

United States Senate

WASHINGTON, DC 20510

April 26, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary DeVos:

We are writing to inquire about the ethics arrangements for Ms. Diane Auer Jones who was recently appointed to be senior policy advisor to the Assistant Secretary for Postsecondary Education at the U.S. Department of Education (“Department”). Given her long career working as a lobbyist and consultant for for-profit colleges, we are deeply concerned with the fact that Ms. Jones will act as the Senior Department Official (“SDO”) in charge of making recommendations on the fate of the Accrediting Council for Independent Colleges and Schools (ACICS), an accrediting agency that oversaw the biggest collapses of for-profit colleges in the history of federal student aid. Additionally, we are concerned that Ms. Jones may be advising you on a variety of regulatory and administrative matters that directly and indirectly impact her former employers and the for-profit college industry.

As Ms. Jones is a political appointee of the Trump Administration, she is required to fulfill the requirements of Executive Order 13770, *Ethics Commitments by Executive Branch Employees*, including signing the ethics pledge, and must comply with other federal ethics statutes and regulations.ⁱ Now that Ms. Jones has been named to several consequential positions, it is imperative that the public have a better understanding of how the Department plans to address the significant number of conflicts of interest and appearances of impropriety that exist in her roles as SDO in the ACICS review process and as an advisor on other policy issues facing the Department such as regulations, enforcement actions, and reviews of conversions by for-profit colleges she may have worked with or represented.

Ms. Jones has a history of participating in the revolving door of government and lobbying, including a position as the chief lobbyist for a for-profit education company operating colleges accredited by ACICS. After serving as Assistant Secretary for Postsecondary Education for President George W. Bush, Ms. Jones worked from 2010 to 2015 as senior vice president and chief external affairs officer for Career Education Corporation (CEC), one of the nation’s largest for-profit education companies. During this time, CEC operated nearly a dozen college chains, with more than 80 campuses in the United States, over 70 of which were accredited by ACICS.ⁱⁱ Ms. Jones even served as CEC’s primary representative to accreditation agencies like ACICS.ⁱⁱⁱ

After lobbying for CEC, from 2015 to 2017, Ms. Jones was president at AJsquared Consulting, which offers higher education and government compliance services to for-profit colleges. Ms. Jones' federal financial disclosures states that she also provided consulting services to the main for-profit college trade association, the Association of Private Sector Colleges and Universities (APSCU), which has many ACICS members, as well as the for-profit college company known as Rasmussen College in Minneapolis, Minnesota and a company associated with the private student loan market, MeasureOne, which tracks private education loans.^{iv} She also served as an expert witness to the Center for Excellence in Higher Education (CEHE), the parent organization based in Utah that operates the for-profit CollegeAmerica and Stevens-Henager College chains.^v

In her role as a lobbyist and consultant to for-profit colleges, Ms. Jones's work included helping the company navigate federal law and investigations and lobbying to advance her employers' policy interests. Lobbying disclosures show that Ms. Jones actively worked to overturn the Department's "gainful employment" regulation which was designed to protect students and taxpayers from taking on debt they cannot repay.^{vi} Ms. Jones' supervisor at such time of her final lobbying disclosure filing was Mr. Robert Eitel, another controversial Department political appointee who has been working to overturn regulations on for-profit colleges. Below are examples of policy issues, investigations, and lawsuits that Ms. Jones was likely involved in on behalf of her former employer and clients.

Career Education Corporation (CEC)

CEC is an Illinois-based parent company whose schools have included American InterContinental University, Colorado Technical University, and Sanford-Brown Colleges. Sanford-Brown Colleges remains accredited by ACICS today. In 2012, while Ms. Jones lobbied for the company, CEC was the fourth largest for-profit college chain, and the company and its subsidiaries are still a major recipient of federal funds and financial aid upon which Ms. Jones now advises the Department. According to a Senate HELP Committee report, during the peak years of the for-profit college boom in 2010, CEC received \$1.9 billion in federal student financial aid.^{vii} The ties between CEC and ACICS are extensive, and the company also has many relevant interests currently before the Department. Even the Department's newly-confirmed General Counsel, Mr. Carlos G. Muñiz, retained CEC as a client and provided consulting services to the company.^{viii} The General Counsel normally oversees the Designated Agency Ethics Official. Due to his resulting conflicts of interest, Mr. Muñiz must recuse himself from the ethics process in matters pertaining to the company and its colleges' accreditation, and his recusal should include approval or determination of ethics arrangements for Ms. Jones.

