

**Congress of the United States**  
**Washington, DC 20515**

August 13, 2019

The Honorable Betsy DeVos  
Secretary  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Madam Secretary :

Americans are facing a crisis of student loan debt. Forty-three million student borrowers in the United States hold more than \$1.4 trillion in outstanding federal student loans.<sup>1</sup> As Chairs of Committees with oversight responsibilities over the student loan industry, we are very concerned by reports that under your leadership, the Department of Education has failed to adequately oversee student loan servicers and has instead shielded these companies from oversight from federal and state law enforcement, including the Consumer Financial Protection Bureau (CFPB). We write to request information regarding the Department's policies and practices overseeing loan servicers.

As you know, the Department contracts with nine student loan servicers to handle billing, repayment, and customer service for borrowers repaying student debt. These servicers set monthly payments for 43 million borrowers based on the borrowers' income. Reports indicate that improper practices by these servicers—including inaccurate determination of monthly payments, forbearance steering, and other practices—directly impact millions of Americans and have ripple effects on their families, communities, and the economy as a whole.<sup>2</sup>

**The Department has failed to oversee student loan servicers.**

On March 5, 2019, the Department's independent Office of Inspector General (OIG) released a report raising serious concerns about the Department's oversight of student loan servicers. The report found that the Department had failed to establish policies and procedures to

---

<sup>1</sup> U.S. Department of Education, Office of Federal Student Aid, *Federal Student Loan Portfolio, Q1 2019*, (online at <https://studentaid.ed.gov/sa/about/data-center/student/portfolio>).

<sup>2</sup> See, e.g., Complaint (Jan. 18, 2017), *Consumer Financial Protection Bureau v. Navient*, N.D. Cal. (3:17-cv-00101-RDM) (Navient has "routinely disregarded" its commitment to help borrowers find an appropriate and affordable repayment plan and has "instead steered borrowers experiencing long-term distress or hardship into forbearance") (online at [https://files.consumerfinance.gov/f/documents/201701\\_cfpb\\_Navient-Pioneer-Credit-Recovery-complaint.pdf](https://files.consumerfinance.gov/f/documents/201701_cfpb_Navient-Pioneer-Credit-Recovery-complaint.pdf)).

mitigate the “risk of servicer noncompliance” and had “rarely used available contract accountability provisions to hold servicers accountable.”<sup>3</sup>

The situation does not appear to be getting better, despite the Department’s claims of “significant ongoing improvements.”<sup>4</sup> In fact, the Department took only two actions against loan servicers and recovered \$2 million in contractual fees in the 18-month period following OIG’s audit. This amount represented less than 0.12 percent of the \$1.7 billion that Office of Federal Student Aid (FSA) budgeted for its servicing contracts across this period.<sup>5</sup> None of the \$2 million recovered was returned to student borrowers.

### **The Department has obstructed state law enforcement.**

Other regulatory bodies and law enforcement organizations (LEOs) play an essential role in holding student loan servicers accountable. Between 2013 and 2017, federal and state LEOs investigated, sued, and successfully concluded litigation with federal student loan servicers. These actions resulted in student loan servicers discontinuing financially harmful practices and policies, with millions of dollars being returned to student borrowers.<sup>6</sup>

Under your leadership, however, the Department has taken a series of drastic steps to obstruct federal and state investigations into student loan servicers.

For example, in December 2017, the Department issued a policy memorandum to all student loan servicers, prohibiting servicers from responding directly to any investigative requests made by LEOs or regulators. The memo instead requires servicers to direct investigative requests to the Department.<sup>7</sup> The Department, however, has not approved *any* disclosures of data to LEOs since the issuance of the December 2017 memo.<sup>8</sup> This record stands

---

<sup>3</sup> U.S. Department of Education, Office of Inspector General, *Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans* (Feb. 12, 2019) (online at [www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf](http://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf)).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See e.g., Consumer Financial Protection Bureau, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2017) (describing CFPB efforts to return over \$750 million to student borrowers from servicer complaints) (online at [https://files.consumerfinance.gov/f/documents/cfpb\\_annual-report\\_student-loan-ombudsman\\_2017.pdf](https://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf)); Department of Justice, Press Release, *Nearly 78,000 Service Members to Begin Receiving \$60 Million Under Department of Justice Settlement with Navient for Overcharging on Student Loans* (May 28, 2015) (online at [www.justice.gov/opa/pr/nearly-78000-service-members-begin-receiving-60-million-under-department-justice-settlement](http://www.justice.gov/opa/pr/nearly-78000-service-members-begin-receiving-60-million-under-department-justice-settlement)).

