



Consumer Financial
Protection Bureau

1700 G Street NW, Washington, DC 20552

September 7, 2017

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

Dear Secretary DeVos:

I am writing in response to a letter I received from the Department of Education on September 1, 2017 stating the Department's intent to terminate our agencies' 2011 and 2014 memoranda of understanding. The letter appears to misunderstand the responsibilities that Congress has placed upon the Consumer Financial Protection Bureau and the actions it has taken with respect to student loans over the past six years in close collaboration with the Department of Education. I write in the hope that we can engage in a constructive conversation about how our agencies can continue to collaborate to best serve student loan borrowers. There is plenty of work for each of us to do, but I believe we can generally do it better by working together.

Title X of the Dodd-Frank Act created the Bureau to "implement, and where applicable, enforce Federal consumer financial law."¹ Just as the Department administers and interprets the Higher Education Act, the Bureau does the same for Federal consumer financial law. The Bureau has authority to issue rules and guidance, and to take appropriate enforcement actions to address violations of Federal consumer financial law, including the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act, and the Dodd-Frank Act's prohibition on unfair, deceptive and abusive acts or practices. The HEA does not supersede these laws, and companies servicing or collecting on federal student loans cannot merely look to the HEA to inform their conduct and ignore their legal obligation to comply with these other laws.

As for consumer complaints, the Dodd-Frank Act directed the Bureau to establish a unit "to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services."² It also conferred on the Bureau the authority and responsibility to supervise certain providers of consumer financial products and services including institutions responsible for "servicing loans" and "collecting debt related to any consumer financial

¹ 12 U.S.C. § 5511(a).

² 12 U.S.C. § 5493(b)(3).

product or service,” which includes collection and servicing of Federal student loans.³ For nearly six years, the Bureau has worked in close coordination with the Office of Federal Student Aid and the FSA Ombudsman. By working together, our agencies have provided much-needed assistance to consumers and improved access to the critical consumer protections established under federal law.

CFPB Complaint Handling and the 2011 Memorandum of Understanding

The Dodd-Frank Act directed the CFPB’s student loan ombudsman to enter into an MOU with the Department’s student loan ombudsman “to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans.”⁴ The 2011 Sharing MOU implemented that directive, and the Bureau has faithfully complied with the MOU since it was signed. Indeed, prior to last week’s letter, the Department had never expressed any concerns about the MOU or the handling of federal student loan complaints.

The Bureau began accepting complaints about federal student loan servicing in February 2016. As of September 1, 2017, without any objection, the Bureau has handled nearly 20,000 complaints on federal student loan servicing, including more than 1,200 from servicemembers, veterans, and their families. Under our standard procedures, complaints are electronically transmitted to companies – typically in less than one day – allowing companies to respond to their customers about a problem or misunderstanding. By this means, customers generally receive a response within 15 days.

The Bureau’s complaint handling plays a key role in furthering our joint mission of serving students and borrowers by providing an efficient means for consumers to voice their concerns and hear from their servicer. Often servicers do provide the relief the consumer has been seeking. Consider, for example, the borrower from Oregon who reported that she was unable to recertify her income-driven repayment plan because she had been unable to obtain the information she needed to complete her application.⁵ Or the borrower from Wyoming who reported that her servicer inaccurately processed a death claim on her account, which turned off her automatic payments and caused her to accrue over \$1,000 in unpaid interest.⁶ In these instances, and many others, servicers acted to rectify these situations – getting borrowers back on track with their student loans – as a direct result of the Bureau’s complaint process. That is a far better result than if they had to consider suing the servicer.

Importantly, we share both the consumer’s complaint as well as the company’s response with the Department of Education in near real-time, as a result of your staff’s access to the Bureau’s secure

³ 12 U.S.C. § 5481(5), (15). The Dodd-Frank Act instructs the Bureau to supervise nonbanks that are larger participants (as defined by Bureau rule) of a market for consumer financial products or services. 12 USC 5514(a)(1)(B). The Bureau has issued larger-participant rules for the student loan servicing and debt collection markets as per the statute. 12 CFR 1090.105 (consumer debt collection market); 12 CFR 1090.106 (student loan servicing market).