In the five years that Ms. Jones was employed as a CEC lobbyist, the company was subject to a number of investigations, lawsuits, enforcement actions, and settlements, including investigations by twenty-two states attorneys general in total, and a recent multistate investigation led by the State of Connecticut.^{ix} The multistate investigation involved CEC's compliance with state consumer protection laws and focused on the recruitment of students, graduate placement statistics, graduate certification and licensing results, and institutional lending practices.^x It is our understanding that CEC remains under investigation and has not yet resolved the issues raised by the attorneys general.

In 2011, CEC agreed to pay \$40 million to settle a class action lawsuit against one of its schools, the California Culinary Academy in San Francisco. Former students alleged that the college misled them by claiming that 97 percent of graduates were being hired for culinary jobs, but failed to disclose to students that this figure included graduates working as waiters, baristas, and line cooks—none of which require a culinary degree.^{xi}

Also in 2011, the Department moved all of CEC's schools to heightened cash monitoring status and began conducting an inquiry into CEC's possible violations of its misrepresentation regulations. According to public filings, this inquiry is still unresolved.^{xii} If the Department finds that CEC engaged in any prohibited activity, the Department may impose monetary or program-level sanctions, require that the schools disburse their own funds to students and seek reimbursement from the Department, or completely cut off its access to federal financial aid.

In 2012, nine CEC campuses that were dually-accredited by ACICS and the Accrediting Commission of Career Schools and Colleges (ACCSC) were placed under a "show-cause" directive by ACCSC due to ongoing concerns about their job placement rates, but they were not sanctioned by ACICS.^{xiii} During the 2016 recognition process ACICS acknowledged the action taken by their fellow accreditation agency only by saying they "remained actively involved in monitoring CEC" at the time, but chose not to impose similar sanctions on the same schools.^{xiv} It is unclear whether ACICS was pressured by Ms. Jones not to impose sanctions on these dually-accredited institutions despite being aware of concerns with the job placement rates at these campuses.

In 2013, CEC entered a settlement agreement with the New York Attorney General for \$10.25 million after an investigation revealed the school used inflated job placement rates to attract students and failed to properly disclose that certain programs lacked accreditation.^{xv} The school claimed placement rates of 55 percent to 80 percent when actual rates were 24 percent to 64 percent, and counted students with jobs in retail and other positions unrelated to their field of study as having obtained "in field" placements. As the 2012 Senate HELP investigation noted, the revelation of systematic misreporting by CEC also points to the weaknesses in ACICS' verification of placement rates.^{xvi} The New York Attorney General had found that placement rates were incorrect at 49 CEC campuses, all of whom were accredited by ACICS.

Earlier this year, CEC agreed to settle a 10-year old legal battle by 2,200 former Le Cordon Bleu students who alleged the company misrepresented their job and earning prospects.^{xvii} Finally, as recently as February 2017, CEC agreed to pay \$10 million to the federal government to settle a False Claims Act lawsuit alleging that American Intercontinental University violated Title IV of the Higher Education Act.^{xviii} While the settlement occurred after Ms. Jones' tenure, the allegations included violations of the ban on incentive compensation for college recruiters, failing to verify students' proof of graduation, and lying to its accreditor.^{xix} If such findings were also made by the Department, CEC would stand to lose a significant revenue source from restrictions to accessing federal financial aid. It is a violation of a school's program participation agreement to violate any provision of Title IV of the Higher Education Act, including a regulation prohibiting misrepresentations to students.^{xx}

