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January 4, 2018

Dr. A. Wayne Johnson
Chief Operating Officer
Office of Federal Student Aid
U.S. Department of Education
400 Maryland Ave, S.W.
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Dear Dr. Johnson:

I write to understand the U.S. Department of Education's ("the Department") vision for the $1.3 trillion federal student loan program, including your specific plans for reducing student loan delinquencies and defaults, holding student loan servicers and contractors accountable, and improving customer service for the over 42 million student borrowers. I also invite you to meet with me to discuss your vision for the student loan program and loan servicing, which appeared in a recent procurement notice for "FSA's Next Generation Processing and Servicing Environment."[1]

Federal Student Loan Program Challenges & Background

I. The Federal Student Loan Debt Portfolio

The Department's Office of Federal Student Aid (FSA) administers a massive, trillion-dollar federal student loan program—the largest student loan portfolio in the world. Each year, FSA originates close to $100 billion in over 17 million new student loans.[2] FSA also distributes $30 billion in Pell Grants to students each year,[3] oversees over 6,000 colleges and universities,[4] and manages the student loan servicers, debt collectors, and other FSA contractors that participate in the federal student loan program.[5]

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[1] "FSA Next Generation Processing and Servicing Environment." *U.S. Department of Education.* (2017, August 1). Online at: https://www.fbo.gov/spg/ED/FSA/CA/FSANextGenerationProcessingandServicingEnvironment/listing.html.

[2] *U.S. Department of Education.* (2017, August 1).

[3] "The Federal Pell Grant Program: Recent Growth and Policy Options." *Congressional Budget Office.* (2013, September). Online at: https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44448_PellGrants_onecolumn.pdf.

[4] "Fast Facts: Educational Institutions." *National Center for Education Statistics*. Online at: https://nces.ed.gov/fastfacts/display.asp?id=84.

[5] "Federal Student Loan Portfolio." *Federal Student Aid, U.S. Department of Education*. Online at: https://studentaid.ed.gov/sa/about/data-center/student/portfolio .

As the Chief Operating Officer of FSA, you are statutorily responsible for management of the federal student loan program, which includes in its statutory purpose: "to improve service to students and other participants in the student financial assistance programs."[6] The Chief Operating Officer's actions can make an enormous difference in the financial lives of millions of Americans.

For years, experts have sounded the alarm about the nation's growing student debt burden, which has surpassed every other form of consumer debt besides mortgages. Student loan debt is placing a drag on the economy and hindering the financial lives of young people by forcing them to delay buying homes, saving for retirement, or starting businesses.[7] Student loan debt is even having a growing impact on the financial lives of older Americans, hundreds of thousands of whom are seeing their social security checks garnished in order to pay fees and interest from their federal student loans.[8]

There are currently 8.6 million borrowers in default on nearly $150 billion in federal student loans—over a million student borrowers defaulted in the past year alone.[9] In 2015, the Consumer Financial Protection Bureau (CFPB) estimated that one in four borrowers are either in default on or are struggling to repay their federal student loans, and current trends suggest that the number of borrowers in this status has since increased.[10] Notably, the majority of students who default do so within three years of entering repayment, resulting in lifelong problems with their financial and credit health.[11]

Student loan debt is a particular crisis for borrowers of color. Based on data from the Department's National Center for Education Statistics, Black students were nearly 20 percentage points more likely to take out federal student loans and less likely to pay down debt than their

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[6] 20 USC§1018(a)(2)(A)

[7] Chopra, R. (2013, May 9). "Student Debt Domino Effect?" *Consumer Financial Protection Bureau.* Online at: https://www.consumerfinance.gov/about-us/blog/student-debt-domino-effect/; Brown, M. & Caldwell, S. (2013, April 17). "Young student loan borrowers retreat from housing and auto markets." *Federal Reserve Bank of New York.* Online at: http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html; Busteed, B. (2015, October 14). "Student Loan Debt: Major Barrier to Entrepreneurship." *Gallup.* Online at: http://www.gallup.com/businessjournal/186179/student-loan-debt-major-barrier-entrepreneurship.aspx.

[8] "Older Americans: Inability to Repay Student Loans May Affect Financial Security of a Small Percentage of Retirees." *U.S. Government Accountability Office.* (2014, September 10). Online at: https://www.gao.gov/products/GAO-14-866T.

