

United States Senate

WASHINGTON, DC 20510

September 18, 2017

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G St. N.W.
Washington, DC 20002

Dear Director Cordray:

Last month, the U.S. Department of Education (“the Department”) terminated the Memoranda of Understanding (MoUs) between the Department and the Consumer Financial Protection Bureau (CFPB or “the Bureau”) regarding the sharing of information in connection with oversight of federal student loans. This decision was unjustified and unwise. We write to strongly encourage the Consumer Financial Protection Bureau to continue its statutorily mandated work to ensure that students are protected from unfair, deceptive, and abusive acts committed by the Department’s student loan servicers and contractors, and other participants in the federal and private student loan industry.¹

This country is facing a student debt crisis, with more than 40 million Americans owing over \$1.4 trillion in federal and private student loan debt.² This massive student debt burden is growing by nearly \$100 billion each year.³ For several years now, under your leadership, the CFPB has sounded the alarm about the country’s growing student debt crisis and analyzed how the nation’s growing student debt burden is impacting consumer behavior.⁴ The Bureau, for example, estimated in 2015 that more than one in four borrowers are either delinquent or in default on their student loans.⁵ The Financial Stability Oversight Council has warned about the impacts of unmanageable student debt on the larger economy, including a general reduction in consumption and a drag on the housing market.⁶

¹ 12 U.S.C. 5481(15)(A); 12 U.S.C 5514(a)(1)(B); 12 CFR Part 1090.105; 12 CFR Part 1090.106.

² “2016 Student Loan Update.” Center for Microeconomic Data. *Federal Reserve Bank of New York* (accessed Sept. 13, 2017). Online at: <https://www.newyorkfed.org/microeconomics/databank.html>; “Consumer Credit – G.19.” *Board of Governors of the Federal Reserve System* (Sept. 8, 2017). Online at: <https://www.federalreserve.gov/releases/g19/current/>.

³ “2016 Student Loan Update.” Center for Microeconomic Data. *Federal Reserve Bank of New York* (accessed Sept. 13, 2017). Online at: <https://www.newyorkfed.org/microeconomics/databank.html>. See sheet “Total student loan balances by age group.”

⁴ “Student Loan Affordability: Analysis of Public Input on Impact and Solutions.” *Consumer Financial Protection Bureau* (May 8, 2013). Online at: http://files.consumerfinance.gov/f/201305_cfpb_rfi-report_student-loans.pdf.

⁵ “CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers” [press release]. *Consumer Financial Protection Bureau* (Sept. 29, 2015). Online at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-concerned-about-widespread-servicing-failures-reported-by-student-loan-borrowers/>.

⁶ “2014 Annual Report” *Financial Stability Oversight Council* (May 7, 2016). Page 22. Online at: <https://www.treasury.gov/initiatives/fsoc/Documents/FSOC%202014%20Annual%20Report.pdf>

The CFPB has also highlighted the role of harmful practices of federal student loan contractors—particularly student loan servicers and private debt collectors—in exacerbating this problem. In many cases, these practices have harmed borrowers, extended borrowers’ payment terms, increased their monthly payments, and made it harder for federal student loan borrowers in financial distress to access the benefits and protections Congress intended them to have.⁷ The Bureau’s role has been particularly important because the Department has repeatedly failed to adequately hold its own contractors accountable.⁸

Borrowers have greatly benefited from this increased oversight of federal student loan servicers since Congress created the Student Loan Ombudsman position in *The Dodd–Frank Wall Street Reform and Consumer Protection Act*. The Ombudsman’s office has released report after report documenting, among other things, how the Department’s student loan servicers have cost borrowers by mishandling their documents, such as income-driven repayment plan applications and renewals;⁹ how servicing failures have helped cause many borrowers to re-default soon after loan rehabilitation or prevented defaulted borrowers from participating in the monthly payment programs that are best for them;¹⁰ and the uniquely disturbing impact of student loan servicing failures on our veterans and members of the military.¹¹ All of this work, which has protected students and helped state and federal policymakers address problems with the student loan program, has been supported by the MoUs between the CFPB and the Department.

