United States Senate
WASHINGTON, DC 20510

December 20, 2018

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

Dear Secretary DeVos:

We write regarding revelations from a Freedom of Information Act request that the U.S. Department of Education ("Department") has failed to protect students who use federal financial aid and are charged unfair fees on financial products that institutions of higher education are paid to promote. This failure has allowed harm to come to students while benefiting large financial institutions like, Wells Fargo. We write to learn what actions, if any, the Department is taking at this point to ensure students are protected from predatory financial arrangements that are prohibited by federal law.

Under the Department's cash management rules, institutions of higher education are required to negotiate agreements with financial service providers that are in the "best financial interests of students." Unpublished analysis provided to the Department by the Consumer Financial Protection Bureau (CFPB) about the use of college-sponsored deposit and prepaid accounts showed that in cases where colleges were paid to promote campus banking products, students paid, on average, *three times more* in account fees than students at campuses without these agreements. Not only did the Department fail to act on this information, but it joined the CFPB in suppressing the data despite several requests from Congress. This regulatory failure allowed Wells Fargo to charge students an average $46.99 in fees compared with an average of $11.93 at institutions that were not paid to promote student accounts. According to the suppressed report, students at the 30 colleges with deals to promote Wells Fargo accounts paid more in fees than students at the other 543 examined colleges combined.

CFPB's analysis has been available to the Department for at least ten months, and the Department should have taken steps to review the agreements that resulted in the highest average fees for students—as such fees are clearly not in the "best financial interest of students." Wells Fargo's actions are especially troubling given the widely known enforcement actions taken against the company for opening unauthorized accounts to meet sales targets. Nonetheless, a Department program review of Wells Fargo, issued in June, 2017, largely ignored the bank's noncompliance in numerous areas due to technicalities, and applied only minor fines in other areas. Moreover, a statement from a Department spokesperson called the highly-relevant information in the CFPB's analysis "broader than the scope of the Department's oversight of school's compliance" with federal regulations. The CFPB's findings seem well within the scope of the Department's oversight responsibilities.

It is difficult to discern whether or how the Department is enforcing the requirements of its own regulations to protect the financial interests of students. Instead, the Department appears to be pushing forward with controversial contracting proposals and ignoring Congressional requests regarding an expansive new payment vehicle program.

To better understand the Department's response to the CFPB data and analysis, please respond to the following questions:

1. Has the Department reviewed any of the Tier 1 and Tier 2 financial agreements between institutions of higher education and financial service providers identified in the CFPB's analysis as having higher than average fees, including but not limited to Wells Fargo, for violating the requirement that they be "not inconsistent with the best financial interests of students?"

2. Has the Department identified any current institution's cash management agreements as deficient in meeting the standard of the "best financial interests of students?" If so, please provide a list of deficient agreements and rationale for their deficient identification.

3. What actions has the Department taken to ensure that institutions correct any deficiencies?

4. Please provide the criteria the Department uses to determine that the agreements meet the requirement of the "best financial interests of students."

5. Have any institutions of higher education, that have agreements with Wells Fargo, provided the Department with evidence demonstrating that they are meeting the requirement that institutions conduct "due diligence reviews at least every two years, to ascertain whether the fees imposed under the accounts are, considered as a whole, consistent with or lower than prevailing market rates; and all contracts for the marketing or offering of the accounts to the institution's students provide for termination of the arrangement at the discretion of the institution based on complaints received from students or a determination by the institution that the fees assessed under the account are not consistent with or are above prevailing market rates"?

6. How do the Department's reviews of the financial agreements ensure that there are sufficient safeguards in any revenue sharing or incentive structures to guard against conflicts of interest and excessive fees for student account holders?

7. What steps has the Department taken to verify that all institutions are reporting the required information?

8. What resources does the Department provide to institutions of higher education to help them identify financial institutions that have entered into consent orders or settlements with federal regulators related to consumer practices, or have established patterns of behavior that could put students at risk of financial harm? Please provide copies of said resources or guidance.

We would like to work with you to protect federal student aid dollars and the financial interests of students, and would appreciate your response by January 5, 2019.

Sincerely,

Jack Reed
United States Senator

Sherrod Brown
United States Senator

Richard J. Durbin
United States Senator

Tammy Baldwin
United States Senator

Elizabeth Warren
United States Senator

Robert Menendez
United States Senator

Jeffrey A. Merkley
United States Senator