

United States Senate
WASHINGTON, DC 20510

May 28, 2020

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

Dear Secretary DeVos:

We write to express serious concern at reports that Great Lakes Educational Loan Services, Inc. (Great Lakes), one of the U.S. Department of Education's (the Department) federal student loan servicers, provided incorrect payment information to the credit reporting companies for nearly five million federal student loan borrowers in direct violation of federal Coronavirus relief law and potentially in violation of federal consumer protection law. This error likely caused significant financial harm to millions of federal student loan borrowers, including lowered credit scores and resulting harm, such as denial or increased cost of credit and other significant financial harm.¹ We demand the Department take immediate action to fully remedy this issue, hold Great Lakes accountable for this inexcusable blunder, and provide Congress with a detailed accounting of how this breakdown occurred.

In March 2020, Congress passed The *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act), which included provisions to provide immediate, temporary relief to federal student loan borrowers during the COVID-19 global public health and economic emergency.² Among the federal student loan provisions in the CARES Act, Congress suspended payments for all borrowers with federally-held loans through September 30, 2020, meaning these borrowers are not required to make any monthly payments towards their outstanding federal student loan interest or principal during this time period.³ Congress also suspended interest accrual and prohibited the Department from engaging in involuntary collections activity, such as garnishment of wages, tax refunds, and Social Security benefits for this same time period.

Importantly, the CARES Act explicitly states that “[d]uring the period in which the Secretary suspends payments... **the Secretary shall ensure** that, for the purpose of reporting information about the loan to a consumer reporting agency, **any payment that has been suspended is treated as if it were a regularly scheduled payment made by a borrower.**”⁴ Despite this explicit directive from Congress to ensure that borrowers' credit not be adversely affected by this

¹ Stratford, Michael, “Student loan company error on emergency relief hits 5M borrowers,” *Politico*, May 20, 2020, <https://www.politico.com/news/2020/05/20/emergency-relief-student-loan-272334>.

² The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136.

³ CARES Act, Section 3513.

⁴ CARES Act, Section 3513(d). Emphasis added.

suspension of payments, millions of federal student loan borrowers with loans serviced by Great Lakes appear to have had their credit adversely affected under your supervision.

Great Lakes, which is owned by Nelnet, Inc. (another federal student loan servicer), erroneously reported the CARES Act suspension of borrowers' monthly payments as a "deferment" for 4.8 million federal student loan borrowers to credit reporting companies.⁵ This mistake appeared on these borrowers' credit reports and potentially triggered a lower credit score for millions of borrowers—a mistake the Department dismissively characterized as a "coding error."⁶ The errors initially appeared in credit information Great Lakes sent to credit reporting companies regarding borrowers' federal student loans in April. The Consumer Financial Protection Bureau (CFPB or the Bureau) first identified the error through early consumer complaints to the Bureau.⁷

The Department reportedly estimates that Great Lakes' credit reporting errors affected about two-thirds of the 7.3 million borrowers with federal loans serviced by Great Lakes.⁸ Great Lakes eventually acknowledged this mistake in a recent public apology for "the inconvenience caused by this situation," and committed to resolve the issue "quickly."⁹ And according to the Department, on May 15, 2020, Great Lakes sent corrected information to the three major credit reporting companies — Experian, TransUnion, Innovis, and Equifax.¹⁰ The company also announced that it's working with credit reporting companies to resolve the issue, but claimed they "do not believe our reporting has impacted actual consumer credit scores provided by those agencies."¹¹ The Department echoed this dubious assertion, claiming that "errors resulted in little or no damage to borrowers' credit scores."¹²

However, despite efforts by Nelnet, Great Lakes, and the Department to downplay this catastrophe and their insistence that these mistakes did not harm borrowers' credit reports, some of us have heard directly from constituents who have in fact experienced lower credit scores as a result of this error. Some affected borrowers have shared their experiences with the press.¹³ The CFPB has received complaints from borrowers about the errors. Affected student loan borrowers have filed a class action lawsuit against Great Lakes alleging their credit scores were lowered by these errors.¹⁴ Additionally, the CFPB and state law enforcement officials and

⁵ Swaminathan, Aarthi. "Student borrowers sue over 'illegally damaged' credit scores amid coronavirus pandemic." *Yahoo Finance*, May 21, 2020, https://finance.yahoo.com/news/student-borrowers-sue-credit-scores-coronavirus-pandemic-114704744.html?acid=twitter_yfsocialtw_11gbd0noiom

⁶ Stratford, Michael. *Politico*. May 20, 2020.

⁷ *Id.*

⁸ *Id.*

⁹ Tweet from Great Lakes, May 14, 2020, <https://twitter.com/MyGreatLakes/status/1260969866225385474>

¹⁰ Stratford, Michael. *Politico*. May 20, 2020.

¹¹ *Id.*

¹² *Id.*

¹³ Berman, Jillian. "5 million student-loan borrowers may see their credit scores fall after CARES Act paused loan payments — 'It's another battle.'" *MarketWatch*, May 26, 2020, <https://www.marketwatch.com/story/up-to-5-million-student-loan-borrowers-may-have-had-their-credit-scores-drop-after-the-cares-act-paused-student-loan-payments-its-another-battle-to-have-to-fight-2020-05-22?mod=jillian-berman>

¹⁴ Katherine Sass and Cody Hounanian vs. Great Lakes Educational Loan Services, Inc., Equifax Informat Services, LLC, Trans Union, LLC, Experian Information Solutions, Inc., and Vantagescore Solutions, LLC., Case 3:20-cv-03424 D, May 2020, https://protectborrowers.org/wp-content/uploads/2020/05/sass_v_great_lakes-1.pdf.

regulators are also reportedly looking into the credit reporting errors and their effect on borrowers.¹⁵ Moreover, the Department has acknowledged that it does not know how long it will take for borrowers' credit reports to reflect any changes by the correction.¹⁶

Credit reports are critical documents in borrowers' financial lives. Lenders, landlords, and employers use them to assess the credit worthiness of borrowers, consumers, tenants, or potential employees, or to otherwise assess how reliable an individual is with regard to their financial obligations. It is critically important that reports be accurate—especially in the middle of a pandemic and economic crisis. It is difficult to know how far reaching the consequences of this error will be for millions of borrowers who might attempt to purchase a home, start a new job, or take out a loan to stay financially afloat during this economic crisis. Any error that results in an inaccurate score must be immediately remedied, and those responsible for such mistakes must be held accountable.

