

Congress of the United States

Washington, DC 20510

September 14, 2018

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

Re: Docket ID ED-2018-OPE-0076

Dear Secretary DeVos:

We write to express concern with the U.S. Department of Education's ("Department") announcement of a negotiated rulemaking that seeks to broadly de-regulate the Federal Student Aid (FSA) programs authorized under the Higher Education Act of 1965 (HEA). Over the past 18 months, the Department's regulatory actions have stripped students and taxpayers of protections from predatory institutions, revealing a fundamental unwillingness and hostility toward providing effective federal oversight. Based on this track record, we are concerned that the forthcoming rulemaking will seek to undo or weaken regulatory safeguards in a way that is inconsistent with the HEA. As you know, the responsibility for making substantive policy changes to the integrity of financial aid programs is and remains the responsibility of Congress. We therefore urge you to abandon this aggressive deregulatory agenda that overrides Congressional intent to protect students, taxpayers, and the integrity of the federal financial aid programs, and defer to Congress as it works to achieve a comprehensive reauthorization of the HEA.

Congress created the student aid program integrity triad in HEA to ensure a system of checks and balances to protect taxpayer dollars and student investment. This triad—consisting of the Department, accreditors, and states—serves as the foundation for our nation's higher education system and is designed to empower each entity with oversight authority. The three actors collaborate to ensure a baseline degree of program and institutional quality from colleges and universities seeking access to federal student aid dollars. Additionally, it is important to recognize that several longstanding HEA statutory provisions and accompanying regulations that govern eligibility for and disbursement of federal student aid were put in place in response to demonstrated incidents of waste, fraud, and abuse.

For example, in order to qualify for federal student aid, Congress required online instructors to provide "regular and substantive" interaction with students to distinguish distance education programs from correspondence "home study" programs that had limited faculty interaction and had exploited veterans after the Vietnam War. Similarly, the Department established the regulatory definition of "credit hour" in response to an investigation by the Department's Inspector General that found certain for-profit colleges were inflating the number of credits—and thereby the financial aid institutions could draw down—associated with various courses.¹

We are also concerned that the Department will not use the rulemaking process to make targeted revisions to the HEA's existing regulatory framework to more fully realize Congress' intent to ensure program quality and protect students. Recent public statements by high-ranking Department officials

¹ Scott, W. "Letter to Dr. Sylvia Manning," U.S. Department of Education, May 24, 2010.
<http://www2.ed.gov/about/offices/list/oig/aireports/x13j0003.pdf>

suggest the Department intends to abuse its rulemaking authority to roll back legislative protections that ensure the integrity of the student financial aid system and further jeopardize students' opportunities to access a higher education system that promotes economic mobility.² The Department's actions to date call into question whether it will seek to weaken or eliminate program integrity in a manner that is inconsistent with the letter and spirit of the law. For example, we are concerned with regulatory rollbacks that would:

- Narrow the role of states in authorizing distance education programs;
- Lower expectations for institutional accreditation standards, including enabling religious institutions to skirt accreditation requirements;
- Abdicate the Department's responsibility to hold accreditors proactively accountable for their role in ensuring institutional quality;
- Significantly weaken the protection that students will receive "regular and substantive" interactions with their instructor;
- Allow unproven and unaccredited education providers to proliferate with taxpayer subsidies of student aid;
- Eliminate the "credit hour" rules and leaving the unit undefined; and
- Allow taxpayer funds in the FSA programs to be used to discriminate or for religious activities.

By initiating a process to weaken rules, this Administration is clearly attempting to rewrite the HEA through regulation in a way that increases the opportunities for predatory institutions, particularly for-profit colleges, to exploit students. This proposed negotiated rulemaking appears to be consistent with House Republican's HEA reauthorization proposal that has, tellingly, failed to garner either bipartisan support or widespread support from the higher education community. We, the signatories, agree that HEA is due for reauthorization. However, any changes to the existing framework that will significantly alter the higher education landscape or increase costs to taxpayers are the charge of Congress, not the Department.

The Department's proposal to initiate a new rulemaking process on key protections designed to prevent students, especially low-income students and student veterans, from enrolling in low-quality educational programs is an unacceptable betrayal of its charge to promote student achievement. Furthermore, this agenda signals that the Department intends to disregard its obligation to responsibly administer the FSA programs. These actions demonstrate a significant overreach of Secretarial authority that contradicts the purpose of HEA. In closing, we urge the Department to abandon this partisan regulatory agenda, honor its student-driven mission, and defer to Congress to update, strengthen, and reform the HEA.

Sincerely,



PATTY MURRAY
Ranking Member
U.S. Senate Committee on Health, Education,
Labor and Pensions

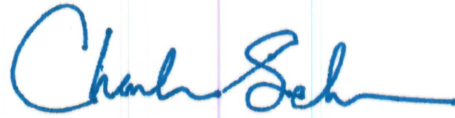


ROBERT C. "BOBBY" SCOTT
Ranking Member
U.S. House of Representatives Committee on
Education and the Workforce

² Kreighbaum, A. "DeVos to Announce New Push for Deregulation, Innovation." *Inside Higher Ed*. July 30, 2018.
<https://www.insidehighered.com/news/2018/07/30/trump-administration-official-describes-plan-rethink-higher-education-through>



