



April 4, 2019

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

We, the undersigned Attorneys General of Colorado, New Jersey, Washington, California, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, and Virginia renew our call to the U.S. Department of Education (“the Department”) to reverse the limitations imposed on the Department’s routine disclosure of student loan information to state law enforcement agencies. Over the past year, the Department has rejected requests for student loan information by states, citing the Privacy Act of 1974 as one of the reasons for the denial.¹ As described in a July 13, 2018 letter to you from twenty State Attorneys General (the “July 13, 2018 Comment”) (copy enclosed), student loan information is vital to our efforts to protect consumers from illegal, unfair, abusive, or deceptive practices by actors in the higher education industry, in which the Department historically has been an important partner. However, the Department’s policy reversal impedes states’ ability to enforce the law and shields unprincipled industry actors from regulatory enforcement, harming student loan borrowers nationwide.

Dual oversight in the higher education arena by state and federal authorities historically has been the cornerstone of responsible regulation and policy-making. In furtherance of this principle, the Department has routinely disclosed student loan data to federal and state law enforcement agencies in connection with such agencies’ investigation of potentially illegal conduct. The Department’s

¹ See, e.g., Complaint for Declaratory And Injunctive Relief, *Pennsylvania Higher Educ. Assistance Agency v. Perez, et al.*, 1:18-cv-00770-RJL (D.D.C. Apr. 4, 2018), ECF No. 1 at 11 (“On March 26, 2018, [the Department]’s Office of the General Counsel denied the Connecticut Defendants’ January 12, 2018 request for access to certain FSA records pertaining to student loan borrowers ...”); see also U.S. Department of Education, Memorandum re: Ownership of and Access to U.S. Department of Education Records and Data (Dec. 27, 2017), available at <https://static.politico.com/51/1f/0f805fd04c2eb035bcd79f9200be/december-27-2017-servicer-memo.pdf> (stating that “[a]ny request made from any third party for Department records to which a contractor has access must be made directly to the Department, where it will be evaluated for compliance with the requirements of the Privacy Act”).

recent rejection of requests from law enforcement agencies is a sharp departure from its long-standing practice.²

The Department contracts with multiple private companies to service student loans it owns and shares student loan data with these companies in the course of these commercial relationships. The activities of such private companies are subject to the police power of various state and federal law enforcement agencies. Dual oversight in this arena has become particularly important in recent years, as concerns mount about these companies' compliance with the requirements for servicing federal student loans and consumer protection laws enforced by State Attorneys General. For example, according to reports by the Consumer Financial Protection Bureau, student borrowers encounter obstacles when interacting with servicers about the most basic servicing tasks such as correctly processing loan payments.³ Student borrowers also face difficulties when trying to enroll or renew enrollment in certain federal repayment programs, such as income-driven repayment plans.⁴

On February 12, 2019, the Department's Office of Inspector General reported that the Department's own oversight activities regularly identified instances of servicer non-compliance with federal requirements and identified concerns about shortcomings in federal oversight of servicers.⁵ Moreover, a July 2018 report by the U.S. Department of the Treasury characterized the federal student loan program as "immensely complex" due to the variety of loan types offered and serviced; numerous repayment plans with different eligibility requirements and repayment structures; and unique product features that differ from nearly all other consumer financial products.⁶ Because the programs are difficult to understand and servicing practices vary among servicers, borrowers rely on their loan servicers to answer questions about repaying their loans, help enroll them in an appropriate and sustainable repayment plan, and assist them when they struggle to make payments.⁷

² *Privacy Act of 1974; System of Records*, 64 Fed. Reg. 72384, 72399 (Dec. 27, 1999); *Privacy Act of 1974; System of Records*, 81 Fed. Reg. 12081, 12083 (Mar. 8, 2016).

³ Consumer Financial Protection Bureau, *Annual Report of the CFPB Student Loan Ombudsman* (Oct. 2013), available at <http://www.consumerfinance.gov/reports/annual-report-of-the-cfpb-student-loan-ombudsman-2013/>.

⁴ Consumer Financial Protection Bureau, *Midyear Update On Student Loan Complaints* (Aug. 2016), available at https://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf.

⁵ U.S. Department of Education, Office of Inspector General, *Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans*, ED-OIG/A05Q0008 at 2 (Feb. 12, 2019) (finding, *inter alia*, that the Department rarely used available contract accountability provisions to hold servicers accountable for instances of noncompliance, and that the Department did not incorporate a performance metric relevant to servicer compliance into its methodology for assigning loans to servicers).

