

OFFICE OF SENATOR ELIZABETH WARREN

Questions for the Record: ESSA Implementation: Update from the U.S. Secretary of Education on Proposed Regulations (7/12/2016)

I. Student Loan Servicing Re-Compete

1. In April, the Department's student loan bank, the Office of Federal Student Aid (FSA), released a solicitation to procure services to develop a new student loan servicing platform to improve customer service and assist borrowers in distress. Prospective firms seeking to work with FSA would need to demonstrate experience "servicing a large number of student loan borrowers successfully and converting a large volume of borrower accounts from another student loan servicing solution onto the offeror's solution."¹

This performance requirement suggests that only firms currently in the business – including those who have provided poor service to the Department – would qualify to compete.

- a. Does the bank believe there were non-incumbent companies (companies that do not currently have contracts with the Department) that could have reasonably submitted a competitive bid during Phase I of the re-compete? Please provide a list of examples.
 - b. Three offerors advanced to Phase II. Each of these offerors includes one or more incumbent servicers. Does the Department plan to re-open the competition to ensure that new players can enter this broken market?
 - c. In 2014, the bank released a Request for Information related to student loan servicing. Which servicers replied to this request? Please provide their submissions.
2. What is the Office of Federal Student Aid's (FSA) expected timeline for Phase II of the re-compete?
 - a. What is the timeline for subsequent phases of the re-compete, including subsequent re-compete processes to hire additional entities and/or sub-contractors?
 3. For each current TIVAS servicer (FedLoan/PHEAA, Navient, Great Lakes, Nelnet), please provide data regarding:
 - a. the proportion of delinquent borrowers (borrowers between 7 – 90 days delinquent) that have been contacted by the servicer regarding Income-Driven Repayment (IDR) programs during the last year;
 - b. the proportion of delinquent borrowers that have enrolled IDR programs during the last year; and,

¹ https://www.insidehighered.com/sites/default/server_files/files/Federal_Aid_Servicing_Solution_-_Solicitation_Statement_of_Objectives.pdf

- c. the proportion of delinquent borrowers who were previously enrolled in an IDR program but have not recertified into such a program during the last year.
4. With respect to Phase II, I appreciate your 30th directive to FSA Chief Operating Officer, Jim Runcie, directing the bank to make past performance “the most important noncost factor in the evaluation.”² In adhering to this directive, how, specifically, will FSA:
 - a. consider past investigations, lawsuits, and settlements for violations of state or federal consumer protection laws or laws meant to protect students and members of our armed services, including evidence of wrongdoing compiled by state and federal law enforcement agencies;
 - b. consider servicers’ failure to pay existing fines for past sanctions;
 - c. evaluate servicers’ previous record of enrolling distressed borrowers into alternative repayment or debt relief plans, including the sampling or data points FSA plans to use; and,
 - d. evaluate servicers’ previous rates of IDR recertification?
5. Each of the three offerors that have been advanced to Phase II includes a market participant (Navient, Nelnet, and PHEAA) that has been caught up in the “9.5% scandal” that plagued the student loan industry. The Department’s Inspector General issued reports on each of these firms and how they overbilled the Department.³
 - a. How will FSA consider the 9.5% scandal in its evaluation of past performance?
 - b. Has the Department recovered the \$22 million in excess payments billed by Navient, as noted by the Inspector General and the Department’s own investigation?
6. In response to allegations that it violated the Fair Credit Reporting Act, one of the Department’s largest servicers, PHEAA, asserted “sovereign immunity” from this law.⁴
 - a. Does the Department believe it is appropriate to retain contractors that believe they do not need to follow federal consumer financial protection laws?
 - b. Will the Department require, by contract, that contracted servicers may not assert sovereign immunity on allegations or claims related to its actions on federal student loans?
7. In evaluating past performance, how, specifically, will the Department analyze a sample of servicers’ loan portfolios to:
 - a. compare and assess the proportion of delinquent borrowers;
 - b. compare and assess what proportion of delinquent borrowers have been contacted regarding IDR programs;
 - c. compare and assess what proportion of delinquent borrowers have enrolled IDR programs; and,
 - d. compare and assess what proportion of delinquent borrowers who were previously enrolled in an IDR program, but have not recertified into such a program?

