

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA**

|                               |   |                               |
|-------------------------------|---|-------------------------------|
| PROJECT ON PREDATORY STUDENT  | ) |                               |
| LENDING OF THE LEGAL SERVICES | ) |                               |
| CENTER OF HARVARD LAW SCHOOL, | ) | Civil Action No. _____        |
|                               | ) |                               |
| <i>Plaintiff,</i>             | ) | Electronically Filed Document |
|                               | ) |                               |
| v.                            | ) |                               |
|                               | ) |                               |
| UNITED STATES DEPARTMENT OF   | ) |                               |
| JUSTICE,                      | ) |                               |
|                               | ) |                               |
| <i>Defendant.</i>             | ) |                               |

**COMPLAINT FOR INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, seeks to compel the release of records that will enhance public understanding of the government’s oversight of for-profit schools and the practices of for-profit education companies.

2. In *United States ex rel. Washington v. Education Management LLC*, No. 2:07-cv-461 (W.D. Pa.) (“EDMC litigation”), the United States joined former employees of Education Management Corporation (together with its subsidiaries and affiliates, “EDMC”)—a large, for-profit education company—in alleging that EDMC illegally compensated its recruiters based on the number of students they enroll, and then lied to the government about it to receive \$11 billion in federal funding.

3. The United States settled its claims against EDMC for \$95.5 million—less than one percent of the federal money EDMC had received. The federal settlement neither required the corporation to admit to any violation of the so-called “incentive compensation ban” or any other federal law, nor did it provide for the cancellation of any federal student loans.

Nevertheless, the United States Department of Education released EDMC from a wide range of potential claims.

4. In June 2016, the Project on Predatory Student Lending of the Legal Services Center of Harvard Law School (the “Project”), which advocates on behalf of low-income student loan borrowers who have been harmed by the predatory practices of for-profit schools, submitted a FOIA request to the United States Department of Justice (“DOJ”) seeking documents in DOJ’s possession regarding EDMC. The requested documents, which were produced to the United States in discovery in the EDMC litigation, are likely to shed light on EDMC’s recruitment practices and, in turn, the government’s actions in enforcing federal law.

5. Former EDMC students and the public at large have a strong interest in the requested records. In addition to supporting the claims of former EDMC students seeking loan relief from the federal government, the requested records will enable the public—who fund the federal government’s trillion-dollar student loan program—to understand the extent and duration of EDMC’s practices, evaluate the settlement based on those practices, and assess what, if any, steps may be taken to prevent similar harms—which occur at taxpayer expense—in the future.

6. To date, DOJ has not produced any records pursuant to the Project’s request.

7. The Project brings this action to compel DOJ’s compliance with its obligations under FOIA.

#### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

9. Venue is proper in the Western District of Pennsylvania pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1)(B), because the withheld records are located in this

district and because a substantial part of the events giving rise to this claim occurred in this district.

## **PARTIES**

10. Plaintiff requester the Project on Predatory Student Lending is part of the Legal Services Center of Harvard Law School, a nonprofit civil legal services organization located in Jamaica Plain, Massachusetts. The Project provides free, high-quality legal representation to low-income student loan borrowers who have been harmed by the predatory practices of for-profit schools. On behalf of its clients and in furtherance of its work, the Project advocates for strong federal enforcement of rules that govern for-profit schools' recruitment activities, such as the incentive compensation ban. Many of the Project's clients have been subject to the high pressure sales tactics that result from for-profit schools' use of quotas and enrollment-based compensation systems for their sales representatives.

11. Defendant DOJ is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). The Executive Office for United States Attorneys is a component of DOJ located in Washington, D.C.

