

United States Senate

WASHINGTON, DC 20510

March 13, 2017

The Honorable Elisabeth DeVos
Secretary
Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Dear Secretary DeVos:

We write today regarding our serious concerns over the Department of Education's (ED) announcement delaying implementation of the Gainful Employment (GE) rule.

The Gainful Employment rule is a critical protection for both students and taxpayers. It will encourage improvement of career education programs that fail to adequately prepare students for good paying jobs that allow them to repay their student debt, and cut off federal financial aid to programs that continue to fall short of these reasonable expectations. This will help prevent students from amassing debt that they can't repay and reduce taxpayer dollars being wasted on underperforming programs.

On January 9, 2017, the Department of Education released final Debt-to-Earnings (D/E) rates for all GE programs at public, non-profit, and for-profit schools. These rates were generated using earnings data from the Social Security Administration and data on program completers reported by institutions. GE afforded schools two opportunities to formally challenge ED's calculations of their data before the January 9 release.

The rule, generously, gives schools a third opportunity for appeal after the release of final D/E rates. Schools can submit alternate earnings data for "failing" or "zone" (near-failing) programs if that data will improve the program's rate significantly enough to avoid sanctions. The deadline for colleges to notify ED of their intent to file an alternate earnings appeal was January 23. Schools then had until March 10 – more than six weeks – to submit their final appeals.

In addition, schools were required to begin using the new GE Disclosure Template by April 3. This new and improved template includes a more meaningful completion rate, the typical earnings of graduates, whether a program meets state licensure requirements, and a prominent warning for failing programs that do not have appeals pending. The GE Disclosure Template will help students be better informed consumers.

Disappointingly, ED has now moved the March and April deadlines back to July 1, 2017, on the grounds that the delay will allow time to “further review” the regulation. According to a Department spokesperson, the delay was also due to “a question about whether schools can provide data to a third party.” It is unclear how this question could not have been solved through follow-up guidance rather than delay. The Department has already gone through an extensive federal rulemaking process and the Gainful Employment rule has been upheld by federal courts. Therefore, this delay needlessly stalls important protections for students and taxpayers and creates more uncertainty for schools.

As such, we seek your answers to the following questions:

- Why did the Department delay the deadline for schools to file alternate earnings appeals and use the GE Disclosure Template?
- What is the scope of the Department’s current “review” of the GE regulations and their implementation?
- Did ED explore alternative options to the delay for resolving any questions about the use of data by third-parties, including issuing guidance?
- Of the programs for which the Department received notice of an intent to appeal by January 23, 2017, how many alternate earnings appeals have been submitted to the Department as of the date of this letter?
- What is the timeline for the Department to resolve all of the alternate earnings appeals received by July 1, 2017?
- Will you commit to swiftly enforce the requirement, which took effect February 8, that institutions provide warnings to current and prospective students for failing programs where no notice of an intent to appeal was received by January 23, 2017?
- Will you commit to requiring schools to use the new GE Disclosure Template no later than July 1, 2017?
- Will you commit to no further delays in the Department’s implementation and enforcement of GE?

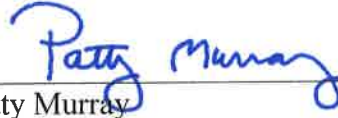
Implementation of this rule is an important part of your responsibility as Secretary to protect students and appropriately oversee taxpayer dollars. In fact, in recent testimony before a House subcommittee, Department of Education Inspector General Kathleen Tighe agreed that “the gainful employment rule is a good rule in terms of protecting kids and protecting taxpayers’ dollars.” Further delays or other attempts to undermine Gainful Employment implementation are unacceptable.

We look forward to your prompt response to our questions.

Sincerely,



Richard J. Durbin
United States Senator



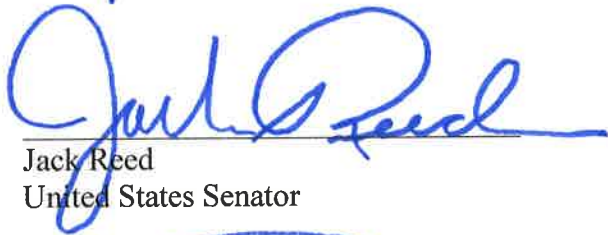
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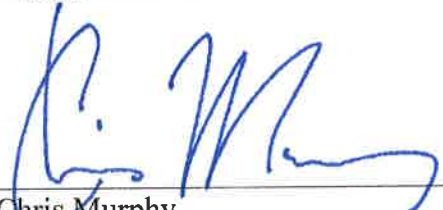
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