

United States Senate

WASHINGTON, DC 20510

December 17, 2019

Kathy Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20052

Dear Director Kraninger,

We write regarding the Consumer Financial Protection Bureau's (CFPB or Bureau) failure to conduct supervisory examinations of student loan servicers' handling of loans owned by the federal government for the past two years. This is unacceptable and an abandonment of the Bureau's statutory obligation to oversee the largest segment of the student loan market: more than \$1.1 trillion in federally-owned student loan debt. We call on you to take immediate action to resume examinations of student loan servicers' handling of loans owned by the federal government.

Until 2017, the Bureau utilized all of its statutory tools to oversee the market for student loans. Following a rulemaking in 2013,¹ the Bureau conducted supervisory examinations of the servicing of both federal and private student loans to ensure servicers were complying with federal consumer financial law.² The Bureau also brought several enforcement actions against student loan servicers when investigations uncovered serious violations of law.³ In addition, the Bureau's Student Loan Ombudsman issued reports detailing the performance of student loan servicers and summaries and analyses of borrowers' complaints against servicers.⁴

Since late 2017, however, the Department of Education (Department) has obstructed the Bureau's ability to oversee student loan servicers' handling of loans owned by the federal government. On August 31, 2017, the Department gave notice that it was terminating two Memoranda of Understanding (MOUs) with the Bureau covering shared information for: (1) complaints; and (2) supervisory and oversight cooperation.⁵ In December 2017, the Department issued guidance

¹ Defining Larger Participants of the Student Loan Market, 78 Fed. Reg. 73383 (Dec. 6, 2013), *available at* <https://www.federalregister.gov/documents/2013/12/06/2013-29145/defining-larger-participants-of-the-student-loan-servicing-market>.

² See Sep. 2017 letter from Dir. Cordray to Sec. DeVos, *available at* <https://www.consumerfinance.com/wp-content/uploads/sites/14/2017/09/Cordray-DeVos-Letter.pdf>;

³ See, e.g., *In re Citibank*, No. 2017-CFPB-0021 (filed Nov. 21, 2017), *available at* https://files.consumerfinance.gov/f/documents/cfpb_citibank-n.a._consent-order_112017.pdf; *CFPB v. Navient Corp.*, Case No. 3:17-cv-00101 (M.D. Pa. Jan. 18, 2017), https://files.consumerfinance.gov/f/documents/201701_cfpb_Navient-Pioneer-Credit-Recovery-complaint.pdf.

⁴ See, e.g., https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf; https://files.consumerfinance.gov/f/documents/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf.

⁵ Aug. 31, 2017 letter from K. Smith, Acting Assistant Secretary, and Dr. A. W. Johnson, Federal Student Aid COO, to R. Cordray, CFPB Director.

prohibiting student loan servicers from sharing information with the Bureau and other regulators as it relates to the \$1.1 trillion portfolio of loans owned by the federal government.⁶

As a result, the Bureau has not had access to student loan information necessary to conduct full and complete examinations of student loan servicers since December 2017.⁷ The Bureau's inability to examine student loan servicers—and through these examinations require servicers to take immediate corrective action to address risks to borrowers or violations of law—has had dire consequences for borrowers. In 2018 and 2019, the Government Accountability Office and the Department's Inspector General issued multiple reports finding widespread mistakes and mismanagement by federal student loan servicers that have harmed student loan borrowers.⁸

During your October 17, 2019 testimony, you reaffirmed that the Bureau has “a responsibility and ability to examine both entities engaged in *federal* student loans as well as *private* student loans.”⁹ But the Department continues to disagree. On October 15, 2019—two days before your testimony—the Department reiterated its view that the “Department of Education is charged with overseeing the *Federal* Student Aid portfolio, [while] the CFPB is charged with oversight of the *private* student loan industry.”¹⁰ You also expressed optimism that the Bureau and Department would soon reestablish the MOUs, testifying that the Bureau is “discussing how to move forward in an effective way to make sure that we're overseeing servicers.”¹¹ But nearly two months later, the Bureau and Department still have not reestablished MOUs, and the Bureau still has not resumed examinations of federal student loan servicers.

While you did not create this situation, you have allowed it to fester. In the one year since you became Director, you have failed to confront the Department, seek a court order,¹² or take any other measure to ensure the Bureau has access to the student loan information so that it can resume

⁶ Dec. 27, 2017 memorandum by Patrick A. Bradfield, Director of Federal Student Aid Acquisitions, *available at* <https://static.politico.com/51/17/0805f04c2eb035bcd79f9200be/december-27-2017-servicer-memo.pdf>.

