, 2018) (online at www.insidehighered.com/news/2018/12/06/education-department-says-data-dispute-behind-failure-enforce-gainful-employment).

¹⁰ *Betsy DeVos Overruled Education Dept. Findings on Defrauded Student Borrowers*, National Public Radio (Dec. 11, 2019) (online at www.npr.org/2019/12/11/786367598/betsy-devos-overruled-education-dept-findings-on-defrauded-student-borrowers).

¹¹ *Appeals Court Nominee Shaped DeVos's Illegal Loan Forgiveness Effort*, New York Times (Nov. 6, 2019) (online at www.nytimes.com/2019/11/06/us/politics/steven-menashi-confirmation.html).

¹² Memorandum from Steven Menashi, Acting General Counsel, Department of Education, to James Manning, Delegated the Authority to Perform the Functions and Duties of the Under Secretary, Department of Education, *Legal Bases for Approval and Discharge of Pending Borrower Defense Claims for Former Corinthian Students Qualifying for Approval on the Grounds of Job Placement Rate, Guaranteed Jobs, and Transfer of Credit Findings* (Dec. 14, 2017) (online at <https://int.nyt.com/data/documenthelper/6576-menashi-memo/e1518a22b8810dd9f9a3/optimized/full.pdf#page=1>).

¹³ Department of Education, *Press Release: Secretary DeVos Approves New Methodology for Providing Student Loan Relief to Borrower Defense Applicants* (Dec. 10, 2019) (online at www.ed.gov/news/press-releases/secretary-devos-approves-new-methodology-providing-student-loan-relief-borrower-defense-applicants); Department of Education, *Borrower Defense Partial Relief Methodology* (Dec. 13, 2019) (online at <https://studentaid.ed.gov/sa/sites/default/files/borrower-defense-partial-relief-methodology-cci.pdf>).

¹⁴ See, e.g., *DeVos Tries Again to Cut Debt Relief for Students Who Were Misled*, New York Times (Dec. 10, 2019) (online at www.nytimes.com/2019/12/10/business/betsy-devos-student-loan-forgiveness.html).

While payments on most federal student loans have been suspended until September 30, 2020, the remaining debt obligations for borrowers receiving less than full relief are likely to be a source of substantial stress and anxiety.

The Department claims that the second partial relief formula uses a “scientifically robust statistical methodology.”¹⁵ However, academic experts have stated that the Department misapplied and confused basic statistical techniques in the development of this new formula.¹⁶ For some programs, a borrower would need to make less than zero in earnings (a mathematical impossibility) to receive full relief. On December 13, 2019, the Department removed from its website spreadsheets showing that under the second partial relief formula, borrowers would need to earn less than zero dollars to receive full relief. The Department did not change the formula, but instead replaced these spreadsheets with new versions that obscured the problem.¹⁷

The Department’s adoption of these partial relief formulas was an abuse of sensitive personal information and an egregious example of Secretary DeVos putting special interests ahead of the interests of students who have been cheated out of thousands of dollars by for-profit colleges. These actions—which have led to protracted litigation—divert significant resources at a time when the Department is engaged in several critical initiatives, including implementation of the CARES Act—which pauses student loan payments, interest, and collections for nearly 40 million Americans—and its ongoing “NextGen” reform of the student loan servicing and collection system that must be ready to implement when federal student loan borrower payments resume. In addition, the Department’s partial relief formula relies on outdated earnings data that disregards the dire economic circumstances that many borrowers and their families now face with tens of millions of Americans unemployed during the pandemic.

For these reasons, we ask that you undertake a review of the Department’s development and application of the first and second borrower defense partial relief formulas, including the following questions:

1. What internal controls, if any, existed at the time of the development and approval of the first partial relief formula to prevent the Department from making unauthorized requests or disclosures of data?
2. What improvements, if any, have been made since the approval and announcement of the adoption of the first partial relief formula to the internal

¹⁵ Department of Education, *Press Release: Secretary DeVos Approves New Methodology for Providing Student Loan Relief to Borrower Defense Applicants* (Dec.10, 2019) (online at www.ed.gov/news/press-releases/secretary-devos-approves-new-methodology-providing-student-loan-relief-borrower-defense-applicants).

¹⁶ *DeVos’ New Borrower Defense Scheme is Nonsensical*, Medium (Dec. 12, 2019) (online at <https://medium.com/@repmarktano/education-expert-devos-new-borrower-defense-scheme-is-nonsensical-b232a096c1a2>).

¹⁷ *Betsy DeVos’ Cruel Math Denies Relief to Defrauded Borrowers*, Center for American Progress (Dec. 18, 2019) (online at www.americanprogress.org/issues/education-postsecondary/news/2019/12/18/478876/betsy-devos-cruel-math-denies-relief-defrauded-borrowers/).

controls and procedures to prevent unauthorized requests or disclosures of data regarding borrowers going forward?

3. Which political appointees were involved in the development and approval of the Department's first and second partial relief formulas?
4. Have these political appointees received any instruction or guidance on what constitute improper requests or disclosures of borrower data?
5. What steps has the Department taken to comply with the requirements of OMB and Budget Circular Number A-108 regarding changes in the agency's system of records with respect to borrower data?
6. What steps has the Department taken to ensure that it complies with the applicable requirements of the Administrative Procedure Act regarding the first and second partial relief formulas, and were such steps adequate under Inspector General standards?
7. What steps did the Department take to develop and approve its second partial relief methodology and to ensure it followed accepted statistical principles? For example, did the Department solicit feedback from internal and external experts in statistical analysis? Were the steps taken adequate under Inspector General standards?
8. Based on your analysis, does the second partial relief formula use a "scientifically robust statistical methodology," as the Department has asserted?
9. Did the Department consider any other methodologies? How were these methodologies evaluated, and how did the Department make a final decision regarding this policy?
10. Did the Department communicate with any for-profit colleges or their representatives regarding the development of the first or second partial relief formulas?
11. Since announcing the second partial relief formula, has the Department appropriately considered revising its methodology to account for widespread economic impacts of the coronavirus pandemic?

We also request an answer to the following questions by June 30, 2020:

12. Was your office consulted on the first partial relief formula and, if so, what feedback was provided regarding the policy?
13. Was your office consulted on the second partial relief formula and, if so, what feedback was provided regarding the policy?

Ms. Sandra D. Bruce

Page 6

The Department has a responsibility to appropriately administer its borrower defense authority, but its track record has created significant cause for concern that student, borrower, and taxpayer resources are being misused. If you have any questions regarding this request, please contact the minority staff of the Senate Committee on Homeland Security and Governmental Affairs at (202) 224-2627 or the majority staff of the House Committee on Oversight and Reform at (202) 225-5051. Thank you for your assistance in this matter.

Sincerely,

/s/ Gary C. Peters

Gary C. Peters
Ranking Member
Committee on Homeland Security
and Governmental Affairs
U.S. Senate

/s/ Carolyn B. Maloney

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives

cc: The Honorable Jim Jordan, Ranking Member
House Committee on Oversight and Reform

The Honorable Ron Johnson, Chairman
Senate Committee on Homeland Security and Governmental Affairs