



May 2, 2019

VIA CERTIFIED MAIL

The Honorable Sandra Bruce
Acting Inspector General, U.S. Department of Education
550 12th Street S.W.
Washington, D.C. 20202

The Honorable Mark Bialek
Inspector General, Board of Governors of the Federal Reserve System and the Consumer
Financial Protection Bureau
20th Street and Constitution Avenue N.W., Mail Stop K-300
Washington, D.C. 20551

Dear Ms. Bruce and Mr. Bialek,

Under federal law, the Department of Education and the Consumer Financial Protection Bureau must coordinate efforts to assist student borrowers in resolving complaints concerning their educational loans. Because the agencies have defaulted on this statutory obligation, Democracy Forward Foundation respectfully requests that your offices investigate. Not only is the lack of coordination contrary to statute, but it has been cited recently by the Bureau, at least, as a basis for avoiding its obligation to adequately supervise loan servicers. That lack of supervision, in turn, lets negligent collection practices go unchecked, may result in borrower default, and is particularly harmful to those who have spent their careers giving back to their communities and are entitled to relief under the Public Service Loan Forgiveness program.

Background

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”), the student loan ombudsman within the Consumer Financial Protection Bureau (the “CFPB” or the “Bureau”) is required to establish a memorandum of understanding with the student loan ombudsman within the Department of Education (“ED” or the “Department”) “to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans.” 12 U.S.C. § 5535(c)(2). In keeping with this requirement, the Bureau and ED previously entered into two memorandums of understanding: in 2011, an information-sharing MOU—the “Memorandum of Understanding

Between the Bureau of Consumer Financial Protection and the U.S. Department of Education Concerning the Sharing of Information” (the “2011 MOU”); and in 2014, a supervisory MOU—the “Memorandum of Understanding Concerning Supervisory and Oversight Cooperation and Related Information Sharing Between the U.S. Department of Education and the Consumer Financial Protection Bureau” (the “2014 MOU”).¹ The 2011 MOU laid the groundwork for information sharing between the CFPB and ED, provided that complaints concerning private education loans would be routed to the CFPB and those concerning federal loans would be routed to ED, and authorized the CFPB to request and receive information from ED relevant to the resolution of complaints. The 2014 MOU expanded upon the agencies’ partnership and specified procedures surrounding the exchange of nonpublic information.²

The overlapping and complex legal regimes that govern federal student loan servicers—state and federal consumer law, the Higher Education Act, and servicing contract requirements—necessitate coordination and information sharing between the Bureau and ED, which share responsibility for overseeing federal student loan servicers. Servicers link borrowers and lenders and are responsible for managing borrowers’ accounts, processing monthly payments, and communicating with borrowers.³ As the agencies know well, errors by loan servicers can result in significant hardship for borrowers. In a 2015 Bureau report, released as a result of a joint effort with ED and the Department of the Treasury, the Bureau documented a number of common failures by servicers to meet borrower needs, including problems with alternative repayment program enrollment, customer service, and payment processing.⁴ Such failures may result in borrowers defaulting on their loans, losing access to repayment protections, suffering payment shock, incurring additional interest or late fees, unnecessarily prolonging repayment, and suffering decreases in their credit scores, among other harms.⁵ The 2011 and 2014 MOUs fostered coordination by ED and the Bureau in protecting borrowers against these harms. Thanks to the agencies’ partnership, they secured \$480 million in loan forgiveness for students of Corinthian College in February 2015.⁶

Notwithstanding Dodd-Frank’s requirement that the CFPB and ED establish an MOU to enable the agencies to coordinate their efforts to protect student borrowers—and notwithstanding the important gains that student borrowers achieved as a result of the agencies’ efforts—in August 2017 ED unilaterally rescinded the MOUs.⁷ At the time of the MOUs’ rescission, the Department left over 44 million student borrowers, owing collectively \$1.5 trillion, with less protection from misbehavior by loan servicers.⁸

¹ See Letter from Kathleen Smith, Acting Assistant Sec’y, Off. of Postsecondary Educ., U.S. Dep’t of Educ., and Dr. A. Wayne Johnson, C. Operating Officer, Fed. Student Aid, U.S. Dep’t of Educ., to Richard Cordray, Dir., CFPB (Aug. 31, 2017), <https://perma.cc/BD46-DPL7> (the “Aug. 31, 2017 ED Letter”).

