



Congress of the United States
House of Representatives
Washington, DC 20515-0529

May 17, 2018

Mr. Carlos G. Muñiz
General Counsel
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Mr. Muñiz:

We write to inquire about ethics and standards of conduct within the U.S. Department of Education's ("Department") Office of Federal Student Aid (FSA) and steps that you are taking to ensure that employees do not have conflicts of interest or any appearances of impropriety during ongoing federal contracting activities.

FSA disburses billions of dollars in student loans and grants each year and conducts solicitations to support the disbursement and servicing of that aid. However, because most FSA employees are career staff they are not subject to, and have not signed, the ethics pledges required of appointees by President Trump's *Executive Order 13770, Ethics Commitments by Executive Branch Employees*. Therefore, the public does not have access to ethics agreements, financial disclosures, or any waivers that may be issued for these employees. We are writing to better understand how the Department guards against ethical violations in FSA's contracting activities and has implemented other federal ethics laws for career employees.

Recently, FSA put forward a pre-solicitation notice indicating their intent to pilot a payment card for students' financial aid similar to a prepaid or debit card which could eventually be scaled up to serve tens of millions of federal financial aid recipients.¹ This solicitation presumably involves numerous individuals, but three employees raise ethical questions.

As you know, Dr. A. Wayne Johnson served as the Chief Operating Officer at FSA from June 20, 2017, through January 25, 2018, at which point he was transitioned to a new "Strategy and Transformation Unit" at FSA to oversee this payment card solicitation.² While Dr. Johnson served as Chief Operating Officer, FSA hired two additional career staff members, Mr. Patrick J. Fox and Ms. Laura Shuler, who we believe may be working on the payment card project.

¹ Federal Student Aid Next Gen Payment Card Program Pilot. Solicitation Number: EDFSA18PaymentCard. January 19, 2018 <https://www.fbo.gov/spg/ED/FSA/CA/EDFSA18PaymentCard/listing.html>

² U.S. Department of Education. Release: Secretary DeVos Forms New Strategy and Transformation Office at FSA. January 25, 2018. <https://go.usa.gov/xQxtU>

All three individuals in question have deep ties to the financial industry, and their prior work history suggests they may have conflicts in soliciting offers from banks and card companies to obtain increased access to students' financial aid accounts. Therefore, we are writing to better understand how Dr. Johnson, Mr. Fox, Ms. Shuler, and the Department have addressed any potential conflicts of interest or appearance of impropriety in the FSA Next Gen Payment Card Program Pilot solicitation process.

Before becoming an employee of the Department, Dr. A. Wayne Johnson was the founder and CEO of First Performance Corporation ("First Performance"), a financial technology company, until March 2017.³ At First Performance, Dr. Johnson was involved in at least one large capital campaign that drew investments from the banking and financial industry such as MasterCard, Regions Financial Corporation, and Synchrony Financial.⁴ Additionally, over the last ten years, Dr. Johnson has worked for a variety of financial services companies, including Reunion Financial Services Corporation, BV Card Assets, and Total Systems Services, Inc. ("TSYS").

In Dr. Johnson's resume, it states that just prior to joining the Department he was principally working to "bring to market a proprietary mobile application which will allow an End User to authorize transactions, set spending limits and spending rates over a defined time frame, limit transactions to either or both card-present and card-not-present transactions on a selected payment card...limit to either or both of ATM transactions, and limit user selected geographic locations."⁵ This phrasing bears a striking resemblance to the features of the FSA Next Gen Payment Card Program Pilot solicitation.⁶ Because Dr. Johnson does not file ethics disclosures, it is not clear whether he has divested from any direct or indirect financial interests from his former company or other former employers.

Mr. Patrick J. Fox currently works at FSA on portfolio management and may be involved in vendor selection or oversight in this pilot program. Like Dr. Johnson, Mr. Fox also has an extensive history of working for companies that are potential vendors in the payment card pilot, including Citibank, Bank One, and Bank of America. Mr. Fox also worked as Senior Director at the same company as Dr. Johnson, TSYS, from September 2009 through some point in 2017, when he was then hired by FSA.⁷ He also appeared to overlap with Dr. Johnson at TSYS from 2009 through 2011, and their current relationship, professional or financial, is unclear. However, TSYS presents several ethical considerations. The company provides "turnkey card programs" for regional and community financial institutions—yet another specific financial technology requested in FSA's payment card solicitation.