[9] *Office of Federal Student Aid.* (2017, December). Online at: https://studentaid.ed.gov/sa/about/data-center/student/portfolio.

[10] "CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers." *Consumer Financial Protection Bureau.* (2015, September 29). Online at: http://www.consumerfinance.gov/about-us/newsroom/cfpb-concerned-about-widespread-servicing-failures-reported-by-student-loan-borrowers.

[11] Miller, B. (2017, December 14). "Who are student loan defaulters?" Online at: https://www.americanprogress.org/issues/education-postsecondary/reports/2017/12/14/444011/student-loan-defaulters/.

White peers, regardless of completion status.[12] In fact, the median Black student owed more on their student loan balances 12 years after college than they owed the day they took out the original loans.[13]

Student loan delinquencies are not moving with the economic cycle, and, unlike other forms of debt, are increasing despite the strong economy.[14] Moreover, the number of student borrowers in financial distress is growing, despite the universal availability of income-driven repayment plans that allow borrowers to lower their monthly payments to more affordable levels or even to zero dollars in many cases.[15] These data collectively point to one stark conclusion: the country is facing an urgent student debt crisis.

This crisis existed before you arrived at the Department, and Congress bears a great deal of the responsibility for this dire situation — particularly by refusing to reduce the artificially high interest rates that have allowed the federal government to profit off the backs of student loan borrowers.[16] But you now have the responsibility of improving the student loan experience for tens of millions of federal student loan borrowers, and of effectively managing the student loan program with the best interests of students in mind.

II. Federal Student Loan Contractor Failures

The FSA Chief Operating Officer is responsible for overseeing dozens of contractors that administer the federal student loan program and act as middlemen between the federal government and student borrowers. In 2010, Congress dramatically strengthened the federal student loan program by ending the old bank-based student lending system and allowing the Department to lend directly to all students and families. Under the previous expensive and scandal-prone program, banks hauled in billions in profits from federal student loans while the taxpayers and students assumed all of the risk. [17] The switch to 100% direct lending allowed the federal government to save billions by cutting out the private banks and put the taxpayer bank subsidies toward grants for low-income students.[18]

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[12] Miller, B. (2017, October 16). "New federal data show a student loan crisis for African American borrowers." Online at: https://www.americanprogress.org/issues/education/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers/.

[13] *Id.*

[14] "Household Debt Reaches New Peak Driven by Gains in Mortgage, Auto, and Student Debt." *Federal Reserve Bank of New York.* (2017). Online at: https://www.newyorkfed.org/microeconomics/hhdc.html.

[15] "Investing in Higher Education: Benefits, Challenges, and the State of Student Debt." *Executive Office of the President of the United States.* (2016, July). Online at: https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160718_cea_student_debt.pdf.

[16] "What no one noticed about CBO's recent projection: $80 billion in student loan profits." *The Institute for College Access &* Success. (2016, September 27). Online at: http://ticas.org/blog/what-no-one-noticed-about-cbos-recent-projection-81-billion-student-loan-profits.

[17] Dillon, S. (2007, May 7). "Whistle-Blower on Student Aid Is Vindicated." *The New York Times*. Online at: http://www.nytimes.com/2007/05/07/washington/07loans.html.

[18] Elmendorf, D. (2010, March 20). Letter to Speaker Pelosi. *Congressional Budget Office*. Online at: https://www.cbo.gov/sites/default/files/111th-congress-2009-2010/costestimate/amendreconprop.pdf.

Given the rapidly growing size of the federal student loan portfolio, it's clear why banks and other private student companies were eager to participate in this profitable federally-guaranteed market. And even after Congress transitioned the federal student loan program away from the bank-based system, many lenders and student loan agencies from the old system have remained central players in the Direct Loan program through lucrative contracts with FSA to help administer the program.

Despite FSA paying hundreds of millions of dollars annually to these private contractors to help administer the federal student loan program, many of these contractors have made critical errors, cut corners, or failed to deliver the quality of customer service that federal student loan borrowers deserve. Much of the distress in the federal student loan system, including the failure of millions of borrowers to take advantage of repayment or forgiveness plans that are best for them, is exacerbated by shoddy student loan servicing and harsh debt collection practices that do not help keep borrowers out of default or delinquency.

