

United States Senate

WASHINGTON, DC 20510

November 17, 2010

Ms. Kathleen Tighe
Inspector General
U.S. Department of Education
Office of Inspector General
400 Maryland Avenue, SW
Washington, DC 20202-1500

Dear Ms. Tighe:

The work of your office is essential to protecting the efficiency and effectiveness of programs administered by the U.S. Department of Education. Independent analysis helps ensure the integrity of the Department's mission and operations. To that end, we request an investigation by your office of the events leading up to the issuance of the Department's proposed regulations regarding "gainful employment."

As you know, Section 492 of the Higher Education Act requires the Department to convene negotiated rulemaking any time it promulgates regulations affecting the federal student aid programs. Negotiated rulemaking ensures the Department works with individuals who are experienced in implementing the federal student aid programs and who understand the consequences of the proposed regulations.

Information has become available that raises serious concerns about whether some negotiators failed to comply with the organizational protocols governing the rulemaking process and other laws governing these proceedings. In addition, publicly available documents indicate the Department may have leaked the proposed regulations to parties supporting the Administration's position and investors who stand to benefit from the failure of the proprietary school sector. We believe an independent investigation will provide additional transparency surrounding the actions taken by Department officials and those who stand to benefit financially from the regulations.

Since November 2009, the Department of Education has been engaged in negotiations to promulgate regulations designed to improve the integrity of the federal student aid programs. At the beginning of the rulemaking sessions, the negotiators adopted "Organizational Protocols" that governed the proceedings. One of the agreed upon principles states: "All members and the organizations they represent shall act in good faith in all aspects of these negotiations" ("Organizational Protocols," U.S. Department of Education. Section VI.B). Another states: "Contact with the media, the investment community, and other organizations outside the community of interest represented by the member will generally be limited to discussion of the overall objectives and progress of the negotiations" ("Organizational Protocols," U.S. Department of Education. Section VI.C.).

The panel met three times between November 2009 and January 2010 and did not reach consensus on the regulations package. On June 16, 2010, the Department released the first package of proposed regulations on "program integrity." A month later, on July 23, 2010, the Department released the second package of proposed regulations on "gainful employment."

In a July 23 Freedom of Information Act (FOIA) request, Citizens for Responsibility and Ethics in Washington (CREW) sought information pertaining to the communications occurring between Department officials and several individuals and organizations outside of the Department. In its request, CREW stated:

Specifically the requested records will inform the public about the role of Education in the controversy over the for-profit education industry and the extent to which Education has knowingly relied on, or has been manipulated by, the views of individuals who seek to advance their financial interests in the for-profit industry by publicly criticizing certain for-profit education entities and companies.

It is our understanding that as of today, the Department has not responded to this FOIA request.

Based on information that has come to light from records released under a Florida public records request, it appears Department officials may have leaked information to outside organizations, some of whom may stand to financially benefit from the failure of the proprietary school sector. For example, an email attached to this letter demonstrates that Edie Irons, Communications Director for TICAS, emailed an embargoed copy of the program integrity regulations to the "GainfulEmploymentGroup" on June 15 at 5:38 p.m. As previously noted, the regulations were not made public until June 16. If one group received an embargoed copy of these proposed regulations, other groups, including those who stand to benefit financially from the failure of the proprietary sector, may have as well.

To resolve these questions, we request an investigation by your office into the events leading up to and surrounding the issuance of the Department's proposed program integrity regulations for the period of April 2009 to the present. In this investigation we respectfully request your review of whether the organizational protocols adopted for negotiated rulemaking were followed by both non-federal negotiators and Department staff. In addition, we ask that you review the propriety of all communications between Department employees and outside individuals and organizations to determine if the proposed regulations packages were inappropriately provided to any individuals or organizations prior to their public release.

Members of the public, including students and the institutions they attend, have a right to expect the Department of Education to promulgate regulations through a negotiated rulemaking process that is undertaken in good faith and without bias.

Thank you for your attention to this request. If you have any questions, please do not hesitate to contact our offices.

Sincerely,



Richard Burr
United States Senator



Tom A. Coburn, M.D.
United States Senator

Enclosures