

# United States Senate

WASHINGTON, DC 20510

October 18, 2018

The Honorable Betsy DeVos  
Secretary  
Department of Education  
400 Maryland Ave, SW  
Washington, DC 20202

Dear Secretary DeVos:

I write today to seek an update from the Department of Education (Department) on its development and future public release of the second round of debt-to-earnings (D/E) rates under the gainful employment rule.

It is inexcusable that the Department's development of a second round of D/E rates, as required by the gainful employment rule, is at least a year behind schedule. In a May 17 letter to me, James Manning revealed that the Department submitted Draft GE Program Completers Lists to institutions on April 30, 2018. For comparison, draft completers lists for the first round of D/E rates were submitted to institutions on June 1, 2016 and final D/E rates were published on January 9, 2017.

Once the Department provides draft lists, institutions have 45 days to review and submit challenges to the Department. According to 34 CFR §668.405, the Department then submits final lists to the Social Security Administration (SSA) to calculate mean and median annual earnings and return the data to the Department. In 2016, it took just over three months from the time draft completers lists were sent to schools for the Department to submit final lists to SSA to generate earnings data. Given that timeline, the Department should have finalized completers lists in early August at the latest. Has the Department finalized completers lists for the second round of D/E rates?

On May 24, 2018, the Memorandum of Understanding between the Department and SSA—which allowed for the sharing of completers lists and earnings data between the agencies—expired. Just days before, in his May 17 letter, Mr. Manning blamed SSA, saying “The Department has asked the SSA to renew the MOU so that we may continue to calculate D/E rates in compliance with the [gainful employment] rule. To date, SSA has not agreed to do so.”

In reality, the Department's irresponsible and legally suspect delays and misuse of the data are to blame—facts that no amount of scapegoating SSA can hide. Had the Department begun the process of generating a second round of D/E rates by providing institutions with draft completers lists in June 2017, consistent with the first D/E rate timeline established by the Obama Administration, D/E rates could have been published in January 2018—well before the May 2018 MOU expiration. In addition, the Department's misuse of earnings data obtained from SSA to develop a dubious scheme for providing partial relief to defrauded borrowers—a use for which it was never intended and is the subject of current litigation<sup>1</sup>—poisoned the inter-agency cooperation necessary for the enforcement of this federal regulation.

I urge the Department, as soon as possible, to enter into a new MOU with SSA that includes clear restrictions on the use of data for the sole purpose of generating additional D/E rates and enforcing the gainful employment rule. The Department's failure to do so will be a failure of its legal responsibility to uphold this regulation and of its responsibility to protect students and taxpayers.

I ask for a response at your earliest possible convenience. Thank you.

Sincerely,



Richard J. Durbin  
United States Senator

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<sup>1</sup> Green, Erica L. (2018, June 6). DeVos Halts Partial Debt Relief Policy After Judge Slams Procedures. *The New York Times*. Retrieved from <https://www.nytimes.com/2018/06/06/us/politics/betsy-devos-student-debt-relief.html>