United States Senate
WASHINGTON, DC 20510

October 11, 2019

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington DC, 20202

Major General Mark A. Brown, USAF (Ret.)
Chief Operating Officer
Office of Federal Student Aid
U.S. Department of Education
830 First Street N.E.
Washington, D.C. 20202

Dear Secretary DeVos and General Brown:

We write today to urge you not to renew the Office of Federal Student Aid's contract with the student loan servicer Navient Corporation ("Navient") when it expires in December 2019. The company has a more-than-decade-long history of allegations of abusive and misleading practices aimed at student loan borrowers, and new disclosures have revealed the extent of this atrocious behavior and the knowledge of this misbehavior by top company officials. Navient is not deserving of the taxpayer funds it receives to help borrowers navigate their federal student loan debt, and it is time for the U.S. Department of Education (ED, or "the Department") to finally hold the company accountable for over a decade of failure and corporate misbehavior.

Introduction

We have conducted rigorous oversight of Navient's predatory, improper, and illegal behaviors since it spun off from SLM Corporation (Sallie Mae) and began contracting with the Department in 2014 to service federal student loans—including questioning whether Navient should have even been awarded its current contract in the first place.[1] Since the Office of Federal Student Aid (FSA) awarded the contract in 2014,[2] Navient has grown to become one of the nation's largest servicers of federal and private student loans. Currently, it services loans owed by

[1] U.S. Senator Elizabeth Warren, "Education Official: Profits from Student Loan Program Are Used to Fund Government Generally," Press Release, March 28, 2014, https://www.warren.senate.gov/newsroom/press-releases/education-official-profits-from-student-loan-program-and-quotare-used-to-fund-government-generally-and-quot.

[2] Title IV Additional Servicing Contracts (2014), https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/ED-FSA-09-D-0015_MOD_0085_Navient.pdf. Navient is paid $2.85 per loan in active repayment, for up to $17.1 million. There is an additional bonus of up to $2 million annually for keeping delinquency rates low.

approximately12 million borrowers[3], worth $215 billion.[4] Navient's contract with the Department covers 5.9 million federal student loan borrowers and is worth approximately $200 million per year.[5]

FSA is required by statute to award contracts only to entities that show "extensive and relevant experience and demonstrated effectiveness,"[6] but Navient has a troubled history of federal and state lawsuits and investigations breaking the law, and harming student loan borrowers. As described below, there have been at least ten incidents in the last decade where Navient (or its corporate predecessor Sallie Mae) has been accused of or fined for actions that rip off borrowers. The company paid millions in fines for improper marketing of student loans; a series of Inspector General reports revealed a host of problems, from overcharging the federal government over $20 million in costs (funds that have still not yet been repaid), to failing to inform borrowers of their rights. The Department of Justice (DOJ) and Federal Deposit Insurance Corporation (FDIC) fined Navient for violating the Servicemembers Civil Relief Act, 29 state Attorneys General allege that Navient violated state consumer protection laws, and numerous other reviews and lawsuits have identified evidence of wrongdoing.

New Evidence of Navient's Misbehavior

Any or all of these incidents should have been enough for the Department to terminate Navient's contract. But newly disclosed information from a 2017 Consumer Financial Protection Bureau (CFPB) lawsuit against Navient provides new evidence of the company's incorrigible behavior and leaves the Department with no excuse for continuing to contract with Navient to serve millions of student loan borrowers.

These documents, released on September 18, 2019 in a legal brief filed by the CFPB, confirmed what evidence has pointed to for years: Navient systematically steered thousands of borrowers who were having difficulty paying their loans into plans that were worse for the borrowers – but more profitable for Navient.[7]

Specifically, the documents indicate that, rather than working with borrowers who were in trouble to identify the "Income-Drive Repayment" (IDR) or other plans that were in the borrower's best interest, Navient had a policy of cutting servicing costs by driving borrowers

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[3] Navient Corporation Annual Report on Form 10-K 2018, https://navient.com/assets/about/investors/shareholder/annual-reports/NAVI_2018_Form_10-K_Final.pdf

[4] U.S. Department of Education Office of Inspector General, "Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements of Servicing Federally Held Student Loans," February 12, 2019, https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf

[5] Navient Corporation Annual Report on Form 10-K 2018, https://navient.com/assets/about/investors/shareholder/annual-reports/NAVI_2018_Form_10-K_Final.pdf. Navient is paid $2.85 per loan in active repayment per month, for up to $201.8 million annually.

