

United States Senate  
WASHINGTON, DC 20510

May 22, 2017

Ms. Marcella Goodridge-Keiller  
Designated Agency Ethics Official  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Ms. Goodridge-Keiller:

We are writing in response to your recent reply to an inquiry regarding the U.S. Department of Education's ("Department") employee, Mr. Robert Eitel, and his ability to adhere to federal personnel policies and to perform his new assignment as Senior Counselor to the Secretary without ethical violations.

As you noted in your May 8 letter, Mr. Eitel has resigned from his position at Bridgepoint Education, Inc. ("Bridgepoint") to join the Department in a permanent role. As such, Mr. Eitel must adhere to ethics standards that apply to all federal employees. Every employee, permanent or temporary, must recuse themselves from any particular matter that involves a former employer over the past two years prior to federal employment.

According to Section 6 of President Trump's Executive Order 13770, Ethics Commitments by Executive Branch Employees ("Ethics Pledge"), every appointee in every executive agency appointed on or after January 20, 2017, shall sign a pledge, and upon signing shall be contractually committed to, the following provision to become a federal government appointee:

*"I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts."*

Your May 8 letter also indicated that, to your knowledge, no Department official, including Mr. Eitel, has received a waiver to this Ethics Pledge, nor has a Department official received a waiver to other federal ethics statutes or regulations, such as 18 U.S.C. § 208 & 5 CFR § 2635.502.

We understand that the U.S. Office of Government Ethics has given the Department and all executive agencies until June 1 to provide waivers issued or approved under the Ethics Pledge and other federal ethics rules, and we are concerned by the Administration's reported attempts to block this legal data request as well as their overall reluctance to share information that should otherwise be public.<sup>1</sup> Regardless of whether a waiver has been or will be issued, it remains unclear why Mr. Eitel is advising the Department on matters pertaining to a pending regulation.

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<sup>1</sup> Lipton, Eric. "White House Moves to Block Ethics Inquiry Into Ex-Lobbyists on Payroll." *The New York Times*. May 22, 2017. <https://www.nytimes.com/2017/05/22/us/politics/trump-white-house-government-ethics-lobbyists.html>

Mr. Eitel is reported to be actively working on an issue that is of significant interest to his previous employer, known as the “borrower defense” regulation.<sup>2</sup> This rule provides the Secretary the ability to forgive and refund the federal student loan debt of borrowers who were misled by their schools or who were the victims of unlawful and abusive practices in higher education. While apparently recusing himself from any current claims made under the 1994 regulation stemming from authority under the Higher Education Act, Mr. Eitel is reported to be still actively working on implementing the revised borrower defense rule that is scheduled to go into effect on July 1, 2017. This regulation creates a new federal standard for borrowers whose loans are disbursed on or after that date.

The borrower defense rule provides student loan borrowers with the potential to have their loans discharged if they are defrauded. The Department may then recoup funds from the school to pay for these discharges and refunds. Mr. Eitel’s former employer is the subject of multiple state and federal investigations and lawsuits that could, in fact, require the company to repay the government under the regulation at issue.

Bridgepoint is currently under investigation by the U.S. Department of Justice, Securities and Exchange Commission, and the state attorneys general of California and Massachusetts. Mr. Eitel’s former employer has also previously been fined more than \$31 million by the Consumer Financial Protection Bureau for allegedly deceiving students about the cost of their private student loans, and has been fined by the Department for incorrect and late refunds. And, a subsidiary of Bridgepoint, known as Ashford University, has provided \$7.25 million in restitution for students and remains subject to monitoring of its practices pursuant to that settlement agreement.<sup>3</sup>

