



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

September 26, 2017

The Honorable Betsy DeVos
Secretary of Education
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Kathleen Smith
Acting Assistant Secretary
Office of Postsecondary Education
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

**Re: Department of Education's Continuing Failures to Protect Students and Families
Struggling to Repay Student Loans**

Dear Secretary DeVos and Assistant Secretary Smith,

We, the undersigned Attorneys General of Pennsylvania, Maryland, Washington State, Illinois, California, Connecticut, Delaware, Hawaii, Iowa, Kentucky, Maine, Massachusetts, Minnesota, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, the District of Columbia, and the Executive Director of the Hawaii Office of Consumer Protection, write to express our profound concern with the U.S. Department of Education's August 31 letter (the letter),¹ terminating two Memoranda of Understanding (MOUs) with the Consumer Financial Protection Bureau (CFPB).

The letter is troubling for at least three reasons. First, the letter is incorrect as a matter of law: the Department of Education (Department) does not have exclusive jurisdiction over companies that service federal student loans (loan servicers). Instead, as courts have found and Congress has made clear, loan servicers are subject to the jurisdiction of the CFPB, Federal Trade Commission (FTC), Department of Justice (DOJ), attorneys general (AGs), and other law enforcement agencies. Second, the letter is the latest in a series of actions by the Department to strip back critical protections for the tens of millions of families who are repaying student loans. Third, the letter misconstrues the excellent work the CFPB has done to protect students and families – often in partnership with the Department and the AGs.

¹ https://edworkforce.house.gov/uploadedfiles/2017-09-01_signed_letter_to_cfpb.pdf.

(1) The Department of Education’s Jurisdiction over Federal Student Loan Servicers is Not Exclusive

The letter argues that the CFPB’s oversight of federal student loan servicers is an expansion of the CFPB’s “jurisdiction into areas that Congress never envisioned” and that the “Department has full oversight responsibility for federal student loans.” This is simply not true. As 39 Members of Congress explained in a September 15, 2017 letter to you, the Department’s authority over loan servicers “is not exclusive and has been intentionally constrained by law due to the Department’s historical negligence in carrying out many of its oversight responsibilities over federal student loan servicers. . . . Multiple federal regulators and law enforcement agencies serve important roles overseeing companies that contract with the Department to service federal student loans. . . . In addition, state attorneys general and other state-based consumer protection entities regularly conduct investigations and enforcement actions on a bipartisan basis to protect students in their states from illegal activities and misconduct of federal loan servicers.”²

Contrary to the Department’s assertion, Congress did **not** exempt the \$1.3 trillion federal student loan market from the CFPB’s jurisdiction – or from the jurisdiction of any other law enforcement agencies. Rather, Congress directed the CFPB to establish an MOU with the Department’s Ombudsman “to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or **Federal student loans.**”³ Not only is the Department’s assertion demonstrably false, but such an exemption would make no sense – the market for federal student loan servicers is bigger than any other consumer finance market except mortgages. Moreover, student loan borrowers, who in most cases cannot discharge their student loans through bankruptcy, are among the most vulnerable borrowers.

Just last month a federal court in Pennsylvania confirmed that the Department does not have exclusive jurisdiction over federal loan servicers when it refused to dismiss the CFPB’s lawsuit against Navient. The Court rejected Navient’s argument that compliance with the Higher Education Act and its regulations alone was sufficient to avoid liability, stating: “[C]omplying with other statutory, regulatory and contractual obligations does not relieve Navient of its obligation to refrain from committing acts that are unlawful under the CFP Act.”⁴

(2) The Department’s Termination of the MOUs Will Harm Taxpayers and the Tens of Millions of Families Struggling to Repay Student Loans

The MOUs were designed to increase cooperation between the CFPB and the Department in the areas of complaint handling and supervision of loan servicers. The Department’s termination of the MOUs will hurt American families by making it more difficult for the CFPB to assist borrowers with complaints about loan servicers and to fulfill its consumer protection mission. And it will increase the likelihood of default by borrowers who can no longer be assisted by the CFPB as a result of the Department withholding information. These defaults damage borrowers’

² <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>.

³ 12 U.S.C. 5535(c)(2) (emphasis added). This is one of the MOUs that the Department has terminated.

⁴ *Consumer Financial Protection Bureau v. Navient Corporation, et al*, Memorandum Opinion, Case 3:17-cv-00101-RDM, Document 57 at 20 (M.D. Pa. August 4, 2017).

credit scores and diminish their chances to get good jobs and fully participate in the economy. Ultimately, this hurts all taxpayers because they own or guarantee all federal loans.

In the past seven months, the AGs have taken action each time the Department has abandoned its responsibility to protect student loan borrowers:

- In February, the AGs wrote to you with concerns about potential rollbacks of rules protecting students and taxpayers from unfair and deceptive practices by for-profit schools.⁵
- In April, the AGs urged you to reconsider withdrawing critical loan servicing protections.⁶
- In June, the AGs wrote you about the Department’s delays processing loan discharges for borrowers who had been defrauded by Corinthian.⁷
- In July, the AGs sued the Department for its unlawful delay of the Borrower Defense Rule⁸ and wrote to oppose the Department’s roll back of the Borrower Defense and Gainful Employment Rules.⁹

Like those ill-considered actions, terminating the MOUs harms students, borrowers, and taxpayers because consumers have lost a key partner in standing up to loan servicers. The Department claims that it has terminated the MOUs “to ensure . . . efficient resolution of borrower complaints.” But the effect will be the opposite of that claimed intention: the likelihood of complaints being resolved will plummet if the Department is the only agency reviewing them. The only beneficiaries of the Department’s sweeping rollbacks of consumer protections are the loan servicers and for-profit colleges, and their executives and investors. We suggest the Department focus its efforts on removing the ability of schools selling worthless educational programs to obtain federally guaranteed student loans.

