

# United States Senate

WASHINGTON, DC 20510

April 3, 2019

Kathleen Kraninger  
Director  
Consumer Financial Protection Bureau  
1700 G St. N.W.  
Washington, D.C. 20552

Dear Director Kraninger:

We write today to request additional information about oversight by the Consumer Financial Protection Bureau (CFPB or “the Bureau”) of the student loan industry, and, specifically, the activity of student loan companies and servicers involved in the administration of the federal Public Service Loan Forgiveness Program (PSLF).

Regulating the student loan industry is a core part of the Bureau’s consumer protection mission. Congress created CFPB to serve as an independent federal financial regulator with broad regulatory and supervisory responsibilities for bank and nonbank providers of consumer financial products and services.<sup>1</sup> American consumers collectively owe more than \$1.5 trillion in student loan debt, making student loans the second-largest market overseen by the Bureau after mortgages.

The student loan servicing companies paid to handle consumers’ billing and payment issues are at the center of this market. These companies, including those under contract with the U.S. Department of Education (ED), are considered “covered persons” under Title X of the Dodd-Frank Act, giving CFPB broad oversight authority over their actions.<sup>2</sup> The Bureau finalized a rule clarifying this authority in 2013.<sup>3</sup>

For years, a range of law enforcement agencies, government auditors, and nonprofit organizations have identified problems with the implementation of the PSLF program by ED, and by the servicing companies paid to administer the program. For example, in September 2018, the Government Accountability Office issued a report recommending the ED provide additional and better information to borrowers struggling to navigate the PSLF program.<sup>4</sup> In 2017, the Bureau updated its examination procedures to clarify further that its supervision program oversees the administration of PSLF by these private companies, explaining:

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<sup>1</sup> 12 USC 5511

<sup>2</sup> 12 USC 5481(a)

<sup>3</sup> In 2013, the Bureau finalized a rule defining “larger participants” in the student loan servicing market and announced the expansion of its student loan examination program to include the largest student loan servicers, including those contracted by the U.S. Department of Education to handle student loans owned by the federal government. 12 CFR 1090.106

<sup>4</sup> U.S. Government Accountability Office, “Public Service Loan Forgiveness: Education Needs to Provide Better Information for the Loan Servicer and Borrowers,” September 27, 2018 <https://www.gao.gov/products/GAO-18-547>

The CFPB has also updated its guidelines to prioritize its supervision of potentially illegal practices used by student loan servicers to administer loan forgiveness benefits. Bureau supervision examinations will look at whether servicers tell eligible consumers what they need to do to qualify for forgiveness, warn consumers who believe they are on track to qualify when they are not, provide clear information about the loan forgiveness program, and accurately evaluate borrowers eligibility and progress toward loan forgiveness. This will be part of the CFPB's regular oversight of these companies' compliance with federal consumer law.<sup>5</sup>

Since that time, a series of enforcement actions and lawsuits brought by state law enforcement officials (including those in Massachusetts and New York) and by private plaintiffs across the country have alleged that these loan servicing companies routinely and flagrantly deceive borrowers who work in public service and are potentially eligible for forgiveness. These enforcement actions and lawsuits also have alleged that this conduct is a deliberate tactic to deny borrowers their rights under federal law.<sup>6</sup> These lawsuits mirror a wide range of student loan servicing breakdowns identified by the CFPB<sup>7</sup> and by organizations representing public service workers and borrowers.<sup>8</sup>

As a complaint filed recently against Affiliated Computer Services (ACS) by the New York Attorney General and the New York Department of Financial Services explains:

ACS managers directed representatives **not** to provide information on PSLF eligibility criteria to borrowers who contacted ACS seeking information about the program...Records of communications with borrowers indicate that ACS representatives told borrowers who asked about the program that their loans did not qualify for PSLF, without further information.<sup>9</sup>

The allegations in this complaint and others filed in 2018 indicate widespread PSLF program abuses across the student loan industry. These reports raise numerous questions about the diligence of the oversight provided by the Bureau. In particular, we are concerned that CFPB leadership has abandoned its supervision and enforcement activities related to federal student

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<sup>5</sup> <https://www.consumerfinance.gov/about-us/newsroom/cfpb-spotlights-borrower-complaints-about-student-loan-servicers-mishandling-public-service-loan-forgiveness-program/>