To further safeguard taxpayers, the borrower defense rule also provides the Secretary tools to ensure colleges are financially responsible, such as requiring a letter of credit in the case of certain state, federal or accrediting agency actions or investigations, as well as significant fluctuations in Direct Loan and Pell Grant funds. Ashford University acquired considerable new student aid revenue by moving from a body of fewer than 1,000 students in 2005, to 77,000 students just five years later, suggesting that Bridgepoint could be subject to these enrollment-related requirements. Finally, the borrower defense rule also bans the practice of inserting clauses for mandatory arbitration and limitations on class action lawsuits into enrollment agreements, a practice known as “forced arbitration.” Bridgepoint regularly uses forced arbitration clauses. In 2015, a federal court held that a class of students suing Bridgepoint Education, Ashford University, and the University of the Rockies for alleged misrepresentations could not be properly certified because it was unclear what share of the schools’ students were bound by its currently-utilized forced arbitration agreements.<sup>4</sup>

Bridgepoint is affected in numerous ways by the borrower defense rule, given a) potentially significant misconduct that could be subject to borrower defense claims, b) potential financial liabilities from the recoupment of loan discharges made under the new borrower defense rule, and c) utilization of an enrollment clause that will soon become prohibited under a pending regulation. The

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<sup>2</sup> Rubin, Jennifer. “Trump does his hires no favors: The ordeal of an ethical public servant.” *The Washington Post*. March 21, 2017. <https://www.washingtonpost.com/blogs/right-turn/wp/2017/03/21/trump-does-his-hires-no-favors-the-ordeal-of-an-ethical-public-servant/>

<sup>3</sup> Miller, Tom. Attorney General of Iowa. May 16, 2014. “Ashford University and Parent Company Bridgepoint Education Agree to \$7.25 Million Payment and Major Changes after Miller Alleges Consumer Fraud.” <https://www.iowaattorneygeneral.gov/newsroom/ashford-university-and-parent-company-bridgepoint-education-agree-to-7-25-million-payment-and-major-changes-after-miller-alleges-consumer-fraud/>

<sup>4</sup> *Guzman v. Bridgepoint Education, Inc.*, 305 F.R.D. 594, 612 (S.D. Cal. 2015).


company admits these interests openly. Little more than three months ago in Securities and Exchange Commission filings, Bridgepoint acknowledged that borrower defense claims under the new rule “could damage our reputation in the industry and have a material adverse effect on enrollments and our revenues, financial condition, cash flows and results of operations” and the company notes an interest in matters involving “delaying the schedule effective date or otherwise affecting the enactment of applicable regulations.”<sup>5</sup>


Thus it would appear that despite his conversion to a full-time government employee, Mr. Eitel remains in direct violation of the Ethics Pledge, and potentially other federal ethics rules. Our March 31 letters asked several questions to address this concern, but we received an incomplete response. As a result, we further request that you provide:

1. A copy of any paperwork submitted by Mr. Eitel to the Department related to financial disclosures, conflicts of interest, or other ethics requirements, including OGE Form 278e and a signed copy of the Ethics Pledge.
2. A description of all policy matters Mr. Eitel has worked on during his time at the Department and all matters he anticipates working on.
3. The date Mr. Eitel was first employed by the Department on any provisional basis and the date Mr. Eitel was hired on a permanent basis.
4. Clarification about the hiring authority used by the Department to hire Mr. Eitel initially, such as the Intergovernmental Personnel Act Mobility Program or as a special government employee pursuant to 18 U.S.C. § 202.

We ask that you provide all copies of requested documents and information no later than close of business on June 5, 2017. If you have any questions related to this request please contact Josh Delaney with the Office of Senator Elizabeth Warren, or Bryce McKibben and Carly Rush of the Minority Staff for the Senate Committee on Health, Education, Labor, and Pensions. We appreciate your assistance with this request.

Sincerely,

  
ELIZABETH WARREN  
United States Senator

  
PATTY MURRAY  
United States Senator

CC: The Honorable Kathleen S. Tighe, Inspector General  
The Honorable Walter M. Shaub Jr., Director, United States Office of Government Ethics

<sup>5</sup> “Form 10-K.” Bridgepoint Education, Inc. *United States Securities and Exchange Commission*. March 7, 2017. <https://www.sec.gov/Archives/edgar/data/1305323/000130532317000016/bpi201610k.htm>