<sup>7</sup> Memorandum from Patrick A. Bradfield, Director of Federal Student Aid Acquisitions, U.S. Department of Education, to Federal Student Aid Vendors, Re: Ownership of and Access to U.S. Department of Education Records and Data (Dec. 27, 2017) (“Any request from any third party for Department records to which a contractor has access must be made directly to the Department, where it will be evaluated for compliance with the requirements of the Privacy Act, unless the contract has specifically provided otherwise.”) (online at <https://static.politico.com/51/1f/0f805fd04c2eb035bcd79f9200be/december-27-2017-servicer-memo.pdf>).

<sup>8</sup> See, e.g., *Pennsylvania v. Navient*, No. 3:17-CV-1814 at 2 (M.D. Pa. Oct. 17, 2018), (finding that the Department repeatedly denied the Pennsylvania Attorney General access to records integral to a law enforcement

in stark contrast to the previous administration, which revised disclosure rules to facilitate—rather than impede—coordination between the Department and LEOs.<sup>9</sup>

On June 13, 2018, the Department further obstructed efforts to hold servicers accountable by publishing a notice in the Federal Register ending the Department’s policy of collaboration with state law enforcement, stating, “The Department no longer intends to disclose any records” for use by other law enforcement agencies.<sup>10</sup> The Department now appears to have both a formal and informal policy of withholding information from law enforcement, obstructing any investigations into student loan servicers.

The Department has also stymied Congressional inquiries into these policies. For example, the Senate report accompanying the bill funding the Department for Fiscal Year 2019 directed the Department to publish a detailed explanation of the policy governing the disclosure of these records and encouraged the Department to publish a list of any law enforcement disclosure requests.<sup>11</sup> The Department, however, failed to comply. Chairwoman DeLauro and Senator Patty Murray then sent a separate information request.<sup>12</sup> More than five months later, the Department has still not provided any responsive information. As a result of this obstruction, Congress lacks key information about the Department’s efforts to shield servicers from federal and state law enforcement.<sup>13</sup>

### **The Department has undermined CFPB’s oversight of student loan servicers.**

The Department and CFPB have joint oversight roles over student loan servicers. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requires the CFPB’s Student Loan Ombudsman to establish a memorandum of understanding (MOU) with

---

investigation) (online at [www.courtlistener.com/recap/gov.uscourts.pamd.113587/gov.uscourts.pamd.113587.44.0.pdf](http://www.courtlistener.com/recap/gov.uscourts.pamd.113587/gov.uscourts.pamd.113587.44.0.pdf)).

<sup>9</sup> 81 Fed. Reg. 12081 (Mar. 8, 2016) (removing “the limitation that disclosures could only be made for possible violations of criminal laws and civil fraud” in order to “permit disclosures to be made for other possible civil or administrative violations of the law.”) (online at [www.govinfo.gov/content/pkg/FR-2016-03-08/pdf/2016-05015.pdf](http://www.govinfo.gov/content/pkg/FR-2016-03-08/pdf/2016-05015.pdf)).

<sup>10</sup> 83 Fed. Reg. 27587 (June 13, 2018) (online at [www.federalregister.gov/documents/2018/06/13/2018-12700/privacy-act-of-1974-system-of-records#print](http://www.federalregister.gov/documents/2018/06/13/2018-12700/privacy-act-of-1974-system-of-records#print)).

<sup>11</sup> Pub. L. No. 115-245, Senate Report 115-289 at 199 (online at [www.congress.gov/congressional-report/115th-congress/senate-report/289/1?overview=closed](http://www.congress.gov/congressional-report/115th-congress/senate-report/289/1?overview=closed)).

<sup>12</sup> Letter from Senator Patty Murray and Rep. Rosa L. DeLauro to Secretary Betsy DeVos, U.S. Department of Education (Feb. 19, 2019) (online at [www.help.senate.gov/imo/media/doc/Secretary%20DeVos%20Enforcement%20Disclosure%20192019.pdf](http://www.help.senate.gov/imo/media/doc/Secretary%20DeVos%20Enforcement%20Disclosure%20192019.pdf)).