⁴ 12 U.S.C. § 5535(c)(2).

⁵ <https://data.consumerfinance.gov/dataset/2439982/i4qd-fq2j>.

⁶ <https://data.consumerfinance.gov/dataset/1828501/mwft-agv9>.

Government Portal. In the past three months alone, Department staff accessed the Bureau’s secure Government Portal more than 80 times. That is more efficient and less risky than forwarding a large volume of electronic files. In short, I do not understand the claim that we have violated the MOU by not forwarding complaints, when we make them available to Department staff in near real-time.

Supervision and the 2014 Supervisory MOU

In 2014, the Department entered into a second MOU with the Bureau, based on a mutual desire to “cooperate in connection with their respective student financial services oversight and supervisory activities.” As noted above, the Bureau has the authority to supervise certain providers of financial services. In conducting examinations, the Bureau can “require reports” and “obtain information about the activities and compliance systems or procedures”⁷ of the entity in order to inform its assessment of whether the entity is in compliance with Federal consumer financial law.

The standard procedure of the Bureau – like those of other financial regulators – is to send an information request before conducting an on-site examination to make the time spent on site most efficient for both the Bureau and the entity. For years, our agencies have worked collaboratively, and the Bureau has never knowingly taken any actions in conflict with the Department’s regulations or instructions to servicers. MOUs are executed in order to facilitate effective coordination, and we stand ready to work toward new MOUs between the Bureau and the Department.

The Bureau has followed its mandate from Congress to take action to ensure compliance with Federal consumer financial law. We have conducted supervisory examinations and issued confidential reports to servicers identifying instances where they were violating the law. These actions are published in our *Supervisory Highlights* in a way that preserves confidentiality. For example, we have reported that Bureau examiners found one or more servicers who were engaged in unfair practices under the Dodd-Frank Act and violations of the Fair Debt Collection Practices Act and the Fair Credit Reporting Act in their handling of federal student loans.⁸ Also, as you know, the Bureau is in active litigation against Navient Corporation and its subsidiaries based on investigations in which we found facts that appear, in our view, to violate Federal consumer financial laws.

None of these examples or any of our other actions is inconsistent with the Department’s directives, or conflicts with our shared goal of protecting student loan borrowers. In fact, input from the Department has regularly informed the Bureau’s work. Without an MOU in place, the basic information sharing between our agencies that make this collaboration possible will cease.

⁷ 12 U.S.C. § 5514(b)(1).

⁸ See, e.g., CFPB, *Supervisory Highlights: Winter 2016* (Mar. 2016), <https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-winter-2016>.

The Bureau also notes that government agencies other than the Department routinely contribute to the joint effort to address problematic conduct by companies involved in the federal student loan system. For example, in July 2013 the FTC settled charges against Expert Global Solutions, a debt collector of federal student loans – the FTC’s largest settlement ever against a third-party debt collector.⁹ The FDIC and the Department of Justice took action against Sallie Mae and Navient for violating the Servicemember Civil Relief Act and FTC Act while servicing federal student loans.¹⁰ And the FCC has issued a regulation that caps the number of calls that federal student loan debt collectors can make to mobile phones.¹¹ Concurrent jurisdiction among multiple agencies is not atypical. When all of us act together as partners, using our different authorities, and bringing different sets of expertise to the table, we are generally more effective.

In sum, I am confident that the Bureau has faithfully followed the MOUs and has not exceeded its authority under the law. Having said that, we stand ready to meet with you or your colleagues, hear your concerns, and explore constructive solutions to help us all better serve students and borrowers.

Sincerely,



Richard Cordray
Director

CC: Kathleen Smith, Acting Assistant Secretary, Office of Postsecondary Education
Dr. A Wayne Johnson, Chief Operating Officer, Federal Student Aid

⁹ <https://www.ftc.gov/news-events/press-releases/2013/07/worlds-largest-debt-collection-operation-settles-ftc-charges-will/>.

¹⁰ <https://www.fdic.gov/news/news/press/2014/pr14033.html>.

¹¹ 47 CFR 64.1200.