

United States Senate

WASHINGTON, DC 20510

June 22, 2012

Ms. Kathleen Tighe
Inspector General
U.S. Department of Education
400 Maryland Ave. SW
Washington D.C. 20202-1500

Ms. Tighe:

Thank you for fulfilling our November 17, 2010 request to investigate events leading up to the issuance of the U.S. Department of Education's proposed "gainful employment" regulations, and for the personal briefing you gave us on this matter. We appreciate the work your office has done on this important matter, and write to respectfully request follow-up action to fully determine whether certain financial and other interests had an undue influence over the Department's regulatory process.

We believe the final audit report [ED-OIG/A19L0002] has several weaknesses. The IG admittedly failed to actively review phone logs and non-email forms of communication.¹ Given the sophisticated efforts of individuals who seek to obtain information for financial gain, no investigation is complete without a thorough examination of all sources of communications, including phone logs and records, faxes, text messages, etc. Also, if any Department staff or officials were engaged in improper communications with outside entities, it was more likely that they were using work phones or even their cell or home phones.

In addition, it is our understanding your audit team did not conduct in-person interviews with non-Departmental personnel, White House staff or congressional staff in instances where red flags were raised by the email correspondence of agency staff or officials. From our vantage point, this leaves your investigation with potentially half the story. Several documents obtained through FOIA requests, for example, raise serious concerns about the conduct of individuals engaging with Departmental staff.

We are also concerned that certain investment analysts were considered "journalists" by your audit team, and therefore apparently given the rights and benefits journalists enjoy, such as protected sources.

Given these perceived deficiencies, we ask you to undertake the following action:

1. Investigate work, cell, and home phone logs and records of individuals where cause is warranted; including patterns and numbers of calls individuals with the potential to financially gain from these regulations outside the Department

¹ See footnote three of ED-OIG/A19L002. OIG staff also confirmed that phone logs were not investigated in the May 21, 2011 briefing provided to the offices of Senators Richard Burr and Tom Coburn.

had with Departmental staff and officials. All other forms of communications not considered in this audit should also be reviewed – such as faxes, text messages, etc. Please expand the time period examined to include the months leading up to the proposed rules and the months following the final rule’s release.

2. Please provide our office an explanation as to whether or not in-person interviews with non-Departmental staff, such as White House and congressional staff, were undertaken in instances where such action may have been warranted.
3. Provide us a list of the key word searches your staff used when examining emails.
4. Please make all emails reviewed public, and in a searchable format.
5. Provide us a detailed explanation in writing of why certain investment analysts are considered journalists by your audit team, and the names of the analysts you reviewed that meet this criterion.
6. The final audit report states that on July 22, 2010, the day before the publication of the NPRM, the Department’s senior officials conducted briefings to inform selected media outlets on the nature of the proposed regulations. Which media outlets were contacted? Were they official news credentialed outlets, or newsletters for investment companies such as short sellers and related analysts?
7. The final audit report also notes that certain investment firms took part in listening sessions. Which investment companies were consulted? What was the Department’s process for identifying individuals at the listening sessions as investment firms? Who made the decision such entities should be consulted?
8. Please also consider expanding the timeframe – from March 2009 to October 2010 – you examined to cover issuance of final regulations as well as proposed regulations.

Secondly, ED-OIG/A19L0002 finds that a former high-level Department official that was significantly involved in the negotiated rulemaking process engaged in communications with his former employer, potentially in violation of applicable ethics standards. You also note that your investigations office is reviewing this matter further. In its response to your office on this matter, the Department states that your office recommends the Secretary remind all political appointees of their ethical obligations. We respectfully request that you keep us updated as to any findings or actions that result from further investigative work, or any guidance that Department may issue to political appointees as a result of this final audit.

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

Sincerely,



Richard Burr
U.S. Senator



Tom A. Coburn, M.D.
U.S. Senator

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