

United States Senate

WASHINGTON, DC 20510

October 28, 2020

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
500 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

We write today to urge you to provide borrower defense relief for students who attended a number of institutions that the Department of Education (ED) cut off from Title IV participation as a result of fraud or other consumer misconduct. In addition, we urge you to use your authority to extend the closed school discharge look-back window in several cases.

Borrower Defense

A recent report by the National Student Legal Defense Network (Student Defense)¹ highlights a number of cases in which ED has taken administrative action against an institution for misrepresentations to students and other consumer fraud—in many cases cutting the institution off from Title IV funding. Specifically, the report identified Computer Systems Institute (CSI),² Globe University and the Minnesota School of Business,³ Marinello School of Beauty,⁴ Medtech College,⁵ and Charlotte School of Law.⁶

Despite taking action against these institutions based on its own findings of misconduct or the findings of another state or federal entity, ED has failed to provide the relief to which the victims of this misconduct are entitled under the borrower defense provision of the Higher Education Act. While ED took the appropriate action to protect against further student harm by eliminating these institutions from the Title IV program, it has not used its authority to remedy the harm already done by these institutions to thousands of students.

¹ Elson, Alex (2020). “Justice at Last: Pathways to Promptly Expanding Closed School and Borrower Defense Relief Using Existing Regulations.” Web. <https://www.defendstudents.org/news/body/docket/100-Day-Docket-Expanding-Debt-Relief.pdf>

² See Letter from Susan Crim, FSA, to Julie Lowder, CEO Computer Systems Institute (July 29, 2016), available at <https://studentaid.gov/sites/default/files/csi-denial-letter.pdf>.

³ See Letters from Susan Crim, FSA, to Jeffrey Myhre, President of Globe University and the Minnesota School of Business (Dec. 6, 2016), available at <https://studentaid.gov/sites/default/files/globe-recert-denial.pdf> and <https://studentaid.gov/sites/default/files/msb-recert-denial.pdf>.

⁴ See 5 Letters from Susan Crim, FSA, to Rashed Elyas, CEO of Marinello School of Beauty (Feb. 1, 2016). All five letters are provided on the Department’s Marinello closure page, available at <https://studentaid.gov/announcements-events/marinello>.

⁵ See Letter from Susan Crim, FSA, to William Winkowski, President of Medtech (July 26, 2016), available at <https://studentaid.gov/sites/default/files/medtech-recert-denial.pdf>.

⁶ See Letter from Susan Crim, FSA, to Chidi Ogene, President of CSL (Dec. 19, 2016), available at <https://studentaid.gov/sites/default/files/csl-recert-denial.pdf>.

Many of us have called on ED to take similar action related to Westwood⁷, Vatterott Colleges⁸, Charlotte School of Law⁹, schools owned by Dream Center^{10,11,12}, CSI¹³, and Education Corporation of America.¹⁴ Years later, it appears that ED has not made a single borrower defense finding, or granted a single borrower defense claim, from borrowers attending CSI or any other of these institutions.

While ED refuses to use its own findings of misconduct against these institutions to provide relief to borrowers, findings of misconduct by State attorneys general providing the basis for borrower defense relief for students who attended these and many other institutions have gone without review or decision by you.¹⁵ At the same time, ED continues to deny borrower defense claims from borrowers who attended these institutions.¹⁶ This is unconscionable, but not an accident. Upon taking office, you began dismantling the Federal Student Aid Enforcement Unit (“Enforcement Unit”), which was created in part to integrate borrower defense into the Department’s administrative review process.¹⁷

⁷ See Senator Durbin Press Release, “Durbin Urges Education Department To Provide Debt Relief To Former Westwood College Students In Illinois,” (Dec. 13, 2016), *available at* <https://www.durbin.senate.gov/newsroom/press-releases/durbin-urges-education-department-to-provide-debt-relief-to-former-westwood-college-students-in-illinois>

⁸ Letter from Senators Durbin, Warren, Blumenthal, Duckworth, and Brown to Sec. DeVos at 2 (Dec. 21, 2018), *available at* <https://www.durbin.senate.gov/imo/media/doc/Letter%20to%20ED%20on%20Vatterott%20Closure%2012.21.20181.pdf>

⁹ Letter from Senators Brown, Warren, Murray, Blumenthal, and Durbin to Sec. DeVos at 2 (Jan. 10, 2018), *available at* [https://www.brown.senate.gov/imo/media/doc/1.10.18%20Charlotte%20School%20of%20Law%20Letter%20signed%20\(002\).pdf](https://www.brown.senate.gov/imo/media/doc/1.10.18%20Charlotte%20School%20of%20Law%20Letter%20signed%20(002).pdf)

¹⁰ Letter from Senators Durbin, Smith, Sinema, Hirono, Klobuchar, Blumenthal, Feinstein, Harris, Kaine, Duckworth, Schatz, Brown, and Warren to Sec. DeVos at 2 (Mar. 8, 2019), *available at* <https://www.durbin.senate.gov/imo/media/doc/Argosy%20Letter%20to%20ED%203.8.19%20final.pdf>

¹¹ Letter from Senators Durbin, Murray, Warren, Blumenthal, Brown, and Duckworth to Sec. DeVos at 2 (Aug. 3, 2018), *available at* https://www.durbin.senate.gov/imo/media/doc/0408_001.pdf