[6] 20 U.S. Code § 1087f(a)(2)

[7] *Forbes*, "Unsealed Documents Reveal Navient's Deceptive Student Loan Practices," Adam Minsky, September 24, 2019, https://www.forbes.com/sites/adamminsky/2019/09/24/unsealed-documents-reveal-navients-deceptive-student-loan-practices/#4c9e4e543e7e; Consumer Financial Protection Bureau brief, March 26, 2019, Case No. 3:17-CV-011-RDM, *Consumer Financial Protection Bureau v. Navient Corporation, et al.*, Exhibit 1., pg. A2, https://protectborrowers.org/wp-content/uploads/2019/09/CFPB-Reply-to-Motion-for-Summary-Judgment-w-Exhibits.pdf

into "forbearance" – an option where borrowers can temporarily suspend payment of their loans, although interest continues to accumulate – meaning that they end up owing more on their loans. Navient's aggressive use of forbearance added nearly $4 billion in unnecessary interest charges for more than 1.5 million borrowers between 2010 and 2015.[8]

The CFPB's ongoing lawsuit against Navient recently led to the disclosure of new proof of this practice, dating back a decade. Specifically, a series of documents released as part of the suit described Navient's internal policies and practices. One internal memo, dated June 2010 and sent from a senior manager to Navient executives, urged, "Our battle cry remains '*forbear them, forebear them, make them relinquish the ball.*"[9] The memo notes that the collections and servicing division of Navient was bringing in $150 million in fees and resolving 40,000 borrower cases each month. It called for forbearance for seven out of every ten resolved borrowers. The memo makes clear that this was part of an explicit business strategy to prioritize borrower's needs only to the extent that they align with Navient's financial interests, noting, "We need to point [borrowers] to the optimal solution based on their unique circumstances (optimal solution for the student and the firm)."[10]

In another internal document made public for the first time as part of the lawsuit, a training document for customer service agents inaccurately communicated that IDR plans were only an option for borrowers who could afford to make payments, despite that fact that virtually all low-income student borrowers with federal loans are entitled to make a zero-dollar monthly payment under one or more IDR plans.[11] In fact, in a deposition, a manager of multiple call centers claimed not to know that zero-dollar IDR payments were an option until 2012, a full three years after the program was created.[12]

Navient also discouraged customer service agents from taking time to guide borrowers through the longer and more complex process of applying for IDR. According to newly released statements from former employees, "The company fostered a culture within the call center that prioritized speed in resolving borrower calls. The company imposed a requirement that employees maintain an average call time of approximately seven minutes." This expectation was enforced by sharing color-coded spreadsheets that ranked employees as green, yellow, or red by average call time, so that representatives always knew where they stood in comparison to their peers. Since placing a borrower in forbearance can be accomplished in under 3.5 minutes, while enrollment in an IDR plan takes much longer, employees understood that they could meet these expectations by steering callers to forbearance.[13]

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[8] Consumer Financial Protection Bureau complaint, January 18, 2017, Case No. 3:17-CV-011-RDM, *Consumer Financial Protection Bureau v. Navient Corporation, et al.*, pgs. 22-23, https://files.consumerfinance.gov/f/documents/201701_cfpb_Navient-Pioneer-Credit-Recovery-complaint.pdf

[9] Consumer Financial Protection Bureau brief, March 26, 2019, Case No. 3:17-CV-011-RDM, *Consumer Financial Protection Bureau v. Navient Corporation, et al.*, Exhibit 1., pg. A2, https://protectborrowers.org/wp-content/uploads/2019/09/CFPB-Reply-to-Motion-for-Summary-Judgment-w-Exhibits.pdf. Emphasis in original.