In addition to providing greater oversight and transparency, the CFPB has improved the student loan industry by rooting out illegal practices in the student loan servicing market and taking legal action against servicers that break federal consumer protection law, just as Congress intended. Simply put, no federal agency or department has done more to curb abusive practices in the student loan industry than the CFPB. CFPB’s role of enforcing federal consumer protection laws has become more important than ever. The Department, under Secretary DeVos, has taken steps that endanger students and make it more difficult to identify and stop student loan contractors and fraudulent for-profit colleges that are breaking the law.

⁷ *Id.*

⁸ “An Analysis of the Department of Education’s Review of Student Loan Servicers Compliance with the Servicemembers Civil Relief Act.” Office of Senator Elizabeth Warren. *United States Senate* (Aug. 2015). Online at: https://www.warren.senate.gov/files/documents/SCRA_ED_Report_August2015.pdf.

⁹ “Student loan servicing. Analysis of public input and recommendations for reform.” *Consumer Financial Protection Bureau* (September 2015). Online at: http://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf.

¹⁰ “2016 Annual Report of the CFPB Student Loan Ombudsman.” *Consumer Financial Protection Bureau* (Oct. 17, 2016). Online at: <http://www.consumerfinance.gov/data-research/research-reports/2016-annual-report-cfpb-student-loanombudsman/>.

¹¹ Frotman, S. “Prepared Remarks of Seth Frotman” [remarks at Judge Advocate General’s Legal Center and School, Charlottesville, VA]. *Consumer Financial Protection Bureau* (Oct. 18, 2016). Online at: http://files.consumerfinance.gov/f/documents/201610_cfpb_Frotman-Remarks-JAG-School.pdf.

The CFPB has gone after law-breaking colleges and companies, including ITT Educational Services, Inc.,¹² Corinthian Colleges¹³ (where it secured \$480 million in loan relief for students¹⁴), and Bridgepoint Education, Inc. While ITT and Corinthian are now defunct, Bridgepoint continues to operate and is the immediate past employer of Robert Eitel, Senior Counselor to Secretary DeVos).¹⁵ The CFPB has also taken action against Navient, the nation's largest student loan servicer, which has a troubling history of cheating servicemembers¹⁶ and illegally steering borrowers away from repayment options that could lower their monthly payments.¹⁷ According to data released by the CFPB in April, Navient—a federal contractor—was the single most complained-about company in the country during the first quarter of 2017—more than Wells Fargo, Bank of America, Equifax, or any other bank or credit reporting company.¹⁸ That is astounding.

At the same time the CFPB went after Navient for railroading student loan borrowers into bad repayment options that boosted the company's profits, the Department ripped up critical policies created last year that would have made it harder for student loan servicers that cheat borrowers to keep raking in lucrative federal contracts. It is no surprise that Navient's stock value skyrocketed after the Department's decision to terminate MOUs with the CFPB.¹⁹ One market analyst responded to the news by upgrading his rating of Navient from “neutral” to “buy,” declaring, “It's a signal that the Trump administration is looking at the industry differently than Obama... With a little bit less oversight, you can get a little bit more comfortable with the risk profile of the company.”²⁰

¹² “CFPB Sues For-Profit College Chain ITT For Predatory Lending” [press release]. *Consumer Financial Protection Bureau* (Feb. 26, 2014). Online at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-college-chain-itt-for-predatory-lending/>.

¹³ “CFPB Sues For-Profit Corinthian Colleges for Predatory Lending Scheme” [press release]. *Consumer Financial Protection Bureau* (Sept. 16, 2014). Online at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-corinthian-colleges-for-predatory-lending-scheme/>.

¹⁴ “CFPB Secures \$480 Million in Debt Relief for Current and Former Corinthian Students” [press release]. *Consumer Financial Protection Bureau* (Feb. 3, 2015). Online at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-secures-480-million-in-debt-relief-for-current-and-former-corinthian-students/>.

¹⁵ “Consumer Financial Protection Bureau Takes Action Against Bridgepoint Education, Inc. for Illegal Student Lending Practices” [press release]. *Consumer Financial Protection Bureau* (Sept. 12, 2016). Online at: <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-takes-action-against-bridgepoint-education-inc-illegal-student-lending-practices/>.