⁶ U.S. Department of the Treasury, *A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation* (July 2018) at 124, available at <https://home.treasury.gov/sites/default/files/2018-07/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financi....pdf>.

⁷ *Id.*

The State Attorneys General are in a unique position to ensure that the servicers are conducting their businesses in compliance with consumer protection laws and have been active in enforcing state consumer protection laws against servicers. For example, the New York and Massachusetts Attorneys General have separately settled their claims against student loan servicer ACS/Conduent Education Services.⁸ In addition, the State Attorneys General of California, Illinois, Mississippi, Pennsylvania, and Washington have brought enforcement actions against student loan servicer Navient.⁹

State Attorneys General also have secured significant protections and relief for student loan borrowers struggling in the face of other abusive and predatory industry practices. These include widespread fraud in the for-profit education sector and the student debt adjustment sector.¹⁰ Indeed, the recent financial improprieties surrounding the financial collapse of Dream Center Education Holdings (“DCEH”), former owner of the Art Institutes, Argosy, and South University schools, highlight the need for law enforcement cooperation in this area. Millions of dollars in federal student aid owed to students was sent to DCEH by the Department but was never received by students.¹¹ Thirty-nine State Attorneys General have consent judgments governing DCEH’s conduct and the settlement administrator monitoring these judgments has intervened in DCEH’s receivership case.¹²

Information maintained by the Department can further these and many other types of law enforcement efforts on both the state and federal level. As previously expressed to you in the July 13, 2018 Comment, State Attorneys General were alarmed when the Department indicated it no longer intended to disclose certain records under the “routine use” exception for information “relevant to any enforcement, regulatory, investigative or prosecutorial responsibility” of a state

⁸ Press Release, Attorney General James and Superintendent Vullo Announce \$9 Million Settlement of Federal Student Loan Servicing Claims With ACS Educations Services (Jan. 4, 2019), *available at* <https://ag.ny.gov/press-release/attorney-general-james-and-superintendent-vullo-announce-9-million-settlement-federal>; Press Release, AG Healey Secures \$2.4 Million, Significant Policy Reforms in Major Settlement with Student Loan Servicer (Nov. 11, 2016), *available at* <https://www.mass.gov/news/ag-healey-secures-24-million-significant-policy-reforms-in-major-settlement-with-student-loan>.

⁹ *State of Illinois v. Navient Corp., et al.*, No. 17-VH-00761 (Circuit Court of Cook County, Jan. 18, 2017) ; *State of Washington v. Navient Corp., et al.*, No. 17-2-01115-1 SEA (King County Superior Court, Jan. 18, 2017); *Commonwealth of Pennsylvania v. Navient Corp., et al.*, No. 3:17-cv-1814-RDM (M.D. Pa. Oct. 5, 2017); *State of California v. Navient Corp., et al.*, No. CGC-18-567732, (San Francisco Superior Court, Jun. 29, 2018); *State of Mississippi v. Navient Corp., et al.*, No. G2108-98203 (Hinds County Chancery Court, July 17, 2018).

¹⁰ See Letter from the Attorneys General of New Jersey, Washington, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawai‘i, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, and Virginia to The Honorable Betsy DeVos, Secretary of Education (July 13, 2018).

¹¹ See Letter from the Department to DCEH Receiver and DCEH Board Chair (Feb. 27, 2019), *available at* <https://studentaid.ed.gov/sa/sites/default/files/argosy-cio-denial-redacted.pdf> (denying change in ownership).

¹² Order Granting Intervention, *Digital Media Solutions, LLC v. South University of Ohio, LLC, et al.*, 1:19-cv-00145-DAP (N.D. Ohio Mar. 12, 2019), ECF No. 144.

or local agency.¹³ Moreover, in recent months the Department has declined to share information with the states under other applicable “routine use” exceptions.

We find it particularly troubling that the Department stopped sharing information with state and federal law enforcement agencies without formally providing any reason for its decision or consulting with the affected agencies. We also are troubled that the Department did not appear to consider the July 13, 2018 Comment, did not respond to the concerns outlined therein, and declined to engage with impacted law enforcement agencies; rather, it simply allowed the changes to go into effect without further discussion. This inexplicable move by the Department impedes the efforts of law enforcement agencies to protect the students the Department exists to serve. These concerns remain unaddressed.

