



**DEMOCRACY
FORWARD
FOUNDATION**

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June 16, 2017

VIA EMAIL

Gregory Smith
Director, FOIA Service Center, Office of Management
Department of Education
LBJ 2E320
400 Maryland Avenue, SW
Washington, DC 20202-4536
EDFOIAManager@ed.gov

Re: Freedom of Information Act Records Request

Dear Mr. Smith:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the Department of Education FOIA regulations at 34 C.F.R. Part 5, Democracy Forward Foundation makes the following request for records.

On June 14, 2017, the Department announced a partial delay of the effective date of certain regulations concerning student financial assistance, arguing that “justice so require[d]” the Department to do so due to pending litigation in the case *California Association of Private Postsecondary Schools v. DeVos*, No. 1:17-cv-00999 (D.D.C. May 24, 2017). As a number of senators noted last week, the rule in question “creates a straightforward and transparent process for defrauded students to apply for relief to which they are entitled under federal law,” and implementing the rule “without delay is practicable, necessary, and very clearly in the public interest.” *See* Letter from Sens. Elizabeth Warren, Patty Murray, Sherrod Brown, and Richard Durbin to Secretary Betsy DeVos (June 8, 2017). Absent the lawsuit noted above, relevant statutes would have “prohibit[ed] the Department from unilaterally amending or delaying a final rule” as the Department did on June 14.

Democracy Forward Foundation requests that the Department of Education produce the following within twenty (20) business days:

1. Any and all records that refer or relate to the California Association of Private Postsecondary Schools (or “CAPPS”), including, but not limited to, communications sent to or from any individuals at CAPPS (including names of CAPPS-affiliated individuals

June 16, 2017

Page 2

listed herein).

2. All communications, including any attachments, sent to or from the following individuals: Boris Bershteyn, Gregory Bailey, Robert Shapiro, Clifford Sloan, Caroline Van Zile.
3. All communications, including any attachments, sent to or from any individuals from Bridgepoint Education, Inc., including, but not limited to, Andrew Clark, Chris Henn, Marc Brown, Kevin Royal, Anurag Malik, Diane Thompson, Vickie Shray, Tom McCarty, Robert Hartman, Patrick Hackett, Dale Crandall, Ryan Craig, and Victor K. Nichols.
4. All communications, including any attachments, sent to or from Anthony Campau of the Office of Management and Budget.

Please limit this search to the following offices at the Department of Education: Office of the Secretary, Office of the Deputy Secretary, Office of the Undersecretary, Office of Postsecondary Education.

The time period for this request is January 20, 2017, to the date the search is conducted.

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. §552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See* 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office,

installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Democracy Forward Foundation is requesting that the Department expedite its processing of the Requests above, because students with potential claims under the final borrower defense regulations face an imminent loss of substantial due process rights. Any delay in the implementation of the final rule deprives the students of their rights to file claims for forgiveness of fraudulent debts. Further, any delay increases the ultimate tax burden on these students, whose forgiven debts will be subject to taxation on the basis of an amount that continues to accrue interest each day that their claims are not fulfilled. As such, the Department should expedite the processing of the requests above, which will allow potential claimants to more fully understand and, if necessary, challenge the Department's basis for delaying implementation of the final rule.

Democracy Forward Foundation is a nonprofit organization organized under Internal Revenue Code § 501(c)(3) and dedicated to educating the public about the operation of the federal government. The records we obtain from this request will be used to support those public education efforts, and we intend to disseminate publicly an analysis of those records. As a nonprofit organization, we do not have a commercial interest in the records. We therefore request a waiver of fees for searching and duplicating records in response to this request under the exception at 5 U.S.C. § 552(a)(4)(A)(iii), which requires waiver of fees if the disclosure is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." If our request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$250. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20 day period, please contact

June 16, 2017
Page 4

Karianne Jones as soon as possible at foia@democracyforward.org or (202) 448-9090.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Karianne Jones

Karianne Jones
Democracy Forward Foundation

June 16, 2017

Page 5

List of individuals affiliated with CAPPS for the purposes of Request No. 1

In addition to any individuals employed by CAPPS, the following individuals are associated with CAPPS and should be included in any search for the purposes of fulfilling Request No. 1:

- Yasith Weerasuriya, Stanbridge College
- Matthew Johnston, Santa Barbara Business College
- Mike Abril, San Joquin Valley College
- Fardad Fateri, International Education Corporation
- Lisa Fuerst, Success Education Colleges
- Konstantine Gourji, Gurnick Academy of Medical Arts
- Lynelle Lynch, Bellus Academy
- Valerie Mendelsohn, American Career College
- Sally Mikhail Bemis, Mikhail Education Corporation
- Rick Wood, Select Education Group
- Michael Zimmerman, MTI College
- Keith Zakarin, Duane Morris LLP
- Katherine (Kate) Lee Carey, Cooley LLP
- Lisa Fuerst, Success Education Colleges
- Matthew Johnston, Santa Barbara Business College
- Lisa Olmedo, Enrollment Resources
- David Vice, Asher College