<sup>13</sup> See *Commonwealth of Pennsylvania v. Navient Corp.*, 3:17-cv-018104-RDM (M.D. Penn., Oct. 17, 2018) (Department shielding Navient from state law enforcement) (online at [www.courtlistener.com/recap/gov.uscourts.pamd.113587/gov.uscourts.pamd.113587.44.0.pdf](http://www.courtlistener.com/recap/gov.uscourts.pamd.113587/gov.uscourts.pamd.113587.44.0.pdf)); *Consumer Financial Protection Bureau v. Navient Corp.*, 3:17-cv-00101-RDM (M.D. Penn. Aug. 10, 2018) (Department shielding Navient from federal law enforcement) (online at [www.courtlistener.com/recap/gov.uscourts.pamd.110329/gov.uscourts.pamd.110329.103.0\\_2.pdf](http://www.courtlistener.com/recap/gov.uscourts.pamd.110329/gov.uscourts.pamd.110329.103.0_2.pdf)).

the Department’s Student Loan Ombudsman to assist individual student loan borrowers with complaints about student loan companies.<sup>14</sup>

To fulfill this statutory requirement, the Department and CFPB entered into two MOUs during the Obama Administration, in 2011 and 2014, that facilitate the sharing of information and collaborative oversight of student loan servicers. Under your leadership, however, the Department unilaterally terminated these agreements in 2017.<sup>15</sup> This cancellation appears to violate a legal requirement to maintain an MOU to “ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans.”<sup>16</sup>

Your rationale for terminating these agreements appears to be no more than a pretext. First, you asserted that CFPB ceased sending complaints related to federal student loans to the Department within 10 days of their receipt, a condition of the MOU. Second, you claimed that CFPB had expanded its jurisdiction to include student loan servicers.<sup>17</sup> Neither claim is valid, as CFPB has explained.<sup>18</sup>

In fact, CFPB has provided the Department with all complaints available in near real-time through a web-portal. Recently, CFPB director Kathleen Kraninger—an appointee of President Trump—made clear that this practice is ongoing, despite the Department’s unwillingness to facilitate any of CFPB’s oversight requests and cancellation of the MOU in violation of federal law.<sup>19</sup>

In addition, your claims that “the CFPB [was] using the Department's data to expand its jurisdiction into areas that Congress never envisioned” and that “CFPB unilaterally expand[ed]

---

<sup>14</sup> 12 U.S.C. § 5535(c).

<sup>15</sup> *Education Dept. Ends Partnership with CFPB*, Inside Higher Ed. (Sept. 5, 2017) (online at [www.insidehighered.com/news/2017/09/05/education-dept-rebukes-cfpb-overreach-kills-information-sharing-agreement](http://www.insidehighered.com/news/2017/09/05/education-dept-rebukes-cfpb-overreach-kills-information-sharing-agreement)).

<sup>16</sup> 12 U.S.C. § 5535.

<sup>17</sup> Letter from Secretary Betsy DeVos, U.S. Department of Education, to Director Richard Cordray, Consumer Financial Protection Bureau (Aug. 31, 2017) (online at [http://online.wsj.com/public/resources/documents/EducationLetterToCFPB08-31-2017.pdf?mod=article\\_inline](http://online.wsj.com/public/resources/documents/EducationLetterToCFPB08-31-2017.pdf?mod=article_inline)).

<sup>18</sup> Letter from Director Richard Cordray, Consumer Financial Protection Bureau, to Secretary Betsy DeVos, U.S. Department of Education (Sep. 7, 2017) (online at [www.consumerfinance.com/wp-content/uploads/sites/14/2017/09/Cordray-DeVos-Letter.pdf](http://www.consumerfinance.com/wp-content/uploads/sites/14/2017/09/Cordray-DeVos-Letter.pdf)).

<sup>19</sup> Letter from Director Kathleen L. Kraninger, Consumer Financial Protection Bureau, to Senator Elizabeth Warren (Apr. 23, 2019) (online at [www.npr.org/documents/2019/may/042319-letter.pdf](http://www.npr.org/documents/2019/may/042319-letter.pdf)). It appears that the Department is using a technical deviation from language in the existing MOU—a deviation that results in materially the same notice envisioned by the MOU—as a reason to discontinue the MOU, and effectively undermine CFPB oversight of student loan servicers.

its oversight role to include the Department’s contracted federal loan servicers,” are factually inaccurate.<sup>20</sup>

CFPB has clear statutory oversight authority over student loan servicers and the financial products they administer. By law, one of CFPB’s primary purposes is to supervise non-depository institutions, such as student loan servicers, that are “larger participant[s] of a market for other consumer financial products or services as defined by rule” for “compliance with Federal consumer financial law” and to take “appropriate enforcement action to address violations of Federal consumer financial law.”<sup>21</sup> CFPB exercised its authority to supervise student loan servicers as larger participants through the Bureau’s formal rulemaking process, including public notice and comment.<sup>22</sup> The Department has no legal authority to ignore CFPB’s rule based on the Department’s contradictory interpretation of CFPB’s statutory authority.

