

# United States Senate

WASHINGTON, DC 20510

May 14, 2019

Mr. Jeffrey R. Noordhoek  
Nelnet, Inc.  
121 South 13th Street  
Lincoln, NE 68508

Dear Mr. Noordhoek:

We are writing regarding disturbing information we have recently obtained about the refusal of federal student loan servicers to cooperate with Consumer Financial Protection Bureau (CFPB or “the Bureau”) oversight and supervision after receiving December 2017 guidance from the U.S. Department of Education (ED or “the Department”). In response to a letter we sent in April 2019, CFPB Director Kraninger revealed, “student loan servicers have declined to produce information requested by the Bureau for supervisory examinations,”<sup>1</sup> following the release of the ED guidance. We request that, to the extent your company is failing to cooperate with the CFPB, you cease this obstruction immediately, and we ask that you provide answers to our questions on this matter no later than May 28, 2019.

On December 27, 2017, the Department issued a policy memorandum entitled, “Ownership of and Access to U.S Department of Education Records and Data,” which provided guidance to all federal loan servicers, private collection agencies, and other Department contractors that participate in federal student aid programs regarding records.<sup>2</sup> This guidance required, “any request from any third party for Department records to which a contractor has access must be made directly to the Department.”<sup>3</sup>

The December 2017 guidance effectively directed student loan servicers to withhold information from state and federal law enforcement agencies seeking to enforce consumer protection laws, including the CFPB, state Attorneys General, and other state and federal banking regulators. Last month, a coalition of 22 state Attorneys General wrote to the Department, revealing that the Department has rejected routine requests for student loan information by states and urging the Department to reverse this policy guidance.<sup>4</sup>

State and federal law enforcement must have access to the information they need to do their jobs and protect student loan borrowers from illegal, unfair, abusive, or deceptive practices,

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<sup>1</sup> Letter to Sens. Warren, Brown, Gillibrand, Durbin, Whitehouse, and Menendez from CFPB Director Kathy Kraninger, April 23, 2019.

<sup>2</sup> Memorandum from Patrick A. Bradfield, “Ownership of and Access to U.S. Department of Education Records and Data,” Department 27, 2017, <https://static.politico.com/51/1f/0f805fd04c2eb035bcd79f9200be/december-27-2017-servicer-memo.pdf>.

<sup>3</sup> *Ibid.*

<sup>4</sup> Letter from Colorado Attorney General Phil Weiser, et. al., to ED Secretary Betsy DeVos, April 4, 2019, <http://www.marylandattorneygeneral.gov/News%20Documents/Final%20AGs%20Letter%20to%20DOE%204.4.19.pdf>.

and to enforce consumer protection laws that fall outside of the Department’s jurisdiction. No Department policy guidance can absolve servicers of their legal responsibility to comply with state and federal consumer protection law.

On April 2, 2019, several Senators wrote to CFPB Director Kathy Kraninger seeking information about CFPB’s ongoing oversight of student loan servicers, and the effects of the December 2017 guidance and other new ED and CFPB policies on these efforts.<sup>5</sup>

Director Kraninger responded to this letter on April 23, 2019, confirming that the CFPB “has conducted several exams of student loan servicers since December 2017.”<sup>6</sup> This response, however, also raised several concerns about the consequences of ED policies put in place over the last several years, including the Department’s termination of a CFPB-ED Memorandum of Understanding and the December 2017 policy guidance:

Since December 2017, student loan servicers have declined to produce information requested by the Bureau for supervisory examinations related to Direct Loans and Federal Family Education Loan Program (FFELP) loans held by the Department based on the Department’s guidance.<sup>7</sup>

The response also noted, “the Bureau has pursued options that would have permitted it to obtain information from student loan servicers necessary for supervisory examinations of Direct loans and Department-held FFELP loans.”<sup>8</sup>

This is disturbing news. It reveals that the Department, under Secretary DeVos, has removed the most potent weapon from the CFPB’s arsenal to fight illegal behavior and mistreatment of borrowers by student loan servicers, and that federal student loan servicers, who are paid by the federal government, are ignoring federal regulators’ requests for information. It also appears to indicate that – at a time when independent watchdogs have identified major and ongoing compliance problems with the student loan program and the failure of the Department to adequately oversee the program – servicers have been complicit in these efforts.<sup>9</sup>

To address our concerns about this matter, we ask that you provide answers to the following questions:

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<sup>5</sup> Letter to CFPB Director Kathy Kraninger from Sens. Warren, Brown, Gillibrand, Durbin, Whitehouse, and Menendez, April 3, 2019.

<sup>6</sup> Letter to Sens. Warren, Brown, Gillibrand, Durbin, Whitehouse, and Menendez from CFPB Director Kathy Kraninger, April 23, 2019.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Department of Education Inspector General, Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans,” Control Number ED-OIG/A05Q0008, February 2019, <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf>.