[10] Ibid., Exhibit 1, pg. A2. Emphasis in original.

[11] Ibid., Exhibit 2, pg. A5

[12] Ibid., Exhibit 3, pg. A9; The Project on Student Debt, "New Income-Based Repayment of Federal Student Loans Starts July 1," June 11, 2009, https://ticas.org/wp-content/uploads/legacy-files/legacy/files/pub/July_1_2009_NR.pdf

[13] Ibid., pg. 9

Executives at all levels of the company appear to have been aware of Navient's aggressive push for forbearance at the expense of IDR and did nothing to change it. On at least five occasions, Navient CEO Jack Remondi was provided with examples of calls in which borrowers who were good candidates for IDR were placed in forbearance without the option of IDR ever being discussed.[14] Internal emails show that Remondi was regularly provided with call samples, including comments on areas of improvement that noted the failure to provide information on IDR. The following examples were all provided to Remondi via email between February 2014 and April 2016:

- In a call dated February 17, 2014, the caller requested forbearance. Under "Areas of Improvement," the supervisor noted that the agent shared no information about future monthly payments and did not discuss the option of IDR or other repayment options.[15]
- In a call dated March 22, 2016, the comments on the call noted that "the Solutions Navigator should have asked questions that will determine the borrower's eligibility for a repayment plan like IBR or Deferment before processing Forbearance."[16]
- In a call dated December 22, 2015, the caller requested to postpone payment until the end of the month. The comments note that the agent processed one month of forbearance but did not advise the caller of lower repayment options.[17]
- In a call dated December 23, 2015, the caller inquired about whether she was required to make payments while her application for Total Permanent Disability was pending. The comments note that the agent placed the customer in forbearance while the application is pending, without examining whether a lower repayment option would have been a better option.[18]
- In a call dated March 31, 2015, the customer stated that she was having difficulty making payments and was receiving food stamps and Medicaid. The comments note that the agent failed to mention or explore IDR before placing the borrower in forbearance.[19]
- In a call dated November 24, 2014, the caller expressed concern that her monthly payment had increased. The comments note that the agent should have explored IDR prior to enrolling the customer in Graduated Repayment.[20]

These examples show that Navient supervisors and the most senior leadership were aware of a clear pattern of customers being provided with incomplete and misleading information, but took no action to change their employees' practices.

These newly released documents paint a detailed and disturbing portrait of a company that was more focused on its own bottom line than on meeting the needs of the student loan borrowers that it contracted with the Department to serve.

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[14] Ibid., Exhibits 7-10.
[15] Ibid., Exhibit 7, pg. A22
[16] Ibid., Exhibit 8, pg. A27. IDR plans are also known as IBR, short for "Income-Based Repayment."
[17] Ibid., Exhibit 8, pg. A29
[18] Ibid., Exhibit 8, pg. A29
[19] Ibid., Exhibit 8, pg. A32
[20] Ibid., Exhibit 8, pg. A36

Navient's Long History of Malfeasance

These newly revealed documents are just the latest disclosure in Navient's track record of malfeasance and abuse of taxpayer funds, stretching back more than a decade. These incidents include:

- In 2007, Sallie Mae (now known as Navient) agreed to a multi-million dollar settlement with the New York Attorney General's office to resolve claims relating to the improper marketing of federal student loans.[21]

- In 2008, the Treasury Department's Inspector General reviewed 36 separate cases and found that Sallie Mae's debt collection arm, Pioneer Credit Recovery, Inc., had violated its contractual obligations in each case through transgressions such as failure to adequately document its debt collection process and failure to inform consumers of their rights and obligations under debt compromises.[22]

