

# United States Senate

WASHINGTON, DC 20510

February 21, 2019

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

Dear Secretary DeVos:

We write with significant concerns over the U.S. Department of Education's ("Department") continued backlog of federal student loan discharge requests under "borrower defense" that have been made by borrowers who have been cheated or defrauded by predatory colleges.<sup>1</sup>

A swift resolution and clear communication about the status of these outstanding claims is crucial given the significant negative impact on the daily life of borrowers and their families who are looking for relief.

Seeking an education is an opportunity for a better life, but instead of moving forward, many students who were subject to unfair and deceptive practices were left with massive debt and without the career options that they were promised. The September 2018 quarterly report on borrower defense listed nearly 106,000 pending claims from borrowers who were cheated or defrauded.<sup>2</sup> The subsequent December report indicated that none of those claims were processed, and another 35,000 new claims had been filed.<sup>3</sup> As a result, over 139,000 borrower defense claims remain pending.

The borrower defense rule was finalized in 1995 to help students who were subject to "any act or omission of the school attended by the student that would give rise to a cause of action against the school under applicable State law."<sup>4</sup> The borrower defense rule was later updated in November 2016 to protect against predatory practices and provide additional options for relief. This rule established school accountability measures such as prohibiting forced arbitration that limits students' legal rights and strengthening the ability to file class action lawsuits.<sup>5</sup>

While these protections were scheduled to take effect in July 2017, the Department attempted to delay the rule, which was later blocked by a federal district court. In *Bauer v. DeVos*, the court determined that efforts to delay implementation of the borrower defense rule were unlawful and ordered the Department to implement the 2016 rule.<sup>6</sup> While the 2016 rule is now current law, the

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<sup>1</sup> Federal Student Aid (December 20, 2018). Federal Student Aid Posts New Reports to FSA Data Center. Retrieved January 3, 2019, from <https://ifap.ed.gov/eannouncements/122018FSAPostsNewReportsToFSADataCenter.html>

<sup>2</sup> Manning, J. F. (September 19, 2018). Borrower Defense - Quarterly Report - for quarter end 6/30/2018. Retrieved January 3, 2019, from [https://www.help.senate.gov/imo/media/doc/Murray\\_2018-09-19-105723.pdf](https://www.help.senate.gov/imo/media/doc/Murray_2018-09-19-105723.pdf)

<sup>3</sup> Federal Student Aid (December 20, 2018).

<sup>4</sup> 34 CFR § 685.206 - Borrower responsibilities and defenses. (n.d.). Retrieved February 11, 2019, from <https://www.law.cornell.edu/cfr/text/34/685.206>

<sup>5</sup> Student Assistance General Provisions, Federal Perkins Loan Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Teacher Education Assistance for College and Higher Education Grant Program, 81 Fed. Reg. 75926 (Nov. 1 2016)

<sup>6</sup> Rodrigo, C. M. (October 16, 2018). Court rules Obama-era student loan regulations must take effect. Retrieved January 3, 2019, from <https://thehill.com/regulation/court-battles/411637-court-rules-obama-era-student-loan-regulations-must-take-effect>

Department has still not provided formal notification that the rule has been implemented. Additionally, the Department continues to fight to collect on the loans of—and limit relief to—students who have been defrauded.

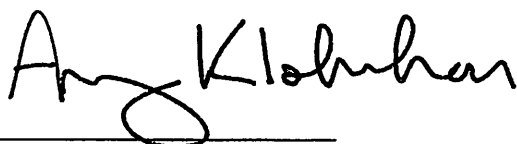
Given the potential impact of fully implementing the 2016 borrower defense rule on both pending and future claims, the Department should provide immediate clarification about what it is doing to implement current law. Accordingly, we respectfully ask that you provide answers to the following questions by March 4, 2019:

1. Why has the Department still taken no action to provide discharges to borrowers with pending “borrower defense” claims?
2. What information has the Department provided to borrowers who are waiting for a response to a filed claim?
3. What information has the Department provided to students who may be eligible to apply for “borrower defense” but have not yet submitted a claim?
4. Please provide a copy of any documents, memoranda, or communications related to the Department’s decision or decisions to delay or deny relief to borrowers with pending claims.