The Department has a responsibility to ensure that its servicers of federal student loans are following the law. The Department reportedly ordered its servicers to implement CARES Act provisions through contractual directives. According to *Politico*, the directive for this matter stated clearly that, “[s]ervicers shall report to credit reporting agencies **as if a regularly scheduled payment was made by the borrower**...reporting should indicate the borrower is current and have made their monthly payment of zero dollars, similar to zero-dollar IDR.”¹⁷ The Department's Office of Federal Student Aid (FSA), which oversees its federal student loan servicers, reportedly hasn't made a “formal determination” as to whether Great Lakes violated the Department's directives.¹⁸ But it appears clear that Great Lakes failed to comply with this directive, which harmed borrowers and could be a violation of its contract with the Department. This error could also be a violation of the *Fair Credit Reporting Act*, which prohibits furnishers of credit information like Great Lakes to from reporting information if a company “knows or has reasonable cause to believe that the information is inaccurate.”¹⁹

The Department has acknowledged that “[p]roviding incorrect information to credit reporting companies is totally unacceptable.”²⁰ We agree – this failure *is* totally unacceptable. We also believe it is the Department's responsibility to properly implement the law, to ensure its servicers and contractors follow the law, and to hold them accountable when they fail to do so. Despite this responsibility, on May 21, 2020, Federal Student Aid Chief Mark Brown doubled down on past efforts to deflect responsibility, blaming “third-party credit service companies” and failing to even identify Great Lakes by name in an alert that purports to be “information for borrowers.”²¹

¹⁵ Stratford, Michael. *Politico*. May 20, 2020.

¹⁶ *Id.*

¹⁷ *Id.* Emphasis Added.

¹⁸ *Id.*

¹⁹ 15 U.S. Code § 1681s–2(a)(1)(A)

²⁰ Stratford, Michael. *Politico*. May 20, 2020.

²¹ Tweet from FSA Chief Operating Officer Mark A. Brown, May 21, 2020
<https://twitter.com/MarkABrown19/status/1263614517759692801>; Federal Student Aid, May 2020,
<https://studentaid.gov/announcements-events/credit-issue>.

The Department has also said that once the issue is resolved, it will “assess if there were mistakes made, and if there were mistakes made, we’ll hold the appropriate parties accountable where we have the authorities to do so.”²² In order to ensure that the Department honors that commitment, we request the following actions:

- Take immediate action to fully remedy this issue, including through direct communications with the credit reporting companies and direct communication with affected borrowers;
- Ensure the CFPB has access to all necessary information, including all relevant documents, data, and borrower files requested by the Bureau, to conduct an examination of servicers’ compliance with the law, including the *Fair Credit Reporting Act*, and to identify any areas of noncompliance with applicable federal consumer protection laws;
- Investigate whether Great Lakes properly followed the Department’s directives and make a “formal determination” as to whether Great Lakes violated these directives or its contract with the Department;
- Take immediate and aggressive action to hold Great Lakes accountable for this mistake, including through any consequences or penalties allowed under the Department’s contact with Great Lakes, which may include the reduction of loan volume;
- Take no action to oppose or obstruct any borrowers’ lawsuit(s) against Great Lakes, and allow the production of any relevant documents or materials in the course of such litigation; and
- Conduct an audit of all servicers’ compliance with the CARES Act to ensure this error is isolated to Great Lakes and to identify any other areas of noncompliance with the law, the Department’s directives, or contracts with the Department;
- Report the results of any investigation or audit related to this matter to the public and to Congress, including any corrective action the Department takes; and
- Provide our offices with:
 - A complete timeline of all actions taken between March 27, 2020 and today related to the implementation of Sec. 3513(d) of the CARES Act by the Department (including FSA) and federal student loan servicers, including copies of any applicable contract modifications, guidance, or other written communications;
 - All communications between the Department and any of the following financial companies between March 27, 2020 and today: Credit Karma, Experian, Equifax, TransUnion, Fair Isaac Corporation, Innovis, or VantageScore LLC;
 - All communications between the Department and the CFPB related to the issues identified in this letter; and
 - All summary of all communications between Great Lakes and/or Nelnet and any of the following financial companies related to the issues identified in this letter: Credit Karma, Experian, Equifax, TransUnion, Fair Isaac Corporation, Innovis, or VantageScore LLC.

²² Stratford, Michael. *Politico*. May 20, 2020.

We will continue to holding the Department accountable to serving the needs of federal student loans borrowers during this crisis. Please provide an update on these items and the documents requested by June 19, 2020.

Sincerely,

Elizabeth Warren
United States Senator

Jeffrey A. Merkley
United States Senator

Sherrod Brown
United States Senator

Richard J. Durbin
United States Senator

Richard Blumenthal
United States Senator

Tina Smith
United States Senator

CC: Ms. Sandra D. Bruce, Acting Inspector General, Office of Inspector General, U.S.
Department of Education
Gen. Mark Brown, Chief Operating Officer, Office of Federal Student Aid, U.S.
Department of Education