⁷ See also Apr. 23, 2019 letter from K. Kraninger to Sen. Brown (Since December 2017 “student loan servicers have declined to produced information requested by the Bureau for supervisory examinations . . . of loans held by the Department based on the Department's guidance.”).

⁸ See U.S. Gov't Accountability Office, GAO 18-547, Public Service Loan Forgiveness, Education Needs to Provide Better Information for the Loan Servicer and Borrowers (2018), *available at* <https://www.gao.gov/assets/700/694304.pdf>; GAO 19-595, Public Service Loan Forgiveness, Improving the Temporary Expanded Process Could Help Reduce Borrower Confusion, (2019), *available at* <https://www.gao.gov/assets/710/701157.pdf>; U.S. Dep't of Education, Office of Inspector General, ED-OIG/A05Q0008, Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans, (2019), *available at* <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf>.

⁹ See Oct. 17, 2019 K. Kraninger Testimony before the Committee on Banking, Housing, and Urban Affairs (emphasis added), *available at* <https://www.c-span.org/video/?465410-1/consumer-financial-protection-bureau-oversight&start=3004>.

¹⁰ See <https://www.npr.org/2019/10/15/769326896/exclusive-turf-war-blocked-cfpb-from-helping-fix-student-loan-forgiveness-progra> (emphasis added).

¹¹ See *supra* n. 9.

¹² For example, in its lawsuit against Navient Corp., a student loan servicer that handles loans owned by the federal government, the Bureau obtained a court order compelling the Department to provide access to federal student loan records. See Order dated Aug. 1, 2018

<https://www.courtlistener.com/recap/gov.uscourts.pamd.110329/gov.uscourts.pamd.110329.104.0.pdf>

examinations of student loan servicers' handling of federally owned loans. The Bureau's failure to examine student loan servicers' handling of these loans is, in effect, a repeal of the Bureau's 2013 rule that established that student loan servicers' handling of both private and federal student loans is subject to its supervisory authority.¹³ You also have effectively given Secretary DeVos veto power over whether the Bureau will examine more than 80 percent of the activity in the student loan servicing market.

After two years of obstruction by the Department, inaction by the Bureau, and widespread reports of mistakes and mismanagement by federal student loan servicers, it is time that you accept responsibility, stand up to Secretary DeVos, and do your job. We call on you to take immediate steps, including seeking a court order requiring the Department to provide access to the borrower information so that the Bureau can resume examinations of student loan servicers' handling of loans owned by the federal government.

In addition, we request that you provide the following information by December 31, 2019:

1. Produce copies of all correspondence between the Bureau and the Department regarding the reestablishment of the MOUs relating to: (a) the sharing of information and complaints (Sharing MOU); and (b) supervisory and oversight cooperation (Supervisory MOU);
2. Provide a timeline for completing the Sharing MOU and Supervisory MOU.
3. Provide a timeline for the Bureau to resume its examinations of student loan servicers' handling of loans owned by the federal government.

Thank you for your attention to this matter. We look forward to your response.

Sincerely,



Robert Menendez
United States Senator



Sherrod Brown
United States Senator

¹³ A recent lawsuit alleges that the CFPB's failure to examine federal student loan servicers is effectively an illegal repeal of the 2013 rule. *Student Debt Crisis v. CFPB*, No. 2:19-cv-10048, (C.D. Cal. filed Nov. 25, 2019), available at <https://democracyforward.org/lawsuits/student-debt-crisis-v-cfpb-education>.



Jack Reed
United States Senator



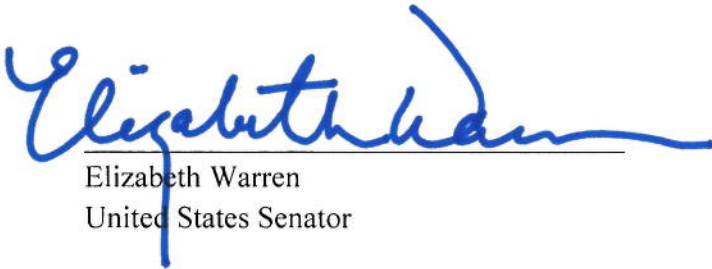
Tina Smith
United States Senator



Chris Van Hollen
United States Senator



Catherine Cortez Masto
United States Senator



Elizabeth Warren
United States Senator



Mark R. Warner
United States Senator