June 7, 2021

To Ms. Lisa Brown,

Congratulations on your nomination to serve as General Counsel in the Office of General Counsel (“OGC”) at the U.S. Department of Education (“ED”, or the “Department”). We write to you as a broad coalition of organizations concerned about ensuring protections for student borrowers. The Department’s policy agenda under the leadership of former U.S. Secretary of Education Elizabeth B. “Betsy” DeVos was disastrous for students and borrowers alike. Among many other abuses, the Department made it more difficult to hold predatory for-profit colleges accountable, denied relief to borrowers eligible for forgiveness, and tipped the scales to protect loan servicers from necessary oversight.

In the aftermath of such a catastrophic tenure, it is essential for the Department, under new leadership, to begin unwinding the DeVos legacy as soon as possible. President Biden has made important commitments to restoring strong protections for student borrowers, but more than 100 days into his administration, we are disturbed to find that many of these DeVos-era policies remain in effect.

The Office of General Counsel must play an active role in this effort. As General Counsel, you are empowered to redirect the Department’s priorities and immediately restore protections for student borrowers. In line with those goals, we urge you to immediately take the following steps:

A. Drop ED’s defense of the Trump administration’s repeal of the “Gainful Employment” regulations in litigation.

In 2019, former Secretary DeVos formally rescinded the “Gainful Employment” regulations that had been implemented during the Obama administration. These regulations protected student borrowers from for-profit and career college programs that trap students under mountains of debt. The American Federation of Teachers, students, and State Attorneys General filed lawsuits against the Trump administration challenging its decision. Although the Biden administration has indicated that it opposes the repeal, it has nevertheless continued to defend the decision in court.¹

B. Drop the Department’s legal defense of the Trump administration’s “Distance Education and Innovation” regulations.

The Trump administration’s “Distance Education and Innovation” regulations allow colleges to avoid requirements set out in the Higher Education Act to prevent federal Title IV funds, including federal student loans and Pell grants, from going to predatory for-profit colleges. The California Attorney General challenged the regulations in a lawsuit,² and we are alarmed that the Biden administration filed a

motion to dismiss in this case. The OGC should drop its defense of this rule in litigation.

C. Drop the Department’s appeal in Vara v. Cardona to allow for the discharge of loans for a class of Corinthian Colleges students.

In 2020, a federal judge ordered the discharge of loans for a class of 7,200 borrowers in Massachusetts who had been defrauded by the for-profit chain Corinthian Colleges. The Trump administration filed an appeal, preventing borrowers from obtaining relief, which the Biden administration has inexplicably continued to defend in court.3 We strongly advise OGC to drop the Department’s appeal.

D. Rescind ED’s Notice of Interpretation that preempts State Attorneys General and students from bringing claims against federal student loan servicers.

In 2018, the Department issued a Notice of Interpretation in the Federal Register that “interpreted” the Higher Education Act to preempt state governments from regulating student loan service corporations. This has severely restricted the ability of state attorneys general to bring enforcement actions against student loan servicers that employ deceptive practices.4 Despite rulings from federal courts rejecting this interpretation, the Notice remains in effect. We are alarmed that the Biden administration has refused to rescind the Notice, and we urge you to do so immediately.

E. Rescind the Trump administration’s OGC memorandum on the Department’s authority to broadly cancel student debt.

In January 2021, former ED General Counsel Reed Rubenstein issued a memorandum reflecting the Department’s determination that the Secretary lacked sufficient statutory authority to broadly cancel student debt.5 The opinion directly contradicts the conclusion of numerous legal scholars who have affirmed the administration’s authority to cancel student debt.6 It has also been characterized as an attempt to sabotage the Biden administration’s efforts on student debt cancellation. OGC must rescind this memo.

F. Waive negotiated rulemaking for good cause to automate the loan discharge process for student borrowers with total and permanent disabilities whom the Social Security Administration (“SSA”) has already determined to be entitled to this benefit.

SSA identified nearly 600,000 individuals last year who were entitled to have their student loans canceled under the Department’s Total and Permanent Disability Discharge program. Over 400,000 of these individuals still have not received relief they are unquestionably entitled to under the law.7 We are pleased that U.S. Secretary of Education Miguel Cardona has temporarily paused some of the program’s

3 “Student loan borrowers perplexed by Biden administration’s continued defense of Trump-era lawsuits.” Washington Post (05/14/21).
4 “Inside the Education Department's effort to 'obstruct' student loan investigations.” NBC News (09/09/19).
5 “Re: Student Loan Principal Balance Cancellation, Compromise, Discharge, and Forgiveness Authority.” U.S. Department of Education Office of the General Counsel (01/12/21).
7 “Groups push for easier student loan relief for the disabled.” ABC News (04/19/21).
requirements, and we urge you to further waive negotiated rulemaking to ensure that borrowers whom SSA has already determined meet the program’s eligibility requirements can receive immediate relief.

In the wake of an administration that gave predatory institutions a free pass, it is vital for the Biden administration to set a new tone and clearly demonstrate its commitment to protecting student borrowers. The OGC has a powerful role to play in that effort, beginning with the six actions outlined in this letter, and we look forward to working with you to accomplish them.

Signed,

Blue Future
Center for Popular Democracy
The Council of University of California Faculty Associations (CUCFA)
The Debt Collective
Demand Progress Education Fund
The Freedom BLOC
In the Public Interest
Jobs with Justice
Liberation in a Generation
Other 98%
Our Revolution
People’s Action
People’s Demanding Action
People’s Parity Project
Progress America
Revolving Door Project
RootsAction.org
Social Security Works
Student Action