Federal student loan servicers, for example, are principally responsible for collecting loan payments from borrowers, keeping borrowers out of delinquency and default, and helping struggling borrowers find the repayment or forgiveness programs that are best for them. They are the critical link between student loan borrowers and the federal government, and serve as student borrowers' primary point of contact when they are struggling to repay their loans or seeking actionable information about repayment or forgiveness options.

Unfortunately, the federal student loan servicing ecosystem is riddled with widespread failures, many of which have been documented by the CFPB. The CFPB has received thousands of complaints about servicers losing paperwork, charging unexpected fees, providing inconsistent or wrong information to student borrowers, or making other critical mistakes that cost student borrowers and often drive them into default.[19] Federal government watchdogs like the Government Accountability Office[20] and the Department of Education's Inspector General[21] have also documented failures in student loan servicing and in FSA's ability to hold federal loan servicers accountable.

Failures by student loan servicers and FSA have forced states to step in and tighten their oversight of federal student loans, and to enforce their own consumer protection laws when federal servicers harm their student borrowers. For example, the Pennsylvania Higher Education Assistance Agency (PHEAA), one of FSA's largest servicers, is being sued by Massachusetts Attorney General Maura Healey for allegedly undermining the Public Service Loan Forgiveness and the Teacher Education Assistance for College and Higher Education Grant programs in a

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[19] "CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers." *Consumer Financial Protection Bureau.* (2015, September 29). Online at: http://www.consumerfinance.gov/about-us/newsroom/cfpb-concerned-about-widespread-servicing-failures-reported-by-student-loan-borrowers.

[20] "Education Could Improve Direct Loan Program Customer Service and Oversight." *U.S. Government Accountability Office.* (2016, May 16). Online at: http://www.gao.gov/products/GAO-16-523.

[21] Tighe, K. (2016, February 29). Letter to Senators Murray, Warren & Blumenthal. *Office of Inspector General, United States Department of Education.* Online at: https://www2.ed.gov/about/offices/list/oig/misc/scrareport02292016.pdf.

manner that caused teachers and other public servants to lose access to federal benefits and forgiveness created by Congress.[22]

Navient (formerly Sallie Mae), the nation's largest federal student loan servicer, is currently being sued by the CFPB and Attorneys General from Pennsylvania, Illinois, and Washington for allegedly violating states' consumer protection laws by harming borrowers with unnecessary obstacles that helped boost the company's profits.[23] This is the same company that was fined nearly $100 million in 2014 by the Department of Justice and the Federal Deposit Insurance Corporation for systematically overcharging service members on their student loans.[24]

More recently, Navient was the subject of more CFPB complaints than any other company in the country during the first quarter of 2017, including Wells Fargo, Equifax, and the nation's largest banks and credit bureaus.[25] And Navient ranked last or near last among the four largest servicers in the Department's borrower satisfaction ratings for the past five years.[26] Considering Navient's assertion that "there is no expectation that the servicer will 'act in the interest of the consumer'" in response to the lawsuit filed by the CFPB,[27] this growing list of issues is not surprising. Despite these extensive problems, and despite the fact that the company *still* owes the Department $22.3 million for a previous scandal,[28] Navient is still a major student loan servicer contracted with the Department.

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[22] "AG Healey Sues to Protect Public Service Loan Forgiveness." *Attorney General Maura Healey (*2017, August 23). Online at: http://www.mass.gov/ago/news-and-updates/press-releases/2017/2017-08-23-pheaa-lawsuit.html.

[23] Commonwealth of Pennsylvania court filing vs. Navient Corporation and Navient Solutions, LLC. (2017, October 5). Online at: https://www.attorneygeneral.gov/uploadedFiles/MainSite/Content/Related_Content/PressReleases/PA%20v.%20Navient%20Complaint%202017-10-6%20(Stamped%20Copy).pdf; Consumer Financial Protection Bureau court filing vs. Navient Corporation, Navient Solutions, Inc., and Pioneer Credit Recovery, Inc. (2017, January 18). Online at: http://files.consumerfinance.gov/f/documents/201701_cfpb_Navient-Pioneer-Credit-Recovery-complaint.pdf.

