



September 16, 2019

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

Dear Secretary DeVos:

We, the undersigned Attorneys General of Colorado, New Jersey, Washington, California, Connecticut, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Mexico, New York, North Carolina, Oregon, Pennsylvania, and Virginia again call on the U.S. Department of Education to refrain from imposing unwarranted limitations on the Department's routine disclosure of student loan information to state law enforcement agencies.

Twice already, in letters dated July 13, 2018, and April 4, 2019, we have expressed concern about the Department's actions to impede state law enforcement agencies' access to student loan information relevant to those agencies' law enforcement authority. Now the Department has announced that it is eliminating yet another avenue of cooperation with state law enforcement—again without any sound justification. This pattern is not sustainable.

On August 16, 2019, the Department published a System of Records Notice eliminating routine use "(3) Disclosure for Use by Other Law Enforcement Agencies" (Routine Use 3) from the Department's Common Origination and Disbursement (COD) records system.¹ On September 9, 2019, the Department published another notice eliminating the same routine use from the National Student Loan Data System (NSLDS).² At the same time, the Department is significantly expanding the purposes of and categories of records in the COD and NSLDS systems.³ The Department is therefore increasing the amount and type of information for which it will no longer provide routine access.

¹ *Privacy Act of 1974; System of Records*, 84 Fed. Reg. 41979 (August 16, 2019).

² *Privacy Act of 1974, System of Records*, 84 Fed. Reg. 47265 (September 9, 2019); *see also Privacy Act of 1974, System of Records*, 78 Fed. Reg. 38963, 38967 (June 28, 2013)

³ *Privacy Act of 1974, System of Records*, 84 Fed. Reg. at 47265; *Privacy Act of 1974; System of Records*, 84 Fed. Reg. at 41980.

The COD system contains information about recipients of federal student financial aid, including borrower demographic and loan-level data such as loan balances, repayment plan, collections, deferment, and forbearances.⁴ Routine Use 3 provided for disclosure of such data to “any Federal, State, local, or foreign agency or other public authority ... if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity’s jurisdiction.”⁵

As set out in our prior correspondence, access to student loan information—including data in the COD system—is critically important to federal and state law enforcement agencies’ efforts to combat widespread fraud in the higher education finance sector. Indeed, the COD system was created “to support the investigation of possible fraud and abuse and to detect and prevent fraud and abuse in the title IV, HEA Federal grant and loan programs.”⁶ The purposes of state law enforcement agencies are consistent with this objective.

The need for state enforcement in this area has never been more important. Multiple federal agencies, including the Department’s Office of Inspector General (OIG), the Consumer Financial Protection Bureau (CFPB), and the U.S. Government Accountability Office (GAO), have reviewed the practices of several student loan servicers and consistently found them to be deeply lacking.

Our April 4, 2019 letter discussed some of these findings, including multiple reports by the CFPB, and the OIG’s February 12, 2019 report that raised concerns over servicer non-compliance with federal requirements. Among other things, these reports echoed a February 2015 GAO report outlining problems with the Federal Grant and Loan Forgiveness Programs for Teachers, which include the TEACH Grant program supported by the COD records system. According to the GAO, “2,252 recipients had their grants erroneously converted to loans by the current and previous servicer due to servicer error” from August 2013 through September 2014.⁷

The Department’s new restrictions on state law enforcement agencies’ access to data impede our ability to investigate potential servicer misconduct and protect borrowers in our respective states. At a time when the Department’s own watchdogs are sounding the alarm, the Department’s actions to hamper law enforcement efforts are profoundly disturbing. The Department’s action pattern suggests a systematic dismantling of the long-standing cooperative relationship between the Department and state law enforcement officials.

The Department’s stated reasons for restricting law enforcement access ring hollow. The Department claims it is deleting Routine Use 3 because some might find its title confusing and infer that Program Management Services within Federal Student Aid is a law enforcement agency.⁸ Any such concerns could be remedied through a simple revision to the title, rather than

⁴ *Privacy Act of 1974; System of Records*, 84 Fed. Reg. at 41983.

⁵ *Privacy Act of 1974; System of Records*, 75 Fed. Reg. 59242, 59244 (September 27, 2010).

⁶ *Privacy Act of 1974; System of Records*, 84 Fed. Reg. at 41983 (August 16, 2019).

⁷ U.S. Gov’t Accountability Office, GAO-15-314, *Better Management of Federal Grant and Loan Forgiveness Programs for Teachers Needed to Improve Participant Outcomes* (February 2015), *available at* <https://www.gao.gov/assets/670/668634.pdf>.

⁸ *Privacy Act of 1974; System of Records*, 84 Fed. Reg. 41979, 41981 (August 16, 2019).

by deletion of Routine Use 3 in its entirety. The Department's claim that state law enforcement agencies *may* still have access to records through another routine use or subsection (b)(7) of the Privacy Act "provided their conditions are met"⁹ is cold comfort. The Department did not consider Routine Use 3 to be redundant when the Department added it to the COD system, and the other provisions cited by the Department come with limitations and conditions that Routine Use 3 did not.

We are concerned that the Department's elimination of this routine use may have much greater consequences for consumers than the Department's perfunctory rationalization suggests. We urge the Department to reverse course and return to its previous policy of sharing student loan information with State Attorneys General and other law enforcement agencies. And we invite the Department to start repairing what had once been a reliable partnership with State Attorneys General and other state law enforcement agencies working to combat unlawful conduct affecting student loan borrowers.

Sincerely,



Phil Weiser
Colorado Attorney General



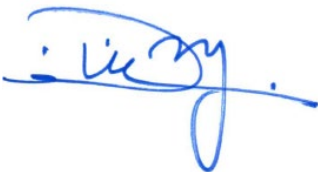
Gurbir S. Grewal
New Jersey Attorney General



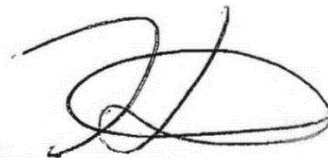
Bob Ferguson
Washington State Attorney General



Xavier Becerra
California Attorney General

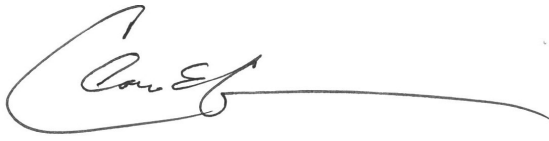


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⁹ *Id.*



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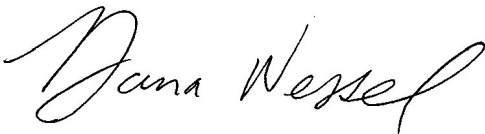
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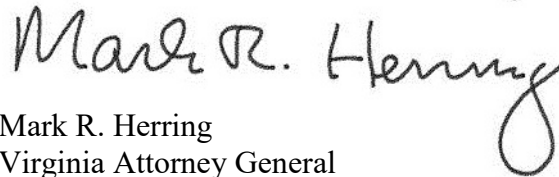
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Cc: U.S. Senate Committee on Health, Education, Labor and Pensions
U.S. House of Representatives Appropriations Subcommittee on the Departments of
Labor, Health and Human Services, Education, and Related Agencies