

United States Senate

WASHINGTON, DC 20510

November 30, 2015

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Ave.
Washington, DC 20202

The Honorable Loretta E. Lynch
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Secretary Duncan and Attorney General Lynch:

We are writing to express our serious concerns about the recent settlement with the for-profit college company Education Management Corporation (EDMC), which operates the Art Institutes, Argosy, Brown Mackie, and other for-profit colleges. Specifically, we are concerned that the settlement does not do enough to hold company executives accountable and to provide relief to students who were the victims of EDMC's scam recruiting tactics.

In 2011, the Department of Justice (DOJ) and four states filed a whistleblower suit against the company based on claims that it was illegally paying incentive-based compensation to its admissions recruiters to enroll students.¹ The whistleblowers reported that the company was unlawfully enrolling students by running a high pressure "boiler room" where admissions personnel were compensated and received perks based on the number of students they enrolled as the company raked in billions of dollars from students and taxpayers.

Under the terms of the federal settlement, EDMC will pay only \$95 million in fines, which represents less than one percent of the approximately \$11 billion in student loan aid that the company fraudulently received over the course of a decade. The paltry settlement was reportedly driven by the company's ability to pay, but it also means federal taxpayers get severely shortchanged. The leniency of EDMC's fine is further compounded by the Department of Education's decision not to restrict the flow of additional federal funds to EDMC moving forward. EDMC will continue operating its institutions and will continue to be able to receive tuition funds paid with federal aid, meaning that the spigot of federal taxpayer funds will remain wide open for EDMC.

Moreover, not one dime of this fine will go to the students that were wronged by EDMC. While state Attorneys General secured approximately \$100 million in debt relief for borrowers

¹ Department of Justice, Office of Public Affairs, "U.S. Files Complaint Against Education Management Corp. Alleging False Claims Act Violations," August 8, 2011
<http://www.justice.gov/opa/pr/us-files-complaint-against-education-management-corp-alleging-false-claims-act-violations>

of EDMC's private loans in a separate settlement announced the same day, federal regulators appear to have obtained nothing for students, leaving defrauded students holding the bag for billions of dollars in federal student loans they incurred after being illegally pressured to enroll.

We are also highly troubled by additional terms of the deal. No executive will go to jail, none will be sanctioned, and the settlement does not even contain an admission of wrongdoing by the company. This is inexplicable and it runs counter to a highly-touted new DOJ policy on "Individual Accountability for Corporate Wrongdoing" that was announced on September 16, 2015.²

This policy was put in place specifically because, as DOJ noted, "One of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing," and because "Only by seeking to hold individuals accountable ... can the Department ensure that it is doing everything in its power to minimize corporate fraud, and, over the course of time, minimize losses to the public fisc through fraud." But a mere two months after announcing this policy, when settling a case that recovered less than one percent of funds that were illegally gained by EDMC, DOJ garnered no admission of wrongdoing and held no individual accountable for the actions that significantly harmed students and taxpayers.

We are also deeply troubled – and surprised – by statements that Secretary Duncan made regarding Education Department consideration of student loan forgiveness for borrowers that were the victims of EDMC's illegal recruiting tactics.³ Under federal law, the Education Department has broad authority to forgive borrowers' student loans in cases where their academic institutions engage in unscrupulous or fraudulent activities. The Department is presently reviewing thousands of cases where borrowers who attended Corinthian Colleges are eligible for such forgiveness.

The EDMC case appears to be a prima facie case where students should be eligible for such debt relief. According to DOJ, the company was "operating essentially as a recruitment mill [that was] ... a violation of the trust placed in them by their students."⁴ EDMC's actions were an "egregious abuse" that "enrich[ed] their corporate coffers at the expense of students seeking a quality education."⁵ The DOJ was clear about how the wrongdoing by EDMC hurt students: it caused "the enrollment of students in programs for which they lacked the necessary skills and qualifications, unsustainable student debt and default rates and [placed] schools' pursuit of profits ahead of a legitimate education mission."⁶

² Department of Justice, Memorandum from Deputy Attorney General Sally Quillian Yates, "Individual Accountability for Corporate Wrongdoing," September 9, 2015
<http://www.justice.gov/dag/file/769036/download>

³ Secretary of Education Arne Duncan, Press Conference, November 16, 2015
<http://www.c-span.org/video/?400827-1/attorney-general-loretta-lynch-news-conference>

⁴ Department of Justice, Office of Public Affairs, "For-Profit College Company to Pay \$95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations," November 16, 2015
<http://www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and>

⁵ *Id.*

⁶ *Id.*

But in a press conference after the settlement, Secretary Duncan indicated that he was unsure if EDMC students would be eligible for student loan relief, stating that EDMC's actions were "not a misrepresentation to students. It was breaking the law and lying to us."⁷ This interpretation makes little sense in the context of the allegations against EDMC and the settlement reached this week. It is also logically absurd. EDMC cannot be guilty of lying to federal officials about recruiting students unlawfully unless EDMC actually recruited students unlawfully. EDMC did not lie to the government in a vacuum – it lied in the context of covering up a “recruitment mill” that was specifically designed to enroll students using any means necessary and saddling them with debt.

For evidence of harm to students, the Education Department need look no further than the evidence compiled by the state Attorneys General settlement with EDMC. In that case, EDMC agreed to settle allegations of a myriad of violations of state consumer protection laws, which appear to be grounds for discharge of federal loans. It is clear that EDMC's predatory practices caused material harm to its students, and we urge the Education Department to use its authority and all available evidence of EDMC's fraudulent behavior to provide these students the full, immediate debt relief afforded by the law.

We are profoundly dissatisfied with a settlement in which the government recovered a miniscule fraction of stolen taxpayer funds, held no individuals accountable while failing to even obtain an admission of wrongdoing from EDMC, and now may not even provide relief to thousands of students who owe billions of dollars in student loans because they were illegally recruited by EDMC.

To address these concerns, we ask that you brief us on these and other issues regarding the settlement—including Secretary Duncan's assertion that EDMC engaged in no misrepresentation to students—no later than December 17, 2015.

Sincerely,



Elizabeth Warren
United States Senator



Richard J. Durbin
United States Senator



Richard Blumenthal
United States Senator

⁷ Shahien Nasiripour, The Huffington Post, “How the Obama Administration Is Making It Harder To Shed Student Debt,” November 17, 2015
http://www.huffingtonpost.com/entry/student-debt-relief-edmc-settlement_564a6006e4b08cda348a47aa