

United States Senate

WASHINGTON, DC 20510

December 6, 2018

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

Dear Secretary DeVos:

This letter is regarding Phase II of the solicitation for the Next Generation Processing and Servicing System (“NextGen”) which will determine the future of customer service provided to more than 42 million federal student loan borrowers throughout this country. The Department’s goal of modernizing our student loan repayment system has the potential to provide borrowers with consistent and quality help while they repay their student loans. To realize this vision, the U.S. Department of Education (“Department”) must ensure that student loan companies and debt collectors are using federal taxpayer dollars fairly, effectively, and legally. NextGen will only succeed if the Department begins to hold student loan companies accountable to the law, and if the Department allows state and federal regulators to do their job.

Federal contractors should place consumer protection among their highest priorities. However, recent developments have raised serious questions whether student loan servicers may be actively harming borrowers by failing to inform them of their options. More than one million student loan borrowers default on their loans each year, and often due to systematic servicing failures. This astounding level of default is unacceptable. The Department has access to an unprecedented amount of information on servicer interactions with borrowers, and this data should be used to promote better performance and high-quality customer service. The data should also be provided to independent regulators that oversee servicers’ compliance with the law. Servicers should have both a moral and regulatory obligation to operate in the best interest of borrowers.

In recent legislation funding the Department, Congress has directed the agency to evaluate NextGen contractors’ “history of compliance” with consumer protection laws, and that this system must “incentivize more support to borrowers at risk of being distressed.”¹ These requirements also clearly extend to any subcontractors, the performance of which Congress has made clear “shall be accounted for in the prime contract and in the overall performance of the prime contractor.” The Department has subsequently said that it “will comply with the FY 2018 Omnibus Spending Bill.”² Unfortunately, we remain strongly concerned that Congressional directives to protect student loan borrowers will be ignored given the Department’s pattern of actions to protect student loan companies from accountability.

¹ Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 (Public Law No: 115-245); Conference Report 115-952

² U.S. Department of Education. Solicitation 91003118R0022, Amendment 03. November 9, 2018. Q17.

<https://www.fbo.gov/utills/view?id=2cc59caf358a583e9dcca7d37fdd359>

The Department has failed to take appropriate steps to actually provide effective oversight of this industry, including through an attempt to limit states' rights. The Department has claimed that the *Higher Education Act of 1965* preempts all state oversight of federal student loan servicers and debt collectors. The Department justified this decision to obstruct independent oversight by states by heralding its own performance, specifically stating that such state oversight of student loan companies is unnecessary because the Department provides "exemplary customer service" that protects borrowers from "substandard practices."³ The Department's go-it-alone track record in the intervening months offers little evidence to support this case.

In order to allow stakeholders across the higher education system to understand and evaluate the baseline you have proposed for the future of the student loan system—and to verify that the Department will uphold rules of the road—the Department should release much more information about the current effort. This information will also provide interested parties, including NextGen vendors themselves, the opportunity to understand how and why the Department's performance evaluations may change. Borrowers, taxpayers, schools, and policymakers are poorly served by the lack of transparency over student loan servicing.

Given our concerns with the Department's historically poor oversight and management of student loan companies, we request the Department publicly release the following:

1. How, and to what standards, it will hold all vendors accountable for both compliance and performance, disaggregated by each component of NextGen.
2. All supporting documentation for NextGen, including the attachments identified in Section J of Phase II of the solicitation.
3. Copies of all past routine and targeted audits and reviews of servicer or vendor compliance.
4. All currently-utilized performance data used for monitoring, evaluation, or allocation
5. A list of all "applicable laws, regulations, and other legal mandates" to which it expects bidders to be in compliance with in order to win federal contracts.⁴
6. How it will process all "enforcement disclosure" requests under the Statement of Records Notice for the Direct Loan Program (Common Services for Borrowers, 18-11-16) made pursuant to the *Privacy Act of 1974* and consistent with directives from Congress.⁵
7. When it will reestablish the required memorandum of understanding to share complaints with the Consumer Financial Protection Bureau (CFPB).

We ask that you provide the requested information no later than January 3, 2019. As stewards of taxpayer dollars, we owe it to all federal loan borrowers to build a servicing system that makes repaying loans easier and holds student loan companies accountable if they break state and federal law. As amended, NextGen does not meet these goals. We stand willing to work with you to improve student loan servicing, and we look forward to your response.

³ U.S. Department of Education. Federal Preemption and State Regulation of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers. March 12, 2018. <https://go.usa.gov/xPFRJ>

⁴ U.S. Department of Education. Solicitation 91003118R0022, Amendment 03. November 9, 2018. Q25. <https://www.fbo.gov/utills/view?id=2cc59caf358a583e9dcca7d37fdd359>

⁵ Departments of Labor, Health and Human Services, and Education, and related agencies Appropriations Bill, 2019 (Public Law No: 115-245); Senate Report 115-289

Sincerely,



PATTY MURRAY
United States Senator




TAMMY BALDWIN
United States Senator



RICHARD BLUMENTHAL
United States Senator



SHERROD BROWN
United States Senator



CATHERINE CORTEZ MASTO
United States Senator



DIANNE FEINSTEIN
United States Senator



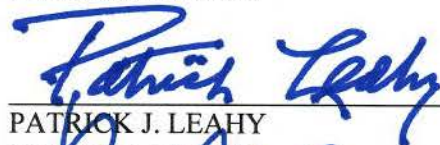
KIRSTEN GILLIBRAND
United States Senator



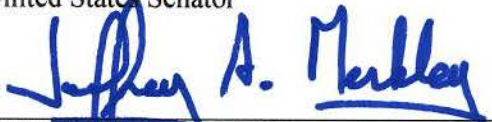
MARGARET WOOD HASSAN
United States Senator



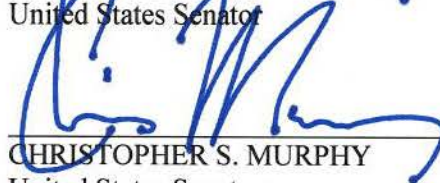
AMY KLOBUCHAR
United States Senator



PATRICK J. LEAHY
United States Senator



JEFFREY A. MERKLEY
United States Senator



CHRISTOPHER S. MURPHY
United States Senator



JACK REED
United States Senator



BERNARD SANDERS
United States Senator



JEANNE SHAHEEN
United States Senator



TINA SMITH
United States Senator



DEBBIE STABENOW
United States Senator



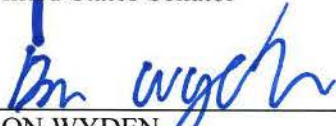
CHRIS VAN HOLLEN
United States Senator



ELIZABETH WARREN
United States Senator



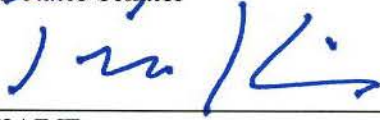
SHELDON WHITEHOUSE
United States Senator



RON WYDEN
United States Senator



RICHARD J. DURBIN
United States Senator



TIM KAINE
United States Senator



DOUG JONES
United States Senator



ROBERT P. CASEY, Jr.
United States Senator