



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

October 11, 2017

Honorable Elizabeth Warren
United States Senate
Washington, D.C. 20510

Dear Senator Warren:

I write in response to your letter dated August 15, 2017, regarding Mr. Robert Eitel. As you are aware, Mr. Eitel began working for the Department of Education on a temporary basis on February 13, 2017, while on an unpaid leave of absence from his employer, Bridgepoint Education, Inc. Before Mr. Eitel even arrived at the Department, he reached out to the Department's Designated Agency Ethics Official, Marcella Goodridge-Keiller, to get her advice on any potential ethics issues, including how to handle taking a temporary position at the Department. Mr. Eitel was advised by Ms. Goodridge-Keiller that the ethics laws would not preclude him from working at the Department on a temporary basis while on a leave of absence from Bridgepoint. Upon his arrival at the Department, Mr. Eitel received the standard ethics briefing from Ms. Goodridge-Keiller and also met with her separately to again review the general ethics laws.

On March 1, 2017, Mr. Eitel contacted Ms. Goodridge-Keiller to inform her of a potential conflict with regard to specific borrower defense claims by students attending institutions owned by Bridgepoint and Career Education Corporation (CEC), where Mr. Eitel had worked until July 2015. She advised him that while he was disqualified from participating in any borrower defense claim if his current or former employer were a party to the claim, he would not be disqualified under 18 U.S.C. § 208 or under paragraph 6 of the Ethics Pledge from participation in the review of, and any policy changes to, the borrower defense regulation.

In addition, Mr. Eitel raised the question with Ms. Goodridge-Keiller of whether he should recuse himself from consideration of the gainful employment regulation; Mr. Eitel then decided to simply recuse himself on that issue regardless of whether the ethics rules required such a recusal. Ms. Goodridge-Keiller advised him on how best to communicate to his colleagues at the Department that he was recusing himself with regard to the specific borrower defense claims and with regard to consideration of the gainful employment regulation. Mr. Eitel then informed his colleagues at the Department that he would be recusing himself both from any particular matters involving his current and former employers as specific parties and from any considerations of the gainful employment regulation. Mr. Eitel has followed through on both of these recusal commitments, avoiding any involvement with the gainful employment regulation, as well as any involvement with particular matters to which his employers Bridgepoint and CEC were specific parties. Mr. Eitel then stepped down from his position with Bridgepoint upon accepting a permanent position at the Department.

In your letter dated March 17, 2017, you inquired about the nature of Mr. Eitel's employment with the Department and whether he had received any ethics waivers on matters at the Department. In a follow-up letter dated March 30, 2017, you pointed out that Mr. Eitel was then employed simultaneously both at the Department and at Bridgepoint and that Bridgepoint had acknowledged in a U.S. Securities and Exchange Commission (SEC) filing that borrower defense claims under the new rule "could damage [Bridgepoint's] reputation in the industry and have a material adverse effect on enrollments and [Bridgepoint's] revenues, financial condition, cash flows and results of operations." In a letter dated May 8, 2017, Ms. Goodridge-Keiller responded to your first two letters, explaining that the Department is fully committed to following the ethics rules and regulations, that no ethics waivers had been granted to anyone at the Department, and that Mr. Eitel had stepped down from his position with Bridgepoint upon accepting a permanent position at the Department.

In a letter dated May 22, 2017, you inquired further about Mr. Eitel's work at the Department, specifically requesting copies of the OGE Form 278e and ethics pledge form that Mr. Eitel submitted to the Department. Ms. Goodridge-Keiller responded again in a letter dated June 21, 2017, explaining that "[t]he Department has informed Mr. Eitel that he is not subject to disqualification under paragraph 6 of the Ethics Pledge or the conflict of interest statute in regard to review of and any possible changes to the borrower defense regulations that were to be effective July 2, 2017, and now delayed," and attaching a copy of Mr. Eitel's OGE Form 278e and a copy of Mr. Eitel's ethics pledge form. Department staff then followed up with your staff after transmission of this letter, discussing the matter by phone on June 29 and July 12 and sending additional information to your staff via email on August 2.

