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November 6, 2019

The Honorable Betsy M. DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Secretary DeVos:

I am writing in response to the Department's November 5, 2019 letter rejecting yet another request for you to testify voluntarily before the House Committee on Education and Labor. I note that the Department's November 5th correspondence also failed to provide my outstanding requests for data and documents related to the Department's implementation of Borrower Defense.¹

As I have previously indicated, you are the only appropriate Department witness to testify on the Borrower Defense matter.² Specifically, you are the only high-level Department official who has remained at the agency across the relevant time span with direct knowledge of the decisions made and its rationale regarding Borrower Defense. It has been more than one year since the Department halted the approval of all borrower defense claims. And the Department developed its partial relief methodology nearly two years ago. Yet, in response to the Committee's repeated requests for you to testify regarding these matters – and to provide the relevant documents – the Department has offered as a witness, General Mark Brown, the Chief Operating Officer (COO) of Federal Student Aid (FSA), who only joined the Department in March 2019³. The recent tenure of General Brown means that he was not present when the Department devised its plan and rationale for the partial relief formula; decided to apply the formula to a subset of Corinthian borrowers; or, ceased approving all borrower defense claims. In short, General Brown is not an appropriate witness as he was not privy to the conversations laying the foundation of the Department's posture regarding Borrower Defense.

Further, you appear to be the Department official who makes the decisions about whether to discharge loans. The COO, while charged with FSA's implementation of *your* policy, does not authorize relief for defrauded borrowers. In fact, General Brown explicitly stated that he was not empowered to make these discharge decisions during a May 1, 2019 briefing with Committee staff.⁴ Though during the Obama Administration Undersecretary Ted Mitchell authorized

borrower defense claims for relief⁵, court filings indicate that you personally assumed this responsibility after you took office.⁶

Most importantly, however, your resistance to implementing this program has left more than 210,000 borrowers in limbo.⁷ To date, the Courts have ordered *you*, not General Brown, to implement Borrower Defense. Despite the judicial directive, you have not approved a single claim in more than a year.⁸ Similarly, my repeated requested for you to appear before the Committee regarding this matter and to produce the related decision documents have gone unheeded.

The U.S. Constitution has established a clear system of checks and balances that provides for Congressional oversight over Executive Branch agencies. The Committee's interest in this matter is vital to its duties to conduct oversight and consider legislation on these important issues—an interest the Department should share. The Department's resistance to standard oversight on these issues is troubling, but it will not deter the Committee from fulfilling its constitutional duties.

Accordingly, please accept my invitation to voluntarily testify before the House Committee on Education and Labor by November 7 at 6:00 P.M. The Committee will treat a failure to respond by that time as a declination of this offer. It is my hope that, in recognition of our shared interests on these topics, you will accept. If instead you again decline my invitation, the Committee will have no choice but to seek to compel your attendance.

Very Truly Yours,



ROBERT C. "BOBBY" SCOTT
Chairman

cc: The Honorable Virginia Foxx, Ranking Member

¹ Acting General Counsel Reed D. Rubinstein, responding on behalf of Secretary Betsy DeVos, Letter to Chairman Robert C. "Bobby" Scott, re: Hearing Invitation (Nov. 5, 2019).

² Chairman Robert C. "Bobby" Scott, *Letter to Secretary Betsy DeVos*, re: Borrower Defense (Mar. 25, 2019) available at <https://edlabor.house.gov/download/letter-to-secretary-devos-regarding-departments-failure-to-implement-borrower-defense-rule->.

³ U.S. Department of Education, *Secretary DeVos Names Mark A. Brown the New Chief Operating Officer of FSA*, (Mar. 4, 2019) available at: <https://www.ed.gov/news/press-releases/secretary-devos-names-mark-brown-new-chief-operating-officer-fsa#:~:text=WASHINGTON%20%2D%20U.S.%20Secretary%20of%20Education,FSA%2C%22%20said%20Secretary%20DeVos.>

⁴ U.S. Department of Education, General Mark Brown briefing Committee Staff (May 1, 2019).

⁵ See, e.g., U.S. Department of Education, *Third Report of the Special Master for Borrower Defense to the Under Secretary*, p.4 ("The Under Secretary has authorized such relief and those discharges are in process") (Mar. 25, 2016).

⁶ See *California v. DeVos* (N.D.C.A.) (Case 3:17-cv-07106-SK).

⁷ U.S. Dep't of Education, *Borrower Defense Quarterly Report* (Sept. 19, 2018).

⁸ *CAPPS v. DeVos*, No. 17-999, p. 2-4 (D.D.C 2018).