United States Senate
WASHINGTON, DC 20510

July 15, 2016

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

Dear Secretary King,

We write to urge the Department of Education ("the Department") and its Office of Federal Student Aid (FSA) to ensure that the upcoming reform of federal student loan servicing addresses an urgent need for a system that works for students and families, protects their rights, and truly helps millions of borrowers avoid the terrible situation of default and delinquency. This system must include robust servicing standards, strong borrower rights, accessible infrastructure, and a thoughtful incentive model that puts students and families first.

More than 40 million Americans collectively owe over a trillion dollars in federal student loan debt. Student loan servicers are a critical link between these borrowers and the Department of Education. For millions of Americans, federal student loan servicers are their primary point of contact when they are struggling to repay their loans or seeking actionable information about their repayment options. As such, it is critical that federal student loan servicers do everything they can to help borrowers effectively manage their federal student loans and, if necessary, help borrowers find the alternative program that best fits their needs.

Servicers, however, have not always put the interests of students and families first in their business practices. In fact, the Consumer Financial Protection Bureau (CFPB) has thoroughly documented "widespread failures" in student loan servicing, and estimates that one in four student loan borrowers are significantly behind, or are struggling to stay current, on their loans despite the availability of repayment options meant to help borrowers manage—and usually lower—their monthly payments.[1] An astounding eight million borrowers are in default. These statistics reflect that poor customer service and shoddy student loan servicing practices are contributing to many borrowers unnecessarily struggling with their student loans. It's time for this to change.

The job of improving federal student loan servicing for borrowers is ultimately up to the Department and FSA. That is why we are pleased to see the Department take steps to overhaul student loan servicing through its new competition for the next round of student loan servicing contracts. We strongly support the Department's goal in this competition "to enhance oversight and accountability and improve customer service by creating a new loan-servicing system for all federal student loans.[2]"

[1] Consumer Financial Protection Bureau. *Student Loan Servicing: Analysis of Public Input and Recommendations for Reform.* September 2015.
[2] Marie, Aketa. *Speak Up On Student Loan Servicing*. Office of the Under Secretary. U.S. Department of Education. June 30, 2016. https://sites.ed.gov/ous/ousblog/.

We believe this competition can be a game-changer for millions of federal student loan borrowers. It can also cement and protect the legacy of the Direct Loan program that realized tens of billions of dollars in savings to taxpayers and created strong new protections for students. However, we are concerned that, if improperly executed, this competition could simply result in the same old players with the same old problems, while borrowers continue to suffer. We recommend taking the following steps to ensure that this competition and servicing reform truly delivers for students and families.

First, we applaud the Department, the Treasury Department, and the CFPB for following-up on the President's Student Aid Bill of Rights with joint servicing principles to reform student loan servicing, improve borrower outcomes, and reduce loan defaults.[3] Now it's time for the Department to turn these principles and the April 2016 borrower repayment rights into real reforms and contractually enforceable standards that set new rules for the road in student loan servicing.[4]

A November 2015 report from the Government Accountability Office (GAO) concluded that the Department's instructions and guidance to loan servicers are "lacking, resulting in inconsistent and inefficient services to borrowers," and that without improved guidance and instructions to servicers, "borrower finances" and "the integrity of the Direct Loan program" could be negatively affected.[5] One example of such a problem is interest capitalization. The Department, not the servicer, should decide how and when interest is capitalized. However, this was not always the case, with some servicers capitalizing loan interest more frequently than was required by law and regulation, increasing the cost of those borrowers' loans for no justifiable reason. In writing requirements for the new competition, the Department must provide far more detailed, clear, and specific requirements and instructions than it is has done in the past, and contractually ensure that servicers employ such requirements and instructions to deliver effective student loan servicing. The new servicing contracts will be successful only if the Department produces common, strong, and detailed servicing standards and guidelines based on the joint principles and April 2016 borrower servicing rights.

Second, the Department must use these new, common standards to finally hold student loan servicers accountable for providing high-quality customer service that results in borrowers receiving consistent, accurate, complete, and actionable information about their repayment or debt relief options and helps them manage their student loans through high-touch, consumer-friendly counseling. In preparing these new standards, the Department should release the draft phase two and phase three contractual requirements as soon as possible, and work closely with consumer and student advocates to improve them. In particular, the Department must allow consumer advocates opportunities to provide detailed feedback to draft standards and keep them closely engaged as the Department works to finalize standards that protect students and families. After the contracts are fully implemented, the Department should maintain a common manual of servicing standards and requirements and make sure that they are always publicly accessible.

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[3] U.S. Department of Education. "Department of Education, Department of Treasury and the Consumer Financial Protection Bureau Issue Joint Principles on Student Loan Servicing," press release, September 29, 2015.
[4] [4] U.S. Department of Education. "Departments of Education and Treasury and the Consumer Financial Protection Bureau Announce New Joint Efforts to Protect and Support Student Loan Borrowers," press release, April 28, 2016.
[5] U.S. Government Accountability Office. *Federal Student Loans: Key Weaknesses Limit Education's Management of Contractors.* November 18, 2015.

The Department should also consult with the law enforcement community, including state Attorneys General, to ensure that standards protect against the full range of unfair, harmful, or abusive practices they have identified with the Department's current servicers. We urge the Department to write these standards into the new federal servicing contracts and borrowers' promissory notes, and to guarantee borrowers' rights to seek legal redress against the Department. This is the only way to ensure that borrowers have multiple tools to fight abusive practices by servicers and will add another critical layer of accountability for servicers.

