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November 3, 2009

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Ave, S.W.
Washington, DC 20202

Dear Secretary Duncan:

As you know, Congress is in the midst of a vigorous debate about the future of college financial aid. Some support a massive expansion of the federal government through a takeover of the private student loan industry, while some – myself included –remain wary of greater government intrusion into the private sector that stifles innovation and will result in the loss of thousands of American jobs.

While this debate proceeds in Congress, the U.S. Department of Education must act as an impartial agent to assist colleges and universities, not as an advocate for its preferred legislative changes to the federal student loan program. That job falls to the men and women elected by the American people to represent them in Congress. For this reason, I am troubled by recent media reports that imply federal funds and federal property are being used by the Department of Education to promote the Administration's political and legislative agenda. Such political activities undermine the Department's duty to enforce current law impartially and may violate federal law. To address these concerns, I respectfully request clarification regarding recent activities reportedly undertaken by the Department of Education officials.

On October 5, 2009, *Inside Higher Ed* published a story about an October 2, 2009 conference call conducted by Obama Administration officials with several community college presidents. According to a transcript of the call obtained by *The Washington Times*, Under Secretary of Education Martha Kanter began the call by stating: "I really want to assure everyone

that the Obama Administration and Secretary Duncan and all of us in the room here will do everything that we possibly can to ensure that all of our students receive the resources and support they need to get through college. And so your voice is critically needed in this process." Massie Ritsch, the Deputy Assistant Secretary for External Affairs and Outreach, is later quoted as saying: "the Department is committed to working with you" but it "will need your voices" in the coming months. Deputy Under Secretary Robert Shireman later added, "The student loan reforms are critical to having the funding so that we can do that [increase Pell Grants]. But hopefully Congress will work with us to make that happen in coming weeks."

Media outlets reporting on this call inferred that college officials were being asked to support a highly controversial package of legislative reforms – known in the U.S. House of Representatives as the *Student Aid and Fiscal Responsibility Act* (*SAFRA*) – that would, among other things, result in a government takeover of private sector entities that offer federal student loan services to students.

Unfortunately, this conference call does not appear to be an isolated incident. I have heard reports that Administration officials are calling individual institutions of higher education to advocate for an immediate conversion to the Direct Loan program – the very policy contained in *SAFRA* that Congress is now vigorously debating. I also have heard reports of materials leading financial aid officials to believe *SAFRA* has already been signed into law in an effort to convince institutions of higher education to convert to the Direct Loan program. For example, on July 8, 2009, Chief Operating Officer of Federal Student Aid William Taggart sent a letter to college presidents in which he informed institutions about the steps the Department has made to ensure a successful transition to the Direct Loan program but failed to mention that Congress had not yet changed the law to mandate the conversion to the Direct Loan program. Last week, the *New York Times* reported on your October 26, 2009 letter to colleges and universities this way: "Congress has not given final approval to legislation ending federal subsidies for private student loans for college. But Secretary of Education Arne Duncan sent a letter Monday to thousands of colleges and universities urging them to get ready to use the government's Direct Loan program in the 2010-11 school year."

As the *Times* notes, legislation to mandate conversion to 100 percent Direct Lending still must clear a number of legislative hurdles before enactment. The implication that federal funds are being used to push a particular political agenda with respect to controversial legislation currently pending before Congress is deeply concerning. Such actions could be a violation of the funding limitation included in the Department's annual appropriation, which contains a prohibition on the use of funds for any activity, including the publication or distribution of literature, that promotes public support for or opposition to any legislative proposal on which Congressional action is not complete, other than to communicate to Members of Congress. This is why I am seeking clarification on the scope and intent of these reported communications.

It is critical that federal funds provided by Congress be used for their intended purpose and in strict accordance with the law. As you are no doubt aware, White House Counsel Gregory Craig was recently compelled to instruct Administration officials to "avoid even the appearance of politicization in order to ensure people's faith in the actions of the Administration." The

actions detailed herein appear to cross that line. I am hopeful your responses to the questions below will resolve the concerns raised by these actions. I respectfully seek your responses to the requested information no later than Tuesday, November 24, 2009.

Thank you for your attention to this request. If you have any questions, please contact Amy Jones or Kirk Boyle on my staff at (202) 225-6558.

Sincerely,

John Kline
Senior Republican Member

cc: The Honorable George Miller, Chairman

Enclosures: Documents and Information Requested
Information Request Supplemental Instructions and Definitions

Documents and Information Requested

1. Please produce any and all documents relating to any communications between the Department of Education and any one or more persons that are not employees of the executive branch of the U.S. Government from January 21, 2009, to the present date concerning any of the following initiatives:
    a. the elimination of the Federal Family Education Loan program;
    b. the conversion to the Direct Loan program;
    c. the American Graduation Initiative; or
    d. other proposals included in the *Student Aid and Fiscal Responsibility Act of 2009*.

2. Please produce a list of the participants on the October 2, 2009 call between the Department of Education and community college officials.

3. Please produce a log of any and all phone calls made by Department of Education officials to officials at institutions of higher education relating to the issue areas outlined in question 1 from January 21, 2009 to the present date, a description of the purpose of these phone calls, and the name and position of the party being called at the institution.

4. Please produce any correspondence, e-mails, meeting minutes, notes, or presentations from January 21, 2009 through the date of this request that have been created by the Department, used by the Department, or provided to institutions of higher education about conversion to the Direct Loan program.

Information Request Supplemental Instructions and Definitions

Instructions

1. In complying with the request, you should produce all response documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain or copy or to which you have access, as well as documents you have placed in the temporary possession, custody, or control of any third party.

2. In the event that any entity, organization, or individual denoted in this request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.

3. Each document produced should be produced in a form that renders the document capable of being copied.

4. When you produce documents, you should identify to which paragraph in the request the documents respond.

5. Documents produced in response to this request should be produced together with copies of file labels, divides, or identifying markers with which they were associated when this request was issued. To the extent documents were not stored with file labors, dividers, or identifying markers, they should be organized into separate folders by any matter prior to production.

6. Each folder and box should be numbered, and a description of the contents of each folder and box, including the request number to which the documents are responsible, should be provided in any accompanying index.

7. It is not proper to refuse to produce a document on the basis that any other person or entity also possesses a non-identical copy of the same document.

8. If any of the requested information is stored in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with the staff contact indicated in the request to determine the appropriate format in which to produce the information.

9. If compliance with the request cannot be made in full, compliance should be made to the extent possible and should include an explanation of why full compliance is not possible.

10. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.

11. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject, and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

12. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive if the date or otherwise descriptive detail were correct.

13. This request is continuing in nature and applied to any newly discovered information. Any record, document, compilation of date, or information not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

14. All documents should be bates-stamped sequentially and produced sequentially.

15. Two sets of documents should be delivered to the Rayburn House Office Building, Room 2101, to the attention of the General Counsel.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and works sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotape, recordings and motion pictures), and electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind of nature, however or otherwise recorded. A document bearing any notation not a part of the original text is to be considered a separate document. A draft of a non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information , regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The term "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business, or government entities and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

5. The terms "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.