Center for Excellence in Higher Education (CEHE)

As an “expert witness” for CEHE in late 2017, Ms. Jones may have played a role in helping the organization negotiate with the Department on overturning a ruling by the former administration that rejected the organization’s attempt to convert its for-profit colleges into “non-profit” status. In 2012, CEHE applied to the Department for a change in status after it acquired four for-profit college companies owned by the Carl Barney Living Trust. In August 2016, the Department rejected the application because it determined that the colleges’ tuition revenue continued to flow to Carl Barney through the Trust. Yet earlier this year, the Trump Administration announced it was considering undoing that ruling by negotiating with CEHE’s lawyers for “potential administrative resolutions.”^{xxi}

The potential reconsideration of CEHE’s conversion follows an alarming trend of other preliminary approvals of for-profit college conversions from the Department. As for-profit colleges continue to seek conversions, as evidenced by impending applications by Ashford University, Grand Canyon University, and others, we are concerned about what level of oversight and scrutiny Ms. Jones will advise the Department to take given her past employment history and involvement on CEHE’s behalf. Finally, the eight CEHE-owned Stevens-Henager College campuses attempted to move ACICS in early 2016, and may still be considering transitioning their accreditation to that agency.^{xxii}

All of these examples also illustrate why it is alarming that Ms. Jones will serve as the SDO in determining the final decision regarding ACICS’ petition for recognition. Her decision will play a highly significant role in determining the regulatory and reputational environment of her former employers and clients. As SDO, Ms. Jones is expected to render a decision by July 30, 2018, and the Department states she has the authority to recommend whether ACICS deserves full recognition, conditional recognition, or a denial.^{xxiii}

Additionally, many of us have also requested that the Department immediately disclose documents being considered by Ms. Jones in ACICS’ petition for recognition by the Department, including information submitted by ACICS in January 2016 in the Part II submission documents.^{xxiv} This submission contains information pertaining to Ms. Jones’ former employer, CEC, including job placement performance of the colleges owned by the company during the time she was employed there.^{xxv} The Part II submission documents also include “all emails among, and documents sent or received by, any of ACICS directors, officers, staff members, consultants (including all members of college review teams), and third parties which concern” CEC and its schools from the period of February 1, 2013 through May 16, 2016, encompassing several years of Ms. Jones’ work for the company. The documents may even contain communications from Ms. Jones given that she was CEC’s representative to accreditation agencies.^{xxvi} Therefore, Ms. Jones should play no role in the Department’s discussion of releasing these documents to the public.

Beyond her role as SDO, Ms. Jones will be advising the Department on policy issues impacting many of the federal student aid programs on which CEC and many of her former for-profit college clients and employers rely, policies that regulate their conduct, and potentially the outcome of the Department’s inquiry into her former employers’ practices and compliance with the law. Given this significant potential for conflicts of interest and appearances of impropriety,

please provide responses to the following questions relating to Ms. Jones's work for the Department:

1. Is it appropriate for Ms. Jones to serve as the SDO to determine the recognition decision for ACICS given her background working on behalf of ACICS-accredited colleges?
2. What ethics requirements must an employee participating in a recognition decision for an accrediting agency fulfill?
3. Has the Department reviewed Ms. Jones' prior communications with ACICS on behalf of CEC institutions?
4. Are there any specific subject-matter recusals or other measures to avoid perceived or actual conflicts of interest that Ms. Jones must abide by in her position as the SDO in the ACICS recognition decision?
5. Will Ms. Jones play a role in deciding whether to release ACICS Part II submission documents to the public?
6. Is Mr. Carlos G. Muffiz, General Counsel, involved in approving or determining any ethics arrangements relating to conflicts of interest or appearances of impropriety, including recusals or other measures taken to avoid perceived or actual conflicts of interest, in matters concerning CEC?
7. What is Ms. Jones's involvement in or access to information related to the Department's investigation and monitoring of CEC?
8. Has Ms. Jones consulted with you with regards to limitations on her participation in matters pertaining to her work for CEC or any other for-profit colleges, including her role as the SDO determining the recognition status for ACICS?
9. What is Ms. Jones's involvement in or access to information related to the Department's reviews and approvals of for-profit college conversions, and in particular, the negotiations to overturn the ruling denying CEHE's conversion to non-profit status?
10. Do you have a formal or informal agreement with Ms. Jones regarding any recusals or other measures taken to avoid perceived or actual conflicts of interest as a result of her prior work on behalf of CEC or other for-profit schools?
11. Please provide a copy of any such formal or information memorialization of limitations on Ms. Jones's participation in specific matters, recusals, or other informal ethics agreements that she has agreed to in consultation with you.
12. Please provide a signed copy of Ms. Jones completed ethics pledge as required by Executive Order 13770.

