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COMMITTEE ON  
EDUCATION AND LABOR  
U.S. HOUSE OF REPRESENTATIVES  
2176 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6100

November 21, 2019

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DUSTY JOHNSON, SOUTH DAKOTA  
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The Honorable Betsy DeVos  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Secretary DeVos:

On November 15 and 18 the Department produced documents to the Committee on Education and Labor (Committee) indicating that it was the “information requested by the Committee in March and June of this year.”<sup>1</sup> While I appreciate this initial production, there are some notable abnormalities and omissions in the Department’s responses that it must correct. Neither response directly addresses any of the questions from my March letter and nor does it address one of the six questions in my June letter. Yet the Department has not claimed any privilege over any of these materials.

**The Department responded with data and information that appears to have been prepared on or before February 4, 2019, most likely in response to staff-level inquiries made in January—not my March letter. This response does little to advance the Committee’s understanding of the current state of the more than 210,000 pending borrower claims.**

The materials produced by the Department in response to my March letter appear in fact to have been largely prepared on or before February 4, 2019 rather in response to my March 25 letter. As background, on January 8, Committee staff transmitted questions to the Department primarily requesting data and information on its implementation of Borrower Defense.<sup>2</sup> The Department agreed to produce responses to those questions by February 8.<sup>3</sup> After the Department missed this self-imposed production date, Committee staff repeatedly requested an updated production timeline, including an offer to accept responses on a rolling basis.<sup>4</sup> When the Department failed to provide any timeline for partial or full production, I wrote to you on March 25.<sup>5</sup> That March 25 letter drew from the unanswered staff questions but did not include portions of the January request that were time-sensitive and had been rendered moot by the Department’s delays. Importantly, the March 25 letter included additional document requests that the Department’s November 15 and 18 productions do not address.

It appears that instead of responding to my March 25 letter with documents and information describing the Department's current handling of 210,000 borrower claims, the Department provided materials responsive to staff's January 8 questions with most information cited as accurate "as of February 4, 2019."<sup>6</sup> This production does not appear to include any information dated subsequent to March 29.<sup>7</sup>

While this production might have addressed a number of my questions if the Department had provided it on February 8, today it is out of date and attempts to make it appear relevant have resulted in seemingly contradictory claims. For instance, the production provided data on pending applications as of February 4 that stated that "[t]he number of pending applications, in the data above, changes daily as we receive new applications."<sup>8</sup> The very next paragraph claims that "the data has not appreciably changed since February 4, 2019."<sup>9</sup> Either the data changes daily or it has not changed in more than 9 months, but both cannot be true. Accordingly, this response does not provide much insight into the Department's implementation of Borrower Defense and how it *currently* impacts borrowers.

Over the past few weeks, the Department has repeatedly indicated that the Office of Federal Student Aid (FSA) under General Brown's leadership "has taken a myriad of steps to provide students with lawful relief."<sup>10</sup> If the Department insists that it has taken great strides under General Brown, then providing the Committee with information, without supporting documentation, that pre-dates General Brown's tenure would seem insufficient to fully inform the Committee.

**The Department failed to cite privilege when withholding documents responsive to my June 24 letter.**

Due to the large number of for-profit college closures over the past 5 years, and the enormous taxpayer liability they pose, I requested information about how the Department evaluates institutional closure risk on June 24.<sup>11</sup> Specifically, I requested documents sufficient to show: 1) the Department's process for developing and testing its risk analysis; 2) the methodology underlying the risk analysis; and 3) a list of institutions that the Department believes pose a closure risk. The Department refused to provide such documentation because the "Department does not—and never has—released this data to entities external to the Department."<sup>12</sup>

While the Committee appreciates that the Department must balance many different considerations when producing materials to Congress, this is not a valid basis for withholding documents responsive to my requests. The Department cannot simply indicate that it does not release data as a rationale for not releasing data. I welcome a more robust conversation about the Department's concerns around production of these materials, but the Committee, not the Department, will ultimately decide whether the Department turns over unprivileged documents and data. If the Department intends to claim a legal privilege as a basis for withholding specific responsive documents or data, the Department should do so. As I am noting in separate correspondence to the Department, however, the Committee may decide not to accept common law legal privileges as a basis for withholding responsive documents.<sup>13</sup>

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My March and June letters ask straightforward questions that merit straightforward, comprehensive answers. The fundamental questions I expect these documents to answer include:

1. Why has the Department stopped discharging loans under Borrower Defense, when the court order it consistently cites as the sole barrier to discharge stated: “Nothing in this Order prohibits the Secretary from fully discharging the loans of any borrower who successfully completed or who successfully completes an attestation form?”
2. What was the underlying rationale for the Department’s development and application of a partial relief formula to Corinthian students who have extensively documented claims of fraud?
3. What specific steps can the Department document that it is taking today on these Borrower Defense claims and when did they begin?