In terminating the two MOUs and forbidding loan servicers from cooperating with CFPB oversight and investigations, the Department has overstepped its legal authority and inappropriately protected student loan servicers from much-needed scrutiny.

According to 21 state attorneys general, the Department’s multiple industry-friendly policies have undermined the enforcement of consumer protection laws against student loan servicers.<sup>23</sup>

For all these reasons, we request that the Department provide the following information by August 26, 2019. Unless otherwise specified, please provide responsive documents from January 20, 2017, to present:

1. Please provide all documents and communications, including internal communications, communications with student loan servicers, and memoranda from the Department’s Office of General Counsel, regarding the Department’s:
  - a. June 13, 2018, Federal Register notice to revise the system of records entitled “Common Services for Borrowers” (CSB);<sup>24</sup>
  - b. December 27, 2017, memorandum to loan servicers entitled “Ownership of and Access to U.S Department of Education Records and Data;”<sup>25</sup> and

---

<sup>20</sup> Letter from Secretary Betsy DeVos, U.S. Department of Education, to Director Richard Cordray, Consumer Financial Protection Bureau (Aug. 31, 2017) (online at [http://online.wsj.com/public/resources/documents/EducationLetterToCFPB08-31-2017.pdf?mod=article\\_inline](http://online.wsj.com/public/resources/documents/EducationLetterToCFPB08-31-2017.pdf?mod=article_inline)).

<sup>21</sup> 12 U.S.C. § 5511(c)(4); 12 U.S.C. § 5514(a)(1)(B).

<sup>22</sup> 12 CFR § 1090.106.

<sup>23</sup> Letter from Colorado Attorney General, et. al., to Secretary Betsy DeVos, U.S. Department of Education (Apr. 4, 2019) (online at [https://portal.ct.gov/-/media/AG/Press\\_Releases/2019/Final-AG-Letter-to-ED-44.pdf?la=en](https://portal.ct.gov/-/media/AG/Press_Releases/2019/Final-AG-Letter-to-ED-44.pdf?la=en)).

<sup>24</sup> 83 Fed. Reg. 27587 (June 13, 2018) (online at [www.federalregister.gov/documents/2016/09/02/2016-21218/privacy-act-of-1974-system-of-records](http://www.federalregister.gov/documents/2016/09/02/2016-21218/privacy-act-of-1974-system-of-records)).

<sup>25</sup> Memorandum from Patrick A. Bradfield, Director of Federal Student Aid Acquisitions, U.S. Department of Education, to Federal Student Aid Vendors, Re: Ownership of and Access to U.S. Department of Education

- c. March 12, 2018, Federal Register notice preempting state regulations of student loan servicers (Preemption Notice).<sup>26</sup>
2. Please describe the Department's position and provide all memoranda from the Department's Office of General Counsel related to the following questions:
  - a. Whether the Department has sole and exclusive oversight responsibility over student loan servicers;
  - b. Whether the Dodd-Frank Act's prohibition on "unfair, deceptive, or abusive acts or practices...in connection with any transaction with a consumer for a consumer financial product or service" applies to student loan servicers;<sup>27</sup>
  - c. Whether other federal consumer financial protection laws apply to student loan servicers, including but not limited to the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Electronic Funds Transfer Act.
3. Please provide all documents related to the Department's process for considering requests for disclosures under the CSB, including:
  - a. All internal guidance;
  - b. All communications between the Department and any contractors; and
  - c. All documents from December 27, 2017, or later related to the process for evaluating individual disclosure requests.
4. Please provide the following information related to the release of records requested by state law enforcement agencies, state regulators, the CFPB, or any other federal or state agency pursuant to any investigation or supervisory actions under the CSB since December 27, 2017:
  - a. A list of all such requests indicating the date of the request, the nature of the request, the requester, the information responsive to the request, whether the request was approved, denied, or is still pending, and the basis for any denial.
5. Please describe the Department's position and provide all memoranda from the Department's Office of General Counsel related to whether the Preemption Notice

---

Records and Data (Dec. 27, 2017) (online at <https://static.politico.com/51/1f/0f805fd04c2eb035bcd79f9200be/december-27-2017-servicer-memo.pdf>).