- In 2009, the Education Department's Inspector General found that Sallie Mae overcharged the federal government by $22.3 million by abusing a program for small lenders.[23] These taxpayer dollars still have not been repaid.[24]

- In 2013, the Education Department's Inspector General found that Sallie Mae had violated contractual terms by failing to report complaints the company had received from federal student loan borrowers.[25] In response to a letter Sen. Warren wrote to the Department requesting more information on the Department's relationship with Sallie Mae, the Department noted many of the ways in which Sallie Mae had failed its borrowers,[26] including "defects in conversion to repayment, incomplete adjustments to borrower accounts when transferred from a previous servicer, incorrect calculation of adjusted gross income for Income Based Repayment payment, and failure to include

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[21] Washington Post, "Student Loan Giant Sallie Mae Settles in N.Y. Conflict-of-Interest Probe," Amit R. Paley & Tomoeh Murakami Tse, Abril 12, 2007, https://www.pressreader.com/usa/the-washington-post/20070412/281539401512263.

[22] Office of Inspector General, Department of the Treasury, "Private Collection Agencies: Pioneer Credit Recovery, Inc., Needs to Improve Compliance with FMS's Debt Compromise Requirements," September 26, 2008, https://m.treasury.gov/about/organizational-structure/ig/Documents/oig08043.pdf.

[23] Office of Inspector General, Department of Education, "Special Allowance Payments to Sallie Mae's Subsidiary, Nellie Mae, for Loans Funded by Tax-Exempt Obligations," August 2009, https://www2.ed.gov/about/offices/list/oig/auditreports/fy2009/a03i0006.pdf.

[24] Letter from U.S. Senator Elizabeth Warren to FSA COO James Runcie, May 10, 2016, https://www.warren.senate.gov/files/documents/2016-05-10%20Letter%20to%20ED%20Navient%20re%20Lobbying%20Spending.pdf.

[25] Office of Inspector General, Department of Education, "Final Alert Memorandum re: Verbal Complaints Against Private Collection Agencies," May 8, 2013, https://www.oversight.gov/sites/default/files/oig-reports/l06m0012.pdf

[26] Letter from U.S. Senator Elizabeth Warren to Treasury Secretary Jacob Lew and Education Secretary Arne Duncan, September 19, 2013, https://www.warren.senate.gov/files/documents/Letter%20from%20Elizabeth%20Warren%20to%20ED,%20Treasury%20-%209-19-2019.pdf.

spousal income when calculating Income Contingent Repayment eligibility."[27] In an audit of Sallie May's FFEL Program portfolio, the Department identified "incorrect billings submitted to the Department, failure to report origination fees, unpaid consolidation loan rebate fees, and general management and reporting deficiencies."[28]

- In 2014, DOJ and FDIC investigations found that Sallie Mae/Navient had engaged in "intentional, willful" and systematic violations of service members' rights under the Servicemembers Civil Relief Act and had illegally overcharged service members for nearly a decade. The DOJ and FDIC investigation resulted in the two agencies requiring the company to pay a nearly $100 million fine.[29] In 2016, we called on the Department to conduct a thorough accounting of this wrongdoing, after your own Inspector General found that ED's actions to identify affected borrowers were inadequate and statistically flawed.[30] This past June, the Department quietly moved to prevent this settlement from being considered in contracting decisions by reducing the required period of disclosures for past violations of consumer protection laws.[31]

- In 2016, a group of 29 state Attorneys General alleged that Navient had violated state consumer protection laws by "paying call center workers based on how quickly they could get struggling student loan borrowers off the phone."[32]

- In 2017, the CFPB filed a lawsuit that led to last month's disclosures, alleging that Navient violated federal laws by steering borrowers into forbearance,[33] failing to provide clear deadlines and reminders to borrowers who were in long-term repayment plans that needed to be renewed annually,[34] and falsely reporting to consumer reporting agencies

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[27] Letter from FSA COO James Runcie to U.S. Senator Elizabeth Warren, December 9, 2013, https://www.warren.senate.gov/files/documents/ED%20Response%20to%20Warren_120913_final.pdf.