The members of the Committee are responsible for understanding the steps the Department has taken to implement legislation we authorized, so if legislative action is necessary, we can act from an informed position. The Department has stated its intention to comply with our request for information, and I take that assertion in good faith; the additional production the Department made on November 18 upon realizing an inadvertent omission in the November 15 production speaks to that good faith. Accordingly, I request that the Department comply with its own terms and produce materials *fully* responsive to my March 25 and June 24 requests by no later than December 2, 2019.

Thank you in advance for your time and interest in this matter. Please direct all correspondence to the Committee Clerk, Tylease Alli, at [Tylease.Alli@mail.house.gov](mailto:Tylease.Alli@mail.house.gov). I look forward to reviewing the documents.

Very truly yours,



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**ROBERT C. “BOBBY” SCOTT**

Chairman

Cc: The Honorable Virginia Foxx, Ranking Member

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<sup>1</sup> Acting General Counsel Reed. D. Rubinstein, responding on behalf of Secretary Betsy DeVos, Letter to Chairman Robert C. “Bobby” Scott, Rubinstein Production Agreement (Nov. 14, 2019).

<sup>2</sup> See Exhibit 1 Staff Communications Log at 1.

<sup>3</sup> See *id.* at 2.

<sup>4</sup> See *id.* at 2.



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<sup>5</sup> Letter from Robert C. “Bobby” Scott, Chairman, House Education and Labor Committee to Betsy DeVos, Secretary, United States Department of Education (Mar. 25, 2019).

<sup>6</sup> See Acting General Counsel Reed. D. Rubinstein, responding on behalf of Secretary Betsy DeVos, Letter to Chairman Robert C. “Bobby” Scott, Rubinstein Production, document titled *BD Implementation* at (Nov. 15, 2019).

<sup>7</sup> See *id.*

<sup>8</sup> See Rubinstein Production, document titled *BD Implementation* at 12-13.

<sup>9</sup> See *id.*

<sup>10</sup> See, e.g., Acting General Counsel Reed. D. Rubinstein, responding on behalf of Secretary Betsy DeVos, Letter to Chairman Robert C. “Bobby” Scott, Re: Hearing Invitation (Nov. 7, 2019).

<sup>11</sup> Letter Robert C. “Bobby” Scott, Chairman, House Education and Labor Committee to Betsy DeVos, Secretary, United States Department of Education (June 24, 2019).

<sup>12</sup> Acting General Counsel Reed. D. Rubinstein, responding on behalf of Secretary Betsy DeVos, Letter to Chairman Robert C. “Bobby” Scott, Rubinstein Production, document titled *6.24.19 response* (Nov. 15, 2019).

<sup>13</sup> See Letter from Robert C. “Bobby” Scott, Chairman, House Education and Labor Committee to Betsy DeVos, Secretary, United States Department of Education, re: Department’s legal arguments (Nov. 19, 2019)

**Exhibit 1**

Staff Communications Log

## **Timeline of Communication between Committee on Education and Labor and Department of Education Regarding the Refusal to Provide Defrauded Students Debt Relief**

1. October 24, 2018 at 5:37 PM – Committee staff requests\* a bipartisan, bicameral staff-level briefing on implementation of Borrower Defense (BD) from the U.S. Department of Education (Department).
2. November 5, 2018 at 5:38 PM – Committee staff again requests\* a bipartisan, bicameral staff-level BD briefing from the Department.
3. November 20, 2018 at 12:15 PM – Department staff briefs bipartisan bicameral committee staff in 2175 Rayburn House Office Building.
4. November 29, 2018 at 5:31 PM – Committee staff transmits\* briefing follow-up questions to Department staff and requests complete responses by December 19, 2019.
5. November 29, 2018 at 5:56 PM – Department staff responds\* to confirm receipt and promises to keep Committee staff updated on the status of the request.
6. December 18, 2018 at 3:58 PM – Committee staff reminds\* Department of the December 19 expectation for responses to follow-up questions transmitted November 29, 2018 and offers to accept such responses on rolling basis.
7. December 18, 2018 at 4:59 PM – Department indicates\* that complete responses to November 29, 2018 transmittal will be provided by December 21.
8. December 20, 2018 at 10:35 AM – Department transmits\* Borrower Defense to Repayment Report in accordance with Senate Report 115-150 and the Consolidated Appropriations Act of 2018 (contents of report not responsive to outstanding Committee requests).
9. December 20, 2018 at 3:10 PM – Department transmits\* corrected cover letter to accompany Borrower Defense to Repayment Report in accordance with Senate Report 115-150 and the Consolidated Appropriations Act of 2018.
10. December 21, 2018 at 2:30 PM – Department transmits\* responses to BD briefing follow-up questions transmitted November 29, 2018.
11. January 8, 2019 at 4:59 PM – Committee staff transmits\* follow-up and additional questions (BD production) and requests complete responses by January 25, 2019. *No Department response received.*
12. January 24, 2019 at 2:19 PM – Department states\* in an unrelated email exchange, its intent to transmit BD production by February 8, 2019.
13. February 8, 2019 – Department fails to transmit BD production to Committee staff.
14. January 25, 2019 at 10:39 – Committee staff requests\* Department responses to BD Production and offers to accept such responses on rolling basis. *No Department response received.*
15. February 21, 2019 – Committee and Department staff discuss via phone the possibility of a Department staff briefing. During the call Committee staff maintains the request for materials responsive to the BD production, agreeing to a Department briefing in addition to, but not in lieu of, BD production.

