



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

February 16, 2018

The Honorable Elizabeth Warren  
United States Senate  
Washington D.C. 20510-2105

Dear Senator Warren:

I am writing in reference to Secretary DeVos' October 11, 2017, letter responding to your letter of August 15, 2017, regarding Mr. Robert Eitel. I understand from the Office of Government Ethics that you expressed some concerns regarding the contents of the October 11, 2017, letter, and I would like to provide further clarification on two points.

The October 11, 2017, letter referenced the legal advice that Mr. Eitel received from me and my staff regarding various ethics matters relating to his position with the Department. The letter made specific reference to whether Mr. Eitel had been provided a "formal ethics counseling memorandum." The Department's ethics program provides advice and counseling to employees in a variety of written formats, including, but not limited to, e-mails and more formal memoranda. Mr. Eitel did not receive written counseling regarding the gainful employment regulations because he voluntarily recused himself before my staff or I reached a conclusion about his participation in those matters. However, Mr. Eitel did receive written ethics advice related to the other matters referenced in the October 11, 2017 letter.

The October 11, 2017 letter also contained the following statement:

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.

The conflict of interest statute at 18 U.S.C. § 208 prohibits Federal employees from participating personally and substantially in any particular matter that would have a direct and predictable effect on the financial interests of the employee or those financial interests that are imputed to the employee under the law. The borrower defense regulations are not applicable to a single group or class. The borrower defense regulations are applicable to different kinds of parties including students receiving Title IV funds, institutions of higher education, both public and for-

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profit, that participate in the Department's Title IV programs, and banks and other financial institutions that may lend funds to supports a student's postsecondary education. For this reason, I did not view the borrower defense regulations to clearly constitute a "particular matter" as that term is defined at 5 C.F.R. § 2635.402(b)(3). Moreover, it is important to note that when Mr. Eitel began working at the Department in February 2017, he requested whether he could participate in Department matters discussing in general ways the Department's overall priorities and regulatory agenda, which included the borrower defense regulations. In my review of that specific request, I did not view these types of general discussions about the Department's priorities and regulatory agenda as a particular matter

I hope this letter clarifies the concerns raised to the Office of Government Ethics.

If you have any questions, please contact my office at (202) 401-8309.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Goodridge-Keiller".

Marcella Goodridge-Keiller  
Assistant General Counsel &  
Designated Agency Ethics Official