

# United States Senate

WASHINGTON, DC 20510

January 2, 2018

The Honorable Kathleen S. Tighe  
Inspector General  
U.S. Department of Education  
550 12<sup>th</sup> Street, SW  
Washington, DC 20202

The Honorable Gale Stallworth Stone  
Acting Inspector General  
U.S. Social Security Administration  
1100 West High Rise  
6501 Security Boulevard  
Baltimore, MD 21235

Dear Inspectors General Tighe and Stallworth Stone:

I write to request that you inspect and examine whether the Department of Education (“the Department” or ED) violated its information exchange agreements with the U.S. Social Security Administration (“SSA”) in order to establish a scheme to limit relief to thousands defrauded borrowers under its Borrower Defense for Repayment (“Borrower Defense”) authority.

On December 20<sup>th</sup>, 2017, the Department announced a new plan and formula to limit debt relief to former Corinthian College students and other defrauded student borrowers by comparing their average earnings to students who graduated from similar vocational programs of study.<sup>1</sup>

The Department stated in its press release that, “[s]tudents whose earnings are at 50 percent or more of their [Gainful Employment] program peers will receive proportionally tiered relief to compensate for the difference and make them whole.”<sup>2</sup> It appears the Department plans to use federal earnings data produced from federal tax records to calculate partial relief for defrauded student borrowers. The Department obtained these federal earnings data through an information exchange agreement between the Department and SSA for aggregate earnings data.<sup>3</sup>

I have a number of concerns with this plan, including whether it is allowed under the current information exchange agreement between the Department and SSA. On December 20<sup>th</sup>, 2017, *The Washington Post* reported that SSA provided an “unofficial, non-legal, staff-level” opinion that SSA staff “do[es] not believe [the Education Department] would be authorized to use earnings information [SSA] provide[s] under any current agreement to make decisions about whether or not to grant debt relief to borrowers in certain vocations.”<sup>4</sup>

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<sup>1</sup> “Improved Borrower Defense discharge process will aid defrauded borrowers, protect taxpayers.” *U.S. Department of Education*. (2017, December 20). Online at: <https://www.ed.gov/news/press-releases/improved-borrower-defense-discharge-process-will-aid-defrauded-borrowers-protect-taxpayers>.

<sup>2</sup> *Id.*

<sup>3</sup> “Amended Information Exchange Agreement Between the Department of Education and the Social Security Administration for Aggregate Earnings Data.” ED Agreement No. 10012/SSA IEA No. 325.

<sup>4</sup> Douglas-Gabriel, D. (2017, December 20). “Betsy DeVos takes action on backlog of student debt relief claims.” *The Washington Post*. Online at: [https://www.washingtonpost.com/news/grade-point/wp/2017/12/20/betsy-devos-takes-action-on-backlog-of-student-debt-relief-claims/?utm\\_term=.c47ceed968a5](https://www.washingtonpost.com/news/grade-point/wp/2017/12/20/betsy-devos-takes-action-on-backlog-of-student-debt-relief-claims/?utm_term=.c47ceed968a5).

I am troubled by the Department's potential misuse of federal earnings data acquired from SSA through an information exchange agreement in order to limit loan relief for defrauded students. The information exchange agreements between the Department and SSA, including Agreement No. 10012/SSA IEA No. 325, allow for the sharing of information "For Aggregate Earnings Data."<sup>5</sup> Agreement No. 10012/SSA IEA No. 325 aims to:

"[A]ssist [ED] in evaluating institutions that participate in the federal student aid programs authorized under Title IV of the Higher Education Act of 1965... ED will also use the information to consider policy options for revising the regulations for programs that are required to prepare students for gainful employment in recognized occupations, and through those regulations to determine each educational aid program's institutional eligibility as measured under 34 CFR § 668.405 Part 600."

Notably, this information exchange agreement explicitly and exclusively allows federal earnings data to be used for the Gainful Employment Rule as finalized by the Department in October 2014.<sup>6</sup> The information exchange agreement makes no mention of Borrower Defense or any use for student loan discharge determinations. And the information exchange agreement is clear that "SSA and ED will use and access the data only for purposes described in this agreement."<sup>7</sup>

There is no evidence of a new data exchange agreement between the Department and SSA for use in Borrower Defense determinations, nor has there been a revision to the Gainful Employment information exchange agreement. Despite these facts, an Education Department spokesman told the *Washington Post*, "This use is fully consistent with the department's agreement with the Social Security Administration."<sup>8</sup> Based on the plain text of the agreement, this does not appear to be true.

I am seeking clarity on this situation. In light of all of this, I request that you inspect and examine the circumstances by which the Department is using SSA federal earnings data to make partial relief determinations under Borrower Defense and whether this is an authorized use of SSA federal earnings data under the current information exchange agreements between the agencies.

Thank you for your prompt attention to this matter.

Sincerely,



ELIZABETH WARREN  
United States Senator

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<sup>5</sup> ED Agreement No. 10012/SSA IEA No. 325.

<sup>6</sup> 34 CFR 600; 34 CFR 668

<sup>7</sup> ED Agreement No. 10012/SSA IEA No. 325.

<sup>8</sup> Douglas-Gabriel, D. (2017, December 20).