Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION
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DEC 9 2013

Honorable Elizabeth Warren
United States Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren:

Thank you for your letter concerning the U.S. Department of Education's (Department's) relationship with Sallie Mae. I am pleased to respond.

I share your desire to ensure that college remains affordable and student loan debt remains manageable for the millions of Americans pursuing a postsecondary education. The Department is continuously working with its student loan servicers to provide exceptional service to borrowers and to serve as good stewards of taxpayer dollars. To that end, the Department investigates all legitimate complaints of wrongdoing against its contractors, and enforces its contractual authority to resolve any issues when appropriate.

Below you will find responses to your specific questions regarding our loan servicer activities.

1. If Sallie Mae is found to have violated the Service members Civil Relief Act, the Equal Credit Opportunity Act, or other laws or contractual provisions, will the Department terminate its contracts with Sallie Mae or otherwise seek monetary relief? What policies and practices will guide the Department's actions in this respect?

   Response: If any of the Department's Title IV loan servicer contractors has been determined to have violated any laws, regulations, policies, or other contractual terms and conditions, then the Department will assess the findings and determine the most appropriate course of action, in accordance with the contract terms and conditions, statutes, case law, and the Federal Acquisition Regulation. Remedies could include monetary relief, termination of the contract in whole or in part, or other appropriate corrective action. At this time, the Department is not aware of any final determinations or issues that would warrant termination, in whole or in part, or monetary relief regarding the Title IV loan servicers, including Sallie Mae. Compliance issues identified in the past through Department monitoring and oversight activities have not risen to the level where these penalties were considered appropriate, and they were resolved through the implementation of corrective action plans. This approach is consistent with that used for all Department loan servicers.

2. What steps has the Department taken in response to the Inspector General's recent finding that Sallie Mae failed to report verbal complaints it received from borrowers?

   Response: In May 2013, the Inspector General's office issued a memorandum to the Department's Federal Student Aid office regarding the reporting of verbal complaints from borrowers by the Department's Private Collection Agency (PCA) contractors. The Department believes that the issues highlighted in the Inspector General's memorandum resulted from a lack of clarity among the PCAs on the definition of what constituted a reportable complaint. Accordingly, in June 2013, the Department provided all PCAs under contract, including Pioneer Credit Recovery, Inc., a Sallie Mae affiliate, with a refined definition and updated procedures on when and how complaints should be reported. As expected, this has led to a general increase in the number of complaints reported.

3. The Department has the authority to assess civil penalties against a lender or guaranty agency of up to $35,000 per violation, failure, or misrepresentation. Has the Department exercised this authority against Sallie Mae or any other lender or guaranty agency? Under what circumstances would the Department exercise this authority?

   Response: Since 2008 the Department has exercised its fine authority against 11 lenders that participate in the Federal Family Education Loan (FFEL) Program and, as a result, has collected $747,500 in fines. Sallie Mae was not one of the 11 lenders. Under Section 432(g) of the Higher Education Act of 1965 (HEA), the Department may fine a lender or Guaranty Agency if the lender's or agency's violation, failure, or substantial misrepresentation is material and the lender or Guaranty Agency knew or should have known that its actions violated or failed to carry out the provisions of the HEA or the Department's regulations. This fine authority does not apply to the Department's Title IV loan servicers.

4. Please detail any and all investigations into Sallie Mae and its affiliated companies over the past 10 years. Please indicate any instances in which Sallie Mae has been found to be in violation of its contractual obligations, and the number of students affected by these violations.

   Response: The Department has conducted three program reviews of the servicing of student loans under the Sallie Mae Title IV Additional Servicers (TIVAS) contract since its award in 2009 and has identified the following issues: defects in conversion to repayment, incomplete adjustments to borrower accounts when transferred from a previous servicer, incorrect calculation of adjusted gross income for Income Based Repayment payment, and failure to include spousal income when calculating Income Contingent Repayment eligibility.

   In the past 10 years, the Department has also conducted 20 reviews of the FFEL Program portfolio held by Sallie Mae, which is serviced by Sallie Mae and four other servicers Sallie Mae contracts with, and has identified the following issues:

incorrect billings submitted to the Department, failure to report origination fees, unpaid consolidation loan rebate fees, and general management and reporting deficiencies.

The Department also resolves annual compliance audits and audits issued by the Office of Inspector General (OIG), relative to Sallie Mae's role as a FFEL lender/servicer, that have disclosed the following issues: incorrect billings submitted to the Department, untimely claims filed with the Guaranty Agencies, due diligence errors, incorrect repayment terms, and incorrect reconciliation of consolidation loan rebate fees reported to the Department.

On September 25, 2013, the Department issued a Final Audit Determination letter sustaining an OIG audit finding that Sallie Mae claimed and was paid special allowance at the 9.5 percent minimum return rate on loans that were not eligible for that rate. The Department considered the overpayment amount of $22.3M, as calculated by the OIG, to be a reasonable estimate of the amount of special allowance overpaid as a result of the finding. Sallie Mae has the right to appeal the Department's determination.

Prior to the closure of program reviews and annual compliance audits, the Department ensures that appropriate corrective action has been taken by Sallie Mae, including any necessary restitution of funds to the Department. In the case of both program reviews and audits, the Department generally recoups the liabilities identified in the findings by directing the party to make an offsetting adjustment to the lenders' current billing with regard to FFEL loan subsidies.

The Department does not have data on the number of borrowers affected by issues identified in program reviews, annual compliance audits, and other program monitoring and oversight activities. In general, these issues have affected a very small percentage of individuals relative to the overall borrower population. The incidence of and responsiveness to issues of this kind by Sallie Mae has been consistent with our experience with other Federal loan servicers.

This response does not include any investigations that may have been done by the Office of Inspector General.

5. Please describe all penalties the Department has assessed on Sallie Mae and its affiliated companies over the past 10 years.

   Response: The Department has not assessed any contractual or civil penalties on Sallie Mae or its affiliates other than those mentioned earlier.

6. If, in the Department's estimation, Sallie Mae's past actions have not been sufficient to justify ending its contract, please describe the Department's policies and standards for the type of unlawful action that would justify the termination of a contract with a loan servicer.

Response: In any situation involving an unlawful action by any of the Department's contractors, the Contracting Officer would make a determination regarding any contractual remedies, including termination, in accordance with the contract terms and conditions, statutes, case law, and the Federal Acquisition Regulations (FAR). For example, pursuant to FAR 52.212-4(m), "[t]he Government may terminate [a] contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance." In making this determination, the Contracting Officer, in consultation with the appropriate program office and the Office of the General Counsel, would consider several factors: the terms of the contract and applicable law/regulations; the specific failure of the contractor and the explanations for the failure; the availability of the supplies and services from other sources; and the urgency of the need for the supplies or services.

The Department is continuously working with and monitoring all its student loan servicers to provide exceptional service to borrowers, serve as good stewards of taxpayer dollars, and ensure the integrity of its financial aid programs.

Again, thank you for the opportunity to address your questions.

Sincerely,

James W. Runcie
Chief Operating Officer