<sup>26</sup> 83 FR 10619 (Mar. 12, 2018) (online at [www.federalregister.gov/documents/2018/03/12/2018-04924/federal-preemption-and-state-regulation-of-the-department-of-educations-federal-student-loan](http://www.federalregister.gov/documents/2018/03/12/2018-04924/federal-preemption-and-state-regulation-of-the-department-of-educations-federal-student-loan)).

<sup>27</sup> 12 U.S.C. § 5531.

applies to state agencies enforcing federal laws, such as the provisions of Dodd-Frank authorizing state enforcement.<sup>28</sup>

6. The Preemption Notice states that the “interposition of State-law requirements may conflict with legal, regulatory, and contractual requirements, and may skew the balance the Department has sought in calibrating its enforcement decisions to the objectives of the program.”<sup>29</sup> In light of this language, please provide:
  - a. All documents and communications related to the Department’s efforts to calibrate enforcement decisions to meet the objectives of the student loan program, including documents identifying the other factors (e.g., cost to taxpayers, cost to student loan servicers, risk of financial or other injury to borrowers) that the Department considers when making enforcement decisions, and how those factors are balanced with the best interests of students;
  - b. Documents sufficient to show each time the Department identified an instance of non-compliance with the Higher Education Act, applicable regulation, or any other federal or state law or regulation, and decided not to require compliance, including the date of non-compliance, the nature of non-compliance, the contractor that was not in compliance, and the Department’s basis for not requiring compliance; and
  - c. Documents sufficient to show each time the Department has removed or modified contract requirements put in place to address legal or regulatory non-compliance due to concerns related to the cost of such contract requirements, including the date the change was made, the nature of the change, the contract that was changed, and the basis for the change.
7. In 2016, FSA strengthened various contractual provisions with student loan servicers. As a result of this change, “servicers are required to proactively communicate with student loan borrowers who submit an incomplete IDR [income-driven repayment] application and, consequently, servicers are prohibited from summarily denying these applications.”<sup>30</sup>
  - a. Are these provisions still in effect?
  - b. If so, please provide documents sufficient to show how they are enforced.
  - c. If not, please provide documents sufficient to show the reason for rescinding them, and when they were rescinded.
8. Has the Department ever adopted any policy or practice not to enforce, or to limit or suspend enforcement of, any federal law or regulation related to student loan

---

<sup>28</sup> *Id.*

<sup>29</sup> 83 FR 10619 (Mar. 12, 2018) (online at [www.federalregister.gov/documents/2018/03/12/2018-04924/federal-preemption-and-state-regulation-of-the-department-of-educations-federal-student-loan](http://www.federalregister.gov/documents/2018/03/12/2018-04924/federal-preemption-and-state-regulation-of-the-department-of-educations-federal-student-loan)).

<sup>30</sup> Annual Report of the CFPB Student Loan Ombudsman (Oct. 1, 2017) (online at [https://files.consumerfinance.gov/f/documents/cfpb\\_annual-report\\_student-loan-ombudsman\\_2017.pdf](https://files.consumerfinance.gov/f/documents/cfpb_annual-report_student-loan-ombudsman_2017.pdf)).

servicers due to concerns about the cost of compliance to the government or to a contractor? If so, provide all documents related to that policy or practice.

9. With respect to the Department's termination of its MOUs with CFPB, please provide:
- a. Documents sufficient to show whether CFPB has made all student-borrower complaints it received accessible to the Department through a web-portal within 10 days of CFPB's receipt;
  - b. Documents sufficient to show whether CFPB's referral of claims through a secure electronic database in near real-time satisfied the relevant terms of the Department's MOUs with CFPB;
  - c. All communication, including internal communications and communications between CFPB and the Department, related to the Department's decision to terminate the MOUs.

The Committee on Education and Labor has oversight and investigation authority over all federal education programs. The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. The Committee on Financial Services has oversight and investigative authority over student loan servicing.

An attachment to this letter provides additional instructions for responding to our request. If you have any questions, please contact Benjamin Sinoff with the Education and Labor Committee at (202) 225-3725 or Benjamin.Sinoff@mail.house.gov.

Thank you for your attention to this matter.

Sincerely,



Robert C. "Bobby" Scott  
Chairman  
Committee on Education and Labor



Maxine Waters  
Chairwoman  
Committee on Financial Services



Elijah E. Cummings  
Chairman  
Committee on Oversight and Reform

The Honorable Betsy DeVos  
Page 9

Enclosure

cc: The Honorable Virginia Foxx, Ranking Member  
Committee on Education and Labor

The Honorable Patrick McHenry, Ranking Member  
Committee on Financial Services

The Honorable Jim Jordan, Ranking Member  
Committee on Oversight and Reform