[28] The Office of U.S. Senator Elizabeth Warren, "Senator Warren Questions Treasury and ED on Accountability for Sallie Mae Rulebreaking and Violations," December 12, 2013. See ED response, pg. 3, https://www.warren.senate.gov/files/documents/ED%20Response%20to%20Warren_120913_final.pdf

[29] The Office of U.S. Senator Elizabeth Warren, "An Analysis of the Department of Education's Review of Student Loan Servicers Compliance with the Servicemembers Civil Relief Act," August 2015, https://www.warren.senate.gov/files/documents/SCRA_ED_Report_August2015.pdf.

[30] U.S. Senators Patty Murray, Elizabeth Warren, and Richard Blumenthal, "Murray, Warren, Blumenthal Respond to Oversight Report on Education Department's Student Loan Servicers' Compliance Report," March 1, 2016, https://www.warren.senate.gov/newsroom/press-releases/murray-warren-blumenthal-respond-to-oversight-report-on-education-department-and-146s-student-loan-servicers-and-146-compliance-review

[31] Student Borrower Protection Center, "Betsy DeVos Wants to Give a Free Pass to the Student Loan Company That Ripped Off 78,000 Service Members," June 18, 2019, https://protectborrowers.org/navient-free-pass/

[32] The Huffington Post, "America's Student Loan Firm Abused Borrowers and Broke the Law, Officials Say," Shahien Nasiripour, April 27, 2016, https://www.huffpost.com/entry/state-prosecutors-navient_n_57214218e4b01a5ebde47a02?fbclid=IwAR20K9kKDvRFIiOTuVOU8SLhpWcckTs8G2HLx0XAEEBJg0r8_e2PkeB9POs.

[33] Consumer Financial Protection Bureau complaint, January 18, 2017, Case No. 3:17-CV-011-RDM, *Consumer Financial Protection Bureau v. Navient Corporation, et al.*, pg. 11, https://files.consumerfinance.gov/f/documents/201701_cfpb_Navient-Pioneer-Credit-Recovery-complaint.pdf

[34] Ibid., pg. 23. The notice sent to borrowers by mail did not include a date by which renewal was due; for the 75% of borrowers who opted to receive electronic communications, the email message only indicated that they had a new message available and required them to log into Navient's website for any information. These unclear communications resulted in more than 60% of borrowers failing to complete the renewal process on time, leading to increased monthly payments and the addition of unpaid accrued interest to the principal of the loan.

that borrowers who had become disabled, including disabled veterans, had defaulted on their loans.[35] The lawsuit also alleges that Navient repeatedly mishandled monthly payments by misallocating or misapplying payments across borrowers' accounts, resulting in improper late fees, increased interest rates, and inaccurate reports to consumer reporting agencies.[36]

- In 2017, an FSA audit found that Navient call centers steered borrowers to inappropriate repayment plans. According to the audit, Navient offered only forbearance as an option for about 10% of student borrowers that the company spoke to on the phone, leaving them with incomplete information about their repayment options.[37] This report's findings were confirmed by the newly released internal documents, which presented steering borrowers to forbearance as the company's explicit strategy.

- In 2018, a judge ruled that a class action bankruptcy lawsuit against Navient could proceed based on evidence that Navient disguised certain loans that may have been dischargeable in bankruptcy as non-dischargeable student loans and continued to collect on them. In one case, Navient called a borrower 29 times in ten days to collect on a debt that should have been automatically discharged.[38]

- And earlier this year, the Education Department Inspector General released an audit of the FSA's failure to hold student loan servicers accountable, the results of which directly contradicted the Department's previous statements that Navient had been complying with Department of Education requirements. The audit found that "FSA's oversight activities regularly identified instances of servicers' not servicing federally held student loans in accordance with Federal requirements," including a review of Navient calls that showed much higher rates of failure to provide callers with all their payment options than FSA's publicly released monthly reports indicated. However, "FSA management rarely used available contract accountability provisions to hold servicers accountable for instances of noncompliance."[39]

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[35] In fact, the borrowers in question had had their loans fully discharged when they became totally and permanently disabled. This likely negatively affected the credit scores of thousands of disabled borrowers.