² *Id.*

³ CFPB, Student Loan Servicing 3 (Sept. 2015), https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

⁴ *Id.*

⁵ *Id.*

⁶ Press Release, CFPB, CFPB Secures \$480 Million in Debt Relief for Current and Former Corinthian Students (Feb. 3, 2015), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-secures-480-million-in-debt-relief-for-current-and-former-corinthian-students/>.

⁷ Aug. 31, 2017 ED Letter, *supra* note 1.

⁸ Zack Friedman, *Student Loan Debt Statistics In 2019: A \$1.5 Trillion Crisis*, *Forbes* (Feb. 25, 2019), <https://www.forbes.com/sites/zackfriedman/2019/02/25/student-loan-debt-statistics-2019/#1309371b133f>.

ED asserted that it was terminating the MOUs because the CFPB had failed to direct appropriate complaints to the Department, causing (according to ED) confusion among borrowers and servicers. ED also objected to the Bureau's oversight of federal student loans, asserting that such oversight fell solely within ED's jurisdiction.⁹ Yet ED's stated objections are unavailing. First, ED has near real-time access to the Bureau's consumer complaint data through the Bureau's secure Government Portal.¹⁰ Second, as noted above, Dodd-Frank *requires* coordination between the CFPB and ED to assist borrowers. *See* 12 U.S.C. § 5535(c)(2).

In the more than a year and a half since ED rescinded the MOUs with the CFPB, the agencies have not displayed any progress toward coming back into compliance with their legal obligation under Dodd-Frank. Director Kraninger has publicly recognized that Dodd-Frank requires an information-sharing MOU to be in place but laid blame for the lack of an MOU on the fact that the student loan ombudsman position at the CFPB is currently vacant.¹¹ But the position remained filled for a full year after the prior MOUs were rescinded, and in any event responsibility for the position's current vacancy lies squarely with the Bureau.

Indeed, the CFPB appears to be awaiting permission from ED before exercising its proper oversight role, leaving borrowers at heightened risk. Director Kraninger has relied on the absence of an MOU with ED as a rationale for the CFPB's failure to adequately supervise loan servicers. In her recent testimony before the Senate Committee on Banking, Housing, and Urban Affairs, Director Kraninger told Senator Robert Menendez that the fact that "99% of [Public Service Loan Forgiveness] applicants are being denied" is "a question for the Department of Education" and predicated CFPB supervision on reinstatement of an MOU with ED.¹²

ED's decision to revoke the MOUs with the Bureau appears to be consistent with a pattern of actions by both agencies that limit assistance and protection for student borrowers. For example, ED has recently limited state law enforcement agencies' access to student loan information. In an April 4, 2019 letter, twenty-one state attorneys general urged Secretary DeVos to reverse that decision, noting that students not only "encounter obstacles when interacting with servicers about the most basic servicing tasks such as correctly processing loan payments,"¹³ but

⁹ *Id.*

¹⁰ Letter from Richard Cordray, Dir., CFPB, to Betsy DeVos, Sec'y, U.S. Dep't of Educ. 2-3 (Sept. 7, 2017), <https://www.consumerfinance.com/wp-content/uploads/sites/14/2017/09/Cordray-DeVos-Letter.pdf>.

¹¹ *Putting Consumers First? A Semi-Annual Review of the CFPB: Hearing Before the H. Comm. on Financial Servs.* (Mar. 7, 2019), available at <https://www.youtube.com/watch?v=5pb63zsNpWo&feature=youtu.be&t=13598>; *The Consumer Financial Protection Bureau's Semi-Annual Report to Congress: Hearing Before the S. Comm. on Banking, Housing, and Urban Aff.* (Mar. 12, 2019), available at <https://www.banking.senate.gov/hearings/03/01/2019/the-consumer-financial-protection-bureaus-semi-annual-report-to-congress>. In a response to questioning by Rep. Jesus Garcia before the House Committee on Financial Services, Director Kraninger similarly acknowledged that the 2011 MOU "had a good purpose and function and I would note that obviously Congress required us to have that MOU in place, so it is a priority to have the conversation[.]" *Putting Consumers First?*, *supra*.

¹² *The Consumer Financial Protection Bureau's Semi-Annual Report to Congress*, *supra* note 11.

