

United States Senate
Washington, DC 20510-1304

May 23, 2018

The Honorable Kathleen S. Tighe
Inspector General
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Inspector General Tighe:

I am writing about the report your office released December 8, 2017, entitled, "Federal Student Aid's Borrower Defense to Repayment Loan Discharge Process."

As your report makes clear, this Administration has done little to provide the full debt relief to which defrauded borrowers are entitled under the Higher Education Act. Tens of thousands of students await action by the Department of Education on their borrower defense claims. I have been seeking updated information about the Department's claims processing for months to no avail.

As I continue to wait, I would appreciate answers to the following questions to help shed additional light on the Department's actions.

1. What additional outcome data for the processing of borrower defense claims did the Office of Federal Student Aid (FSA) provide to your office on October 26, 2017, as noted in footnote 5?
2. The report indicates that FSA's Borrower Defense Unit (BDU) reduced contractor staffing by more than two-thirds from November 2016 to September 2017. Did FSA provide a rationale for this decrease in staff, even as the number of claims mounted?
3. With regard to borrower defense claims related to ITT Tech guaranteed employment misrepresentation noted on page 10, did FSA maintain legal memoranda or other documentation for these findings that indicate to how many potential borrowers and states such claims would apply?
4. According to your analysis of unique claims that did not fall within one of BDU's seven established categories, "[a]s of January 20, 2017, BDU had identified additional categories of claims warranting further research." According to FSA, how many additional categories of claims had BDU identified?
5. The report notes on page 16 that the further research into additional categories of claims was "placed on hold." According to FSA, who initiated the halt to this research?

6. What explanation was provided by FSA in its decision to halt the BDU research into additional categories of claims, if any?
7. On November 14, 2017 at the opening session of the current borrower defense rulemaking, then Acting Under Secretary Jim Manning stated: “The Department is also working to adjudicate pending claims related to other schools and we are making progress on that front. However, I will admit that we're not as close as we are with the Corinthian claims. ...Once Corinthians adjudications begin our work on other claims will gather momentum.”¹ Based on OIG’s assessment that additional research into claims was placed on hold, was Mr. Manning’s statement of November 14 accurate?
8. On page 21, the report notes that, as of September 2017, FSA was testing a claims management tool. Did FSA indicate when development of this tool commenced and when it is expected to be operational?
9. Does the development of the claims management tool indicate to OIG that FSA was responsive to the need to further refine BDU processes for handling claims?
10. Which political appointees from the Obama Administration that were involved in writing, or received, the legal memoranda referenced in the report did you interview, respectively?
11. The current appointees of this Administration have repeatedly framed its borrower defense policies in reference to supposed shortcomings of the prior Administration. For example, again on November 14, 2017, at the opening session of the borrower defense rulemaking, then Acting Under Secretary Jim Manning stated “the Secretary also remains focused on working through pending claims. Unfortunately, she inherited a difficult situation, one where there was inadequate infrastructure in place to properly adjudicate claims.”² Did OIG consider the intent of Secretary DeVos’ request for this review when deciding on the scope and objectives for the review?

Answers to these questions will greatly assist in the ability of Congress to conduct appropriate oversight over borrower defense issues – especially given the lack of public information being provided by the Department and FSA. I would appreciate a response to these questions by June 6, 2018. Thank you for your attention to this matter.

Sincerely,



Richard J. Durbin
United States Senator

¹ U.S. Department of Education. Transcript: Borrower Defense and Financial Responsibility Negotiated Rulemaking Committee 2017-2018. Tuesday, November 14, 2017.

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2017/bdtranscriptnov14.pdf>

² Id.