[36] Ibid., pg. 39.

[37] "Warren Releases New Evidence of Navient Student Loan Malfeasance," Press Release, November 20, 2018, https://www.warren.senate.gov/oversight/letters/warren-releases-new-evidence-of-navient-student-loan-malfeasance; National Public Radio, "Student Loan Servicer Steered Some Borrowers to Higher-Cost Plans, Government Says," Laurel Wamsley, November 21, 2018, https://www.npr.org/2018/11/21/670039878/student-loan-servicer-steered-some-borrowers-to-higher-cost-plans-government-say.

[38] Plaintiff's Second Amended Complaint, January 26, 2017, Case 15-35586 (DRJ), *Evan Brian Haas, Michael Shahbazi v. Navient Solutions, Inc., Navient Credit Finance Corporation*, pg. 10, https://getoutofdebt.org/wp-content/uploads/2017/10/178138938356_new.pdf Although most student loans are not dischargeable in bankruptcy, loans made for training programs outside traditional accredited Title IV institutions (such as culinary school, flight school, exam prep courses, etc.) may be eligible for discharge. Although Navient disclosed to potential investors that these loans could be dischargeable in bankruptcy, they did not disclose this to student borrowers and instead continued to try to collect on them.

[39] U.S. Department of Education Office of Inspector General, "Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements of Servicing Federally Held Student Loans," February 12, 2019, https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf

Conclusion: The Department Should Not Renew Navient's Contract

In the coming weeks, you will have an important decision to make about whether to renew or extend Navient's ED contract, worth hundreds of millions of dollars, for servicing federal student loans. As you prepare to launch the long-awaited NextGen platform for student loan servicing, press reports indicate that you are considering extending existing contracts while the new system is under development.[40] The timing is unclear, although Navient's current contract expires in December 2019.[41] As you consider these extensions, we urge you not to reward Navient's blatant disregard for borrowers, taxpayers, and the law. Navient's record – and the newly released documents that provide important details about company policies and practices, and the extent to which high-level executives, including the company CEO, were aware of these policies and practices - makes it clear that the company has repeatedly ripped off student loan borrowers, failed to meet contractual requirements, and appeared to violate numerous federal and state laws.[42]

For years, we have called on the Department of Education to protect students and hold Navient accountable for its repeated failings and predatory behavior. It is not too late for you to do so. Navient declared in a 2017 court filing, "there is no expectation that the servicer will 'act in the interest of the consumer,'" and their actions make it clear that they have lived by this mantra, putting their corporate interests first at every opportunity. Navient should not be allowed to take advantage of even one more student loan borrower. We urge the Department to take its obligations to protect student loan borrowers seriously and decline to renew Navient's contract with the Department.

We appreciate your attention to this matter and ask that you provide us with a staff-level briefing regarding your plans for this contract no later than October 24, 2019.

Sincerely,

Elizabeth Warren
United States Senator

Richard Blumenthal
United States Senator

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[40] *New York Times*, "Education Dept. Cancels Plan for New Student Loan System and Will Try Again," Stacy Cowley, December 16, 2018, https://www.nytimes.com/2018/12/16/business/education-dept-cancels-plan-for-new-student-loan-system-and-will-try-again.html

[41] Navient Corporation Annual Report on Form 10-K 2014, https://www.sec.gov/Archives/edgar/data/1593538/000119312515070145/d832950d10k.htm

[42] Politico, "How the Student Loan Industry Lobbied DeVos to Fight State Regulations," Michael Stratford, August 15, 2019, https://www.politico.com/story/2019/08/15/student-loan-devos-lobbying-1464926.