16. February 22, 2019 at 8:07 PM – Committee staff memorializes\* the content of February 21, 2019 call to accept a Department staff briefing in addition to (and not in lieu of) Department materials responsive to BD production. *No Department response received.*
17. March 15, 2019 at 5:06 PM – Committee staff requests\* status update on BD production and requests transmittal of all materials responsive to such production prepared to that point. *No Department response received.*
18. March 19, 2019 at 10:37 AM – Committee staff requests\* status update on BD production. *No Department response received.*
19. March 19, 2019 in the afternoon – Committee staff calls Department staff to discuss all outstanding information requests, including BD production. During this call, Department staff asserts that the Department staff’s communication made on January 24, 2019 at 2:19 PM claiming that BD production “responses were close to being finished” and asserting intent to transmit such responses by February 8, 2019 was inaccurate. During the call, Department staff stated that, in fact, no work had been done on the BD production to-date. Department shared with Committee staff its intent to obtain and transmit to Committee staff a timeline for BD production.
20. March 19, 2019 at 6:29 PM – Committee staff memorializes\* contents of March 19, 2019 call. Committee staff requests clarification from Department staff, if email misstates the Department’s position or is not reflective of the substance of the call. *No Department response received.*
21. March 25, 2019 at 6:15 PM – Committee staff requests\* a status update on BD production. Committee staff again seeks confirmation of the Department’s statements during March 19, 2019 call that no work has been done on the BD production request and the Department cannot provide any timeline on the BD production. Committee staff requests clarification, if email misstates the Department’s position. *No Department response received.*
22. **March 25, 2019 – The Chairman sends a letter to the Secretary requesting a briefing on BD, the Department’s response to the BD production and additional documents and data (now comprising full BD Production).**
23. March 26, 2019 at 9:40 AM – Department of Education offers\* to provide more information on BD but fails to specify what that means.
24. March 26, 2019 at 4:44 PM – Committee staff responds\* and reiterates the scope of the Chairman’s request, per the March 25, 2019 letter. *No Department response received.*
25. April 2, 2019 at 2:30 PM – Chairman Scott and Secretary DeVos meet in 1201 Longworth House Office Building in advance of Secretary’s April 10, 2019 appearance before the full Committee in defense of the Administration’s Fiscal Year (FY) 2020 Budget. During this meeting, both the Secretary and Department staff state the goal of prompt response to Committee’s outstanding requests in response to Committee staff’s assertion that Committee has received no timelines for productions.
26. April 10, 2019 at 10:15 AM – Secretary DeVos appears before the full Committee for a hearing entitled “*Examining the Policies and Priorities of the U.S. Department of Education.*” Secretary DeVos provides testimony and answers Member questions in defense of the Administration’s proposed FY 2020 Budget. During the hearing, the Chairman references outstanding BD requests in his opening statement. Multiple members ask the Secretary about the Department’s handling of BD claims (see hearing transcript or archived web link).