In your fourth and most recent letter, dated August 15, 2017, you reiterated the concerns raised in your previous letters. For example, your letter points out once again that Bridgepoint has acknowledged in an SEC filing that borrower defense claims under the new rule "could damage [Bridgepoint's] reputation in the industry and have a material adverse effect on enrollments and [Bridgepoint's] revenues, financial condition, cash flows and results of operations." Although this is an accurate quotation from one of Bridgepoint's SEC filings, and although this statement accurately elaborates on some of the ways that the new borrower defense regulation could harm Bridgepoint, the same kinds of harms can and would accrue to institutions across the universe of institutions that receive Title IV funds following implementation of the new borrower defense regulation. For example, on June 13, 2017, I received a letter from representatives of more than 100 historically black colleges and universities and predominantly black institutions describing the "detrimental impact of the U.S. Department of Education's (Department) Borrower Defense to Repayment regulation" on these institutions if the implementation of the borrower defense regulation were not delayed, including "irreparable financial and reputational harm to HBCUs that are, in fact, providing quality educational opportunities to students." The fact that some of the institutions affected by the borrower defense regulation have clearly described the harms that the regulation's implementation could cause to them does not automatically restrict who can advise me regarding the implementation or delay of the regulation; in fact, it is especially important to hear from those whose experience in higher education has given them first-hand knowledge of how additional regulations could create otherwise unforeseen negative impacts for educational institutions across the country.

With regard to the first specific question in your letter, during the time period when he was on an unpaid leave of absence from Bridgepoint, Mr. Eitel discussed in the most general way the Department's priorities and regulatory agenda (including the borrower defense regulation). As explained more fully below, he could do so because he was advised by the Designated Agency Ethics Officer that the borrower defense regulation would not require his recusal (whether he was on a leave of absence or not). None of these isolated conversations related in any way to the gainful employment regulations.

With regard to the second specific question in your letter, you may rely on our prior correspondence and communications with your staff as applying to both the periods before and after Mr. Eitel ended his unpaid leave of absence from Bridgepoint. The Department's letter dated June 21, 2017, did not distinguish between the ethics analysis applicable to these periods because the same outcome applies to both time periods. Mr. Eitel was advised during his unpaid leave of absence that he was "not subject to disqualification under paragraph 6 of the Ethics Pledge or the conflict of interest statute in regard to review of and any possible changes to the borrower defense regulations." With regard to the conflict of interest statute, this conclusion follows from the fact that the borrower defense regulation is not a particular matter because it is directed to the interests of a large and diverse group of persons, including almost all of the institutions and borrowers involved with Title IV funds.

With regard to the third specific question in your letter, the Department advised Mr. Eitel that the borrower defense regulation is not a particular matter, as explained previously. Mr. Eitel relied on this advice.

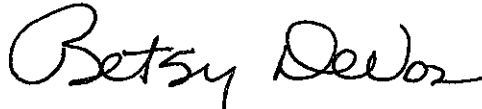
With regard to the fourth specific question in your letter, Department ethics officials did not issue any ethics waivers or make any ethics exemption determinations with regard to Mr. Eitel because none were needed, as explained above.

With regard to the fifth specific question in your letter, there is no evidence suggesting that Mr. Eitel could have violated 18 U.S.C. § 208 between February and April of this year or at any point, and I decline to speculate based on facts that do not exist. However, I will take the opportunity to reiterate that all of us at the Department take seriously our responsibility to abide by all of the ethics laws and regulations as well as the Ethics Pledge we each have signed pursuant to Executive Order 13770.

With regard to the sixth specific question in your letter, as described above, Mr. Eitel decided voluntarily to recuse himself from any matters involving the gainful employment regulation in the course of his discussions with Ms. Goodridge-Keiller and then communicated that decision to his colleagues at the Department. Mr. Eitel has followed this recusal decision by not involving himself in discussions of the gainful employment regulation and excusing himself from meetings when the issue has unexpectedly arisen. As a result, Mr. Eitel has not been involved at all in discussions of the gainful employment regulation since arriving at the Department. Although our ethics staff provided Mr. Eitel with ethics advice, as described above, they have not provided Mr. Eitel with a formal ethics counseling memorandum on this issue or the other issues discussed above, and Mr. Eitel's position does not require an ethics agreement under the ethics regulations.

Mr. Eitel received ethics advice that he has followed and upon which he has relied. He has gone above and beyond with regard to his ethics obligations, not only in voluntarily recusing himself from matters relating to the gainful employment regulation but also by recusing himself from any borrower defense claims filed by any students from any school. Unjustified accusations of criminal misconduct arising solely from partisan disagreements are beyond the pale, especially when leveled against a government servant who has been so careful to avoid ethics issues while serving the public.

Sincerely,

A handwritten signature in cursive script that reads "Betsy DeVos". The signature is written in black ink and is positioned above the printed name.

Betsy DeVos

cc: Kathleen Tighe, Inspector General, U.S. Department of Education
David J. Apol, Acting Director, U.S. Office of Government Ethics