13. Please provide a copy of any communications between Ms. Jones and the Department from 2010 to 2015 while she was a lobbyist for CEC.

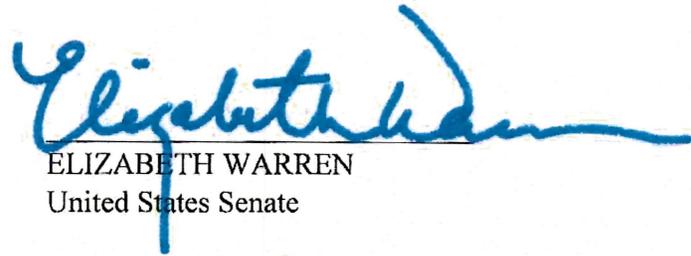
14. Please provide a copy of any communications between Ms. Jones and the Department when she consulted for APSCU, Rasmussen College, and MeasureOne.

Given that the Department has stated Ms. Jones may respond as SDO in writing to ACICS' submission at any time before, or on, July 30, 2018, and this is therefore an urgent matter, we ask that you provide a response to this inquiry by [two weeks from send], 2018. If you have any questions, please contact Khaliyl Lane with the Office of Senator Richard Blumenthal at (202) 224-2823. Thank you for your attention to our request.

Sincerely,



RICHARD BLUMENTHAL
United States Senate



ELIZABETH WARREN
United States Senate



PATTY MURRAY
United States Senate



SHERROD BROWN
United States Senate



RICHARD J. DURBIN
United States Senate



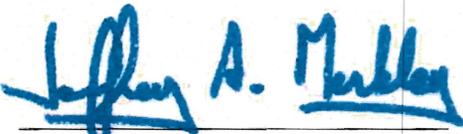
CATHERINE CORTEZ MASTO
United States Senate



TINA SMITH
United States Senate



MAZIE R. HIRONO
United States Senate



JEFFREY A. MERKLEY
United States Senate



KAMALA D. HARRIS
United States Senate

cc: Mr. Carlos G. Muñiz, General Counsel
Ms. Marcella Goodridge-Keiller, Designated Agency Ethics Official
Ms. Kathleen Tighe, Inspector General

ⁱ 18 U.S.C. § 208 & 5 CFR § 2635.502

ⁱⁱ Senate Health, Education, Labor and Pensions (HELP) Committee. Report: *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Part II, Career Education Corporation*, July 30, 2012. https://www.help.senate.gov/imo/media/for_profit_report/PartII/CEC.pdf

ⁱⁱⁱ BusinessWire. Release: Career Education Corporation Appoints New Leaders & Establishes New Roles on Executive Team. July 17, 2012. <https://www.businesswire.com/news/home/20120717005331/en/Career-Education-Corporation-Appoints-New-Leaders-Establishes>

^{iv} U.S. Office of Government Ethics. *Executive Branch Personnel: Public Financial Disclosure Report (OGE Form 278e)*. Accessed April 13, 2018. <https://www.documentcloud.org/documents/4416584-Diane-Jones-Financial-Disclosure.html>

^v *Ibid.*

^{vi} U.S. Senate Lobbying Disclosure Electronic Filing System. Accessed April 4, 2018. <https://go.usa.gov/xOZSe>

^{vii} Senate Health, Education, Labor and Pensions (HELP) Committee. Report: *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Part II, Career Education Corporation*, July 30, 2012. https://www.help.senate.gov/imo/media/for_profit_report/PartII/CEC.pdf

^{viii} Muniz, Carlos Genaro. Nominee Report. Executive Branch Personnel, Public Financial Disclosure Report (OGE Form 278e). Signed April 18, 2017.