[24] "Justice Department Reaches $60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans." *United States Department of Justice*. (2014, May 13). Online at: https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging; "FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act." *Federal Deposit Insurance Corporation*. (2014, May 13). Online at: https://www.fdic.gov/news/news/press/2014/pr14033.html

[25] "Monthly Complaint Report." Vol. 22. Consumer Financial Protection Bureau (2017, April). Online at: http://files.consumerfinance.gov/f/documents/201704_cfpb_Monthly-Complaint-Report.pdf.

[26] Federal Student Aid. "Servicer performance metrics and allocations." *U.S. Department of Education*. Online at: https://studentaid.ed.gov/sa/about/data-center/business-info/contracts/loan-servicing/servicer-performance#12312015.

[27] Navient Corporation court filing. (2017, March 24). Online at: https://consumermediallc.files.wordpress.com/2017/04/gov-uscourts-pamd-110329-29-0.pdf.

[28] Office of Inspector General, Department of Education. (2009, August). *Special Allowance Payments to Sallie Mae's Subsidiary, Nellie Mae, for loans Funded by Tax-Exempt Obligations*, Final Audit Report Online at: https://www2.ed.gov/about/offices/list/oig/auditreports/fy2009/a03i0006.pdf.

FSA's private collections agencies (PCA) have their own troubling record of federal consumer protection law violations.[29] Despite their record of lying to student borrowers and breaking the law, FSA reportedly recently rewarded two previously fired PCAs — Pioneer Credit Recovery (owned by Navient) and Alltran (formerly known as Enterprise Recovery Systems) — with the accounts of 325,000 defaulted student loan borrowers.[30] Besides violations of the law, the CFPB estimates that nonsensical and counterintuitive PCA policies and practices have resulted in one in three defaulted student borrowers defaulting again within two years of loan rehabilitation, despite likely qualifying for zero-dollar monthly payments under an income-driven repayment plan.[31] FSA pays PCAs hundreds of millions of dollars to collect mere pennies on the dollar. The current PCA arrangement is a galling waste of taxpayer dollars.

Finally, there are tens of thousands of borrowers in debt collection despite eligibility for loan cancellation due to disability, school closure, or fraud.[32] Multiple state Attorneys General, including Massachusetts', are currently suing the Department for collecting on these invalid debts.[33] In addition to cleaning up federal student loan servicing, it's time to ensure that FSA's debt collection practices, policies, and contracts are structured to help get and keep borrowers out of default, hold PCAs accountable for violations of federal consumer protection laws, and stop sending invalid debt into collections in the first place.

III. Past Efforts to Reform Student Loan Servicing and Improve Accountability

In June 2016, former Education Secretary John King unveiled a new vision for overhauling federal student loan servicing.[34] But Secretary DeVos abruptly halted implementation of this plan in April 2017.[35]

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[29] Howard, P.J. (2014, July 11). "Handling of Borrower Complaints Against Private Collection Agencies." *Office of Inspector General, United States Department of Education.* Online at: https://www2.ed.gov/about/offices/list/oig/auditreports/fy2014/a06m0012.pdf.

[30] "ED Turns 325,000 Student Loan Borrowers Over to Debt Collectors It Fired for Breaking the Law." *Student Loan Borrower Assistance.* (2017, December 14). Online at: http://www.studentloanborrowerassistance.org/ed-turns-325000-student-loan-borrowers-debt-collectors-fired-breaking-law/.

[31] "CFPB Projects that One-in-Three Rehabilitated Student Loan Borrowers Will Re-default Within Two Years." *Consumer Financial Protection Bureau.* (2016, October 17). Online at: http://www.consumerfinance.gov/about-us/newsroom/cfpb-projects-one-three-rehabilitated-student-loan-borrowers-will-re-default-within-two-years/.

[32] "In Light of Troubling New Data, Sen. Warren Demands Education Department Halt Collection of Former Corinthian Students' Debt and Discharge Their Loans." *Office of Senator Elizabeth Warren.* (2016, September 29). Online at: https://www.warren.senate.gov/?p=press_release&id=1266.

[33] Fernandes, D. (2017, December 15). "Maura Healey sues Betsy DeVos, again." *The Boston Globe.* Online at: https://www.bostonglobe.com/metro/2017/12/14/healey-sues-betsy-devos-again/zvCt9omYpGHN8rKBTbAwFN/story.html; Thompson, D. (2017, December 14). "California sues Trump administration over Corinthian students' unresolved debt relief claims." *Los Angeles Times.* Online at: http://www.latimes.com/business/la-fi-corinthian-student-loans-20171214-story.html.

