

Congress of the United States
Washington, DC 20510

February 22, 2018

The Honorable Betsy DeVos
Secretary of Education
U.S. Department of Education
400 Maryland Ave., S.W.
Washington, D.C. 20202

Dear Secretary DeVos:

We write today to urge the Department of Education (“the Department”) to address repeated disclosure of nonpublic information prior to official public announcements about important Department actions that have market-moving implications for publicly traded firms. These disclosures appear to be creating opportunities for insider trading of the stock of the companies affected by the Department’s actions. We have a number of questions about these actions, and we urge the Department to establish clear protocols for the handling and release of information about the Department’s actions that may have market implications, particularly information regarding the Office of Federal Student Aid’s publically traded contractors and publically traded for-profit colleges.

The first suspicious incident of potential disclosures of Department information involved trades of Navient stock on August 31, 2017. These trades occurred just prior to the public announcement of the Department’s termination of its 2011 and 2014 Information Sharing Memoranda of Understanding (MOUs) with the Consumer Financial Protection Bureau (CFPB).¹ The letter sent from the Department to CFPB terminating the agreement was dated August 31, 2017, and was reportedly received by the CFPB at around 3:50 p.m. on September 1, 2017.² The House Committee on Education and Workforce released the letter publicly through a press release about one hour later.³

But reports indicated that an unknown investor, or multiple investors, purchased 872,394 shares of stock in student loan firm Navient (24 percent of Navient’s trading volume that day) during the late afternoon of August 31 before the letter was public.⁴ Navient, which at the time was

¹ U.S. Department of Education. (2017, August 31). Letter to CFPB. Online at: https://edworkforce.house.gov/uploadedfiles/2017-09-01_signed_letter_to_cfpb.pdf.

² Nasiripour, S. (2017, October 10). “SEC asked to prove trades of student loan firm Navient.” *Bloomberg*. Online at: <https://www.bloomberg.com/news/articles/2017-10-10/navient-subject-of-afl-cio-call-for-insider-trading-probe>.

³ “Foxx praises exit of Consumer Financial Protection Bureau in student loan servicing.” Committee on Education and the Workforce. (2017, September 1). Online at: <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=401966>; Nasiripour, S. (2017, October 10).

⁴ Nasiripour, S. (2017, October 10).

being sued by CFPB for railroading borrowers into more costly financing options,⁵ had previously disclosed in its SEC filings that an adverse ruling in CFPB's lawsuit "may have a material adverse impact on the Company."⁶ The elimination of the MOUs led market analysts to upgrade Navient to "buy" on the following business day.⁷ Following the public announcement of the Department decision, Navient's stock price increased by almost 18 percent between August 31 and September 27, 2017.⁸⁹

A second incident of suspicious trading occurred on January 11, 2018, when the Department sent a series of emails indicating that the Department would award Performant Financial Corporation ("Performant") a valuable student loan debt collections contract. Performant was one of 42 debt collection agencies vying for a contract with the Department to collect on unpaid student loans worth hundreds of millions of dollars.¹⁰ On January 11th, shortly after 1:30 p.m., a Department employee emailed 40 of the companies alerting them that they would not be awarded the contract; about two hours later, at 3:47 p.m. the Department publicly announced that Performant and Windham Professionals would receive the contracts. During this two hour gap and before the Department's public announcement, Performant's stock jumped by almost 20 percent, with approximately 179,000 shares traded.¹¹ This was about 75 percent of the average daily trading volume of company stock exchanging hands in a two hour period (compared to the fewer than 900 shares traded in the first four hours of the day).¹²

The timing of these trades – and the similar circumstances under which they occurred - raise serious questions, including whether investors, Department employees, or others with knowledge of the Department's actions were trading based on nonpublic information from Department officials or employees. The Department's plan to terminate the MOUs with the CFPB appears to have been material, nonpublic information with significant market implications, as was the Department's decision about which companies would receive the contracts for collection of unpaid student loans. Insider trading of stocks based on nonpublic information would potentially violate the *Securities Act of 1933 or the Securities Exchange Act of 1934*.

⁵ "CFPB sues nation's largest student loan company Navient for failing borrowers at every stage of repayment." Consumer Financial Protection Bureau. (2017, January 18). Online at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/>.

⁶ Navient Corporation. (2017). Form 10-K. Online at: <https://www.sec.gov/Archives/edgar/data/1593538/000119312517056358/d293261d10k.htm>.

⁷ Nasiripour, S. (2017, October 10).

⁸ Nasiripour, S. (2017, October 10).

⁹ The stock price has since declined to a one-year low, which appears to be largely caused by the company's decision to suspend a share repurchase program. (Navient Corporation. (2017). Form 8-K. Online at: <https://seekingalpha.com/filing/3730032>).

¹⁰ Nasiripour, S. (2018, January 30). "Early word on a contract may have helped investors cash in." *Bloomberg*. Online at: <https://www.bloomberg.com/news/articles/2018-01-30/early-word-on-a-contract-may-have-helped-investors-cash-in>.

¹¹ Nasiripour, S. (2018, January 30).

¹² Nasiripour, S. (2018, January 30).

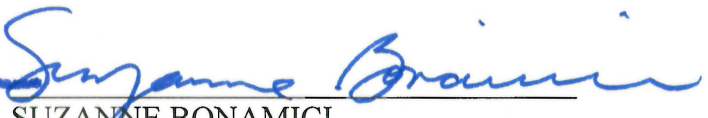
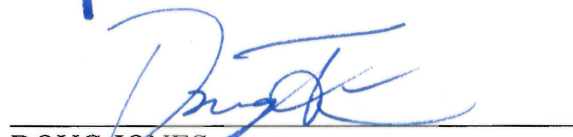
We are concerned that these two instances may be indicative of procedural problems or internal control weaknesses within the Department that are allowing potential insider trading of company stocks based on nonpublic information.

To address our concerns, we request your response to the following questions:

1. What procedures does the Department have in place to prevent the misuse of nonpublic information, including procedures to prevent nonpublic information from leaking to investors or being used by Department officials to engage in stock trading?
2. What is the Department's policy on the dissemination of information or announcements that could affect the market position of publically traded companies?
3. Has the Department conducted its own investigation of whether the Navient or Performant announcements may have leaked or whether individuals within the Department may have made stock trades based on these announcements before they occurred? If so, what has this investigation revealed?
4. Has the Department reported any concerns about these matters to the SEC?
5. Has the Department made any changes or modifications to the procedures used to announce these matters in the time period following the Navient and Performant contracting decisions?
6. Will the Department establish clear protocols for the handling and release of nonpublic information about the Department's actions that may have market implications, including safeguards to prevent leaks of nonpublic information and a prohibition against making public announcements with market implications during trading hours?

We also ask that your staff provide our staff with a briefing on this matter no later than March 8, 2018.

Sincerely,


ELIZABETH WARREN
United States Senator
SUZANNE BONAMICI
Member of Congress
DOUG JONES
United States Senator

cc: The Honorable Jay Clayton, Chairman, Securities and Exchange Commission
Mr. James Manning, Acting Chief Operating Officer, Federal Student Aid and Acting Under Secretary, U.S. Department of Education