¹³ Letter from 21 Attorneys Gen. to Sec'y DeVos, U.S. Dep't of Educ. (Apr. 4, 2019), <http://www.marylandattorneygeneral.gov/News%20Documents/Final%20AGs%20Letter%20to%20DOE%204.4.19.pdf> (citing CFPB, Annual Report of the CFPB Student Loan Ombudsman (Oct. 16, 2013), <http://www.consumerfinance.gov/reports/annual-report-of-the-cfpb-student-loan-ombudsman-2013/>).

also “face difficulties when trying to enroll or renew enrollment in certain federal repayment programs, such as income-driven repayment plans.”¹⁴ Student borrowers are inherently dependent on servicers “to answer questions about repaying their loans, help enroll them in an appropriate and sustainable repayment plan, and assist them when they struggle to make payments.”¹⁵ ED’s oversight of servicers is therefore critical, and any steps by ED to limit such oversight raise concern for student borrowers.

In addition, the recent Inspector General audit of ED’s Office of Federal Student Aid concluded that ED had failed to establish policies to protect student borrowers against risks, and to adequately hold loan servicers accountable.¹⁶ This report prompted inquiries by Senator Patty Murray and Representative Susan Davis.¹⁷ And data released by the Department in March 2019 to Senator Murray demonstrated that ED failed to approve a single borrower defense claim for students defrauded by predatory colleges during the last three months of 2018.¹⁸

With respect to the CFPB, an April 2019 request by Senators Warren, Brown, Durbin, Gillibrand, Whitehouse, and Menendez demanded an explanation of the CFPB’s current oversight of the Public Service Loan Forgiveness program based on concern that the Bureau is not fulfilling its obligation to protect student borrowers.¹⁹

Request for Investigation

Because ED’s rescission of the MOUs with the CFPB hinders the agencies’ ability to oversee student loan servicers and harms student borrowers, an investigation is appropriate. We respectfully request your offices review the following matters:

- Whether the lack of an MOU between ED and the CFPB “to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans” violates Dodd-Frank, 12 U.S.C. § 5535(c)(2);

¹⁴ *Id.* (citing CFPB, Midyear Update On Student Loan Complaints (Aug. 2016),

https://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf).

¹⁵ *Id.* (citing U.S. Dep’t of the Treasury, A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation 124 (July 2018), <https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financi....pdf>).

¹⁶ Letter from Bryon S. Gordon, Assistant Inspector Gen. for Audit, U.S. Dep’t of Educ., to Mark A. Brown, Chief Operating Officer, Federal Student Aid, at 2 (Mar. 5, 2019), <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf>.

¹⁷ Press Release, Rep. Susan Davis, Murray, Davis Request Information from U.S. Department of Education on Mismanagement of Federal Student Loan Program (Mar. 5, 2019), <https://susandavis.house.gov/news/documentsingle.aspx?DocumentID=393074>.

¹⁸ Press Release, U.S. S. Comm. on Health, Educ., Labor, & Pensions, After Murray Questions Secretary DeVos on Student Borrower Relief, Department of Education Confirms No Claims Have Been Approved (Mar. 30, 2019), <https://www.help.senate.gov/ranking/newsroom/press/after-murray-questions-secretary-devos-on-student-borrower-relief-department-of-education-confirms-no-claims-have-been-approved>.

¹⁹ Press Release, Senators Warren, Brown, and Colleagues Question CFPB’s Public Service Loan Forgiveness Program Oversight Failure (Apr. 5, 2019), <https://www.warren.senate.gov/newsroom/press-releases/senators-warren-brown-and-colleagues-question-cfpbs-public-service-loan-forgiveness-program-oversight-failure>.

- The process by which ED terminated the 2011 and 2014 MOUs, including any consultation among ED, the CFPB, the White House, the Office of Management and Budget, student borrowers, or loan servicers;
- Efforts by ED and the CFPB, if any, to enter into a new MOU, including but not limited to any steps being taken to fill the Bureau's student loan ombudsman position;
- Efforts by ED to oversee, or forfeit its role in overseeing, student loan servicers;²⁰ and
- Efforts by the Bureau to oversee, or forfeit its role in overseeing, student loan servicers.²¹

Thank you for considering opening an investigation into these matters.

Sincerely,

/s/ Anne Harkavy

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²⁰ See, e.g., 20 U.S.C. § 1087f(a)(2).

²¹ See, e.g., 12 U.S.C. §§ 5514, 5535; 12 C.F.R §§ 1090.100, 1090.106.