^{ix} Kelderman, Eric. State Attorneys General Open New Investigations Into For-Profit Colleges. *Chronicle of Higher Education*. January 28, 2014. <https://www.chronicle.com/article/State-Attorneys-General-Open/144255>

^x Career Education Corporation, Quarterly Report (Form 10-Q) (Sept. 30, 2017), https://www.sec.gov/Archives/edgar/data/1046568/000156459017021193/ceco-10q_20170930.htm

^{xi} Smith, Matt. California Culinary Academy Settles Lawsuit With Students for Millions. *SF Weekly*. May 4, 2011. <https://bit.ly/2qJ0NcV>

^{xii} *Supra*, see note x.

^{xiii} Career Education Corporation, Current Report (Form 8-K) (June 7, 2012), <https://www.sec.gov/Archives/edgar/data/1046568/000119312512268354/d365943d8k.htm>

^{xiv} Bieda, A. ACICS. Response to Secretary King and Ms. Jennifer Hong regarding April 8, 2016 multistate attorneys general letter. May 16, 2016.

^{xv} New York State Office of the Attorney General, Press Release, *A.G. Schneiderman Announces Groundbreaking \$10.25 Million Dollar Settlement With For-Profit Education Company That Inflated Job Placement Rates To Attract Students* (Aug. 19, 2013), <https://go.usa.gov/xQZSt>

^{xvi} Senate Health, Education, Labor and Pensions (HELP) Committee. Report: *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Part II, Career Education Corporation*, July 30, 2012. https://www.help.senate.gov/imo/media/for_profit_report/PartII/CEC.pdf

^{xvii} Mehlhaf, Nina. KGW8 News. Portland culinary students getting tuition money back after lawsuit. February 5, 2018. <http://www.kgw.com/article/news/local/portland-culinary-students-getting-tuition-money-back-after-lawsuit/283-515118349>

^{xviii} Career Education Corporation, Current Report (Form 8-K) (Feb. 15, 2017), <https://www.sec.gov/Archives/edgar/data/1046568/000119312517050424/d347448d8k.htm>

^{xix} *United States of America, ex rel. Melissa Simms Powell, et al. V. American InterContinental University, Inc.*, Civ. Action No. 1:08-CV-2277-RWS (Sept. 20, 2016 N.D. Ga.).

^{xx} 34 C.F.R. § 668.14; 34 C.F.R. § 668.71-74.

^{xxi} Stratford, Michael. Politico Morning Education. *DeVos May Reverse Obama Ruling on For-Profit College Conversions*. January 24, 2018. <https://www.politico.com/newsletters/morning-education/2018/01/24/devos-may-reverse-obama-ruling-on-for-profit-college-conversions-082109>

^{xxii} Accrediting Council for Independent Colleges and Schools. Council Actions Effective April 8, 2016. <http://www.acics.org/WorkArea/DownloadAsset.aspx?id=6642>

^{xxiii} U.S. Department of Education (“Department”) under the Order of the Secretary in Docket No. 16-44-0.

^{xxiv} Senators Durbin, Warren, Blumenthal, and Brown to Secretary DeVos regarding ACICS Part II submission documents. April 11, 2018. <https://go.usa.gov/xQDsT>

^{xxv} *Accrediting Council for Independent Colleges and Schools v. U.S. Department of Education*, Case No. 16-2448-RBW, Motion to Supplement Administrative Record, Ex. A, ECF No. 41-2 (D.D.C. Mar. 31, 2017)

^{xxvi} *Supra*, see note iii.