<sup>6</sup> Commonwealth of Massachusetts v. Pennsylvania Higher Education Assistance Agency, <https://assets.documentcloud.org/documents/3943786/Massachusetts-v-PHEAA-Complaint.pdf>, [https://www.dfs.ny.gov/about/ea/ea190104\\_conduent.pdf](https://www.dfs.ny.gov/about/ea/ea190104_conduent.pdf); Kathryn Hyland, et. al v. Navient Corporation and Navient Solutions, LLC, <https://www.courtlistener.com/recap/gov.uscourts.nysd.502032/gov.uscourts.nysd.502032.1.0.pdf>

<sup>7</sup> Consumer Financial Protection Bureau, "Stay on track while giving back: the cost of student loan servicing breakdowns for people serving their communities," June 2017, [https://files.consumerfinance.gov/f/documents/201706\\_cfpb\\_PSLF-midyear-report.pdf](https://files.consumerfinance.gov/f/documents/201706_cfpb_PSLF-midyear-report.pdf)

<sup>8</sup> <https://protectborrowers.org/aft-and-sbpc-launch-joint-investigation-into-mismanagement-and-industry-abuses-in-federal-public-service-loan-forgiveness-program/>

<sup>9</sup> Student Borrower Protection Center, "AFT and SBPC Launch Investigation into Mismanagement and Industry Abuses in Federal Student Loan Forgiveness Program," December 20, 2018. [https://www.dfs.ny.gov/about/ea/ea190104\\_conduent.pdf](https://www.dfs.ny.gov/about/ea/ea190104_conduent.pdf)

loan servicers. This suggests a shocking disregard for the financial wellbeing of our nation's public servants, including teachers, first responders, and members of the military.<sup>10</sup>

To clarify the role that the Bureau has played in overseeing student loan servicers handling of PSLF since December 2017, when former Interim Director Mulvaney assumed control of the CFPB, please provide detailed answers to the following questions no later than April 23, 2019:

- 1) In June 2017, CFPB released updated guidelines to clarify examination procedures for student loan servicers' administration of PSLF.<sup>11</sup> CFPB released these documents to provide affected industries and consumers with insight into the scope and substance of CFPB examinations. As of the date of this letter, the Bureau's website notes that these guidelines are still included as part of the Bureau's examination procedures.<sup>12</sup>
  - a) Is the document Education Loan Examination Procedures (Updated June 22, 2017)<sup>13</sup> still in use?
  - b) Does the document still include questions relevant to the oversight of PSLF, including but not limited to the following questions in Module 3- Student Loan Servicing?
    - *PSLF Q1-Q15*
    - *Billing Statements and Payment Histories Q9-Q10*
    - *Communications about repayment options Q11*
    - *Transfer of Servicing Q2*
    - *Borrower Benefits Q7-Q9*
  - c) How many examinations have taken place since December 2017 during which examiners have used some or all of the questions identified above? Please note specifically the number of examinations in which an examiner has used each of the above questions.<sup>14</sup> In your response please describe whether the examiner used these questions when overseeing servicers handling of 1) Direct Loans, 2) older federal loans held by private creditors (commercial FFEL) or 3) both Direct Loans and commercial FFEL?

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<sup>10</sup> See, e.g., U.S. Department of Defense, *Information Paper: HR4508, the Promoting Real Opportunity, Success, and Prosperity through Education Reform (PROSPER) Act (January 10, 2018)*, [https://www.insidehighered.com/sites/default/server\\_files/media/Department-of-Defense-on-PROSPER-Act.pdf](https://www.insidehighered.com/sites/default/server_files/media/Department-of-Defense-on-PROSPER-Act.pdf). (“...the Public Service Loan Forgiveness (PSLF) program has been an important recruitment and retention tool for the military to compete with civilian sector, predominantly in specialty fields, such as the Judge Advocates General Corps, for whom graduate degrees are required. The absence of this program, particularly in a strong economy, makes recruitment and retention especially difficult in specialized occupations.”).

<sup>11</sup> Consumer Financial Protection Bureau, “Education Loan Examination Procedures,” CFPB, June 2017. [https://files.consumerfinance.gov/f/documents/201706\\_cfpb\\_Education-Loan-Servicing-Exam-Manual.pdf](https://files.consumerfinance.gov/f/documents/201706_cfpb_Education-Loan-Servicing-Exam-Manual.pdf)

<sup>12</sup> In August 2018, CFPB updated its comprehensive examination procedures on consumerfinance.gov. This was included as part of this update. [https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb\\_supervision-and-examination-manual.pdf](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual.pdf)

<sup>13</sup> *Id.*

<sup>14</sup> Module 3, *PSLF Q1-Q15*, as well as *Billing Statements and Payment Histories Q9-Q10*, *Communications about repayment options Q11*, *Transfer of Servicing Q2*, and *Borrower Benefits Q7-Q9*.