[34] King, J.B. (2016, June 30). Letter to James W. Runcie, Chief Operating Officer, Federal Student Aid. Online at: https://sites.ed.gov/ous/files/2016/06/John-King-servicer-past-performance-memo.pdf.

[35] DeVos, B. (2017, April 11). Letter to James W. Runcie, Chief Operating Officer, Federal Student Aid. Online at: https://www2.ed.gov/documents/press-releases/student-loan-servicer-recompete.pdf.

These steps, along with FSA's past failure to adequately manage the student loan program and its contractors, raise serious questions about the agency's sudden ability to build a federal student loan servicing environment that puts borrowers first.

While not perfect, I strongly supported the Obama Administration's goal "to enhance oversight and accountability and improve customer service" by overhauling student loan servicing through a competition for the next round of student loan servicing contracts. [36] I believed that, if properly executed, this competition could have been a game-changer for millions of federal student loan borrowers. I also cautioned that, if improperly executed, it would simply result in the same old players with the same old problems, while borrowers continued to suffer. I worked with my colleagues in Congress to submit policy recommendations to ensure that this plan delivered for students and families.[37]

Even before the Obama Administration's servicing overhaul announcements, in March 2016, I released my own vision for reforming federal student loan servicing through five fundamentals for student loan servicing reform.[38] My reform fundamentals were:

- Put students and families first.
- Punish bad actors that break the rules.
- Change the financial incentives for servicers.
- Release more and better data.
- Step up aggressive oversight.[39]

These reform fundamentals included recommendations for improving customer service, protecting student borrowers, strengthening accountability, and ensuring data transparency. I continue to believe that if FSA adopts these reform fundamentals into its new vision for servicing reform, then no matter what technological and processing infrastructure FSA builds for the federal student loan system, defaults and delinquencies will decrease and student borrowers will benefit. I hope you will seriously consider these reform fundamentals in your vision.

The Obama Administration adopted many of my reform fundamentals in its plan to overhaul student loan servicing. But in spring 2017, Secretary Betsy DeVos tore up critical policy memos that would have integrated new consumer protections into the new student loan servicing contacts.[40] The set of reform policies—often referred to as the "Mitchell Memo"—developed in consultation with the Treasury Department and the CFPB, outlined a series of

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[36] "New guidance for accrediting agencies will strengthen information sharing and transparency." *Office of the Under Secretary, U.S. Department of Education.* Online at: https://sites.ed.gov/ous/ousblog/.

[37] Murray, P., Warren, E., et al. (2016, July 15). Letter to John King, Secretary of Education. Online at: https://www.warren.senate.gov/files/documents/2016-7-15_Ltr_to_ED_on_servicing.pdf.

[38] Warren, E. (2016, March 30). "Senator Warren calls on Department of Education to implement five fundamentals to reform student loan servicing." Online at: https://www.warren.senate.gov/?p=press_release&id=1093.

[39] Warren, E. (2016, March 30). "Student loan servicing reform fundamentals." Online at: https://www.warren.senate.gov/files/documents/Student_Loan_Servicing_Fundamentals.pdf.

[40] DeVos, B. (2017, April 11). Letter to James W. Runcie, Chief Operating Officer, Federal Student Aid, "Student Loan Servicer Recompete." *U.S. Department of Education.* Online at: https://www2.ed.gov/documents/press-releases/student-loan-servicer-recompete.pdf.

enhanced protections and common customer service standards to hold student loan servicers more accountable.[41]

The Mitchell Memo directed FSA to enhance the economic incentives it uses to compensate servicers; to provide accurate and actionable information to borrowers; to ensure borrowers received adequate, timely, and consistent customer service on a common Department of Education-branded portal; to strengthen accountability for borrowers; and to ensure data transparency.[42]

Former Secretary King also issued directives to make past performance "the most important non-cost factor in the evaluation."[43] I strongly supported this directive because past performance of servicers is the best indicator of future performance. This directive protected borrowers from continued harm at the hands of servicers with a shoddy record of customer service or with a troubling history of unlawful activity. Secretary DeVos also withdrew this policy guidance to "to negate any impediment, ambiguity or inconsistency..."[44]

In addition to ripping up these important consumer protection policies, Secretary DeVos even terminated the Department's relationship with the CFPB to share information in connection with the oversight of federal student loans. The CFPB is statutorily mandated to ensure that students are protected from unfair, deceptive, and abusive acts committed by financial service providers, including the Department's student loan servicers, contractors, and other participants in the federal student loan system. Again, Secretary DeVos took action that favored the student loan companies at the expense of the rights of students.