## **STATEMENT OF FACTS**

### **The EDMC Litigation**

12. The EDMC litigation is a False Claims Act suit, in which the United States government, along with several states, alleged that EDMC violated federal law and then lied to the government about it in order to receive billions of dollars in federal funding. Joint Complaint in Intervention by the United States of America, and the States of California, Florida, Illinois, and Indiana ("Joint Complaint") ¶¶ 1, 6-11, 36-168, 271, *United States ex rel. Washington v. Educ. Mgmt. LLC*, No. 2:07-cv-461 (W.D. Pa. Aug. 8, 2011), ECF No. 128.

13. EDMC’s primary source of revenue is government student loans. *See, e.g.*, Senate Comm. on Health, Educ., Labor & Pensions, *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* 453, A9-5 (2012). The company recruits students to attend one of its for-profit colleges, the students apply for state and federal loans, that loan money goes to EDMC for tuition, and the students are on the hook to repay the government. This business model depends on student enrollment—the more students enroll at EDMC, the more loan money they bring in, and the more revenue EDMC earns. *See id.* at 462.

14. According to the government’s complaint in the EDMC litigation, EDMC established an illegal compensation system for its admissions officers—the more students they recruited, the more they were paid. Joint Complaint ¶¶ 36-168, 271. The complaint alleges that the corporation “created a ‘boiler room’ style sales culture,” the “relentless and exclusive focus” of which was “the number of new students” each recruiter could enroll. *Id.* ¶¶ 88-89. EDMC taught its recruiters a “tactic called ‘finding the pain,’” which meant “locating a prospective student’s vulnerabilities and exploiting those vulnerabilities to persuade the student to enroll in an EDMC program, even after the student has expressed a desire not to enroll.” *Id.* ¶ 108. The corporation “regularly instruct[ed]” recruiters “to enroll applicants regardless of their qualifications, including applicants who are unable to write coherently, applicants who appear to . . . be under the influence of drugs, and applicants for” online education “who do not own computers.” *Id.* ¶ 106.

15. Recruiters’ compensation was based on the number of students they could enroll. *Id.* ¶ 88. And those who recruited the most students were rewarded with bonuses, extra time off, vacations, and gifts. *Id.* ¶¶ 140-47. Those who didn’t meet their quotas were threatened with termination. *Id.* ¶¶ 148-50.

16. Federal law has prohibited this kind of compensation system since 1992, forbidding schools from providing “any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance.” 20 U.S.C. § 1094(a)(20). To receive federal funding, EDMC was required to—and did—certify compliance with this incentive compensation ban. Joint Complaint ¶¶ 271-72. In the EDMC litigation, the government claimed that EDMC’s certifications that it had complied with the incentive compensation ban were false, such that each loan an EDMC student received, which went to funding the school, was a “false or fraudulent claim” in violation of the False Claims Act. *See id.*

17. Following discovery, the parties settled the case for \$95.5 million. *See* U.S. Dep’t of Justice, Office of Pub. Affairs, *For-Profit College Company to Pay \$95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations* (Nov. 16, 2015), <https://www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and>. Despite being hailed as a victory for students and taxpayers, *see id.*, the federal settlement did not provide for the cancellation of any federal student loans. Nor did it require EDMC to admit any liability; instead, the United States Department of Education released EDMC from a wide range of potential claims, and agreed, subject to limited exceptions, not to “institut[e], direct[], or maintain[] any other administrative action” against EDMC on the basis of the settlement.

### **The Project’s FOIA Request**

18. On June 20, 2016, the Project submitted a FOIA request (Ex. A) to the Executive Office for United States Attorneys (“EOUSA”), the “FOIA Contact” provided by DOJ to

requesters seeking records held by United States Attorneys' Offices.

19. The Project sought documents, produced by EDMC to DOJ in response to a subset of specific discovery requests in the EDMC litigation, regarding EDMC's recruitment and regulatory compliance practices. *See* Ex. A.

20. DOJ, specifically the United States Attorney's Office for the Western District of Pennsylvania, has possession of and control over the requested records.

21. By letter dated July 5, 2016, DOJ, through EOUSA, acknowledged receipt of the Project's request and assigned it Request Number FOIA-2016-03030.

