

United States Senate

March 3, 2016

Dr. John B. King, Jr.
Acting Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

Dear Acting Secretary King:

In May 2014, the Department of Justice (DOJ) and Federal Deposit Insurance Corporation (FDIC) reached a \$100 million settlement with student loan servicer Sallie Mae, now known as Navient, for "intentional [and] willful violations of federal laws that capped servicemembers student loan interest rates."¹ Despite this settlement, Navient has continued to service millions of federal student loans. Instead of acting to penalize the company or reduce its role in servicing millions of loans, the Department announced at the time that it would conduct its own separate investigation of Navient and other major student loan servicers.

The results of that investigation were released on May 26, 2015, alongside the public statement from the Department concluding, inexplicably, that "in less than 1% of cases, borrowers were incorrectly denied the 6 percent interest rate cap required by the law."² No action was taken against Navient or any other major student loan servicers.

Even the most cursory examination of the Department's investigation indicated that it was seriously flawed. I raised my concerns about the methodology and conclusions of the analysis in an August 25, 2015 staff report, and along with Senators Patty Murray (D-WA) and Richard Blumenthal (D-CT) asked the Department's independent Inspector General to conduct its own review of both the investigation and the Department's statements about its conclusions.³

¹ Department of Justice, Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans (May 13, 2014) (www.justice.gov/opa/pr/justice-department-reaches-60-million-settlementsallie-mae-resolve-allegations-charging); FDIC, FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act (May 13, 2014) (www.fdic.gov/news/news/press/2014/pr14033.html)

² Department of Education, U.S. Department of Education Completes Review of Major Loan Servicers (May 26, 2015) (www.ed.gov/news/press-releases/us-department-education-completes-review-major-student-loan-servicers).

³ Sen. Elizabeth Warren, An Analysis of the Department of Education's Review of Student Loan Servicers' Compliance with the Servicemembers Civil Relief Act (Aug. 2015) (http://www.warren.senate.gov/files/documents/SCRA_ED_Report_August2015.pdf).

That review was released this week. It concludes that there were “flaws in the Department’s sampling design...errors in the program reviews it conducted, and inconsistent and inadequate corrective actions for the errors it identified.”⁴ The Inspector General further found that the Department’s public statements describing the findings in May of 2015 were “unsupported and inaccurate.”⁵

It has been nearly two years since Navient settled with two federal agencies for cheating tens of thousands of active-duty servicemembers by overcharging them on their student loans while they were on deployment serving their country. To date, the Department has done nothing but generate excuses for why it will not act to hold Navient accountable, and has put no serious effort into trying to remedy – or even identify – this problem to the extent it occurred across student loan servicers during the time period in question.

This week’s independent review is a stunning indictment of the Department of Education’s oversight of student loan servicers, exposing the extraordinary lengths to which the Department will go to protect these companies when they break the law. The thousands of servicemembers who were cheated deserve far better. These findings also raise serious questions about whether the Department and its Office of Federal Student Aid can be trusted to protect the millions of borrowers under its care.

Attached, please find a copy of a portion of the written questions that I have submitted as part of the official record for your February 25, 2016 confirmation hearing before the Health, Education, Labor and Pensions, which relate to this incident. If confirmed as the next head of the Department of Education, you will be responsible for ensuring that private companies who contract with the Department to participate in the student loan program follow the law and are held accountable when they cheat borrowers. We need to get to the bottom of how this happened — and who allowed it to happen — to ensure that it does not happen again.

Sincerely,



Elizabeth Warren
United States Senator

⁴ Department of Education Inspector General, Review of Education Department Servicemembers Civil Relief Act Review (Feb. 29, 2016).

⁵ Department of Education Inspector General, Review of Education Department Servicemembers Civil Relief Act Review (Feb. 29, 2016).

OFFICE OF SENATOR ELIZABETH WARREN

Additional Questions for the Record: Nomination of Dr. John King to serve as Secretary of Education Regarding the Department's Review of Student Loan Servicers and the Education Inspector General 3/1/2016 Report⁶

1. How and why did the Department make the decision not to rely on DOJ's and the FDIC's investigation, and instead conduct separate reviews of Navient's conduct to determine whether Navient should be subject to penalties in the student loan program as a result of its settlement with DOJ and the FDIC?
2. Given that neither the Department of Education nor its Office of Federal Student Aid – the Department's student loan bank –administers or enforces the SCRA, why was this review conducted by the Office of Federal Student Aid, and not a certified auditor with SCRA expertise or an arm of the Department that does not regularly engage with student loan servicers?
3. Did the Office of Federal Student Aid seek input on the scope of the review from the Department of Justice or the Consumer Financial Protection Bureau's Office of Servicemember Affairs, or from elsewhere in the Department of Education?
 - a. If not, why not?
 - b. If so, how did their input factor into the program review?
4. When the Department was first briefed by both the Consumer Financial Protection Bureau and Department of Justice on possible SCRA violations by Sallie Mae/Navient?
 - a. When did officials at the Department of Education know that federal investigators had found evidence that Sallie Mae/Navient had violated SCRA?
 - b. When did officials at the Department of Education know the details of the DOJ's May 13, 2014 announcement?
5. For each of the following reviews, who oversaw the first FIOS review of Navient, the second FIOS review of Navient, and the review of the other three TIVAS?
 - a. How many full-time FSA and/or non-FSA employees were assigned to and/or worked on each of these three reviews?
 - b. How was the methodology for each of these three reviews established and reviewed? Who set the parameters for the methodology and sampling methods for each of these three reviews?
6. What policies and procedures guide FIOS' approach to a review such as these, and how are these policies and procedures similar to the reviews of other Department guaranty agencies, private debt collectors, contractors, and other financial institutions?
 - a. Is it the Department's policy that a certain number of mistakes are appropriate from its servicers?