1. When and on how many occasions since December 2017 has the CFPB requested data or information from your company in connection with examination or supervision activities?
  - a. Please provide all written communications between your company and the Department since December 2017 in connection with CFPB examination or supervision activities.
2. According to an April 9, 2018 letter from the CFPB to a federal judge, the CFPB requested information during discovery in its enforcement action against Navient; however, the Department instructed Navient to decline to provide this information and indicated that CFPB needed to obtain a court order to get it.<sup>10</sup> A federal judge had to intervene to compel Navient to comply with the Bureau's request for documents in discovery during the course of the Bureau's law enforcement action.<sup>11</sup>
  - a. When and on how many occasions since December 2017 has the CFPB requested or demanded data or information from your company in connection with an investigation, lawsuit, or other enforcement action related to federal student loans?
  - b. Please provide all written communications between your company and the Department since December 2017 in connection with any investigation, lawsuit, or other enforcement action by the CFPB.
3. According to July 2018 court documents, the Pennsylvania Higher Education Assistance Agency has resisted the Connecticut Department of Banking's request for information, relying also on the Department's December 2017 memorandum.<sup>12</sup>
  - a. When and on how many occasions since December 2017 has a state banking regulator requested data or information from your company in connection with examination or supervision activities related to federal student loans?
  - b. Please provide all written communications between your company and the Department since December 2017 in connection with examination or supervision activities by state banking regulators.
4. According to August 2018 court documents, Navient has also denied Attorneys General in Washington and Pennsylvania access to important documents in discovery during state enforcement actions against the company, again relying also on the Department's

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<sup>10</sup> Letter from CFPB to The Honorable Judge Robert D. Mariani. Re: CFPB v. Navient Corp., et al., Case No. 3:17-CV-00101-RDM. April 9, 2018.

<https://www.courtlistener.com/recap/gov.uscourts.pamd.110329/gov.uscourts.pamd.110329.84.0.pdf>

<sup>11</sup> Memorandum Opinion, The Honorable Judge Robert D. Mariani. CFPB v. Navient Corp., et al., Case No. 3:17-CV-00101-RDM. May 4, 2018.

[https://www.courtlistener.com/recap/gov.uscourts.pamd.110329/gov.uscourts.pamd.110329.88.0\\_1.pdf](https://www.courtlistener.com/recap/gov.uscourts.pamd.110329/gov.uscourts.pamd.110329.88.0_1.pdf)

<sup>12</sup> Complaint for Declaratory and Injunctive Relief, Plaintiff Pennsylvania Higher Education Assistance Agency v. Jorge L. Perez, in his official capacity as Commissioner of the Connecticut Department of Banking, et al., Case 3:18-cv-01114-MPS. July 2, 2018.

<https://www.courtlistener.com/recap/gov.uscourts.ctd.126659/gov.uscourts.ctd.126659.1.0.pdf>

December 2017 memorandum.<sup>13</sup> The courts have consistently ordered Navient to produce these records and comply with law enforcement.<sup>14</sup>

- a. When and on how many occasions since December 2017 has a state Attorney General requested or demanded data or information from your company in connection with any investigation, lawsuit, or other enforcement action related to federal student loans?
  - b. Please provide all written communications between your company and the Department since December 2017 in connection with any investigation, lawsuit, or other enforcement action by a state Attorney General.
5. Has your company failed to provide all requested information on any of the occasions referred to in Questions 1-4? If so,
- a. On what occasion(s) did your company fail to provide requested information?
  - b. What requested information did your company fail to provide?
  - c. Why did your company fail to provide this requested information?
  - d. Has your company provided this information to the Department?
  - e. Has your company provided this information to any other federal or State entity, such as a state's Attorney General or state banking regulator?
  - f. In cases where your company has refused to provide information requested by CFPB, did the Bureau pursue other options? And if so, what were these options and what was your response?
6. Did you communicate with ED officials about the Privacy Act guidance in advance of the December 2017 release?
- a. If so, what was the nature of that communication?
  - b. Please provide copies and records of all e-mail, memoranda, or any other verbal or written communications of or related to these discussions.
7. Have you communicated with ED officials about the Privacy Act guidance since the December 2017 release?
- a. If so, what was the nature of that communication?
  - b. Please provide copies and records of all e-mail, memoranda, or any other verbal or written communications of or related to these discussions.
8. Please provide copies of all internal communications related to CFPB compliance matters, state banking regulator compliance matters, or state Attorneys General actions and the December 2017 Education Department Privacy Act guidance.


Please provide answers no later than May 28, 2019.

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<sup>13</sup> Letter from Pennsylvania Attorney General Josh Shapiro to The Honorable Robert D. Mariani, Re: Commonwealth of Pennsylvania v. Navient Corporation et al., No.3:17-cv-01814-RDM. August 17, 2018. <https://www.courtlistener.com/recap/gov.uscourts.pamd.113587/gov.uscourts.pamd.113587.35.0.pdf>;

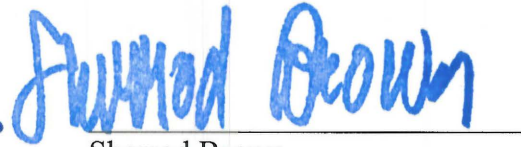
<sup>14</sup> Memorandum Opinion, The Honorable Judge Robert D. Mariani. Commonwealth of Pennsylvania v. Navient Corp., et al., Case No. 3:17-cv-01814-RDM. October 17, 2018. <https://www.courtlistener.com/recap/gov.uscourts.pamd.113587/gov.uscourts.pamd.113587.44.0.pdf>

Sincerely,



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Elizabeth Warren  
United States Senator




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Sherrod Brown  
United States Senator



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Kirsten Gillibrand  
United States Senator



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Richard J. Durbin  
United States Senator



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Sheldon Whitehouse  
United States Senator