² <http://sites.ed.gov/ous/files/2016/06/John-King-servicer-past-performance-memo.pdf>

³ <http://www2.ed.gov/about/offices/list/oig/auditreports/fy2009/a03i0006.pdf>

⁴ <http://www.scotusblog.com/wp-content/uploads/2016/02/pele-op-below.pdf>

8. In evaluating past performance, does the Department's student loan bank plan to require companies involved in the bidding for contracts to disclose any pending civil investigative demands, subpoenas, lawsuits, or settlements relating to their servicing practices prior to awarding a contract?
9. The Department has said that it intends to create mandatory servicing standards. How will you ensure that these standards are privately and publicly enforceable?
 - a. Specifically, will the Department create a third party beneficiary right for borrowers in the contracts?
 - b. Will the Department insert the enforceable standards in the promissory notes that students sign?
 - c. If not, how else would the Department ensure enforceability?
10. Where, in addition to the contracts, will the standards be available?
 - a. For example, will there be a handbook or manual?
 - b. If so, how will this differ from the standards in the contracts?
 - c. Will the contracts and standards be public?
11. How does the Department intend to adopt the Treasury Department's recommendations on best practices in performance-based contracting, and build these recommendations into the Department's incentive model?⁵
12. Is the Department planning to create new financial incentives for the new servicing contracts?
 - a. If so, which elements of the current metrics is the Department planning to keep and which will the Department change or improve?
 - b. How does the Department plan to compensate specialty servicers?
 - c. Has the Department evaluated the performance or effectiveness of the current specialty servicers and are these evaluations public?
 - d. Please send my office the specialty servicer contracts.
13. Which specific offices within the student loan bank and the Department will be involved in the review of prospective bidders?
 - a. According to public information sources, the Department's student loan bank's Deputy Chief Operating Officer, Matthew Sessa, formerly worked at PHEAA. Has the Department's ethics office specifically prohibited Mr. Sessa from participating in any discussion related to student loan servicing?⁶
 - b. How many other employees at the bank are barred from participating in decision-making related to student loan servicing and the re-compete, due to their personal financial interests or recent employment history?
 - c. How will the Department ensure that employees at the bank are barred from participating in decision-making related to student loan servicing and the re-compete, due to their personal financial interests or recent employment history?

⁵ <https://www2.ed.gov/inaid/loans/repay/best-practices-recommendations.pdf>

⁶ <https://www.linkedin.com/in/matthew-sessa-13b5a44>

II. General Student Loan Servicing

14. A November 2015 Government Accountability Office (GAO) report found "weaknesses in the processes for selecting calls to be monitored and for documenting results." Specifically, the GAO found that "FSA monitors far fewer outbound than inbound calls, even though one servicer said it makes 60 times more outbound calls than it receives inbound calls, and outbound calls are often made to borrowers who are delinquent and at risk of default."⁷
- a. Does the Department and FSA plan to increase the number of full-time employees monitoring calls made between servicers and borrowers? If so, how many FTE's will be allocated?
 - b. How do the Department and FSA currently determine which phone calls to monitor?
 - c. How has Department and FSA addressed this weakness found by the GAO?
 - d. What is the process for ensuring that servicers implement the necessary changes when deficiencies are found?
 - i. Has the Department or FSA discovered instances of servicers failing to implement changes?
 - ii. If so, what steps did the Department or FSA take as a result, and how will these past deficiencies factor into FSA's evaluation of past performance?
15. The same GAO report found that FSA has failed to provide servicers with clear guidance on how to apply over or under payments. Is there an updated timeline on when FSA will provide such guidance to ensure that borrowers receive consistent servicing practices as they repay their student loans?⁸
16. A June 2016 GAO report discovered that borrowers may have difficulties with contacting servicers through their call centers due to where they live and the hours of operation at call centers. Specifically, Department officials stated that they "have no minimum standard for call center hours and each servicer sets its own."⁹
- e. What steps has the Department taken to address this concern?
17. This same 2016 report also found that, "no performance metrics relate to compliance with program requirements, servicers with more compliance errors experience no reduction in assigned loans, even as their borrowers may experience servicing problems."¹⁰
- f. Does the Department plan to incorporate this as a metric moving forward, both with the re-compete and single servicing platform?
 - g. If so, how does the Department plan to incorporate and weight this metric?
18. Will the Department or FSA regularly release findings from examinations of its contracted servicers and subcontractors?

⁷ <http://www.gao.gov/products/GAO-16-196T>

⁸ *Id.*

⁹ <http://www.gao.gov/products/GAO-16-523>

¹⁰ *Id.*

19. Please provide all Internal Review Reports of contracted servicers and debt collectors over the past five years.

III. Student Loan Portfolio Data

20. I understand that the Department produces a number of documents on a recurring basis for evaluating the health of the loan portfolio and the performance of student loan servicers. This includes things like the Operations Services Reports.

- a. Describe each of these document types, their use, and their recurrence, including the student loan servicer performance reports that FSA leadership receives to assess the performance of their loan portfolios.
- b. Please provide copies of these documents to my office.
- c. Will the Department release these documents to the public?