- 2) In December 2017, ED instructed its student loan servicing contractors that they should not produce documents directly to other government agencies that may seek information to support investigations or oversight.<sup>15</sup>
- a) On how many occasions has CFPB sought documents, data, or other information from student loan services since this memorandum was issued?
  - b) Have any student loan servicers declined to provide documents, data, or other information to CFPB examiners since this memorandum was issued? Please include any relevant documentation or correspondence related to such a denial.
  - c) Have any student loan servicers denied CFPB examiners access or information necessary to conduct any specific element (e.g. file review, call monitoring) or aspect (e.g. PSLF) of any examination since this memorandum was issued? Please include any relevant documentation or correspondence related to such a denial.
  - d) Has CFPB made any changes to planned examination scoping or prioritization in response to the issuance of this memorandum or any other communication by the Department of Education that certain student loan servicers would be prohibited from providing documentation to CFPB examiners? Please include any relevant documentation or correspondence related to such a decision, including all correspondence between CFPB and ED.
- 3) In 2015, it was reported that CFPB was investigating ACS, then a division of Xerox.<sup>16</sup> Since that time, the Bureau has neither announced an enforcement action against ACS nor has it acknowledged publicly that an investigation was closed.
- a) Is ACS still under investigation by CFPB?
  - b) Was CFPB aware of the problems alleged by the New York Attorney General and the New York Department of Financial Services in its January 2019 complaint?
  - c) At any point between 2015 and the present, did CFPB notify ACS that it was investigating any claim substantially similar to one that was included in this settlement? Please note whether such a notification was included in a Notice and Opportunity to Respond and Advise (NORA) letter, a Potential Action and Request for Response (PARR) letter, a settlement demand, or any other official or unofficial communication between CFPB and ACS. Please provide all relevant documents, correspondence, and other information related to such a notification.
  - d) Between December 2017 and January 2019, did Bureau leadership take any action to narrow, limit, or reduce the scope of any investigation by the Bureau into illegal student loan servicing practices by ACS? If so, please provide all relevant documents, correspondence, and other information related to such a decision.

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<sup>15</sup> Politico, "Memorandum on Ownership of and Access to U.S. Department of Education Records and Data," December 2017, <https://static.politico.com/51/1f/0f805fd04c2eb035bcd79f9200be/december-27-2017-servicer-memo.pdf>

<sup>16</sup> BuzzFeed, "Xerox Under Federal Investigation Over Student Loan Business," Molly Hensley-Clancy, November 2, 2015. <https://www.buzzfeednews.com/article/mollyhensleyclancy/xerox-under-federal-investigation-over-student-loan-business>

- 4) The Bureau has had no formal information-sharing agreement in place with the U.S. Department of Education since August 2017, including no framework to handle the sharing of confidential information related to its oversight of ED-contracted loan servicers.<sup>17</sup>
- a) What is the understanding between the agencies related to information-sharing regarding student loan servicers?
  - b) Are discussions in place to develop a new information sharing agreement? If so, what is the status of these discussions?
  - c) Currently, when CFPB identifies illegal practices, is it able to share this information with the Department of Education?
  - d) Currently, when ED identifies illegal practices that violate laws under the Bureau's jurisdiction, is it able to share this information with the Bureau?
  - e) Has such information-sharing taken place since December 2017? To the extent such information would not compromise any ongoing investigations, please provide all related correspondence between CFPB and ED during this period.

Please contact our offices if you have any questions.

Sincerely,



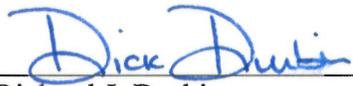
Elizabeth Warren  
United States Senator



Sherrod Brown  
United States Senator



Kirsten Gillibrand  
United States Senator



Richard J. Durbin  
United States Senator



Sheldon Whitehouse  
United States Senator



Robert Menendez  
United States Senator

<sup>17</sup> The Education Department eliminated a previous information sharing agreement in September 2017.  
[https://edworkforce.house.gov/uploadedfiles/2017-09-01\\_signed\\_letter\\_to\\_cfpb.pdf](https://edworkforce.house.gov/uploadedfiles/2017-09-01_signed_letter_to_cfpb.pdf)