27. April 29, 2019 at 11:34 AM – Committee transmits to the Department Questions for the Record (QFR) in follow-up to the April 10 full Committee hearing entitled “*Examining the Policies and Priorities of the U.S. Department of Education.*” Multiple members submit QFRs pertaining to the Department’s handling of BD claims. *As of November 15, 2019, Committee has not received responses to the April 10, 2019 QFR requests.*
28. May 3, 2019 at 5:31 PM – Committee staff requests\* BD briefing and status update on full BD production.
29. May 6, 2019 at 3:33 PM – Department offers\* a staff call on BD to take place May 7.
30. May 6, 2019 at 3:39 PM – Committee staff responds\* and accepts the Department’s offer for a call on May 7. Committee staff offers to accommodate the Department by merging BD and an outstanding request for a Gainful Employment briefing, given the related nature of the two issues.
31. May 7, 2019 – Committee staff and Department discuss outstanding requests (call).
32. May 10, 2019 at 5:16 PM – Committee staff requests\* status update on briefing and full BD production. *No Department response received.*
33. May 14, 2019 at 9:25 AM – Committee staff requests\* status update on full BD production.
34. May 14, 2019 at 10:00 AM – Department apologizes\* for delay and states intent to have information to share with Committee staff soon.
35. May 24, 2019 at 9:34 AM – Committee staff requests\* update on briefing and full BD production. *No Department response received.*
36. June 3, 2019 at 9:15 AM – Committee staff requests\* update on status of briefing and full BD production and also requests confirmation that the Department is working on such response and production.
37. June 3, 2019 – Committee staff and Department speak on the phone regarding timeline for production. During the call, Department states that full BD production is forthcoming and confirms Department will get back to Committee staff with dates for BD briefing.
38. June 4, 2019 at 8:43 AM – Committee staff memorializes\* content of June 3, 2019 call with the Department and requests clarification, if email misstates the Department’s position or is not reflective of the substance of the call. *No Department response received.*
39. **June 21, 2019 – The Chairman sends a [follow-up letter](#) reiterating March 25 request for briefing and full BD production.**
40. **June 24, 2019 – The Chairman sends a [letter](#) requesting briefing, documents and data related to the Department’s implementation of BD financial responsibility standards (BDFR production).**
41. August 8, 2019 – Committee staff calls Department for a status update on all outstanding BD requests, including a briefing, the full BD production, and BDFR production. During call Department indicates that it will provide a production timeline for outstanding BD requests.
42. August 8, 2019 at 3:08 PM – Committee staff memorializes\* substance of call and requests clarification, if email misstates the Department’s position or is not reflective of the substance of the call. *No Department response received.*



43. August 26, 2019 at 10:09 AM – Committee staff requests\* status update on outstanding BD requests from Department. *No Department response received.*
44. August 27, 2019 at 5:25 PM – Committee staff requests\* status update on outstanding BD requests from Department.
45. August 27, 2019 at 6:04 PM – Department responds\* indicating that it is working on a production timeline and will produce such timeline as quickly as possible.
46. September 3, 2019 at 12:16 PM – Committee staff requests\* update on outstanding BD requests from the Department. *No Department response received.*
47. September 6, 2019 – Committee staff and Department discuss outstanding requests (call).
48. September 6, 2019 at 5:54 PM – Committee staff memorializes\* content of September 6, 2019 call with the Department and requests clarification, if email misstates the Department’s position or is not reflective of the substance of the call.
49. September 9, 2019 at 2:35 PM – Department confirms\* that a timeline for the full BD production and the BDFR production is forthcoming, and the Department’s responses are in process.
50. September 9, 2019 at 6:57 PM – Committee requests\* that the Department’s timelines for both productions be transmitted to Committee staff as soon as possible.
51. September 11, 2019 – Department and Committee staff phone call during which Department indicates intent to produce BDFR production by September 20, 2019.
52. September 12, 2019 at 2:05 PM – Committee staff memorializes\* content of September 11 call. *No Department response received.*
53. September 30, 2019 at 12:04 PM – Committee staff requests\* update on BDFR production, given that the Department missed the September 20 deadline.
54. September 30, 2019 at 5:06 PM – Department apologizes\* for delay but confirms that BDFR production will arrive by October 11.
55. October 11, 2019 – Department fails to transmit BDFR production to Committee staff.
56. October 15, 2019 at 4:47 PM – Committee staff communicates Chairman’s intent to invite Sec. DeVos to appear before the Committee on November 19, 2019 for a full Committee hearing on Borrower Defense.
57. October 15, 2019 at 5:47 PM – Department requests\* call to discuss forthcoming invitation to Secretary DeVos.
58. October 16, 2019 – Committee and Department staff speak via phone regarding forthcoming invitation. During the call Committee staff reiterates the importance of the Secretary’s testimony before the Committee, as she is the only appropriate witness.
59. October 16, 2019 at 1:30 PM – Committee staff memorializes\* the content of the October 16, 2019 call. *No Department response received.*

