

Congress of the United States
Washington, DC 20510

October 23, 2017

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
Washington, D.C. 20549

Dear Chairman Clayton:

We write to request that the U.S. Securities and Exchange Commission (SEC) investigate the circumstances surrounding the U.S. Department of Education's ("the Department") August 31, 2017, decision to terminate its partnership with the Consumer Financial Protection Bureau (CFPB) and alleged insider trading of Navient Corporation's (Navient) stock related to this decision.

As explained below, the circumstances surrounding the date the Department's termination letter was made public and events that followed raise questions about whether one or more Department officials may have engaged in the unauthorized disclosure of material, nonpublic information regarding the termination of the Memoranda of Understanding between the Department and the CFPB. If such unauthorized disclosure occurred, it would be a violation of the *Securities Exchange Act of 1934*, which was amended by Sections 4 and 9 of the *Stop Trading on Congressional Knowledge Act of 2012* to include federal employees.¹ Alternatively, if any individual who traded Navient stock was an external party to the Department, but had knowledge of the letter before it was public, this could violate Section 17(a) of the *Securities Act of 1933*. Earlier this month, the AFL-CIO wrote to you to express concern over a potential case of insider trading related to Navient, and we share those concerns.²

Last month, in a letter dated August 31, 2017, the Department terminated its 2011 and 2014 Memoranda of Understanding (MOUs) with the CFPB regarding the sharing of information in connection with oversight of the federal student loan program.³ The CFPB reportedly received the Department's letter around 3:50 p.m. on September 1, 2017.⁴ The House Committee on Education and Workforce made the letter public via press release late Friday afternoon on September 1, 2017.⁵

¹ 7 U.S.C. § 6c. [http://uscode.house.gov/view.xhtml?req=\(title:7+section:6c+edition:prelim\)](http://uscode.house.gov/view.xhtml?req=(title:7+section:6c+edition:prelim)).

² AFL-CIO. Letter to U.S. Securities and Exchange Commission (October 10, 2017). Letter attached.

³ U.S. Department of Education. Letter to CFPB (August 31, 2017). Online at:

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

⁴ Nasiripour, S. "SEC asked to probe trades of student loan firm Navient." Bloomberg (October 10, 2017). Online at: <https://www.bloomberg.com/news/articles/2017-10-10/navient-subject-of-afl-cio-call-for-insider-trading-probe>.

⁵ "Foxx praises exit of Consumer Financial Protection Bureau in student loan servicing." *House Committee on Education and the Workforce* (Sept. 1, 2017). Online at: <https://edworkforce.house.gov/news/documentsingle.aspx?DocumentID=401966>.

According to data released by the CFPB in April, Navient was the subject of more complaints than any other company in the country during the first quarter of 2017.⁶ On January 18, 2017, the CFPB sued Navient, alleging that the company, among other practices, systematically railroaded borrowers away from student loan repayment plans that would result in lower payments. Navient later disclosed in its SEC filings that an adverse ruling in the CFPB's lawsuit "may have a material adverse impact on the Company."⁷

Because of the CFPB's pending investigations into and lawsuit against Navient, the Department's plan to terminate the MOUs with the CFPB was material, nonpublic information with significant market implications. Unlawful disclosure of such information to Navient's investors, or any trading by a government employee based on this nonpublic information, would constitute a clear violation of the *Securities Exchange Act of 1934*, the *Securities Act of 1933*, or both, depending on parties involved.

Recent reports indicate that an unknown investor, or multiple investors, purchased 872,394 shares of Navient stock at or after 4pm on August 31, the day before the CFPB received the Department's letter and before the House Committee on Education and Workforce made the termination public.⁸ These trades amounted to 24 percent of trading volume that day. As a result, Navient's stock increased by more than 4 percent to \$13.75 per share from the market close on August 31st.⁹

Navient's stock price continued to rise after the House Committee on Education and Workforce made the Department's decision to terminate MOUs with the CFPB public, increasing almost 18% between August 31 and September 27.¹⁰ One market analyst responded to the news by upgrading his rating of Navient from "neutral" to "buy," declaring, "It's a signal that the Trump administration is looking at the industry differently than Obama... With a little bit less oversight, you can get a little bit more comfortable with the risk profile of the company."¹¹

The timing and scope of these trades raise serious questions. If investors or Department employees were trading based on the unauthorized disclosure or discussion of nonpublic information by Department officials or employees, then it would appear to be a clear violation of securities law.

⁶ "Monthly Complaint Report." Vol. 22. *Consumer Financial Protection Bureau* (Apr. 2017). Online at: http://files.consumerfinance.gov/f/documents/201704_cfpb_Monthly-Complaint-Report.pdf.

⁷ Navient Corporation (2017). Form 10-K. (Retrieved from SEC EDGAR website <https://www.sec.gov/Archives/edgar/data/1593538/000119312517056358/d293261d10k.htm>).

⁸ AFL-CIO. Letter to U.S. Securities and Exchange Commission (October 10, 2017). Letter attached.

⁹ *Id.*

¹⁰ The stock price has since declined to a one-year low, a drop which appears to be largely caused by the company's decision to suspend a share repurchase program. (Navient Corporation (2017). Form 8-K. Online at: <https://seekingalpha.com/filing/3730032>).

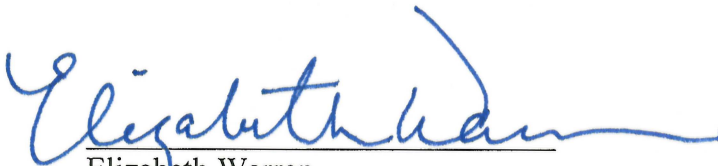
¹¹ Berman, J. "The latest sign the Trump administration could be a boon to student loan companies." *MarketWatch* (Sept. 8, 2017). Online at: <http://www.marketwatch.com/story/the-latest-sign-the-trump-administration-could-be-a-boon-to-student-loan-companies-2017-09-06>.

Because of the unusual timing of the Navient stock trades and the Education Department's announcement, we request that your office open an investigation into this matter. We ask that you investigate:

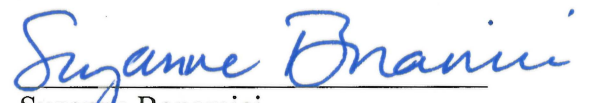
1. Which individuals or corporate entities made the large trades in Navient stock on August 31, 2017?
2. Were these individuals or corporate entities aware of any disclosure of nonpublic information that could have led to possible insider trading?
3. To the extent that the individuals who traded in Navient stock were privy to any non-public information, how and from whom did they obtain this information?
4. Were any individuals outside the Department aware of the decision prior to its public announcement?
5. Did any individual(s) with knowledge of the letter deliberately or inadvertently share information with anyone inside or outside the Department who was not authorized to have the information?

Thank you for your prompt attention to this matter. Please notify us if you have any further questions. We look forward to your prompt response.

Sincerely,



Elizabeth Warren
United States Senator



Suzanne Bonamici
Member of Congress

cc: The Honorable Kathleen S. Tighe, Inspector General, U.S. Department of Education