The "NextGen" Vision for the Student Loan Program

While I was disappointed that Secretary DeVos rolled back so many elements of Secretary King's plan to help student loan borrowers, I am heartened to see that you are finally beginning to move on a replacement plan. In November 2017, the Department finally shared more of this administration's vision for the federal student loan program and requested comment from industry on its vision in advance of a new solicitation in early 2018.[45]

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[41] Mitchell, T. (2016, July 20). Letter to James Runcie, Chief Operating Officer, Federal Student Aid, "Policy Direction on Federal Student Loan Servicing." *U.S. Department of Education.* Online at: https://www2.ed.gov/documents/press-releases/loan-servicing-policy-memo.pdf.

[42] "Education Department to implement improved customer service and enhanced protections for student loan borrowers." (2016, July 20). *U.S. Department of Education.* Online at: https://www.ed.gov/news/press-releases/education-department-implement-improved-customer-service-and-enhanced-protections-student-loan-borrowers.

[43] King, J.B. (2016, June 30).

[44] DeVos, B. (2017, April 11).

[45] U.S. Department of Education. (2017, November 29). "U.S. Department of Education announces vision to transform federal student aid, improve customer service." Online at: https://content.govdelivery.com/accounts/USED/bulletins/1c8212e.

FSA and the Department believe this vision, known as the Next Generation Financial Services Environment ("NextGen"), "will increase awareness and understanding of Federal student aid opportunities and responsibilities, improve operational flexibility, and enhance cost and operational efficiency, producing better outcomes for customers and taxpayers."[46] The NextGen solicitation and contracts have the potential to correct the failures of both the Obama and Trump Administrations, and I would like to give your vision for servicing reform fair consideration.

I am pleased with certain elements of the plan as it has been revealed to the public. As mentioned in my servicing reform fundamentals,[47] I strongly support the creation of a single Department of Education-branded portal with personalized information about borrows' federal student loans, including repayment options, so borrowers are not confused about who owns their federal student loan. I also support greater mobile integration, since many borrowers have long called for the ability to better manage their federal student loans from their smartphones and mobile devices. Common servicing standards are also long overdue, so I support efforts to establish strong common customer servicing standards across providers, so long as those standards contain strong consumer protections.

But I have significant questions about five different aspects of the NextGen plan, detailed below:

1. **High-quality customer service for borrowers.** I am curious how NextGen will ensure that borrowers receive high-quality customer service, what qualitative metrics FSA plans to use when evaluating the customer service that student borrowers receive, and how NextGen will address the complex needs of certain borrowers.

   The Obama Administration proposed "high-touch servicing"—specialized units of knowledgeable, specially-trained servicing personnel to assist borrowers who were most at-risk of default and who expressed interest in more affordable monthly payments.[48] High-touch servicing makes sense because some borrowers with complex needs clearly require additional attention, expertise, and outreach. NextGen makes no mention of high-touch servicing, so I am curious how NextGen will address the complex needs of military borrowers, borrowers who are disabled, borrowers who are eligible for discharge, borrowers who did not complete school, and other borrowers identified as at-risk of default.

   a. How will NextGen ensure that student loan servicers engage in high-touch servicing for certain groups of borrowers, such as service members, borrowers who did not complete school, and borrowers most likely to default?

   b. How does FSA plan to qualitatively evaluate contractor performance? What specific metrics does FSA plan to use, and how will these metrics evaluate how well student

[46] *U.S. Department of Education.* (2017, August 1).

[47] Warren, E. (2016, March 30).

[48] Mitchell, T. (2016, July 20).

loan servicers are keeping borrowers out of delinquency and default? How will FSA hold servicers accountable to such metrics?

c. Will FSA continue to make evaluations of contractor performance public?

d. How will NextGen get more borrowers into the loan repayment or forgiveness plan that is best for them? Will NextGen include processes for evaluating how well servicers are getting student loan borrowers into the right repayment or forgiveness programs? What are your specific numeric goals for increasing use of loan repayment or forgiveness plans under NextGen?