Third, this new competition must result in a servicing platform that allows multiple customer service providers to compete to best serve students. We support the vision outlined in Under Secretary Mitchell's June 2016 blog post, in which he clarified that the goal of this competition is to select a single technological backbone or platform upon which multiple customer service providers will use to service borrowers' loans.[6] Furthermore, the Department will own the rights to use this platform. Such a system will help the Department hold servicers accountable by ensuring that no single student loan servicer is "too big to fail" or too big to hold accountable.

Multiple service providers with units devoted to specialized tasks will also allow borrowers to receive counseling from subject matter experts while continuing to promote competition that best serves borrowers. The contracts should encourage specialization by using incentives that are tied to helping borrowers with unique circumstances or who are specifically protected by federal law, including, but not limited to, borrowers who are: at risk of default, members of the military, totally or permanently disabled, non-completers, or have complaints about unscrupulous colleges that could result in a student loan discharge. The Department should further conduct an analysis to determine other groups of borrowers who are at-risk of not successfully repaying their loans.

Fourth, as the Department progresses to phase two of the selection process and identifies a provider who will build the single servicing platform, FSA must adhere to Secretary King's June 30th directive to make past performance "the most important noncost factor in the evaluation.[7]" Past performance is the best indicator we have of future performance. Without proven reforms to practices that have harmed borrowers, the Department of Education must not proceed to select a service provider that has a track record of:

- Harming students or members of the military,
- Investigations or lawsuits for violations of state or federal consumer protection laws or laws meant to protect students and members of our armed services,
- Noncompliance or weak compliance with Department rules or federal laws,
- Unfair, deceptive, or abusive acts or practices,
- Asserting immunity from federal laws meant to protect consumers,
- Communicating with borrowers in a fashion that is not tailored to the borrower's circumstances; or
- Not providing exceptional and accessible technological tools to borrowers.

In adhering to Secretary King's June 30th directive, the Department should also evaluate how servicers are "achieving success in keeping borrowers in good repayment status," by examining

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[6] *Speak Up On Student Loan Servicing.*

[7] King Jr., John B, Secretary of Education, *Consideration of Past Performance in Student Loan Servicing Recompete,* Letter, June 30, 2016, Washington, D.C.

how well servicers have enrolled and recertified borrowers who might benefit from income-driven repayment programs.

Finally, the Department must shift the financial incentives for servicers by paying service providers based on how well they guide borrowers into the program that best meets their unique needs, and by rewarding servicers that demonstrate strong performance in a more targeted manner. A May 2016 GAO report concluded that, although the Department compensates and rewards servicers with additional loan volume based on performance metrics, "these metrics and related compensation do not fully align with [the Department]'s goals for superior service and program integrity.[8]"

The Department's current metrics and compensation model must be overhauled to properly incentivize servicers to help borrowers decide which repayment or debt relief program that best meets a borrowers' unique needs and help borrowers enroll in that program, particularly if the Department intends to have specialty servicing arrangements. The Department should work with advocates and researchers to create a dynamic payment structure that incentivizes servicers to help borrowers who are struggling. This structure should allow for innovative practices that provide effective help to more borrowers, more quickly. And the Department should regularly gauge the success of the compensation model with advocates and researchers and should regularly release more and better data about the student loan portfolio to enable advocates and researchers to help identify early whether the compensation model may not be working to serve the intended goals.

The May 2016 GAO report also concluded that the Department lacks performance metrics that relate to compliance, stating that "servicers with more compliance errors experience no reduction in assigned loans, even as their borrowers may experience servicing problems...unless [the Department] evaluates and better aligns its servicer performance metrics and compensation with strategic goals, borrowers will continue to be at risk for experiencing errors and poor customer service.[9]"

The Department must ensure that the new performance metrics adequately consider compliance with statutory, regulatory, and contractual requirements as well as past performance. The Department can accomplish this by adopting the Treasury Department's recommendations on best practices in performance-based contracting, and by building these recommendations into the Department's incentive model.[10] And the Department must conduct a significant overhaul of its current servicer oversight conducted within the Financial Institution Oversight Service unit to ensure that servicers are actually complying with the servicing standards and other federal laws and requirements. Servicers should know they will be held to account for disregarding the interests of any borrower.

Student loan servicers are a critical link between borrowers and the Department of Education. With about one in four student loan borrowers in default or delinquent on their federal student loans, it is critical that the Department step up to address the student debt crisis and ensure that

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[8] U.S. Government Accountability Office. *Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight.* May 16, 2016.
[9] *Ibid.*
[10] U.S. Department of Education. "Recommendations on Best Practices in Performance-Based Contracting," 2015. https://www2.ed.gov/finaid/loans/repay/best-practices-recommendations.pdf

all service providers in the student loan program are doing everything they can to put students and families first. We look forward to continuing to work with the Department to improve student loan servicing for all borrowers.

Sincerely,

PATTY MURRAY
United States Senator

ELIZABETH WARREN
United States Senator

RICHARD J. DURBIN
United States Senator

TAMMY BALDWIN
United States Senator

RICHARD BLUMENTHAL
United States Senator

SHERROD BROWN
United States Senator

BARBARA BOXER
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EDWARD J. MARKEY
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CHRISTOPHER S. MURPHY
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