(3) The CFPB Has Provided Critical Leadership in Protecting American Families from Predatory Practices by Loan Servicers and For-Profit Colleges

The CFPB has stood up for tens of millions of families trying to repay student loans and for victims of for-profit colleges that fail to deliver a worthwhile education. For six years, CFPB Director Richard Cordray and his Student Loan Ombudsmen Rohit Chopra and Seth Frotman have led the CFPB’s tireless work on behalf of the 44 million Americans with student loans. The CFPB’s student lending accomplishments include:

- Processing complaints from more than 40,000 student loan borrowers across all 50 states and shining a spotlight on the servicing breakdowns and red tape that hurt struggling families.
- Standing up for servicemembers, veterans, older Americans, and communities of color who are misled by companies that originated or serviced student loans. For example, the CFPB and states of Washington and Illinois sued Navient, the largest loan servicer, for wrongly steering borrowers into costly repayment plans that benefit the servicer, not the borrowers.
- Cracking down on abusive for-profit colleges. The CFPB’s actions, in conjunction with the Department and the AGs, saved taxpayers billions of dollars by helping to shut down ITT

⁵ https://ag.ny.gov/sites/default/files/multistate_ag_letter_on_for-profit_schools_feb_2017.pdf.

⁶ <http://www.mass.gov/ago/docs/press/2017/multistate-letter-to-sec-devos.pdf>.

⁷ <http://www.mass.gov/ago/docs/press/2017/borrower-defense-multistate-letter.pdf>.

⁸ <http://www.mass.gov/ago/docs/press/2017/filed-complaint-massachusetts-et-al-v-devos.pdf>.

⁹ <http://www.mass.gov/ago/docs/press/2017/multistate-comments-on-proposed-borrower-defense-and-gainful-employment-negotiated-rulemaking.pdf>.

Tech and Corinthian. The CFPB then led related enforcement actions to recover hundreds of millions of dollars in refunds and discharges for families swindled by predatory schools.¹⁰

- Halting illegal loan servicing practices at Wells Fargo.¹¹
- Rooting out over a dozen instances where loan servicers were systematically breaking federal law and halting these practices by confidential supervision.¹²
- Working with AGs to create an interactive tool that helps students choose a college by comparing financial aid offers, total financial commitment, and likely earnings potential.¹³

We urge the Department to reconsider its termination of the MOUs. Instead of taking on the job of monitoring student loan servicers by itself, we ask that the Department welcome the assistance of the CFPB, AGs, FTC, DOJ, and other law enforcement agencies to ensure that students and families repaying student loans are protected from illegal acts by servicers and for-profit colleges. Even if the Department does not reconsider its termination of the MOUs, the AGs will continue to vigorously enforce consumer protection and other laws to protect student loan borrowers and hold servicers accountable.

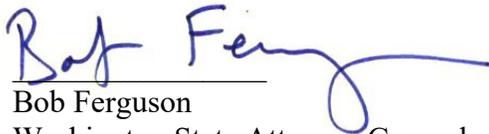
Sincerely,



Josh Shapiro
Pennsylvania Attorney General



Brian E. Frosh
Maryland Attorney General



Bob Ferguson
Washington State Attorney General



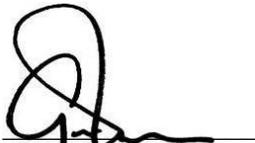
Lisa Madigan
Illinois Attorney General



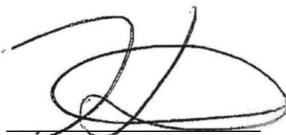
Xavier Becerra
California Attorney General



Matthew Denn
Delaware Attorney General



George Jepsen
Connecticut Attorney General



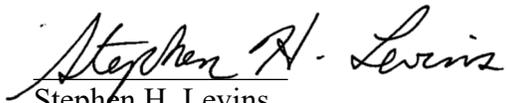
Karl A. Racine
District of Columbia Attorney General

¹⁰ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-aequitas-capital-management-aiding-corinthian-colleges-predatory-lending-scheme/>.

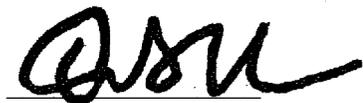
¹¹ <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-wells-fargo-illegal-student-loan-servicing-practices/>.

¹² <https://www.consumerfinance.gov/policy-compliance/guidance/supervisory-highlights/>.

¹³ <https://www.consumerfinance.gov/paying-for-college/compare-financial-aid-and-college-cost/>.


Stephen H. Levins
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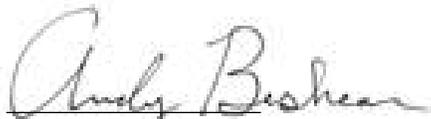

Eric T. Schneiderman
New York Attorney General

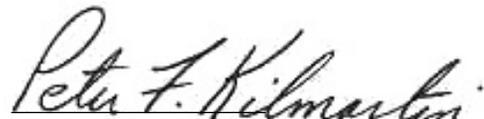

Douglas S. Chin
Hawaii Attorney General

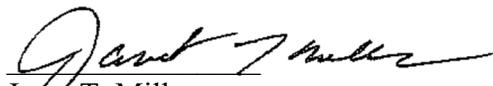

Josh Stein
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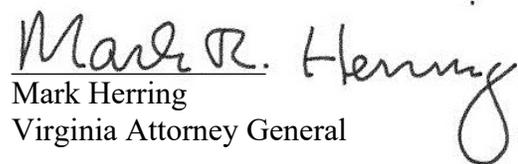

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The Honorable Ron Wyden

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