2. **Strengthening accountability in student loan servicing.** Federal student loan servicing is not a traditional consumer marketplace for borrowers. With the exception of a Direct Loan consolidation, federal student loan borrowers generally do not have the ability to switch servicers when their servicer is failing them; they cannot simply take their business elsewhere. As such, FSA must hold servicers accountable on behalf of borrowers.

   FSA must be willing—and have the technical capacity—to remove any poor-performing servicer or contractor from the federal student loan program at any time. Simply put: the only way that a federal student loan servicer loses business is if FSA takes it away.

   a. How will NextGen hold accountable student loan servicers, debt collectors, and other contractors that break the law, abuse students, or otherwise provide poor service to borrowers, including through sanctions, fines, contract terminations and other penalties, for their poor performance?

   b. How will FSA consider and weigh prior investigations, lawsuits, settlements, or sanctions in evaluating contractor proposals? How is FSA working to address the concerns raised by state Attorneys General who have sued FSA's contractors?

   c. How will FSA handle borrower complaints about contractors in light of the CFPB Memorandum of Understanding termination?

   d. When critical servicing breakdowns and errors occur in ways that harm borrowers, how will FSA pinpoint which contractor(s) is (are) responsible for—and which contactor(s) to hold accountable for— a failure in a system where multiple contractors touch a single borrower's loan(s)?

3. **Avoiding "Too Big to Fail" Contractors.** FSA's ability to fire a servicer is foundational for real accountability. I was extremely alarmed by Secretary DeVos's initial plans to transition to just one monopolistic servicer for the entire trillion-dollar federal student loan program.[49] This plan would have eliminated competition in federal student loan servicing and created a

[49] "U.S. Secretary of Education Betsy DeVos releases amended federal student loan servicing solicitation." (2017, May 19). *U.S. Department of Education.* Online at: https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-releases-amended-federal-student-loan-servicing-solicitation.

'too big to fail' (and too big to hold accountable) federal contractor. I was glad to work across the aisle with a bipartisan coalition of Senators to introduce legislation that would have guaranteed competition on federal student loan servicing and prevented this wrong-headed plan from ever happening.[50] Fortunately, the Department abandoned this terrible idea.

The Department and FSA must continue to include multiple providers in the federal student loan servicing ecosystem, ensure competition between servicers, and establish effective and qualitative performance metrics that adequately evaluate servicers against one another in a competitive manner. Then, FSA should reward servicers that are doing well with additional business, and punish servicers that are failing borrowers by taking business away, and, if necessary, firing them. This is the only way that servicers will be incentivized to improve relative to their competitors.

a. Under NextGen, does FSA plan to terminate any contractor that breaks the rules or fails students? What criteria will you use to make these determinations? How will you ensure that no contractor becomes 'too big to fail' or 'too big to fire'?

b. How will you ensure that new players and providers enter the NextGen system?

c. How will you ensure competition between NextGen's multiple contractors that engage with borrowers? How many contractors will engage directly with borrowers?

d. How does FSA intend to change the current incentive structure in order to reward servicers that are doing well with additional business, and punish servicers that are failing borrowers by taking business away? How will FSA compensate contractors?

4. **Use of "Student Aid Disbursement Cards."** I am concerned about FSA's reported plans to disburse federal student aid on a prepaid "federal disbursement card" in order to "[remind] students that they are spending student loan money."[51] According to reports, you have said this prepaid card would be operated by a financial services company under a contract with FSA, and that schools and students would have to opt in to the product.[52]

   This idea appears extremely vulnerable to fraud, predation, and abuse by both financial institutions and colleges. Given the troubling past relationship between colleges and financial institutions when it comes to campus financial products, including campus debit cards,[53] I am deeply concerned that this arrangement, if not executed with extreme caution and strong

[50] Blunt, R., Warren, E., Lankford, J., & Shaheen J. (2017, August 1). "Senators introduce bipartisan bill to promote competition amongst student loan servicers." Online at: https://www.warren.senate.gov/?p=press_release&id=1778.