DOUG JONES
United States Senator



CHARLES E. SCHUMER
United States Senator



TAMMY BALDWIN
United States Senator



RICHARD BLUMENTHAL
United States Senator



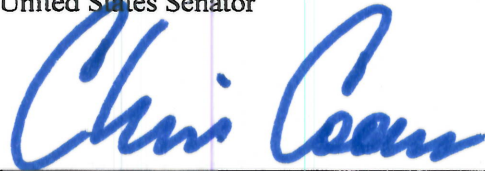
SHERROD BROWN
United States Senator



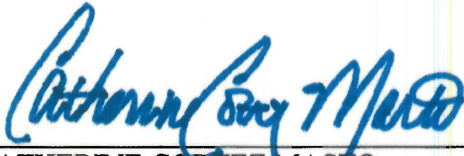
BENJAMIN L. CARDIN
United States Senator



THOMAS R. CARPER
United States Senator



CHRISTOPHER A. COONS
United States Senator



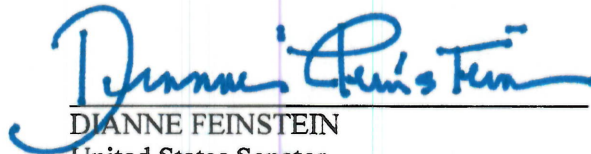
CATHERINE CORTEZ MASTO
United States Senator



TAMMY DUCKWORTH
United States Senator



RICHARD J. DURBIN
United States Senator




DIANNE FEINSTEIN
United States Senator



KIRSTEN GILLIBRAND
United States Senator



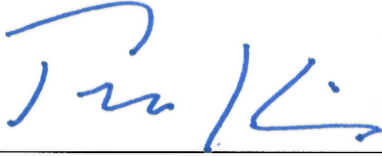
KAMALA D. HARRIS
United States Senator



MARGARET WOOD HASSAN
United States Senator



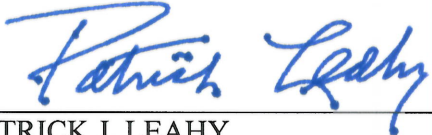
MAZIE K. HIRONO
United States Senator



TIM KAINE
United States Senator



AMY KLOBUCHAR
United States Senator



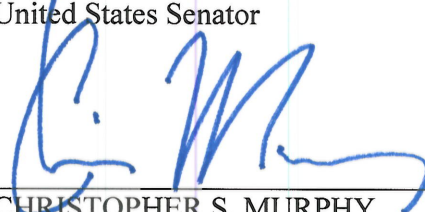
PATRICK J. LEAHY
United States Senator



EDWARD J. MARKEY
United States Senator



JEFFREY A. MERKLEY
United States Senator



CHRISTOPHER S. MURPHY
United States Senator



JACK REED
United States Senator



BERNARD SANDERS
United States Senator



BRIAN SCHATZ
United States Senator




JEANNE SHAHEEN
United States Senator



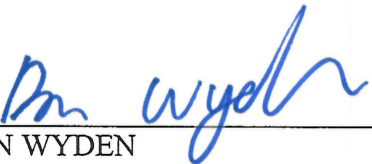
TINA SMITH
United States Senator

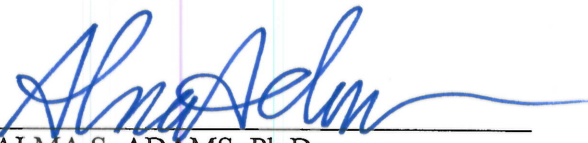


CHRIS VAN HOLLEN
United States Senator

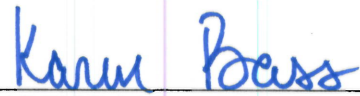

ELIZABETH WARREN
United States Senator

SHELDON WHITEHOUSE
United States Senator

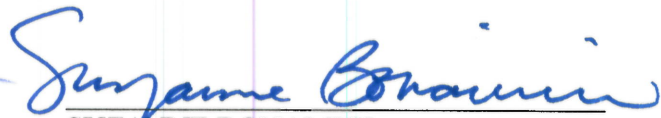

RON WYDEN
United States Senator

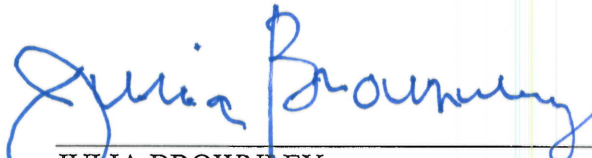

ALMA S. ADAMS, Ph.D
Member of Congress



NANETTE DIAZ BARRAGÁN
Member of Congress



KAREN BASS
Member of Congress

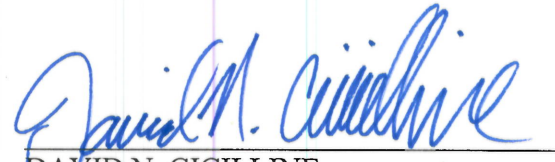

LISA BLUNT ROCHESTER
Member of Congress

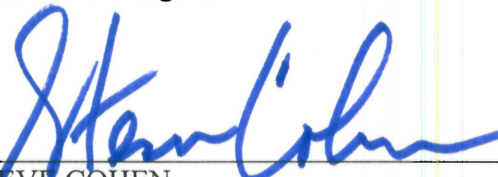

SUZANNE BONAMICI
Member of Congress

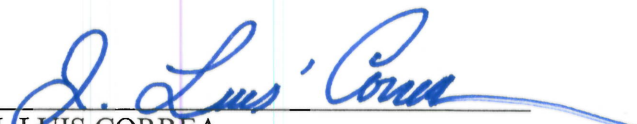

JULIA BROWNLEY
Member of Congress


MICHAEL E. CAPUANO
Member of Congress


SALUD O. CARBAJAL
Member of Congress


DAVID N. CICILLINE
Member of Congress


STEVE COHEN
Member of Congress


J. LUIS CORREA
Member of Congress