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November 9, 2020

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Ave, SW
Washington, D.C. 20202

Dear Secretary DeVos:

With the upcoming transition of presidential administrations, the House Committee on Education and Labor (Committee) respectfully reminds you of the critical importance of records management and preservation under the Federal Records Act (FRA). As you are aware, the FRA requires all departments and agencies in the Executive Branch to collect, retain, and preserve records that document “the transaction of public business” or contain “informational value”.¹ This information sharing and records management is important to ensuring that the President-elect is prepared to lead the country immediately upon assuming office.

The FRA requires the head of each Federal agency to “make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency...”.² These protections extend to all types of information, whether stored physically, digitally, or electronically.³ Further, these requirements apply to all offices and other organizational components under the U.S. Department of Education’s (Department’s) purview, as well as to all Department personnel.

Federal officials and employees who violate the FRA are subject to criminal penalties. Any agency employee who “willfully and unlawfully” conceals, removes, mutilates, obliterates, destroys, or attempts any such action against a federal record, is subject to fine and/or imprisonment for up to three years.⁴ In addition, any federal office holder convicted of violating

¹ 44 U.S.C. § 3301(a)(1)(A).

² 44 U.S.C. § 3101.

³ See 44 U.S.C. § 3301(a)(2).

⁴ See 18 U.S.C. § 2071(b).

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the FRA can lose his/her position and can be disqualified from holding future federal office.⁵ Moreover, as the head of an agency governed by the FRA, you have a responsibility to notify the Archivist of any actual, impending, or threatened unlawful action against records at your agency.⁶

The Committee seeks assurances, in writing, that records, documents, data, or information have not been and will not be destroyed, modified, removed, transferred, or otherwise rendered inaccessible during the transition. Further, the Committee requests that the Department provide FRA compliance guidance to all politically appointed officials to ensure they observe appropriate record keeping practices.

Since the FRA's enactment in 1950, there have been a dozen presidential transitions, and it is the Committee's expectation that your agency will fully comply with the requirements of the FRA to ensure a smooth transition of agency operations.

The Committee appreciates your cooperation and attention to this matter.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman

Cc: The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor

Cc: Jason Gray, Chief Information Officer, U.S. Department of Education

⁵ *Id.*

⁶ *See* 44 U.S.C. § 3106(b).