22. On September 6, 2016, DOJ summarily denied the Project's FOIA request in its entirety. Ex. B.

23. The denial letter cited four FOIA exemptions, but did not offer any explanation for DOJ's conclusion that these exemptions apply or even identify which exemption applies to what information. *Id.* The letter stated only that "[i]n making our determination we have taken the following into account: the protective orders in place [in the EDMC litigation], protection of personal privacy, protection of confidential business information, and the Family Educational Rights and Privacy Act." *Id.*

24. The Project timely appealed DOJ's denial by sending a letter dated December 2, 2016. Ex. C. In its appeal, the Project argued that DOJ's summary citation to the four exemptions and single-sentence explanation of the grounds for its denial failed to meet the agency's statutory burden of demonstrating that the withheld records were exempt from disclosure. *Id.* Further, the Project noted that DOJ's wholesale withholding of the requested records—without even a reference to the requirement that an agency segregate information that is exempt from FOIA disclosure and disclose the rest—demonstrated the agency's failure to comply with its obligation

under FOIA to release nonexempt portions of the requested records. *Id.* Finally, the appeal noted that DOJ's denial did not estimate the volume of the withheld records, as required by FOIA. *Id.*

25. The Project's appeal requested that DOJ provide a *Vaughn* index: a complete list of documents covered by the request, and a specific indication of what material is being withheld and what exemptions are claimed with respect to that material. *Id.* The Project observed that without such an index, it was "effectively helpless" to respond to DOJ's scant explanation of its wholesale withholding of the requested records. *Id.*

26. DOJ acknowledged receipt of the Project's appeal by letter dated December 15, 2016.

27. As of the date of this Complaint, DOJ has not made any determination with respect to the Project's appeal. Nor has it produced any records in response to the Project's request.

28. DOJ's withholding of responsive records and failure to make a determination with respect to the Project's appeal not only violate the Project's rights under FOIA, but also hinder the Project's ability to obtain relief for former EDMC students; inform the public about for-profit education; and advocate for policies that will protect low-income student loan borrowers.

29. Pursuant to FOIA, the Project has exhausted its administrative remedies with respect to its appeal because more than 20 working days have passed with no determination from DOJ. 5 U.S.C. § 552(a)(6)(A)(ii) (requiring agency to "make a determination with respect to any appeal within twenty" working days of receipt), (C)(i) (providing that requester "shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions").

## CAUSE OF ACTION

### Violation of the Freedom of Information Act

30. The Project realleges and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

31. DOJ's failure to make a determination with respect to the Project's appeal within the applicable time limit violates FOIA, 5 U.S.C. § 552(a)(6)(A)(ii).

32. DOJ's failure to produce the requested records, where it has not met its burden of demonstrating that the requested records are exempt from disclosure, violates FOIA, 5 U.S.C. § 552(a)(3)(A).

33. DOJ's failure to disclose all "reasonably segregable" portions of the requested records violates FOIA, 5 U.S.C. § 552(b).

34. DOJ's failure "to estimate the volume of any requested matter the provision of which is denied" violates FOIA, 5 U.S.C. § 552(a)(6)(F).

35. Pursuant to FOIA, the Project is entitled to injunctive relief and other remedies.

### REQUEST FOR RELIEF

WHEREFORE, the Project respectfully requests that this Court:

A. Order DOJ to file, within 14 days or as soon as is practicable, a *Vaughn* index: a complete list of documents covered by the request, and a specific indication of what material is being withheld and what exemptions are claimed with respect to that material;

B. Order DOJ to promptly produce all responsive records pursuant to 5 U.S.C. § 552(a)(4)(B) or otherwise justify its withholding in reference to statutory exemptions;

C. Award the Project its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

D. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

PROJECT ON PREDATORY STUDENT  
LENDING

/s/ Amanda Savage

Amanda Savage (application for admission *pro hac*  
*vice* to be submitted)

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