60. October 18, 2019 at 12:48 PM – Committee staff requests\* update from Department. *No Department response received.*
61. October 18, 2019 at 1:22 PM – Committee staff requests\* update on Status of all outstanding BD requests and offers to “drop everything and be flexible” to make any hour work any time in the next week at any location to accommodate the outstanding request for a briefing. *No Department response received.*
62. October 21, 2019 at 12:25 PM and 12:27 PM – Committee staff requests\* update on full BD production, BDFR production, BD briefing, and confirmation of Secretary’s intent to appear before the Committee on November 19, 2019. *No Department response received.*
63. **October 28, 2019: Chairman Scott sends a [letter](#) to formally invite Secretary DeVos to appear before the Committee on November 19, 2019 for a full Committee hearing on Borrower Defense.**
64. October 28, 2019 at 6:24 PM – Committee staff requests\* update on status of all outstanding requests, including the BD briefing, full BD production, BDFR production, and invitation to testify.
65. October 29, 2019: Department responds via letter signed by Reed D. Rubinstein asserting an inaccurate legal justification to prevent Secretary DeVos from testifying on November 19, 2019 and offering a bipartisan briefing with General Mark Brown, Chief Operating Officer of Federal Student Aid.
66. **November 1, 2019: Chairman Scott responds via [letter](#) to Secretary DeVos to accept the Department’s offer of a briefing with General Brown, dispel the Department’s inaccurate legal justification to prevent Secretary DeVos from testifying, and reiterate his request for the Secretary’s appearance and testimony on November 19, 2019.**
67. November 4, 2019 at 8:44 PM – Committee staff accepts\* the Department’s offer for a briefing with General Brown and requests dates and times for such briefing. *No Department response received.*
68. November 5, 2019 at 9:58 AM – Committee requests\* status updates on the full BD production and the BDFR production. *No Department response received.*
69. November 5, 2019 – Department responds via letter signed by Reed D. Rubinstein offering General Brown to testify before the Committee the week of December 9, 2019.
70. **November 6, 2019: Chairman Scott responds via [letter](#) to Secretary DeVos reiterating his invitation for the Secretary to appear before the Committee on November 19, 2019.**
71. November 7, 2019: Department responds via a letter signed by Secretary DeVos to offer a private conversation between the Chairman and the Secretary and a briefing with General Mark Brown.
72. November 7, 2019: Department responds via a letter signed by Reed D. Rubinstein that makes numerous inaccurate assertions concerning process and Congressional oversight authority.
73. **November 8, 2019: Chairman Scott sends a [letter](#) to Secretary DeVos reiterating his request for Secretary DeVos’ testimony on November 19, 2019 and accepting the Department’s offer for General Brown brief Committee staff via transcribed interview to take place on November 13, 2019. The Chairman’s letter notes that a substantive response to the inaccurate assertions contained in Mr. Rubinstein’s November 7, 2019 letter is forthcoming.**
74. November 12, 2019: The Department responds via letter signed by Reed D. Rubinstein to rescind the Department’s offer that General Brown provide a briefing and instead offer General Brown as the Department

witness for the November 19, 2019 hearing. Mr. Rubinstein's letter also attempts to set the terms of future testimony on the issue of Borrower Defense provided by the Secretary on December 12, 2019.

75. November 14, 2019 at 12:20 PM: The Department issues a press release claiming that the Department has gone to "great lengths...in an attempt to provide the legitimate information Congress has requested, and the five times we have offered to share that information." The press release is accompanied by a Department-generated log of correspondence dating October 29, 2019 to November 12, 2019 and copies of Department letters to the Chairman transmitted during that timeframe.
76. November 14, 2019 at 12:47 PM: Committee contacts\* Department to confirm correct staff contact to receive service on behalf of Secretary DeVos.
77. November 14, 2019 at 1:43 PM: Committee staff follows-up\* to confirm correct staff contact to receive service on behalf of Secretary DeVos.
78. November 14, 2019 at 2:34 PM: Department confirms\* the correct staff contact to receive service on behalf of Secretary DeVos.
79. November 14, 2019 at 6:28 PM: Department transmits letter signed by Reed D. Rubinstein to communicate intent to provide Committee with materials in response to both the full BD production and the BDFR production on November 15, 2019. The letter suggests the Department's "good faith" and asserts the Chair's failure to reciprocate with good faith.
80. November 14, 2019 at 8:15 PM – Chairman Scott releases a press statement announcing receipt of Mr. Rubinstein's November 14, 2019 letter and intent to review the Department's production to inform forthcoming testimony from Secretary DeVos.
81. **November 15, 2019: Chairman Scott sends a letter to Secretary Devos accepting full cooperation with the BD production requests and advising the Secretary to hold time on her calendar for December 12, 2019 for testimony before the full Committee.**

\* = email on file with Committee