



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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