21. Will the Department publish quarterly data on the number of borrowers certified into Public Service Loan Forgiveness, or other programs intended to benefit borrowers to allow me and other policymakers, as well as the public, to understand their effectiveness?

22. I understand that the Department has received requests from researchers to access anonymized NSLDS and other data and that the requests are on hold. Can you explain why the requests are on hold and what your timeline is to resolve any delays?

23. Earlier this year the White House announced ED would start a process for granting researchers access to federal student aid data through the Advancing Insights Through Data (AID) Project.

- d. What is the status of AID?
- e. How many individuals have been granted access, what is the process for granting access, and where can individuals learn about how to apply?

IV. Enterprise Complaint System

24. Will the Department or FSA release annual reports on complaints submitted to the new complaint system? If so, will these reports identify the number of complaints submitted by servicer and nature of the complaint?

25. Will FSA ensure that every single complete complaint gets immediately sent to the Federal Trade Commission's Sentinel?

26. How will FSA ensure that servicers, debt collectors, schools, and other Department contractors are resolving complaints and are accountable to students and borrowers?

- a. What is FSA's quality assurance process?

27. Will the complainant have direct access to all correspondence and information associated with his or her complaint through the system?

- a. Will the complainant be able to read a servicer, debt collector, or school's response and associated information?
28. Will FSA ensure that all complainants are asked whether they are satisfied with the resolution of their complaints, and will complaints from unsatisfied borrowers be reviewed by staff?
- a. Will complaints be kept open until they are resolved and the complainant is satisfied?
29. Will students and borrowers who file complaints know exactly what to expect from the Feedback system?
- a. Does FSA plan to release a public guide to detail the life cycle of complaints and suspicious activity reports, and who is responsible at what stage?
30. Will the Department or FSA release annual reports on complaints submitted to the new complaint system?
- a. What information and will be contained in FSA's October 2016 report about the Feedback system?
 - b. If so, will these reports identify the number of complaints submitted by service and nature of the complaint?

V. Other Issues

31. What is the Department's current practice regarding public access to servicing contracts?
- a. Specifically, does the Department make public both the contracts and guidance, as well as any modifications to contracts?
 - b. Please provide a copy of the contract or contractual modification with MOHELA to provide borrower defense assistance, including a description of the parameters, requirements of this contract, financial incentives, and whether these documents are public.
 - c. If these documents are not public, then please explain why not.
32. Institutions of higher education are required to meet certain standards of financial responsibility. The Department determined that Corinthian Colleges had a financial composite score of 0.9 for FY2011, which fell below the minimum required financial composite score. However, the Department's student loan bank did not require any letter of credit to protect against losses to the taxpayers.
- a. Why did the Department decline to order Corinthian to produce a letter of credit? Please provide all documents and memoranda related to this decision.
 - b. Who at the Department's student loan bank made the final decision not to order the letter of credit?
 - c. How much does the Department expect taxpayers in closed school discharge and borrower defense claims because the bank failed to order a letter of credit from Corinthian?

33. With respect to borrower defense, is the Department planning to publically issue guidance regarding how FFEL borrowers can apply for borrower defenses?
- d. If so, what is the timeline and how will this guidance be made public?
 - e. Do you believe guidance for FFEL loan holders to grant forbearances to FFEL borrowers who apply for defense to repayment is necessary or can FFEL loan holder currently grant forbearances?
 - f. Do you plan to issue guidance on this topic?
34. In my February 2016 Questions for the Record, I asked you to “please provide the guidance that the Department currently gives student loan servicers regarding borrower defense discharges, closed school discharges, and other student loan discharges.” You said your staff would “be pleased to further discuss our guidance to student loan servicers” in a meeting with my staff. Months later, my staff has never seen such guidance. Does the Department provide guidance to student loan servicers regarding borrower defense discharges? If not, then why not? If so, then please provide the guidance.
35. What is the status of the PCA contracts, and how do these contracts interact with the servicing re-compete (if at all)?
36. Last year, my office published a report detailing its investigation of the flawed reviews conducted by the Department’s student loan bank. I am pleased that the Department is prohibiting the bank from conducting the review and is instead retaining an independent firm.¹¹
- a. What error rate would exceed the Department’s tolerance level and lead to termination of the contract?
 - b. Will the Department publicly release this error rate prior to conducting the review?
 - c. Will the Department’s student loan bank’s executives be prohibited by the Secretary to determine any sanctions?

Please contact Josh Delaney (202-224-4543) in my office if you have any questions.

¹¹ http://www.warren.senate.gov/files/documents/SCRA_ED_Report_August2015.pdf