The same concerns are shared by the United States Congress, which directed the Department to respond to enforcement disclosure requests and to publish an explanation of the policy that governs such disclosures.¹⁴ In their letter dated February 19, 2019, Senator Patty Murray and Representative Rosa DeLauro noted the Department’s failure to comply with this directive with alarm given “the Department’s historically poor oversight and management of student loan companies and contractors....”¹⁵

The same issues were raised in a hearing held by the U.S. House of Representatives Appropriations Subcommittee on the Departments of Labor, Health and Human Services, Education, and Related Agencies on March 6, 2019. In that hearing, Chair DeLauro noted that our country is facing a student loan servicing crisis, and that the conduct of federal student loan servicers needs continued and vigorous oversight. Chair DeLauro also observed that compliance with state law—as well as federal law—is an obligation expressly imposed upon federal loan servicers by their contracts with the Department. By including this obligation in its servicing contracts, the Department correctly recognized that state law enforcement agencies have an interest in protecting consumers from deceptive, misleading, unfair, and unconscionable practices that contravene state law as servicers carry out their contracts.

At a time when the Department struggles to keep up with its oversight of loan servicers charged with handling millions of student loan accounts, protecting student loan borrowers from unfair or deceptive practices is more important than ever. These protections are advanced by mutual support and cooperation among state and federal agencies. Now is the time to bolster, not curtail, our joint oversight and enforcement efforts.

¹³ *Privacy Act of 1974; System of Records*, 83 Fed. Reg. 27587 (June 13, 2018).

¹⁴ Departments of Labor, Health and Human Services, and Education, and related agencies Appropriations Act, 2019 (Public Law No. 115-245); Senate Report 115-289, <https://www.congress.gov/115/crpt/srpt289/CRPT-115srpt289.pdf>.

¹⁵ Letter from U.S. Senator Patty Murray and U.S. Representative Rosa DeLauro to The Honorable Betsy DeVos, Secretary of Education (Feb. 19, 2019).

The Department's abandonment of its policy of disclosing records to law enforcement agencies represents a significant step away from the interests of consumers and toward the interests of corporate actors, who seek to use the Privacy Act as a shield as they resist being held accountable for their actions. We again urge the Department to return to its previous policy of disclosing student loan information to State Attorneys General and other law enforcement agencies.

Sincerely,



Phil Weiser
Colorado Attorney General



Gurbir S. Grewal
New Jersey Attorney General



Bob Ferguson
Washington State Attorney General



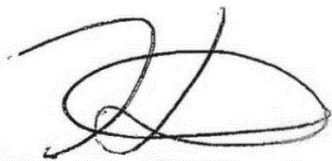
Xavier Becerra
California Attorney General



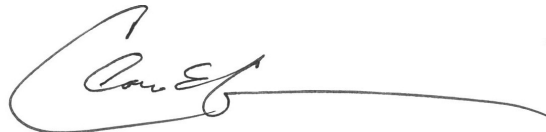
William Tong
Connecticut Attorney General



Kathleen Jennings
Delaware Attorney General



Karl A. Racine
District of Columbia Attorney General



Clare E. Connors
Hawaii Attorney General



Kwame Raoul
Illinois Attorney General




Tom Miller
Iowa Attorney General



Brian Frosh
Maryland Attorney General



Maura Healey
Massachusetts Attorney General



Dana Nessel
Michigan Attorney General



Keith Ellison
Minnesota Attorney General



Aaron Ford
Nevada Attorney General



Letitia A. James
New York Attorney General



Josh Stein
North Carolina Attorney General



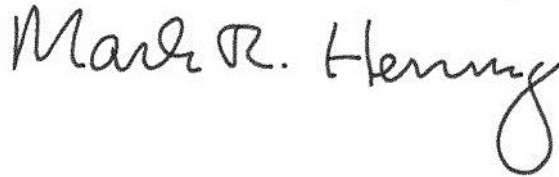
Ellen F. Rosenblum
Oregon Attorney General



Josh Shapiro
Pennsylvania Attorney General



Peter F. Neronha
Rhode Island Attorney General



Mark R. Herring
Virginia Attorney General

Enclosure

Cc: U.S. Senate Committee on Health, Education, Labor and Pensions
U.S. House of Representatives Appropriations Subcommittee on the Departments of
Labor, Health and Human Services, Education, and Related Agencies