¹⁶ “Nearly 78,000 Service Members to Begin Receiving \$60 Million Under Department of Justice Settlement with Navient for Overcharging on Student Loans” [press release]. Office of Public Affairs. *U.S. Department of Justice* (May 28, 2015). Online at: <https://www.justice.gov/opa/pr/nearly-78000-service-members-begin-receiving-60-million-under-department-justice-settlement>.

¹⁷ “CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment” [press release]. *Consumer Financial Protection Bureau* (Jan. 18, 2017). Online at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/>.

¹⁸ “Monthly Complaint Report.” Vol. 22. *Consumer Financial Protection Bureau* (Apr. 2017). Online at: http://files.consumerfinance.gov/f/documents/201704_cfpb_Monthly-Complaint-Report.pdf.

¹⁹ “Navient Corporation Common Stock Historical Stock Prices.” *Nasdaq* (accessed Sept. 13, 2017). Online at: <http://www.nasdaq.com/symbol/navi/historical>.

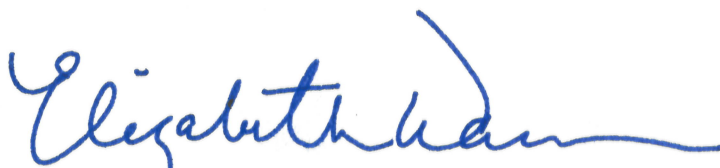
²⁰ Berman, J. “The latest sign the Trump administration could be a boon to student loan companies.” *MarketWatch* (Sept. 8, 2017). Online at: <http://www.marketwatch.com/story/the-latest-sign-the-trump-administration-could-be-a-boon-to-student-loan-companies-2017-09-06>.

The recent actions by the Department under Secretary DeVos raise new questions about whether the Department can be trusted to stand up for student loan borrowers against giant student loan servicers and debt collectors. In fact, the Department appears to be going out of its way to protect its servicers from real oversight and accountability. Terminating MOUs seems to be another example of Secretary DeVos's acting in favor of the profits of private student loan companies rather than the rights of students and borrowers.

We appreciated your September 7 letter to Secretary DeVos, in which you clearly explained the responsibilities and authorities that Congress has placed with the CFPB. You noted that, prior to the August 31 letter from the Department, the Department "has never expressed any concerns about the MOU or the handling of federal student loan complaints;" and outlined the ways in which your staff have made complaint data available to the Department.²¹ Last week, we wrote to Secretary DeVos with some of our colleagues to express our concerns with her actions.²² Today, we write to ask that you provide us with responses to the following requests:

1. Please provide copies of all communications between the CFPB and the Department, and between the CFPB and the White House or any other agency, regarding this matter, including all discussions of the reasons for terminating the MOUs and the legal basis for CFPB's work on student loan issues.
2. How has the CFPB used the information shared by the Department to address problems with the student loan program? If possible, please provide a summary of illegal practices that have been uncovered and shared between the Department and the CFPB through the MOUs.
3. How has the existence of these MOUs helped federal student loan borrowers?
4. You wrote in your September 7 letter that, "[w]ithout an MOU in place, the basic information sharing between [the Department and CFPB] that make ... collaboration possible will cease." Please describe in greater detail the impact of terminating information sharing between the CFPB and the Department.

Sincerely,



Elizabeth Warren
United States Senator



Sherrod Brown
United States Senator

²¹ Cordray, R. [Letter to U.S. Secretary of Education Betsy DeVos]. *Consumer Financial Protection Bureau* (Sept. 7, 2017). Online at: <https://consumermediallc.files.wordpress.com/2017/09/director-cordray-letter-to-department-of-education-9-7-17.pdf>.

²² "Brown, Murray Lead Senate, House Members Calling on Secretary DeVos to Reverse Rollback of Student Loan Borrower Protections" [press release]. *Office of Senator Sherrod Brown* (Sept. 15, 2017). Online at: <https://www.brown.senate.gov/newsroom/press/release/brown-murray-lead-senate-house-members-calling-on-secretary-devos-to-reverse-rollback-of-student-loan-borrower-protections>.