Furthermore, in October 2017, NetSpend Corporation ("NetSpend"), a TSYS subsidiary, agreed to pay \$53 million in refunds and to settle charges from the Federal Trade Commission, which

³ Advanced Technology Development Center (ATDC) at Georgia Tech. "First Performance Global Names New CEO." March 14, 2017. <http://atdc.org/fintech/first-performance-global-names-new-ceo/>

⁴ Advanced Technology Development Center (ATDC) at Georgia Tech. "First Performance Raises \$17.5M to Accelerate and Expand Global Presence." January 26, 2017. <http://atdc.org/news-from-our-companies/first-performance-raises-17-5m-accelerate-expand-global-presence>

⁵ <https://www.scribd.com/document/350505154/Resume-for-Dr-Arthur-Wayne-Johnson>

⁶ Federal Student Aid Next Gen Payment Card Program Pilot. Solicitation Number: EDFSA18PaymentCard. January 19, 2018 <https://www.fbo.gov/spg/ED/FSA/CA/EDFSA18PaymentCard/listing.html>

⁷ Fox, Patrick J. LinkedIn Profile. Accessed March 2018. <https://www.linkedin.com/in/pjfoxjr/>

found that their customers were charged excessive overdraft fees when accessing the company's prepaid debit cards. Egregious consumer violations by NetSpend led the Consumer Financial Protection Bureau to issue a rule requiring disclosures of various fees of prepaid cards in October 2016.⁸ TSYS and NetSpend heavily funded the lobbying effort to invalidate this rule, creating significant questions about whether their former employees, Dr. Johnson and Mr. Fox, may have participated in corporate decisions to lobby against federal consumer protection law.

Finally, Ms. Laura Shuler currently serves as Senior Advisor to the Chief Operating Officer and as a Senior Advisor for Business Process at FSA. In this capacity, she may also be working on the payment card program. According to her LinkedIn page, Ms. Shuler was previously employed by Reunion Financial Services as Director of Marketing for at least a year between April 2013 and 2014, during which time she also would have overlapped with Dr. Johnson.⁹ Her more recent employment history is not publicly available.

Because the payment card solicitation is intended to allow FSA to implement a financial services solution that will eventually serve millions of students, the agency must establish protections against conflicts of interest or appearances of impropriety from former executives in the financial services industry in this process. Dr. Johnson, Mr. Fox, and Ms. Shuler may make operational or contracting decisions that could have a substantial long-term impact on their former employers' financial interests or their personal financial holdings. Based on our understanding of the Department's current interpretation of federal ethics law, employees should be prohibited from engaging in a particular party matter regarding their former employer or entity in which they hold investments, which would presumably include any solicitation process for taxpayer-funded federal contracts in which said entity is a potential vendor.

Therefore, we are requesting additional information about efforts by the Department to ensure that vendor selection in the current payment card solicitation process and other federal contracting efforts provide the best service for students and do not directly or indirectly enrich FSA employees. Given the significant potential for conflicts of interest in the areas mentioned above relating to Dr. Johnson, Mr. Fox, Ms. Shuler's work for the Department, please respond to the following questions:

1. Have Dr. Johnson, Mr. Fox, and Ms. Shuler each consulted with you regarding limitations on their participation in matters pertaining to the FSA payment card solicitation?
2. Does the Department regard meetings, calls, emails, or other communication with an employee's recent employer in regards to a potential vendor selection process to be a violation of federal conflicts of interest law, an appearance of impropriety, or both?

⁸Consumer Financial Protection Bureau, "CFPB Finalizes Strong Federal Protections for Prepaid Account Consumers: New Rule Includes 'Know Before You Owe' Prepaid Disclosures." October 5, 2016. <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-strong-federal-protections-prepaid-account-consumers/>

⁹ Shuler, Laura. LinkedIn Profile. Accessed April 9, 2018. <https://www.linkedin.com/in/laurashuler/>

3. Do you have written agreements with Dr. Johnson, Mr. Fox, and Ms. Shuler regarding their recusals or other measures taken to avoid actual or perceived conflicts of interest as a result of their prior employment? If so, please provide a copy of these agreements.
4. Does the Department maintain a policy regarding compliance with ethics laws for federal employees involved in FSA contracting activities? If so, please provide a written copy of this policy.

Because the current payment card solicitation is moving swiftly, we ask that you respond to this inquiry by June 1, 2018. If you have any questions please contact Claire Viall in the Office of Congressman Takano. Thank you for your attention to our request.

Sincerely,



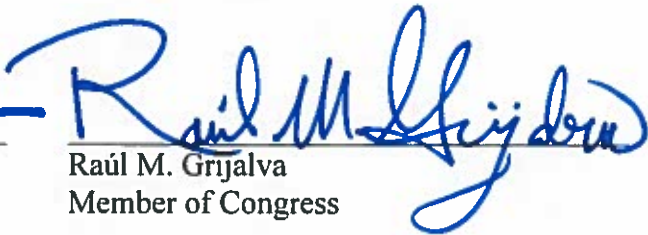
Mark Takano
Member of Congress



Suzanne Bonamici
Member of Congress



Mark DeSaulnier
Member of Congress



Raúl M. Grijalva
Member of Congress

cc: Ms. Marcella Goodridge-Keiller, Designated Agency Ethics Official