Students should never have to worry about predatory practices from colleges as they look to improve their lives and career prospects through postsecondary education. We urge you to immediately communicate the status of the remaining claims to affected students and enforce the borrower defense rule.

We look forward to your response on this important matter.

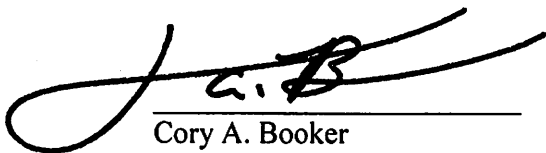
Sincerely,



Amy Klobuchar  
United States Senator




Richard Blumenthal  
United States Senator

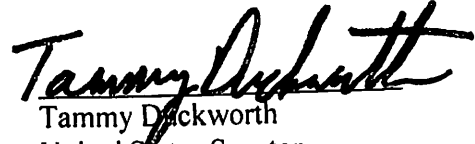


Cory A. Booker  
United States Senator

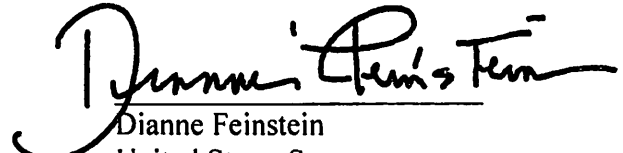


Sherrod Brown  
United States Senator

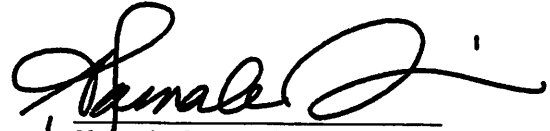
  
Catherine Cortez Masto  
United States Senator

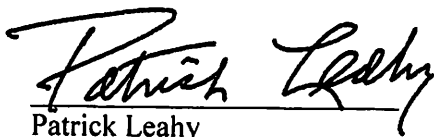
  
Tammy Duckworth  
United States Senator

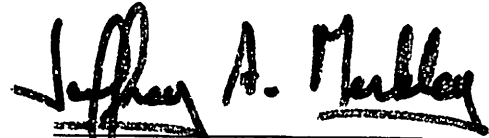
  
Richard J. Durbin  
United States Senator

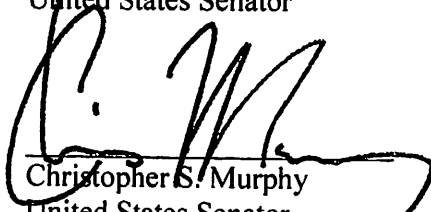
  
Dianne Feinstein  
United States Senator


  
Kirsten Gillibrand  
United States Senator

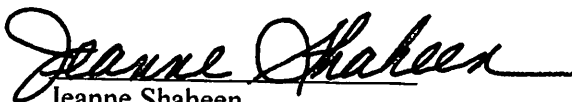
  
Kamala D. Harris  
United States Senator

  
Patrick Leahy  
United States Senator

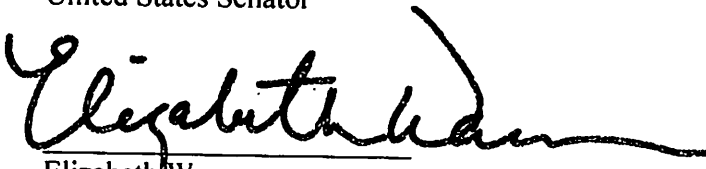
  
Jeffrey A. Merkley  
United States Senator

  
Christopher S. Murphy  
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Bernard Sanders  
United States Senator

  
Jeanne Shaheen  
United States Senator

  
Debbie Stabenow  
United States Senator

  
Elizabeth Warren  
United States Senator