

# United States Senate

WASHINGTON, DC 20510

February 10, 2016

Joseph A. Smith  
Special Master  
United States Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Special Master Smith:

We write regarding recent actions taken by the Department of Education (ED) and the Federal Trade Commission (FTC) against DeVry Education Group Inc. (DeVry). We believe that the evidence on which these actions are based entitle significant numbers of borrowers who attended DeVry to relief under the defense to repayment (DTR) process, and we urge you to act swiftly in providing the student debt relief that affected student borrowers deserve.<sup>1</sup>

On January 27, ED and FTC brought enforcement actions against DeVry for misleading consumers about job placement outcomes and earning potential. ED's action included a notification of the Department's intent to impose limitations on DeVry's participation in Title IV federal student aid programs. These limitations are based on ED's findings that DeVry failed to substantiate the employment statistics that the institution used to attract prospective students.<sup>2</sup> Also on January 27, the FTC filed suit against DeVry for violating the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce," commonly referred to as UDAP.<sup>3</sup> Both actions are based on similar sets of evidence – namely, that DeVry misrepresented two employment statistics that the institution featured prominently in various materials designed to attract prospective students. DeVry's claim that 90 percent of its graduates who were actively seeking employment obtained new jobs in their field of study within six months of graduation, used prominently in institution advertising materials since 2008, was based on deceptive manipulation of data that graduates had self-reported to the institution. In addition, DeVry's claim that its graduates with bachelor's degrees earned 15 percent more than graduates with bachelor's degrees from all other colleges and universities, featured in institution materials since 2013, is based on a third-party survey that used a deeply flawed methodology.

There are a large number of student borrowers who may have made enrollment decisions based on the fraudulent misrepresentations cited above. Based on the FTC's evidence that annual enrollment at DeVry between 2008 and 2014 ranged from 29,000 to 49,000 students, the universe of students who could be eligible for debt relief under the DTR process is at least 203,000 students and could be as high as 343,000 students. DeVry defrauded these student borrowers, luring them to its campuses with false and unsubstantiated information. These

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<sup>1</sup> As provided by 20 U.S.C. § 1087e(h); 34 C.F.R. § 685.206(c)

<sup>2</sup> As required by 20 U.S.C. § 1094(a)(8); 34 C.F.R. § 668.14(b)(10)

<sup>3</sup> 15 U.S.C. § 45(a)

borrowers should not be forced to wait until ED completes its negotiated rulemaking process to rewrite the DTR regulations, nor should their relief be delayed until the FTC suit reaches a resolution. Many borrowers have accumulated crippling amounts of student loan debt based on DeVry's false pretenses, and their burden grows heavier every day as the interest on their loans continues to accrue. You have an obligation to provide such student borrowers with the debt relief to which they are entitled under the law, and we urge you to fulfill that obligation without delay. In addition, without affecting the scope or speed of federal relief to borrowers, we expect the Department to make every effort to hold DeVry financially accountable to defrauded students and to taxpayers.

As we have previously discussed with you, the threshold that determines the success of a borrower's DTR claim is the existence of "any act or omission of the school attended by the student that would give rise to a cause of action under applicable State law."<sup>4</sup> We believe that the FTC Act violations detailed extensively in the FTC's evidence would give rise to a cause of action under many, if not all, state UDAP laws, and thus would satisfy the threshold for a successful borrower defense. In a report on state UDAP statutes, the National Consumer Law Center noted that enacting general prohibitions against deceptive and unfair contact is "the approach of the FTC Act, on which many UDAP statutes are based."<sup>5</sup> Thus, the actions which allowed the FTC to bring suit against DeVry for violating the FTC Act would also give rise to a cause of action under the UDAP laws of many, if not all, states.

We urge you to establish a process for providing rapid relief to affected DeVry student borrowers. This process should minimize the burden on affected student borrowers, allowing for group adjudication of claims without requiring borrowers to prove individualized harm. In addition, we ask that you conduct comprehensive, aggressive outreach to the universe of potentially affected DeVry student borrowers. Such outreach should provide clear information on the entire relief process.

Finally, we ask that you brief our staff on what steps the Department is taking to ensure that DeVry's misrepresentations qualify borrowers for immediate relief no later than February 24, 2016.

Thank you for your attention to this matter. We look forward to your response.

Sincerely,

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Richard Blumenthal  
United States Senator

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Richard J. Durbin  
United States Senator

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<sup>4</sup> 34 C.F.R. § 685.206(c)

<sup>5</sup> Carter, Carolyn L. Consumer Protection in the States. National Consumer Law Center. Feb. 2009. 11.

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Elizabeth Warren  
United States Senator



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Sherrod Brown  
United States Senator

Cc: The Honorable Ted Mitchell, Under Secretary, United States Department of Education