⁶ <http://www2.ed.gov/about/offices/list/oig/misc/scrareport02292016.pdf>

- b. What number and scope of mistakes would warrant punitive action against a servicer?
7. Was the first Navient review (initiated June 2014) completed, or merely stopped before completion?
 - a. If it was stopped, then why was it stopped?
 - b. Who made the decision to stop it?
8. Please provide the results of the first Navient review and explain why its existence and its content have not been previously disclosed to the public. If the review was not completed, then please provide materials produced as part of the review.
9. Why didn't FIOS attempt to determine whether the TIVAS has information in their own servicing systems that could have helped them to identify a complete universe of servicemembers who might be eligible for the SCRA benefit?
 - a. Why didn't the FIOS review of Great Lakes, PHEAA, and Nelnet use the Defense Manpower Data Center to identify potential SCRA-eligible servicemembers?
10. What percentage of servicemembers with federal student loans are in military grace periods or deferment at any given time?
11. How much was Ernst and Young paid to corroborate the FIOS reviews of the TIVAS?
 - a. Please provide copies of the contract, guidance, and directive that FIOS/FSA gave Ernst and Young.
 - b. Did Ernst and Young ever raise concerns about the FIOS methodology? If so, what were those concerns and who received them? How did the Department respond to these concerns?
12. Why did the Department assert in its May 26th, 2015 press release that its reviews showed violations in "less than 1 percent of cases" when the "acceptance" sampling methodology used by FIOS to analyze the non-Navient services makes it impossible to draw such conclusions?⁷ Who at FSA approved the substantive content of the May 26th, 2015 press release? Does he or she still oversee financial institution oversight or compliance?
13. Why did the Department assert in its May 26th, 2015 press release that its reviews showed violations "in less than 1% of its cases" when the small sample and methodology of its sampling design preclude the reporting of a statistically valid aggregate denial rate, and its own reported raw data indicated incorrect denials in 8% of reviewed cases?
 - a. Why did the Department combine the program review of all four TIVAS in its May 26th, 2015 press release?
14. Why did the dataset FIOS used to review PHEAA compliance with SCRA not exclude the more than 50% of reviewed loans for which borrowers could not benefit from the 6% interest cap?

⁷ <http://www.ed.gov/news/press-releases/us-department-education-completes-review-major-student-loan-servicers>

15. Why did the second FIOS analysis of Navient credit Navient with providing SCRA benefits to three servicemembers who did not receive those benefits during the designated review period, and only received them after the review period as the result of new SCRA compliance procedures implemented in the wake of the Navient SCRA scandal?
16. Second Navient Review Methodology:
- b. Did this review sample at the loan level or the borrower level?
 - c. What was the rationale for the sample design?
 - d. What was the expected deviation rate for the sample design?
 - e. What was the tolerable deviation rate for the sample design?
 - f. What was the expected precision for the sample design?
 - g. Why has the Department never previously disclosed the level of the review sample, the rationale for the sample design, the expected deviation rate for the sample design, the tolerable deviation rate for the sample design, and the expected precision for the sample design?
 - h. Why didn't FSA consult with or use a statistician to assist with designing the sample it used in its program reviews?
17. Why didn't FIOS recommend that all of the TIVAS—especially PHEAA and Great Lakes, whose program reviews identified SCRA compliance errors—review their borrowers to identify and correct all potential instances of incorrect denial of the SCRA interest rate cap?
- a. What corrective actions did FSA recommend for SCRA noncompliance with these two servicers?
18. Why didn't FIOS ask the TIVAS for a sample of SCRA benefit denials?
19. The Department of Education told the Inspector General hat "it was a management decision not to require further [TIVAS] corrective actions for the periods reviewed." The Department also said that this decision was "not primarily based on a statistical analysis." Please explain how this decision was made, who made it, and what factors formed the basis for this decision. Similarly, what was the basis for the Department's decision not to pursue further corrective actions against Navient?
20. Given FSA's demonstrated inability to conduct an accurate program review, does the Department plan to act to penalize Navient based on the Department of Justice and FDIC findings?
- a. Does the Department feel the need to conduct another review of Navient based on those findings or will the Department defer to the investigation and conclusions of the DOJ and the FDIC?
 - b. Is the Department willing to fine, to cancel the contracts of, or to otherwise penalize Navient based on the DOJ and the FDIC findings?

21. Given FSA's demonstrated inability to conduct an accurate program review, how will the Department ensure that an independent, thorough, reliable, statistically sound review of whether Great Lakes, PHEAA, and Nelnet complied with SCRA during the time period in question occurs?
 - a. Is the Department willing to fine, to cancel the contracts of, or to otherwise penalize the Great Lakes, PHEAA, and/or Nelnet based on the results of any additional, reviews?
 - b. Will the Department direct every TIVAS to independently review every servicemember student loan based on the Department of Defense's Defense Manpower Data Center database from June 19, 2009 to May 31, 2014 to identify servicemembers eligible for SCRA benefits who did not receive them?
22. Will the Department take corrective action to require TIVAS to make whole any and all borrowers who were eligible for SCRA benefits from June 19, 2009 to May 31, 2014 and didn't receive them?
23. Given the serious and basic flaws here, do you feel that the Office of Federal Student Aid is equipped to do these kind of reviews?
 - a. Will the Department move financial institution oversight out of the Office of Federal Student Aid?
24. Please provide any and all communication between the Office of Federal Student Aid and Navient regarding this review.
25. What's the Department's full explanation for how this happened, and how will the Department ensure that this never happens again?