¹² Letter from Senators Durbin, to Dr. Barbara Gellman-Danley, President of The Higher Learning Commission (Jun. 26, 2018), *available at* <https://www.durbin.senate.gov/imo/media/doc/Dream%20Center%20Letter%206.26.18.pdf>

¹³ See Senator Durbin Press Release, “Durbin Calls For Extended Student Loan Relief For Illinois Students Deceived By The Computer Science Institute,” (Feb. 2, 2016), *available at* <https://www.durbin.senate.gov/newsroom/press-releases/durbin-calls-for-extended-student-loan-relief-for-illinois-students-deceived-by-the-computer-science-institute>

¹⁴ Letter from Senators Warren, Brown, Hirono, Durbin, Blumenthal, Feinstein, Harris, and Sanders to Sec. DeVos at 2 (Dec. 20, 2018), *available at* <https://www.warren.senate.gov/imo/media/doc/Letter%20to%20ED%20re%20ECA.pdf>

¹⁵ Letter from Senators Durbin and Murray to Sec. DeVos at 2 (Nov. 15, 2018), *available at* <https://www.durbin.senate.gov/newsroom/press-releases/durbin-murray-continue-to-seek-status-of-group-discharge-applications-submitted-by-state-ags>

¹⁶ See *Sweet v. DeVos*, No. 19-cv-03674-WHA, Dkt. 108-2 at 9 (Letter from Kathryn Davis, U.S. Dep’t of Justice, to Eileen Connor, Legal Services Center of Harvard Law School (Aug. 10, 2020)) (explaining that, to date, the Department has “established categories of eligible borrower defense claims” for only Corinthian and ITT and has denied claims from, among others, the Charlotte School of Law, Marinello School of Beauty, and many others).

¹⁷ See U.S. Dep’t of Educ Press Release, “Student Aid Enforcement Unit Formed to Protect Students, Borrowers, Taxpayers,” (Feb. 8, 2016), *available at* <https://www.ed.gov/news/press-releases/student-aid-enforcement-unit-formed-protect-students-borrowers-taxpayers>.

We urge you to use the evidence and findings in ED’s possession as the basis for long-overdue borrower defense findings and provide immediate relief to eligible borrowers. Furthermore, going forward, we urge you to include borrower defense relief in the administrative review and findings process from the outset. We, specifically, request the status of ED’s borrower defense reviews for cases in which findings of misconduct were used to take action against the school—including CSI, Globe University and Minnesota School of Business, Marinello, Medtech, and Charlotte School of Law. We also request the status of ED’s borrower defense reviews for Vatterott Colleges and schools owned by Dream Center and Education Corporation of America.

Closed School Discharge

As you know, pursuant to 34 C.F.R. § 685.214(c)(1)(i)(B), you have the authority under “exceptional circumstances” to extend the closed school discharge look-back window beyond 120 days. Yet, with a few limited exceptions, you have failed to exercise this authority—even where evidence and fairness demand it. In its report, Student Defense urges ED to conduct a wholesale review of school closures and extend the look-back windows, in a consistent manner, where appropriate. We agree.

For example, we urged you more than one year ago to extend the look-back period for students who attended ITT Tech (ITT).¹⁸ As we explained in our previous letter, students who withdrew more than 120 days prior to ITT’s September 3, 2016 closure should not be penalized for abandoning what they reasonably—and correctly—believed was a sinking ship. We have also urged a look-back extension in the cases of Vatterott Colleges^{19,20}, Charlotte School of Law²¹, schools previously owned by Dream Center²² and Education Corporation of America.²³

In addition, the Student Defense report makes the case for extensions for Marinello, Medtech, Westwood College, and schools previously owned by Education Management Corporation. With respect to each of these institutions and many others, ED has evidence—again, often from its own program reviews—that constitutes “exceptional circumstances” and warrants an immediate extension of the closed school discharge look-back window. We call upon ED to extend the look-back dates for each of these institutions and, consistent with the automatic closed school discharge provision, provide this relief to borrowers automatically where applicable.²⁴

¹⁸ Letter from Senators Durbin, Warren, Blumenthal and Brown to Sec. DeVos at 2 (Sep. 4, 2019), *available at* <https://www.durbin.senate.gov/newsroom/press-releases/durbin-dem-senators-press-devos-to-provide-automatic-closed-school-discharges-to-former-itt-tech-students>.

¹⁹ See Footnote 9.

²⁰ Letter from Senators Durbin, Murray, Warren, Blumenthal, Brown, and Duckworth to Sec. DeVos at 2 (Aug. 3, 2018), *available at* https://www.durbin.senate.gov/imo/media/doc/0408_001.pdf

²¹ See Footnote 10.

²² See Footnote 11.

²³ See Footnote 14.

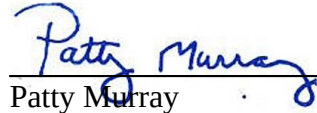
²⁴ See 81 Fed. Reg. 75,926, 76,078-82 (Nov. 1, 2016) (codified at 34 C.F.R. §§ 674.33(g)(3), 682.402(d)(8), 685.214(c)(2)).

Please provide a response to our request no later than November 12. Thank you for your consideration.

Sincerely,



Richard J. Durbin
United States Senator



Patty Murray
United States Senator



Richard Blumenthal
United States Senator



Elizabeth Warren
United States Senator



Sherrod Brown
United States Senator