[51] Hefling, K. (2017, November 29). "Financial aid chief spells out planned improvements." *Politico*. Online at: https://www.politico.com/newsletters/morning-education/2017/11/29/financial-aid-chief-spells-out-planned-improvements-035361.

[52] *Id.*

[53] Lange, J. & Lynch, S.N. (2015, December 27). "Higher One must repay millions to students over 'deceptive' financial aid practices." *Huffington Post.* Online at: https://www.huffingtonpost.com/entry/higher-one-repay-millions_us_56802738e4b06fa688805b43.

consumer protections, could encourage banks and other predatory financial institutions to use the federal student aid program as another tool to aggressively market financial products to college students or to charge students excessive and unnecessary fees.

a. How will you protect students from fraud, predation, and abuse if you implement federal disbursement cards?

b. What specific steps will FSA take to prevent card companies from charging borrowers excessive or unnecessary fees?

c. Will FSA consider the fees contractors plan to charge student borrowers in procurement decisions? How will FSA ensure that companies that participate in this program act in the best financial interests of students?

d. What specific steps will FSA take to prevent card companies from inappropriately marketing related products to card holders? How will borrowers benefit from the use of disbursement cards?

5. **Data transparency.** The NextGen procurement notice discusses the importance of "data analytics" in order to allow FSA "to analyze disparate data sets within loan servicing to drive meaningful, real-time customer insights into borrower patterns and outcomes and reduce risk."[54]

   I'm glad FSA is using data to support the strategic operation and management of the student loan program, but federal student loan portfolio data has use and importance beyond program management and operation. It is critical that policy-makers and the public have more and better information about the federal student loan portfolio, including student loan data disaggregated by servicer and borrower demographics. These data help Congress and the rest of the federal government make good decisions and policies to better serve students and taxpayers.

   a. What are your specific plans for data transparency?

   b. Will FSA create a tool to allow researchers, policy-makers, or other members of the public to securely analyze FSA's student loan data (including FFEL and PLUS data) in a manner that protects student privacy?

I share NextGen's primary goal of providing "a world-class customer experience throughout the student financial aid lifecycle to improve customer outcomes."[55] I want to give your NextGen vision a chance—but FSA and the Department's record does not inspire confidence. As a member of the United States Senate Committee on Health, Education, Labor, and Pensions, I have a responsibility to conduct aggressive oversight over FSA to ensure that it works for students and taxpayers. That's why I want to hear directly from you about your vision.

[54] *U.S. Department of Education.* (2017, August 1).

[55] *U.S. Department of Education.* (2017, August 1).

I also want to hear your answers to my above questions, and to general questions about how you will execute your vision, including:

1. What are your priorities in this student loan servicing overhaul?

2. Why is NextGen good for all student borrowers—not just better than the dismal status quo?

3. How will NextGen eliminate or significantly reduce loan delinquencies and defaults? What are your specific numeric goals for reducing loan delinquencies and defaults under NextGen?

4. How will NextGen improve customer service for the over 42 million student borrowers? What are your specific goals for customer service improvement under NextGen?

5. Are you proactively reaching out to consumer protection experts and student/borrower advocates in your market research? Who? How are you incorporating their feedback?

6. How do you intend to balance the conflicting FSA goals of reducing federal student loan program costs and providing higher quality customer service that respects borrower rights?

7. How are you putting student loan borrowers first?

I invite you to answer all of these questions in writing by Friday, January 26th, 2018, and to come to my office this month to discuss NextGen and your vision for the student loan program.

Conclusion

With contactors' financial and profit incentives pushing so hard in the opposite direction, it is imperative that FSA actively prioritize students over contractor profits in every decision to protect the integrity of the federal student loan program. It's up to you to hold all student loan contractors accountable when they break the law or mistreat borrowers, to ensure that contractors provide borrowers with consistent and high-quality customer service, and to enforce the rights of borrowers.

Federal student loan borrowers deserve better that what they have experienced over the past decade. This matters so much to me because a student borrower's interaction with an FSA contactor about her student loan may be her *first and most impactful* interaction with the federal government. We have to get this right. The financial lives of millions of Americans depend on it. I look forward to working with you to protect student loan borrowers—the real customers of the federal student loan program.

Sincerely,

Elizabeth Warren

ELIZABETH WARREN
United States Senator