

**Congress of the United States**  
Washington, DC 20510

March 5, 2019

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

Mr. Mark A. Brown  
Chief Operating Officer  
Federal Student Aid  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Dear Secretary DeVos and Mr. Brown:

We write to request information regarding the U.S. Department of Education's ("Department") oversight of the federal student loan servicers that contract with the Office of Federal Student Aid (FSA). Recently, the Department's Office of the Inspector General (OIG) completed an audit report that found consistent failures to track and respond to instances of noncompliance from each of the nine federal loan servicers. The OIG found that FSA did not follow appropriate policies or procedures when evaluating servicers' interactions with borrowers, rarely used contract provisions to hold servicers accountable, did not identify or analyze trends of recurring noncompliance, and failed to incorporate noncompliance into decisions regarding how to assign loans to servicers.<sup>1</sup>

In light of the important role of loan servicers, the OIG audit report, and the Department's plan for a wholesale redesign of the student loan servicing system through the Next Generation Processing and Servicing System ("NextGen"), it is essential we understand the Department and FSA's existing compliance system, as well as any improvements planned to the Department's evaluation and oversight of servicers and those bidding for NextGen contracts. Accordingly, we request the following information no later than March 19, 2019:

1. The Department claims "all instances of non-compliance are tracked in an internal tracking database" and this tracking mechanism has been in place for "several years." Please provide:
  - a. the name of the database;
  - b. the date the database was implemented and the dates and descriptions of any subsequent modifications, including any changes to add instances of noncompliance regardless of resolution classification;
  - c. a list of the indicators or metrics of noncompliance the database currently tracks; and
  - d. a copy of the database.
  
2. Copies of Department policies and procedures that explain how the Department incorporates information from the tracking database to ensure servicer compliance with federal requirements.

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<sup>1</sup> U.S. Department of Education, Office of Inspector General. Final Audit Report, "Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans," Control Number ED-OIG/A05Q0008. February 14, 2019. <https://go.usa.gov/xEUeG>

3. The OIG report notes the Department's database on compliance did not record instances of noncompliance when a servicer implemented an acceptable remedy during the review period. For the review period of the OIG's report, in how many instances was noncompliance found but not recorded in the database for each servicer, and what would the rate of noncompliance have been for each servicer, if these instances had been recorded?
4. The Department claims it is already using data on noncompliance to analyze trends and assess servicer performance. Which specific trends related to compliance does the Department track for trend analysis, and how long has the Department tracked each trend? Please provide any trend analyses the Department has conducted.
5. A list of all referrals of noncompliance the Department has made following compliance reviews of servicers to federal, state, local, tribal, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, criminal law, or regulation.
6. A copy of the written comments the Department submitted to OIG on November 2, 2018 in advance of the audit described above.<sup>2</sup>
7. Copies of any communications with any outside entity related to the OIG audit report between October 1, 2018 and December 31, 2018, including but not limited to:
  - a. any communications related to the Department's change in position between its November 2, 2018 response that it neither agreed nor disagreed with the findings, to the November 20, 2018 response that it strongly disagreed with the overall conclusion;
  - b. any discussion or copy of any portion of the OIG's draft report submitted to the Department for comment; and
  - c. any external transmissions of a final or working draft of either of the Department's comments.
8. An explanation of the specific steps the Department will take to ensure NextGen offerors' compliance with federal requirements, including, for each component of NextGen:
  - a. a detailed description of how the Department will assess offerors' history of compliance with federal consumer protection laws, regulations, agency guidelines, and court mandates prior to awarding federal contracts;
  - b. a detailed description of how the Department intends to monitor offeror compliance with consumer protection laws, regulations, and agency guidelines; and
  - c. a detailed description of how the Department intends to enforce offeror compliance with consumer protection laws, regulations, and agency guidelines including in what circumstances the Department will withhold access to contract payments, or use other sanctions, in instances of noncompliance.

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<sup>2</sup> Id.

8. The Department's current risk tolerance in servicing, defined as the threshold of noncompliance that would compel the Department to take enforcement action, calculated both:
  - a. including all instances of noncompliance, including those for which the servicer has implemented an acceptable remedy; and
  - b. including only the instances of noncompliance for which the servicer has not implemented an acceptable remedy.
9. The Department asserts it has made “significant ongoing improvements” to its “oversight and monitoring policies and procedures” since the review period of the OIG’s report.<sup>3</sup> What are the significant improvements to oversight and monitoring that have been implemented from October 1, 2017 to the present?
10. What policies or procedures does the Department employ to incorporate servicer feedback into the process for finalizing a review or audit, such as permitting servicers to see initial findings, and what steps are necessary to finalize a review?
11. How does the Department incorporate complaints submitted to the Consumer Financial Protection Bureau into its oversight of its contracted servicers, and how has this process changed over time?
12. When will the Department reestablish the required memorandum of understanding to share servicing complaints with the Consumer Financial Protection Bureau?<sup>4</sup>

If you have any questions or would like to discuss this request, please contact Carly Rush on the Senate Health, Education, Labor, and Pensions Committee minority staff at (202) 224-0767 or Brandon Mendoza with Congresswoman Susan Davis at (202) 225-2040. Thank you in advance for your attention to this matter.

Sincerely,



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PATTY MURRAY  
Ranking Member  
U.S. Senate  
Committee on Health, Education, Labor and  
Pensions



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SUSAN A. DAVIS  
Chair  
U.S. House of Representatives  
Committee on Education and Labor,  
Subcommittee on Higher Education and  
Workforce Investment

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<sup>3</sup> *Supra* see note 1, page 42.

<sup>4</sup> 12 U.S. Code § 5535: