

**NOMINATION OF DR. JOHN KING TO SERVE
AS SECRETARY OF EDUCATION**

HEARING
OF THE
**COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS**
UNITED STATES SENATE
ONE HUNDRED FOURTEENTH CONGRESS
SECOND SESSION
ON
EXAMINING THE NOMINATION OF JOHN B. KING, OF NEW YORK, TO BE
SECRETARY OF EDUCATION

—
FEBRUARY 25, 2016
—

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C O N T E N T S

STATEMENTS

THURSDAY, FEBRUARY 25, 2016

Page

COMMITTEE MEMBERS

Alexander, Hon. Lamar, Chairman, Committee on Health, Education, Labor, and Pensions, opening statement	1
Murray, Hon. Patty, a U.S. Senator from the State of Washington	4
Enzi, Michael B., a U.S. Senator from the State of Wyoming	16
Whitehouse, Hon. Sheldon, a U.S. Senator from the State of Rhode Island	18
Isakson, Hon. Johnny, a U.S. Senator from the State of Georgia	19
Warren, Hon. Elizabeth, a U.S. Senator from the State of Massachusetts	21
Scott, Hon. Tim, a U.S. Senator from the State of South Carolina	23
Murphy, Hon. Christopher, S., a U.S. Senator from the State of Connecticut ..	25
Collins, Hon. Susan, a U.S. Senator from the State of Maine	27
Casey, Hon. Robert P., Jr., a U.S. Senator from the State of Pennsylvania	28
Roberts, Hon. Pat, a U.S. Senator from the State of Kansas	30
Murkowski, Hon. Lisa, a U.S. Senator from the State of Alaska	32

GUEST REPRESENTATIVE

Scott, Hon. Bobby, a U.S. Representative from the State of Virginia	6
---	---

WITNESS

King, John B., Jr., Ph.D., Acting Secretary, Department of Education, Tacoma Park, MD	8
Prepared statement	10

ADDITIONAL MATERIAL

Statements, articles, publications, letters, etc.:	
Letter submitted by Senator Alexander	42
Title IX letters submitted by Senator Murray	42
Letters of support	56
Response by John B. King, Jr., Ph.D.to questions of:	
Senator Alexander	69
Senator Enzi	75
Senator Murkowski	76
Senator Scott	79
Senator Hatch	81
Senator Cassidy	82
Senator Murray	84
Senator Sanders	88
Senator Franken	90
Senator Bennet	91
Senator Whitehouse	94
Senator Warren	95

NOMINATION OF DR. JOHN KING TO SERVE AS SECRETARY OF EDUCATION

THURSDAY, FEBRUARY 25, 2016

U.S. SENATE,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The committee met, pursuant to notice, at 2:05 p.m., in room 430, Dirksen Senate Office Building, Hon. Lamar Alexander, chairman of the committee, presiding.

Present: Senators Alexander, Murray, Enzi, Isakson, Collins, Murkowski, Scott, Roberts, Cassidy, Casey, Franken, Bennet, Whitehouse, Murphy, and Warren.

OPENING STATEMENT OF SENATOR ALEXANDER

The CHAIRMAN. The Committee on Health, Education, Labor, and Pensions will please come to order.

Our hearing today is on the nomination by the President of Dr. John King to serve as the U.S. Secretary of Education. Senator Murray and I will have an opening statement, and then we'll introduce the nominee. After Dr. King's testimony, Senators will each have 5 minutes of questions.

We especially welcome Bobby Scott from the House of Representatives, whose leadership played such a key role in the passage of the Every Child Succeeds Act. It would not have happened without him. He was forceful and diplomatic and oriented toward results, so we admire that and appreciate his work on that, and I'll introduce him later to introduce Dr. King.

And we welcome Dr. King's family, who I know are here, and I'll let him introduce them at a later time.

I'm very glad we're having this hearing today. When Senator Murray and I and Representative Scott and others were at the White House on December 10th for the signing of No Child Left Behind by President Obama, I urged the President to send to the Senate a nominee to succeed Education Secretary Arne Duncan. I did that because this is such an important year for schools.

We need an education secretary who is confirmed and accountable to Congress while we're implementing a law that may govern elementary and secondary education for years to come. I want to be sure that we're working together to implement it as Congress wrote it. So, congratulations on your nomination, Dr. King.

And if you'll permit a personal note, this very month 25 years ago, I was sitting in the very same position that you're sitting today, having been nominated as U.S. Education Secretary by

President George H.W. Bush. I remember thinking that the Senators had deliberately sat me way down there and them way up here so I'd be intimidated by that. The hearing lasted 4 hours. We won't do that to you today, I don't think. My appointment was announced in December, but I wasn't confirmed until March 14th.

What happened to me at the hearing—and my family was there, like yours; I can remember it vividly—Senator Metzenbaum from Ohio said, “Well, Governor Alexander, I've heard some disturbing things about you.” And I said, “Oh?” And he said, “But I'm not going to bring them up here today.”

[Laughter.]

And Senator Kassebaum leaned over and says, “Well, Howard, I think you just did.”

[Laughter.]

And he probably put a hold on me, and I hung for about 3, 2 months waiting for that to be lifted. I don't suspect you're going to have any of that sort of problem today.

Senator Dan Coats, currently a Senator, was on this committee then, and he said at that hearing 25 years ago many of the States are way ahead of the Federal Government in terms of opening themselves up to more innovative solutions in education. That was true then; it's true today.

When the President signed into law the Every Student Succeeds Act in December, he was signing a law that passed the U.S. Senate 85 to 12. Nineteen of the 22 members of this committee voted for it. I believe it's fair to say that every single member of this committee made some contribution to the result. We achieved the result because, as Newsweek said, this was a law that everyone wanted fixed, and fixing it was long overdue.

Not only was there a consensus about the need to fix the law, there was a consensus about how to fix it, and the consensus which we repeated over and over again was this: Continue the important measures of the academic progress of students, disaggregate the results of tests and report them so everyone can know how the school teacher and children are doing, and then restore to States, school districts, and classroom teachers and parents the responsibility for deciding what to do about the tests and about improving student achievement.

This new law is a dramatic change in direction for Federal education policy. In short, it reverses the trend toward what, in effect, had become a national school board and restores to those closest to children the responsibility for their well-being and academic success. The Wall Street Journal called the new Every Student Succeeds Act, “the largest devolution of Federal control of schools from Washington back to the States in a quarter of a century.”

More importantly, I believe the new law can inaugurate a new era of innovation in student achievement by putting the responsibility for children back in the hands of those closest to them, the parents, the classroom teachers, principals, school boards, and States.

The law is so important that the Nation's Governors gave it their first full endorsement of any piece of Federal legislation in 20 years. The last time they did that was the welfare reform bill in 1996. The law has the support of organizations that do not always

see eye to eye. In fact, almost every education organization that supported the bill is already beginning to work together to help to implement it.

We held a hearing with several of them on Tuesday. Those groups have formed a coalition made up of the following: the National Governors Association; the School Superintendents Association; the National Education Association; the American Federation of Teachers; the National Conference of State Legislators; the National Association of State Boards of Education; the National School Board Association; the Association of Elementary School Principals and of Secondary School Principals; the National Teachers Association; and it also has the support of the Chief State School Officers.

Any of us who have been around education knows that these groups do not always see eye to eye all the time, but they do on this bill. You already know this because they've sent you a letter in which they said,

"Although our organizations do not always agree, we are unified in our belief that ESSA," or, as Senator Franken says, ESSA, "is an historic opportunity"—that's your suggestion, right? For what we call it? Right.

[Laughter.]

"ESSA is an historic opportunity to make a world-class, 21st century education system, and we are dedicated to working together at the national level to facilitate partnership among our members and States and districts to guarantee the success of this new law." Continuing their letter, "The new law replaces a top-down accountability and testing regime with an inclusive system based on collaborative State and local innovation. For this vision to become a reality, we must work together to closely honor congressional intent. ESSA is clear: education decisionmaking now rests with States and districts and the Federal role is to support and inform those decisions."

I will include the letter in our record.

[The information referred to can be found in additional material.]

The CHAIRMAN. The letter accurately reflects the consensus forged by these disparate organizations and by the Democrats and Republicans in Congress. The consensus ended the practice of granting conditional waivers through which the U.S. Department of Education has become, in effect, a national school board for more than 80,000 schools and 42 States. Governors have been forced to go to Washington and play "Mother May I" in order to put in a plan to evaluate teachers, or help a low-performing school, for example. That era is over.

This law ends what had become, in effect, a Federal Common Core mandate. It explicitly prohibits Washington from mandating or even incentivizing Common Core or any other specific academic standards. It ends the "highly qualified teacher" definition and requirements, teacher evaluation mandates, Federal school turnaround models, Federal test accountability and adequate yearly progress, because it moves decisions about whether schools and teachers and students are succeeding or failing out of Washington,

DC and back to States and communities and classroom teachers, where those decisions belong.

This hearing provides Congress with the opportunity to ask questions, learn more about your background, and get your commitment to work with us if you are confirmed. My colleagues and I will have questions about such important issues as should parents have the right to opt their children out of federally mandated tests, and how will you balance the new law's requirement on that important issue with deference to State and local decisionmaking; how will you manage the Department's \$1 trillion portfolio of student loans; how do you plan to deal with the issues raised by Congressman Chaffetz in the House about the security of information technology systems at your department; what are your plans for addressing the Office of Civil Rights' practice of treating guidance issued without notice and comment as binding on our Nation's college campuses on the serious issue of campus sexual assault.

You have a distinguished career. You've been a public school student, a teacher, you founded a charter school, served as Education Commissioner in New York, a State of nearly 20 million, with responsibility of more than 7,000 public schools, as well as 270 colleges and universities. You were delegated the duties of Deputy Secretary of Education by Secretary Duncan, and you are also the father of two children. You've seen our education system from nearly every angle.

As you and I have discussed, I believe that if you are confirmed we will be able to work together not only to implement the new law governing elementary and secondary education, but that we can take some bipartisan steps, which we have already begun in the committee, to make it easier and less expensive for students to go to college, and that we can begin to cut through the jungle of red tape that is strangling our 6,000 institutions of higher education. Many of these steps are well underway. They have broad support, and we should finish the job.

Welcome to you and to your family. I look forward to hearing from you today.

Our new Every Student Succeeds Act is an important change in direction. It is excellent policy. It should provide a much-needed period of stability for Federal policy in schools for several years. But we all know that a law is not worth the paper it's printed on unless it's implemented the way Congress wrote it. That's why I'm glad the President has appointed an Education Secretary who can be confirmed and be accountable to the U.S. Senate. If you are confirmed, I look forward to working with you to help you and our new law succeed for the benefit of 50 million children, 3.5 million teachers, and 100,000 public schools.

Senator Murray.

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. Thank you very much, Chairman Alexander. Thank you to all of our colleagues for joining us today.

Dr. King, thank you for being here. I, too, want to acknowledge your wife and two daughters for joining us today.

As we all know, in public service, we cannot do our job without the incredible support of our families, and having two daughters in

public schools I'm sure provides some tremendous motivation for you and inspiration for all you do.

I also want to acknowledge my good friend, Representative Bobby Scott, who is the Ranking Member of the House Education and Workforce Committee, who has joined us today to introduce Dr. King to our committee. And I want to take this opportunity personally to thank you for all your great work and leadership on education. You've been a true partner throughout your career on efforts to improve outcomes for all of our children, regardless of where they live or how they learn or how much money they make, as well as championing efforts to ensure that college is affordable to all Americans. So, Bobby, welcome here to our committee as well.

This is an important time for students of all ages, from our very youngest learners all the way to those who are pursuing college and career training. In recent years, the costs of college have skyrocketed, leaving families and students to struggle with high costs and the crushing burden of student debt. And there have been recent cases of institutions that deceive and mislead students, and of student loan servicers making it harder for borrowers to pay back their loans.

When it comes to early learning, we've seen improvements, but we have much more to do to expand access to high-quality preschool so more kids can start school on a strong footing.

And this is a critical moment for K-12 education as schools and districts and States transition from the broken No Child Left Behind law to our bipartisan Every Student Succeeds Act that the President did sign into law late last year. I'll talk more about that transition a little later.

But with all of these challenges and opportunities, it is important for the Department of Education to have strong leadership, and I am confident that Dr. John King is a strong nominee to transition from Acting Secretary to taking on the position of Secretary of Education.

Through his personal background he knows firsthand the power that education can have in a student's life. He has enriched students' lives as a classroom teacher and as a principal. He has worked with schools to close the achievement gap, and he served as the Commissioner of Education for New York State for 4 years.

Overall, he has spent his career fighting on behalf of students so they get the chance to learn and grow and thrive in a classroom and beyond. No one can question his passion for our Nation's young people.

This Administration, as we all know, has just a little less than a year left in office, but that is still plenty of time to make progress in several key areas.

In higher education, I, along with my Democratic colleagues, will continue to focus on ways to make college more affordable and reduce the crushing burden of student debt that is weighing on so many families today. I would also like to see the Department take new steps to protect students who are pursuing their degrees, and that includes issuing clear guidelines for students like those who attended Corinthian College who went to an institution that did engage in widespread deceptive practices. These students have the

right to seek loan forgiveness and get some much-needed relief through what's known as defense to repayment.

I've also been especially concerned by cases where servicers have overcharged men and women in the military on their student loans while they served on active duty. In August Senator Warren, Senator Blumenthal and I requested that the Inspector General examine the Department's review of servicers' compliance with the Service Members Civil Relief Act, and I am anticipating that IG report very soon. I will continue to press the Department to fully address cases of service members who were over-charged and take corrective steps to make sure it never happens again. All of our borrowers should receive the highest level of customer service and protection under the law.

And, of course, the role of Education Secretary has become especially important as the Department begins implementing the Every Student Succeeds Act. This new law gives States more flexibility, but also includes strong Federal guardrails to make sure every student has access to a high-quality education. I expect the Department to use its full authority under the Every Student Succeeds Act to hold our States and schools accountable, to help reduce reliance on redundant and unnecessary testing, and to expand access to high-quality pre-school.

I look forward to hearing more from Dr. King about his vision for implementing the Every Student Succeeds Act to help every student gain access to a quality education regardless of where they live or how they learn or how much money their parents make. A good education can be a powerful driving force for success in our country, and it can help more families live out the American Dream. That's what makes education such a vital piece of our work to help our economy grow from the middle out, not the top down. And as Secretary of Education, I hope Dr. King will be a valuable partner in that work. I look forward to working with all of our colleagues on moving this nomination forward.

Thank you, Mr. Chairman.

The CHAIRMAN. Thanks, Senator Murray.

Before I present Dr. King to the committee, I would like to call on Representative Bobby Scott, who Senator Murray and I both talked about and who played really an indispensable role in this new law as the Ranking Member of the Education and Workforce Committee in the House of Representatives, and who represents Virginia's 3d congressional District.

Representative Scott, we welcome you, and we know you have a busy schedule. So, after you make your remarks, you are certainly welcome to stay or to go, whichever fits your schedule, and then I will introduce the nominee.

STATEMENT OF HON. BOBBY SCOTT, REPRESENTATIVE FROM THE STATE OF VIRGINIA

Mr. SCOTT. Thank you, Mr. Chairman and Ranking Member Murray. I want to join in the comments made about the work that was done on the Every Student Succeeds Act. The work that was done was cooperative and collaborative and constructive, and I think we ended up with an excellent bill. You indicated the list of people that support it, and it would not have been possible without

that cooperative effort, and I want to thank you and the Ranking Member for that work.

That couldn't have been done without a cooperative committee. So I want to thank all of the committee members.

I also thank you for the opportunity to introduce Dr. John King, an inspirational and tested leader who is before you today as President Obama's nominee to serve as U.S. Secretary of Education.

Our Nation continues to make strides in closing achievement gaps, improving graduation rates, increasing minority attainment in higher education, but there's much more work that needs to be done to fulfill our moral and civil rights obligation to ensure that every student has the opportunity to fulfill his or her academic and lifelong potential.

There is no one more qualified than Dr. King to lead the Department as it endeavors to fulfill that obligation, especially as we implement Every Student Succeeds Act. The fight for educational equity is a deeply personal and lifelong fight for Dr. King. His life is an extraordinary testament of the powerful role that education plays in creating opportunity. His life's journey, support by New York public school educators he credits as role models, is a symbol of what we collectively seek for millions of disadvantaged students across the country.

His belief in both the centrality of educational opportunity to the American Dream and a vital necessity of second chances for our young people are founded in his impressive and improbable journey, overcoming daunting challenges early in life, going on to earn not one but four Ivy League degrees, empowering young people as an effective teacher, school leader, and charter school founder, serving as educational commissioner for the State of New York, and now sitting before you today nominated by the President of the United States of America to serve as the Nation's top education official, charged with protecting and promoting educational opportunity for all students.

Acting Secretary King brings a continued commitment to advancing excellence and equity for every student, elevating the teaching profession, and improving access to higher education, college affordability, and completion rates. And while it's impossible for me to highlight his long list of experience and accomplishments with the limited time I have, I'd like to share with you just a few of his accomplishments.

Before becoming Acting Secretary, Dr. King served at the Department as Principal Senior Advisor. In that role he carried out duties of Deputy Secretary, overseeing all pre-school through 12th grade education policies, programs, and strategic initiatives, as well as the operations of the Department.

Prior to his arrival at the Department, he served as a Commissioner of Education for the State of New York, where he served as Chief Executive Officer of the State Education Department and as President of the University of the State of New York. At the time of his appointment, Dr. King was one of the Nation's youngest State education leaders and the first African American and Puerto Rican to serve as a New York State education commissioner.

Dr. King also brings to his role extensive experience leading urban public schools that are closing the achievement gap and pre-

paring students to enter, succeed in, and graduate from college. Prior to his appointment as Senior Deputy Commissioner in the New York State Department of Education, he served as Managing Director with Uncommon Schools, a non-profit charter management organization that operates some of the highest-performing urban public schools in New York, New Jersey, and Massachusetts.

Dr. King earned a Bachelor of Arts in Government from Harvard, a Master of Arts in Teaching and Social Studies from Columbia, a Juris Doctorate from Yale, and a Doctorate in Educational Administrative Practice from Columbia. For his leadership on issues in education equity, Dr. King has been honored with the Anna Scheele Award from the New York Urban League, the Eugene M. Lang Lifetime Achievement Award from the I Have A Dream Foundation, from the New York Immigration Coalition the Builders of the New New York Award, and the Robin Hood Foundation Heroes Award.

Many of you became familiar with Dr. King during last year's successful reauthorization of the Elementary and Secondary Education Act, and no doubt found him and his staff to be accessible, responsive, and collaborative. Knowing the character and leadership of Dr. King, I know that accessibility and collaboration will persist through the remainder of his term as he and his staff in the Department work closely with this committee and with the House Committee on Education and the Workforce, and I could not be more confident that Dr. King will effectively lead the Department as the Nation's 10th U.S. Secretary of Education.

Mr. Chairman, it's my pleasure to introduce Dr. King.

The CHAIRMAN. Thank you, Representative Scott. Thank you for being here.

Dr. King has been well introduced by Representative Scott. We welcome him, his wife and his children.

He is currently the Acting Secretary of Education. Before joining the Department, he served as Commissioner of Education in New York, the Managing Director of the Uncommon Charter Schools in New York, and Co-Founder of Roxbury Preparatory Charter School in Massachusetts.

Dr. King, we now invite you to give 5 minutes of opening remarks, and I know that if you would like to introduce your family, we would like to meet them. Your written statement will be entered into the record in its entirety, and then following that we'll have a 5-minute round of questions because we have a number of Senators here who would like to talk with you.

Dr. King.

**STATEMENT OF JOHN B. KING, Jr., Ph.D., ACTING SECRETARY,
DEPARTMENT OF EDUCATION, TACOMA PARK, MD**

Mr. KING. Thank you so much. Thank you, Chairman Alexander, Ranking Member Murray, and members of the committee, for welcoming me here today. I am humbled and honored to appear before you as President Obama's nominee for Education Secretary. I'm proud to be here today with my wife Melissa and my two wonderful daughters Amina and Mireya.

I am grateful to the President for his faith in me. I am appreciative of the committee's hard work and continued focus on behalf

of our Nation's learners. And I am mindful of how remarkable it is that I'm here at all.

As some of you may know, I believe education is the difference between hope and despair, between life and death even, because it was for me. I grew up in Brooklyn, the son of two lifelong New York City public school educators. Although I never had the chance to know them well, my parents' faith in education continues to inspire me.

When I was 8, my mother died of a heart attack. My father passed away just 4 years later after suffering through undiagnosed Alzheimer's disease that made our home a scary and unpredictable place.

Amidst that trauma and uncertainty, school was my refuge, and teachers were my saviors, and it is because there are so many young people out there like me that I feel such urgency about the work of education.

Thanks to the efforts of this committee, the Obama administration, and our Nation's educators and parents, there are many reasons to feel hopeful. Last year we achieved the highest graduation rate we've ever had as a country. Since 2008 we halved the number of dropout factory high schools. Tens of thousands of children now have access to high-quality pre-school, and millions more children have access to higher education. These are meaningful, positive steps; and yet, so much work remains.

For all our progress, students of color, low-income students, English learners and students with disabilities still lag behind their peers in nearly every important measure of school achievement. And in far too many schools we still offer them less, less access to the best teachers and the most challenging courses, less access to the resources necessary to thrive. So we have urgent work to do.

But I believe we stand well-positioned for that work, in part thanks to the Every Student Succeeds Act. The new law preserves the critical Federal role to ensure guardrails to protect civil rights, but the locus of decisionmaking is rightly shifting back to States and districts and away from the one-size-fits-all mandates of No Child Left Behind.

As a former teacher, principal, and State commissioner, I know from personal experience that the best ideas come from classrooms, not from conference rooms. The new law creates a renewed opportunity to focus on equity and new freedom for State and local leaders to establish better, more balanced ways of assessing student learning. Together, I hope we can harness the bipartisan momentum of its passage to transform career and technical education and to advance college access, affordability, and completion. It won't be easy; the most critical work rarely is. But I sit here today ready for the challenge and mindful of its tremendous urgency.

If you'll indulge me, I'll close with a story about my father that captures that sense of urgency.

My father was a teacher in the New York City public schools, and he loved to play basketball on the weekends. And 1 weekend he broke his wrist playing basketball, and so he had to have a cast on his wrist. He came in on Monday after the weekend and was headed to his classroom, and the principal told him you can't go to

class, you can't teach your class with a cast on. And my father asked why that was, and the principal said there was some sort of regulation or rule that he couldn't teach with a cast on. My father said, no, no, it's important, I want to teach my class, and the principal said, no, absolutely not, you can't teach with a cast on.

So my father walked over to the counter, and if you've been in the New York City public schools, older buildings have these very high counters, usually in the main office, and my father laid the cast down on the counter and brushed the pieces into the trash can and put his hand in his suit pocket and said I'm going to go teach my class now. And when I was a kid, whenever someone in the family said something was too hard or too challenging, my father would say, huh, seems like it's going to rain soon, I can feel it in my wrist. It was his way of reminding us of that story and of his sense of clarity about the role of education.

My father knew that schools saved lives, and though he couldn't have possibly imagined it then, I sit here decades later as living proof that he was right. Like my parents, like the President and First Lady, like all of you, I believe that education is at the heart of the promise of equality of opportunity for all Americans. If confirmed, it will be my great privilege and honor to continue working with you to realize that promise in the months ahead.

Thank you again for your consideration, and I look forward to your questions.

[The prepared statement of Mr. King follows:]

PREPARED STATEMENT OF JOHN B. KING, JR., PH.D.

Thank you, Chairman Alexander, Ranking Member Murray, and members of the committee for welcoming me here today. I have dedicated my career to serving the needs of children and their families, so it is with great humility and a deep sense of honor that I appear before you as President Obama's nominee to continue that work as education secretary.

I am proud to be here today with my wife, Melissa, and our two wonderful daughters, Amina and Mireya.

I am grateful to the President for his faith and confidence in me.

I am appreciative of the longstanding work and continued focus by every member of this committee on the education of our Nation's learners—from early childhood through post-secondary success. I'm especially thankful to Chairman Alexander and Senator Murray for your personal commitment and leadership on education, and for the recent effort of the committee to reauthorize the Elementary and Secondary Education Act. This committee's work on that bill is a reminder to all of us that bipartisan compromise is not just still possible; it's capable of delivering meaningful legislation and necessary changes. I look forward to continuing to work with all of you in that same bipartisan spirit.

And I am mindful of how remarkable it is that I am here at all. As some of you may know, I believe education is the difference between hope and despair—between life and death, even—because it was for me.

I grew up in East Flatbush, Brooklyn; the son of John and Adalinda King, two lifelong New York City public school educators. My father grew up poor in Bedford Stuyvesant, yet by the end of his career he had become one of the highest-ranking African American educators in the country. My mother came to New York from Puerto Rico as a little girl and was raised by a single mother who was a garment worker, yet she found a way to become the first person in her family to graduate from college.

Although I never had the chance to know them well, my parents' faith in education continues to inspire me.

When I was 8, my mother had a heart attack and passed away. My father died just 4 years later—after suffering through undiagnosed Alzheimer's that made our home a scary and unpredictable place.

Amidst all the trauma and uncertainty, school was my refuge, and teachers were my saviors.

I am here today because of Mr. Osterweil, my teacher at PS 276 in Canarsie who required me to read the *New York Times* every day, and who made me feel safe, nurtured, and challenged.

And I am here because of Celestine Dessasure—Miss D—who turned her social studies classroom at Mark Twain Junior High School in Coney Island into an actor's studio, and whose lessons proved that rigor and joy are not mutually exclusive.

My New York City public school teachers literally saved my life. If not for them, I could not have survived that turbulent period, and I certainly wouldn't be sitting before you today.

The influence they had on me, coupled with the example my parents provided, led me to become a teacher myself.

But there are still so many young people out there like me, children whose paths to school have been marked by burdens no young person should have to bear. We owe it to those children to make school for them what it was for me.

That's why I feel such urgency about the work of education. That's what led me to help found a school and then a school network. And it's what drove me in my tenure as the Deputy Commissioner and then Commissioner of Education in New York State.

Roxbury Prep, the first school I co-founded, and one that is filled with young people from backgrounds like mine, became one of the highest-performing urban middle schools in the commonwealth of Massachusetts. The Uncommon Schools network that my colleagues and I created now includes nearly 50 high-performing urban schools, and impacts the lives of thousands of low-income students every day. And as a result of my tenure in Albany, I am proud to say that New York is now a leading State in its work to bring together K–12, post-secondary and business partners to expand access to high-quality career and technical education; in its commitment to create socioeconomically diverse schools; and in its work to improve the preparation and certification of its teachers, as the State transitions to more rigorous expectations for students.

I've also learned from each successive challenge about how to create lasting change. Since leaving Roxbury Prep and Uncommon, I've thought a lot about the importance of both holding students to high expectations and fostering a safe, welcoming school climate. Too often, we have seen a false dichotomy between the belief that schools alone can overcome outside forces and the belief that schools are powerless in the face of those forces. In my time in New York, I was reminded often of how critical it is that policymakers remain in constant communication with parents and teachers—the adults who are most responsible for shaping the daily experiences of our children. I have been working on that here in Washington.

All of these experiences have only reaffirmed my belief that educational equity and excellence must be national civil rights priorities.

Thanks to the work of this committee, the Obama administration, and our Nation's educators and parents, there are many reasons to feel hopeful.

Last year, we achieved the highest graduation rate we've ever had as a country—82 percent. This progress was driven in no small part by significant reductions in the dropout rate among African American, Latino, and low-income students. Since 2008, we have halved the number of “dropout factory” high schools. A million more African American and Latino students are in college today than when the President took office. Tens of thousands of children now have access to high-quality preschool and millions more students have access to higher education.

These are meaningful, positive steps.

And yet, there is still much work to be done.

For all their progress our children of color and low-income children still stand too far behind their peers in nearly every important measure of school achievement. So do our rural students and students with disabilities, our English Learners, Native American students, and homeless students.

And in far too many schools, we still offer them less—less access to the best teachers, less access to the most challenging courses, less access to art and music, and less access to the resources necessary to thrive.

We need to support teachers and educators as they raise academic expectations for all of our students—so that they are prepared to compete with their peers in other nations.

We need to offer students more affordable college choices, and to help more of them graduate. The most affluent students are still six times more likely to complete college than low-income students, and too many Americans are still struggling to pay back their student loan debt.

So we have urgent work to do.

We are not yet what we ought to be.

But I believe we stand positioned to move closer to what we ought to be, in part thanks to the Every Student Succeeds Act (ESSA). With ESSA, Congress has reinforced the Federal commitment to holding our Nation's schools accountable for the progress of all students. In this new era, the locus of decisionmaking around the most appropriate supports, interventions, and rewards in our schools is rightly shifting back to States and districts—and away from the one-size-fits-all mandates of No Child Left Behind. As a former teacher, principal, and State commissioner, I know from personal experience that the best ideas come from classrooms, not conference rooms.

The new law provides a renewed opportunity to focus on preparing every young person for success in college and future careers, and that demographics do not determine destiny—starting with our youngest learners.

It preserves the critical Federal role to ensure guardrails to protect civil rights. But it also gives educators and State and local leaders the freedom to establish better, more balanced ways of assessing student learning, including looking beyond just test scores.

It maintains the principle that, when groups of students or entire schools are falling behind, action will be taken to provide the supports necessary to foster progress. And it creates the opportunity to reclaim the goal of a well-rounded education for all students: an education that not only includes strong numeracy and literacy but access to science, social studies, the arts, physical education and health, and the opportunity to learn a second or third language.

The start of a new era also brings with it an opening for a much-needed reset in the national dialog. Over the last few years, education policy discussions have too often been characterized by more heat than light—especially where educators are concerned. Despite the best of intentions, teachers and principals, at times, have felt attacked and unfairly blamed. All of us—at the local, State, and Federal level—have to take responsibility for the climate that exists. And all of us must do whatever we can to change it.

We know—and I know personally, because I lived it—the importance of great teachers. That's why one of my highest priorities as education secretary would be to lift up the teaching profession, and find more ways to celebrate, support, and sustain our Nation's educators.

In so many ways, this is a unique moment in our Nation's educational journey. The passage of ESSA should not be the end of a road; it should be the beginning of many.

Let's harness the bipartisan momentum of last year to make this year one of continued progress. Just as No Child Left Behind was overdue for a rewrite, so too is the Perkins Act. Let's make 2016 the year we transform career and technical education for the 21st century by driving innovation and quality.

Just as we were up for the challenge in pre-K through high school, let's work together to advance improvements to the Higher Education Act. And let's ensure that every student has the opportunity to obtain the post-secondary education needed to gain the knowledge and skills that will shape success in today's economy—whether in the form of a 2-year or 4-year college degree, or an industry credential and direct pathway to a well-paying job.

Together, we can fortify the Pell program as an engine of opportunity. And we can support the innovative ideas of schools around the country to serve more students at a lower cost, and ensure that students don't just start college but complete it with an affordable, high-quality degree. That includes working with you to build on our efforts to support students and families who are managing their student loan debt.

None of this will be easy—the most critical work rarely is. But I appear before you ready for the challenge, and mindful of the tremendous urgency we must bring to the tasks at hand.

If you'll indulge me, I'll close with a story about my father that captures that sense of urgency.

My father loved basketball, and one weekend, while playing, he broke his wrist. When he went to work on Monday, with his wrist in a cast, the principal stopped him and said, "Mr. King, you can't teach today." The principal said there was a regulation back then about not teaching with a cast, and the principal refused to budge.

So what did my father do? He walked over to the counter and smashed the cast into pieces. Then he brushed those pieces into a trash can, put his hand in his suit pocket, and went to teach his class.

My father knew that schools save lives. And though he never could have imagined it then, I sit here decades later as living proof that he was right. Like my parents;

like the President and First Lady; like all of you, I believe that education is at the heart of our promise of equality of opportunity for all Americans.

If confirmed, it will be my great privilege and honor to continue working with you to realize that promise in the months ahead.

Thank you again for your consideration. I look forward to your questions.

The CHAIRMAN. Thank you, Dr. King, and thank you for the story about your father.

We're going to begin a round of questions now, which we'll limit to 5 minutes back and forth for each Senator.

Let me start with some nuts and bolts. You've been at the Department for a while. You know how it works. We're coming to a transition point in Federal education policy in a variety of ways. When we have a new law, that means that every State will need to submit a new plan to you in order to receive the title I and title II money. That's about \$17.5 billion.

The law requires that organizations work together—States, teachers, ET cetera—and that you work with them. The conditional waivers that exist now are repealed on August 1 of this year. I would assume that we would hope that new State plans would be in place in time for the 2017–2018 school year, so I'm thinking that maybe plans would need to be in by mid-summer of next year. The plans have to go through a peer review.

Over the weekend I met with the Governors, and the Governors and teachers, all those people that I mentioned in my testimony, are forming coalitions State by State to work together on their plans. So you have a lot of people affected here. We've got 100,000 public schools, 50 States, 3.5 million teachers, 50 million children.

And the other thing to say about this that's good, I think, is that this is a good law. It has broad support. It lasts 4 years, but my guess is it may set Federal education policy for a longer period of time than that.

So we've got a new multi-year law. We're going to have new plans that won't have to be amended unless there is dramatic change. So we could be ushering in not only a new direction but a new period of stability in Federal education elementary and secondary school policy, which I think teachers and principals and school boards would welcome. And because there are so many people working together to do this, it may help move—it won't entirely do it—move politics to the back burner and education to the front burner.

What can you tell all of these States, teachers, chief State school officers about the schedule? When will your regulations be final? When do the plans need to be submitted? What's the schedule you'll use to implement the new law?

Mr. KING. Thanks for the question, Senator. We believe it's very important that the process we follow in implementing the Every Student Succeeds Act builds on the notion that stakeholder feedback and input is critical. So we have begun that process of gathering stakeholder feedback and input. We've held two public hearings. We published a notice in the Federal Register and received hundreds of comments from over 800 individuals and organizations. We've held countless meetings with stakeholders, civil rights organizations, educators, community-based organizations as we gather input about implementation of the law.

We are looking to understand from stakeholders, from schools and districts what kinds of guidance and regulations they think would be necessary for strong implementation. We have begun the process of negotiated rulemaking with respect to assessments and supplements to plans, two areas where stakeholders asked us to provide more clarity, and we will continue to work to review that comment and to——

The CHAIRMAN. If you were still in New York, what would be your goal to have a State plan in? What would you be aiming at?

Mr. KING. Yes, we certainly have to have the plans in place, as you said, for the 2017–2018 school year. I think we want to make sure we have a deliberate process to provide guidance and regulations, and I think there's a real eagerness on the part of State chiefs to get started. As you indicated, many State chiefs are already beginning to consult with stakeholders and beginning to frame their plans.

The CHAIRMAN. We had a hearing earlier this week with a number of the chief State school officers, Governors, ET cetera, and they expressed both points of view, really. They wanted to get on with it, but they also want to take the time to get it right, which is a nice balance.

The only other thing I would say is—and I'll have other questions as we have time for a second round—we'll be having a half-dozen hearings this year on the implementation of the new law because, as I said, the law is not worth the paper it's printed on unless we implement it the way Congress wrote it, and oversight is as important a part of our job as passing the law is.

So my request of you is that if you're confirmed, will you be available to me and to Senator Murray and other members of the committee and to our staff to promptly answer our questions as you go through this important period of time?

Mr. KING. Absolutely. I look forward to collaborating on implementation.

The CHAIRMAN. I personally will promise not to bother you with a lot of politically inspired, long letters, but what I would like to do is if I've got a question, I'd like to get an answer, and if we have a disagreement, I'd like to find a way to resolve it promptly. I know that there are tens of thousands of people around the country who are affected by these plans, and they would have the same feeling.

Senator Murray.

Senator MURRAY. Thank you.

Dr. King, I've been really impressed with this Administration's work over the years to protect civil rights, including promoting educational opportunities for students of color, women and girls, students with disabilities, LGBT students, and I look forward to continuing to work with you on those issues. But I wanted to raise one specific issue with you today, campus sexual assault and violence.

It's a growing national crisis, and depending on the survey, we know that at least 1 in 5 women are being sexually assaulted while on our college campuses. That's stunning. One in five of our daughters, granddaughters, sisters, loved ones are being sexually assaulted while in college. That is, by the way, the lowest of the estimates out there, which is really appalling and unacceptable.

I hear over and over again from students, from administrators, from survivor groups, schools, and everybody about the important work the Office of Civil Rights does to enforce title IX. In fact, before this hearing today, I received many letters from professors and students and sexual assault survivor groups supporting the work of the Office for Civil Rights, and I ask unanimous consent to include those letters in the record, Mr. Chairman.

The CHAIRMAN. They will be.

[The information referred to can be found in additional material.]

Senator MURRAY. The Office for Civil Rights has taken some critical actions to make sure that our college campuses do have the tools and resources necessary to comply with title IX and keep our campuses safe, and I applaud their work. But I wanted to ask you, can you talk with us about the importance of having safe campuses and your Department's commitment to addressing that?

Mr. KING. Absolutely. It is a top priority for the President, for the Vice President, for the Department to ensure that we do everything possible to protect our students, male and female students, from sexual violence and sexual assault.

In the period before the Administration and in the early years of the Administration, we saw both the challenge of sexual assault on campuses and genuine lack of clarity on the part of higher ed institutions about what they should be doing to protect students and what their responsibilities were under title IX.

We issued guidance early in the Administration intended to try to address that lack of clarity. That guidance has been very helpful to higher ed institutions in creating safer environments for their students. We've worked very productively with higher ed institutions to adjust their policies to make sure that students are safe while protecting due process rights as well.

We certainly want to continue that work. The White House Task Force on Sexual Assault has gathered extensive feedback and input, and we continue to try to steer institutions toward best practices that will help them keep their campuses safe.

But all of us, I think, as parents and as citizens have to worry about the safety of our students. We want them to be able to go off to college or to be in a K-12 school and feel safe and know that the institution will do everything possible to protect their safety.

Senator MURRAY. OK. This is something I will continue to followup, so I appreciate that.

I also wanted to ask you about the teacher shortage. I hear this all over my State. It's exacerbated in schools that serve a high percentage of low-income students, rural areas, in hard-to-teach subjects like STEM.

Why do you think we are facing this teacher shortage?

Mr. KING. We've got two challenges. One is shortages in specific States in specific areas or driven by specific conditions in States. There are some States where teacher compensation is quite low relative to other fields. I think that makes it a challenge to recruit folks. There are some States that have experienced rapid growth in their population of English language learners and are struggling to recruit the necessary teachers.

There are certainly districts and States around the country that are struggling with recruiting teachers to rural communities, which can be a challenge as rural communities lose population.

But then I think there is a broader challenge, which I think is a tone in the conversation around educators over the last decade that has at times left teachers and principals feeling attacked or blamed for the challenges that we have as a society. I think the new law gives us an opportunity for a reset on that conversation to broaden how we think about educational excellence to make sure that teachers and principals are very much a part of how districts and States use the new flexibility under Every Student Succeeds Act.

And I think we have an opportunity to build on the bipartisan work on the Every Student Succeeds Act with some of the President's budget proposals. The President proposed a \$1 billion investment in making teaching the best job in the world, investing in the time for collaboration that teachers so desperately want, creating incentives for teachers to go into the highest-need communities and to teach in high-need subjects like math and science and so forth; ambassador teacher preparation and school leader preparation, because we know strong preparation helps people arrive better prepared and makes it more likely that they will be able to stay.

I think there's real opportunity to shift the conversation, but there's an urgent need to do so.

Senator MURRAY. I agree, and I look forward to your Department really working to elevate that conversation nationally, so thank you very much.

The CHAIRMAN. Thank you, Senator Murray.

Senator Enzi.

STATEMENT OF SENATOR ENZI

Senator ENZI. Thank you, Mr. Chairman. I want to thank you for urging the President and our leader to do some rapid confirmation so we'd have an actual Secretary of Education in place. I know from your background that you realize the importance of getting that done because you've been through that lengthy waiting time yourself.

I want to thank Dr. King for the opportunity to visit a little bit yesterday. I will have some numbered questions for you. I don't ask those in hearings because I found that it puts people to sleep. So I'll focus my questions today on cyber security at the Department of Education and the important protections that we need for the student information.

In 2015 there was an audit, and the Inspector General conducted a cyber-security review in which he was able to penetrate one of the Department's networks and move throughout the system undetected. The Inspector General concluded,

"We determined that the Department's overall incident response and reporting program was not generally effective because we identified key weaknesses in its detection and prevention system penetration."

So the Department's inability to detect an outside actor as it moved throughout the system raises concerns that the Department has al-

ready been breached and is unaware of the compromise to its systems. These systems include 139 million Social Security numbers in the Federal Student Aid Program, which is about \$1.2 trillion in Federal assets.

In the prior year's report the IG reported,

"In some instances, although the Department said it has completed a recommendation, we continue to find that the corrective actions were not implemented, and we had to issue modified repeat recommendations because of the exact similar conditions continuing to exist."

Protecting the privacy and security of the student's personal and financial information is one of the greatest responsibilities, I think, of the Department, and I do find the history of the Department's capability to execute that pretty alarming.

To what level are you concerned about this? And, if confirmed, what plans do you have to strengthen the cyber security and to improve the incidence response and the reporting?

Mr. KING. Cyber security is a top priority for me and the senior leadership team at the Department. Since I joined the Department in January 2015, I've been focused on trying to strengthen our cyber security posture, even to the level of having weekly meetings when I was in the role of Deputy, weekly meetings with our senior leadership team across the Department focused on making rapid progress on cyber security.

I can tell you some encouraging progress has been made over the last year. Last spring and summer, when there was a Federal cyber security sprint to evaluate the cyber security posture across Federal agencies, it was found that the Education Department was only at 11 percent in terms of the percentage of our privileged users using two-factor Level 4 authentication, that level of security that is recommended for protecting our data information when users come onto the system.

Since then we worked very diligently, amended nearly 60 contracts, and today I can tell you 95 percent of privileged users are using Level 4 two-factor authentication, and we are closing in on 100 percent by the end of next month.

We're making progress in closing items from our FSMA audit that were identified. We are working with the Inspector General and want to address the concerns that the Inspector General has identified.

We are also working very closely with the Department of Homeland Security to leverage their best expertise from across the Federal Government.

This is a top priority. It is fair to say that there is more work to do, and we've got to move quickly to strengthen our cyber security posture. But the threats that are out there are numerous and will continue to grow and evolve, and we've got to make sure that we have the strongest possible posture.

Senator ENZI. I appreciate the steps you've taken, and we'll be looking forward to additional ones. I know that in that report there were 16 findings of security weaknesses, and six were repeat findings from the previous year, and now there are 26 recommendations to solve those weaknesses, and 10 of them are repeat recommendations.

So what steps are being taken to address the inefficiencies? And, if confirmed, will you commit to working with the Inspector General to implement all 26 recommendations?

Mr. KING. I'm very committed to implementing the recommendations. I think over time there have been challenges both in terms of resources and talent acquisition. I think we see this challenge across the Federal Government, trying to identify strong cyber security professionals. We recently added a new chief security officer to our IT team. I think that will be very helpful. He's got military experience, military intelligence. I think that will add a lot to our team.

FTARA I think will be helpful. One of the historical challenges in the Department has been separate IT structures between the Department and Federal student aid, and FTARA will bring those together.

I think we're well positioned to make progress on all 26. We're committed to closing out those items.

Senator ENZI. Thank you.

My time has expired. I'll submit some numbered questions.

The CHAIRMAN. Thank you, Senator Enzi.

Senator Whitehouse.

STATEMENT OF SENATOR WHITEHOUSE

Senator WHITEHOUSE. Dr. King, welcome. I am glad you're here, and I intend to support your nomination. But I want to, first, behind you, say how well your daughters are doing through the tedium of this hearing.

Mr. KING. Thank you.

Senator WHITEHOUSE. I'll channel a bit what I hear from my teachers in Rhode Island. I worked very, very hard on the middle school piece of the ESSA, and on the innovation schools piece, with literally years of work with educators to try to get those pieces as good as they could be. And in that process I spent a lot of time listening and learning, and some of the things that I learned are that the classroom teachers don't have a lot of faith in the education oversight machinery. They very often see it as propagating a jargon cycle where people come and offer the latest jargon to them for their classrooms, and then after a couple of years, when the jargon gets stale, they go off to other conferences and learn new jargon and come back. And after you've seen rinse and repeat a few times, it begins to look pretty repetitive.

They have seen sort of Celebrity Chef type folks come through who seem to have their eyes more on the approval of faraway foundations than on the classrooms in which they serve. They see more forms, they see more tests, they see less resources, they see less freedom. I think, to use your father's story, they see more rules about casts, and I don't know that rules about casts served your father or his classroom very well.

I think what they want more than anything else is the benefit of the doubt, where teachers and the community support local innovation, and to be able to support and implement that with the least obstruction and delay.

So I would hope that as you discharge your duties, you will do so with a keen eye for the hazard of unintended consequences,

which the testing regime is a prime example of; a prudent judgment about the tools of particularly Federal oversight; with an abiding confidence in the value of local innovation and initiative; and with an appreciation that sometimes the course of wisdom is to get out of the way.

I think if you can do that, be there when we need you and be out of the way when the schools are trying as hard as they can to get it right, I think that will make a very big difference in our schools.

Teachers are fed up, and they're not just fed up with the old buildings and the budgets that they have to deal with. I think a lot of them are also fed up with an oversight mechanism that they don't feel is serving their classroom interests. So I urge you to take that to heart, and you'll have our full support.

Mr. KING. Thank you very much. I appreciate that. I think every ounce of feedback gives us some great opportunities to foster that local innovation and allow districts and States to rethink the definition of educational excellence beyond just English and math test score performance, to think about the role of science and social studies and art and music, to rethink how they approach closing achievement gaps based on innovation, and I think we've got an opportunity as well with education innovation and research programs within the Every Student Succeeds Act to continue to build an evidence base around innovations that work with students, locally driven, and then to scale those innovations through local decision-making.

I'm very optimistic about the potential. Thank you.

Senator WHITEHOUSE. We'll be on the same page, then. But as you know, I think, from dealing with folks, it's a pretty strong feeling out there. They don't have the tools to do the job. People are in their hair, and they are so urgent about the need to do their job better in the classroom. They need resources, not restrictions.

Mr. KING. I think that's right. We have the Teach to Lead initiative at the Department, bringing together teacher leaders from across the country, and that is exactly the sentiment we hear, and people are excited when they have the opportunity to work with colleagues to do innovative things in their classrooms, in their schools, in their districts to try and improve outcomes for students.

The CHAIRMAN. Thank you, Senator Whitehouse.

Senator Isakson.

STATEMENT OF SENATOR ISAKSON

Senator ISAKSON. Thank you, Chairman Alexander, and thank you for your conversation yesterday on the phone, Dr. King. I appreciate it. It's good to have your family here. Your daughters are beautiful.

Mr. KING. Thank you.

Senator ISAKSON. So is your wife, by the way.

Mr. KING. Thank you.

Senator ISAKSON. You and I suffered a similar criticism in our careers. When you were in New York and Commissioner of Education, you caught a lot of hell for having too much testing, if I read correctly some of the articles. I'm one of the last remaining people who voted for No Child Left Behind in the Congress of the

United States, and we caught plenty of hell for requiring too much testing.

The current bill that Chairman Alexander and other members of the committee brought about in terms of testing allows parents to opt out of testing. That opt out provision was in there precisely to address the concern that many people had about too much testing. The 95 percent participation rate is still required in Every Student Succeeds Act, as it was under No Child Left Behind. The difference is the State is the authority that enforces that requirement, not the Federal Government. You have the ability to say you'll withhold title I funding, but only the State can see to it that it's withheld, and they can have another mechanism to ensure participation.

Given that we have the opt out provision, which I authored because of my experience with too much testing, and given that we still have the 95 percent participation rate, how are you as the Secretary of Education going to work with the States to ensure we have a participation rate that gives us the good metrics we need to know without forcing it down the throats of parents and educators?

Mr. KING. I appreciate the question. I think it's very important that we had in No Child Left Behind and have in Every Student Succeeds the expectation for all students to participate in the assessments. At the same time, I think we have an opportunity with the Every Student Succeeds Act to shift the tone, that we want to work with States on this. We've asked States that haven't met their participation requirements to develop State strategies to try to respond to that.

I think one thing I learned in New York, and I wish we'd done sooner, was we ran a grant program to ask school leaders, teachers, in some cases parents to look together at the assessments that are given in any given district and ask do we need all of these, are these the right ones, do they make sense, could we reduce the number, are some of these assessments low level and should we replace them with things like essays and research projects and science experiments and lab reports. That grant program was very successful. That is similar to the testing action plan that the President announced in the fall. We've given guidance to States and districts on how they can use existing funds for those kinds of audits.

I do think we have to acknowledge that there are places around the country over the last decade where there has genuinely been too much time spent on testing and too little time, as a result, or a loss of time on instruction, and I think we have an opportunity to shift that. The President has in his budget a proposal to increase funding for assessment grants so that States have additional resources that they can put toward those kinds of audits where they review assessments and get rid of ones that are unnecessary.

So I'm optimistic that the new law, the thoughtfulness of State leaders I'm seeing across the country in looking at how they reduce assessments to the minimum necessary to support good instruction, I'm optimistic that those things will help us get to a better place.

Senator ISAKSON. I appreciate your answer. You have a 10-month period of tenure, I guess, for sure, through this Administration, but that 10 months will include the beginning of the upcoming school year, which starts around the country as early as the first week in

August in Georgia. So you're going to be having a lot of situations to have communication with the States regarding requirements and regarding the flexibility of the Every Student Succeeds Act.

I hope you will take that opportunity to realize that the States went to the Federal Government for relief by asking for waivers from No Child Left Behind because we didn't do the reauthorizing we should have. Now that we have done a reauthorization, now that the States are more engaged in the implementation of elementary and secondary education, I hope you'll treat this as a partnership between the Federal Government and the States, not a dictatorship from the Federal Government to the States.

And thank you for your service.

The CHAIRMAN. Thank you, Senator Isakson.

Senator Warren.

STATEMENT OF SENATOR WARREN

Senator WARREN. Thank you, Mr. Chairman.

Millions of Americans are being crushed by student loan debt. More than 90 percent of that debt is either owned or guaranteed by the Department of Education through its Federal Student Aid Office. In other words, the Department of Education runs what amounts to a trillion-dollar bank, with exactly one product, student loans, and exactly one obligation, fairly serving millions of student loan customers.

It is clear to me that the Department's bank is in need of some serious improvement. Would you agree with that, Dr. King?

Mr. KING. As we discussed, I look forward to working with you and the rest of the committee to try to strengthen the student loan system. I worry that too many students don't understand their options with how to manage the debt that they have. I worry that there are institutions that are bad actors, where there's a need for more enforcement. We just added a new enforcement unit to focus on that. So I'm very committed to continuing to work with you and with the committee to strengthen our efforts in this.

Senator WARREN. I appreciate that and I'm glad to hear it because I want to put in the record just a few of the problems about how the Department's student loan bank has been falling down on the job.

First, the Department of Justice found that the student loan servicer Naviant, formerly known as Sallie Mae, had been cheating the women and men of our military on their student loans and fined the company \$60 million. But the Department of Education's bank took no action. Instead, the Department's bank let them off the hook after conducting its own separate and deeply misleading review. The bank then rewarded the company that cheated our members of the military by renewing another \$100 million contract.

Second, the CFPB identified widespread failures in student loan servicing. Servicers routinely mistreat borrowers and break the rules, but the Department of Education's bank consistently renews their contracts. And in 2014, the bank even gave these companies a raise.

Third, over the last decade the Department of Education's Inspector General has criticized the bank's failure to police debt col-

lectors who casually break consumer protection laws. The Department of Education's bank is still paying those same debt collectors that break the law.

Fourth, the student loan bank won't share data about the student loan program with anyone, not even the rest of the Department of Education. This means that nobody, nobody has any insight into how this trillion-dollar bank is being run.

And fifth, the last one I'll mention here, despite these massive and ongoing problems, the Department's bank thinks that it is doing such a great job that in 2014 they gave dozens of their own senior officers—those are your Department's employees—bonuses, and some of those bonuses were as high as \$75,000.

So there are five examples, and I understand, Dr. King, these problems existed long before you ever set foot in the Department of Education. But if you are confirmed as the next Secretary of Education, you will be responsible for how the Department's trillion-dollar bank runs. Will you commit yourself to cleaning up this bank's operation and making sure that it works for the students that it is supposed to serve?

Mr. KING. I am deeply committed to ensuring that Federal student aid serves students well, serves borrowers well, and protects the taxpayer interest.

Let me tell you four things that I think are promising. One is the Department has worked on the gainful employment regulations, which I think will help to ensure at the outset that institutions provide good information to students and ensure that we act when there are bad actors.

Two, on the servicing issues around service members, we have now in place a system where there is automatic notification between the Department of Defense and FSA when service members go into active duty, and that automatic notification then protects service members. We also have tried to make whole any service members who did not have the proper interest rate prior to that system going into place.

Third, we have created this new enforcement unit that I mentioned. Robert Kay, who has been an enforcement litigator at the FTC, has joined us to lead that unit, and we are committed to taking action with bad actor institutions.

And fourth, we will shortly re-compete the servicing contract, and as we do that we will integrate into that servicing contract many of the suggestions that you have made, that other advocates have made regarding how we're going to protect students' and borrower interests, and feedback we've gotten from higher ed institutions as well that worry about their students and their borrowers and want to make sure they are well served.

So I think there are promising indicators, but you are right, there's a lot of work to do to ensure that we protect our students and borrowers, and we intend to do that.

Senator WARREN. I very much appreciate it. I appreciate the steps that you are already taking. I just want to say it is the Department of Education's job to stand up for students, not for the student loan companies that are making money off these loans or these for-profit colleges that want to suck down more taxpayer dollars.

The Department's student loan bank is failing massively at this critical task, Dr. King, and the American people need to know that if you are confirmed you will make it a priority to fix these problems. Thank you.

Mr. KING. Thank you.

The CHAIRMAN. Thank you, Senator Warren.
Senator Scott.

STATEMENT OF SENATOR SCOTT

Senator SCOTT. Thank you, Mr. Chairman.

Dr. King, good to see you again. Thank you for coming by the office yesterday and spending some quality time on the issue of education. Certainly, your friend and my friend, Mo Cowan's opinion of you is very high, and thankfully so. It certainly has had some influence and impact, though he needs to come back from Massachusetts to DC more often.

[Laughter.]

A question for you on charter schools. I know that you were intimately involved in Roxbury Prep and had a lot of success there. When I saw a similar program being replicated through the Uncommon Charter Schools, it was very successful. What can we expect from you in terms of charter schools, and how will your approach be different from the approach of Secretary Duncan?

Mr. KING. I appreciate the question. We think charters can play a key role in fostering innovation in education and providing better outcomes for high-need students. Certainly that's what we tried to do at Roxbury Prep and at Uncommon.

We have two programs that are supporting charters, our Charter School Program, which is designed to spur the creation of new, high-quality charters, and also strengthen charter school authorizing; and we have a program that's focused on scaling high-performing charter management organizations. The President has proposed increased funding for charter efforts.

We are very focused on how we grow the number of high-performing schools that students can choose, whether it's district or charter schools. As we do that, one of the things we have to be vigilant about is authorizer quality. As we talked briefly about, I do worry that there are places where authorizers aren't doing a good enough job. We have to make sure that authorizers act when schools aren't delivering on the promises of their charter. I think that will help lift the sector.

But as States move forward with the Every Student Succeeds Act and think about what interventions they will put in place in high-need schools, growing the number of innovative high-need schools, whether that's innovative district schools or innovative charter schools, should be a part of that discussion.

Senator SCOTT. One area where we may have to agree to disagree is on the D.C. Opportunity Scholarship. I know that there are some parents and students in the audience who have a very passionate position, as I do, on the importance of the D.C. Opportunity Scholarship, especially when you look at your commitment to equity and excellence and the fact that we have a classic example here in Washington, DC of a process and a program that has

produced numbers and success in a way that's inconsistent with other schools.

I think the graduation rate of those students attending a D.C. Opportunity Scholarship program is around 90 percent. Other schools in the DC area is around 62 percent, with some going as low as 38 percent. The cost per pupil for the D.C. Opportunity Scholarship program is somewhere around \$9,000 to \$12,000. For the other schools it's over \$18,000. You get a 50 percent better graduation rate. Eighty-eight percent of those students go on to a 2-year or 4-year college experience.

It seems to me that the Administration and you as Secretary should take a second look at that program and look for ways to integrate it and to use the carryover money, \$35 million, to fund more scholarships. Frankly, this is not just my perspective. This is a bipartisan perspective. When you look at the support of Senators like Republican Senator Ron Johnson, as well as Senators Feinstein and Cory Booker, all have the same opinion of D.C. Opportunity Scholarship.

What can we do to move the Administration, and perhaps you as the new Secretary, in the direction of using that \$35 million in carryover funds to fund more scholarships? When you take into consideration the fact that in the DC area there are basically three approaches to education, the DC public schools get about \$20 million a year. The Opportunity Scholarship program is around \$20 million a year. So the funds that are necessary to continue the scholarships apparently are already there.

What we have an opportunity to do is to take the \$35 million to use for more scholarships so that we see more kids—97 percent of these kids are either African American or Latino—we see more kids succeeding at high levels, especially when you think about the fact that 60 percent of these kids are receiving TANF or SNAP benefits, and yet they are out-performing their peers throughout the DC area and perhaps throughout the country.

Mr. KING. As we talked about, I very much respect your position. I think our view is that the number of slots in the DC voucher program should be based on annual appropriations. To the extent that there are open slots within the annual appropriation, those would be filled. We think the carryover funds should be maintained to ensure that the currently enrolled students, if new appropriations are not made, have the opportunity to complete their education in the schools where they are now enrolled.

Again, I respect that we have a difference of opinion on that. I think we share an urgency around equity and excellence. I do not personally believe that vouchers are a scalable solution to the equity and excellence challenge and prefer the route of public school choice but respect, certainly respect your position on this.

Senator SCOTT. I'll just close with this, Mr. Chairman. I certainly think that your success on charter schools is undeniable, and thank goodness that you've taken that try. It has been a successful try. I think when you look at the D.C. Opportunity Scholarship and the fact that over a 10-year period of time we've seen 6,000 students go across, and 95 or 93 percent of those kids graduate, that it would be a shame for us not to take advantage of a system or a program that is working so well, that we have so many kids that

would have been denied access to higher education now being involved in higher education, succeeding in higher education. That changes their entire family system. So for us not to take a second look at this would be a shame.

Thank you.

The CHAIRMAN. Thank you, Senator Scott.
Senator Murphy.

STATEMENT OF SENATOR MURPHY

Senator MURPHY. Thank you very much, Mr. Chairman.

Good afternoon. Congratulations. I have to pass on to you a compliment paid to you by a friend shortly after you were named to the interim position. This individual said to me it's wonderful that a person like John King could become the Secretary of Education. I asked him what he meant by that, and he said, you know, it's not just his background, to have somebody there who has done everything within the educational system, someone who wasn't a creature of Washington but a creature of local school districts, but just someone of the temperament and the disposition that John has. You have a lot of fans out there, not because of the work you've done but just because of the person you are, and that has come through in every post you've had, a real tribute to you.

Dr. King, I wanted to talk to you a little bit about one of the particular provisions in ESSA that I care most about. I and others on this committee—Senator Warren, Senator Murray, amongst others—fought very hard for requirements in the new elementary and secondary education law that would ensure that States must step in with evidence-based interventions for the lowest performing schools, the bottom 5 percent of schools, dropout factories that failed to graduate a third of their students, and schools with consistently under-performing subgroups.

These requirements, they're essential to maintain the core purpose of ESEA, originally, as a civil rights law. It's not really any good to have a Federal education law if it's not also a civil rights law. But it's really going to be up to the Department to ensure that States have meaningful definitions of things like "consistently under-performing" and that States and districts are monitoring schools with consistently under-performing subgroups.

So my question is a general one. The law, it does appropriately turn over a lot of flexibility to States in the design of these accountability systems, but it also includes some really important Federal guiderails. So as Secretary, how are you going to ensure that States implement accountability systems that protect these subgroups of vulnerable students?

Mr. KING. Thanks. I appreciate the question. The civil rights legacy of the Elementary and Secondary Education Act is crucial to preserve and advance, and I think States have an opportunity to use their flexibility around interventions to increase equity. In order to do that, I think you're exactly right, we will need to ensure that there are good guardrails, that we're gathering comment and feedback from schools and civil rights organizations and community leaders and educators to understand how we can, through regulations and guidance, support the implementation of interventions that actually move us closer to closing the achievement gap.

I think it's a good thing that the Every Student Succeeds Act moves us away from the one-size-fits-all solutions of No Child Left Behind. If you've got a school that's struggling with a population of English learners, you should be able to bring in evidence-based professional development and teaching practices and help teachers support those English learners. You shouldn't have to go to a one-size-fits-all solution that has nothing to do with English language learners because that's in a Federal law.

I think there's an opportunity here for States to have smarter interventions and districts to have smarter interventions. But it will also be important for the Department to be vigilant after that first set of interventions is put in place. If they aren't working, if they aren't closing achievement gaps, if they aren't raising graduation rates, there's going to need to be a demonstrated effort on the part of States to intensify those interventions, to act on the evidence, and to change strategies.

So we are going to be very careful in our work to regulate on this, to provide guidance on this, and to provide technical assistance, and we're going to be guided in that by the feedback that we get from stakeholders.

Senator MURPHY. I appreciate your focus on this. I want to ask one additional question, following up on Senator Warren's questions.

Another one of these for-profit schools, Marinello School of Beauty, went out of business earlier this month, leaving about 460 students in my State suddenly with unfinished degrees and massive student debt. These are just piling up, the headlines, by the month.

You've got the ability in the Department of Education to cutoff aid for schools only when they hit a fairly ridiculous trip wire, which is 30 percent of their students effectively achieving the status of financial ruin, that they have gotten so badly behind on their debt that they are defaulting.

A lot of the conversation around higher ed reauthorization here is whether there's a better way to give you power or give you the ability to intercede earlier than that moment when one-third of all students graduating from an institution have gotten degrees that are so worthless and meaningless that they can't pay back their student loans, this concept of shared responsibility.

What do you think about the need to give the Department of Education some new ability to intervene a little bit earlier?

Mr. KING. We would love to work with you on that. I do think the gainful employment regulations will help with respect to some of the institutions. Our new enforcement unit will help. But strengthening the accountability within the Higher Education Act would be very valuable, including strengthening the accountability for accreditors. If you look at what happened with Corinthian, Corinthian was accredited throughout. So ensuring that accreditors are paying close attention to whether or not students are getting what they pay for I think is also a critical step we can take in the reauthorization.

Senator MURPHY. As the Chairman and Ranking Member will remember, we had the accreditor of Corinthian before us, who defended the accreditor's total and complete inaction in the wake of

Federal Government intervention, which to many of us was a little hard to swallow.

Thank you very much, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you, Senator Murphy.

Senator Collins.

STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you, Mr. Chairman.

Welcome, Dr. King, and congratulations again on your nomination.

ESSA includes some innovation that is an assessment pilot program which I co-authored with Senator Sanders, which ought to tell you something about the breadth of support that the program has.

[Laughter.]

Senator COLLINS. This is a pilot program that would allow seven States to develop alternative models for assessment. One such model could be proficiency based, which Northern New England is particularly interested in. And the law allows seven States, as I mentioned, to participate in the demonstration project.

What are your plans for implementing this pilot program?

Mr. KING. Thank you for the question, and thank you for your leadership on this issue. I think we are still in the early stages of gathering feedback and comment from some stakeholders in areas where regulations or guidance will be helpful. As we work on the innovative assessment pilot, I think we have a good example to look toward, as we discussed briefly, in New Hampshire. New Hampshire I think is doing very good work on building a performance-based assessment system led by teachers that then will transition into, they hope, their statewide assessment system. So we will certainly look to their example and leadership, but we want to make sure that we support States as they think about taking advantage of this opportunity.

Senator COLLINS. Turning to another topic, when I talk to school administrators in Maine, they tell me that they're very concerned that the maintenance of effort requirements under IDEA are producing the unintended effect of hindering the ability of school districts to provide the most effective and cost-efficient services to children with special needs, and let me give you an example that one gave to me.

A school district in Maine wanted to hire an in-house school pathologist—sorry—speech pathologist to provide services to children with special needs instead of using a much more expensive outside contractor. Unfortunately, they found they could not do so because it would be considered reducing the maintenance of effort because it would be less expensive. Yet clearly, from this school district's perspective, having an in-house speech pathologist is far more responsive to the needs of these students than contracting out that function.

A GAO report last October also commented on this lack of flexibility and said that it discouraged school districts from changing spending decisions even when doing so would benefit their special needs children. The limited regulatory exceptions for adjusting the

maintenance of effort requirement do not appear to allow for those kinds of changes.

As Secretary, would you consider refining the maintenance of effort regulations so that if a school district is actually trying to produce better outcomes for special needs students, they can do so even if it ends up lowering the cost?

Mr. KING. I appreciate that. Certainly, the principle—I think we'd agree that the principle of maintenance of effort as a way of protecting the services that students with disabilities are receiving and ensuring that school districts meet those needs is clearly the right principle. I would certainly like our team to talk with yours about these specific cases and to look at how they evolved.

As we talked about, I think particularly in some of our rural areas around the country, these issues are particularly pertinent, and it's particularly challenging. One of the things that we tried to do in New York was to leverage shared regional service providers to try to ensure that districts were able to get the students the services they need in a sustainable way. But certainly I want to make sure our teams connect on that and talk through that because we certainly want to be in a position of supporting districts in serving students with disabilities as well as possible.

Senator COLLINS. Thank you. My final comment is that I hope you will have a listening session in a rural area—we talked about that in my office—as opposed to just large urban areas like L.A. and DC.

Mr. KING. Yes, absolutely.

Senator COLLINS. Thank you.

The CHAIRMAN. Thank you, Senator Collins.

Senator Casey.

STATEMENT OF SENATOR CASEY

Senator CASEY. Thank you, Mr. Chairman.

Dr. King, welcome, and thank you for your testimony and your willingness to serve. We appreciate that commitment.

I want to commend and salute your family as well, because when you serve, they serve with you in one way or another. We appreciate the commitment your family has made to this high level of public service.

I wanted to start with an issue we discussed and about which we have a disagreement, and that's the student loan servicing reallocation question, where I have a disagreement with the Department and I think it could have an adverse impact on borrowers, and we don't agree, but I hope we can continue to engage on that and come to a resolution that's satisfactory. So, I hope you'll be open to further engagement on that.

I wanted to start, though, with an issue which we don't hear an awful lot about. As you know, it has a very technical name, "significant disproportionality," which I guess the simplest way to describe it is children of color overrepresented in special education, for a whole variety of reasons.

I'm pleased that the Department has released a draft rule to address this issue. We know that this is a huge problem across the country. Data that I know you're aware of that covers about a 12-year timeframe, data gathered by the Office of Special Education

Programs indicated, among other things, that, for example, African American students were 50 percent more likely and Hispanic students 40 percent more likely to be identified as a student with a learning disability. Similarly, African American students were 70 percent more likely, and American Indian and Alaska Native children were 120 percent more likely, to be identified as a student with an emotional disturbance. All of that, of course, results in those students being suspended at much higher rates than other students.

We know that this issue of so-called overrepresentation is a widespread problem. We know that in 2013 the GAO found that only 2 to 3 percent of districts nationwide were reporting over-identifying students of color as special education. So that's obviously a failure of our system when only 2 or 3 percent of districts are tracking this and identifying the problem.

We know that hundreds, literally hundreds of districts across the country with these disparities go unidentified. The children don't get the help they need and are misidentified early on in life and, in essence, among other horrific problems, the problem feeds the school-to-prison pipeline.

So all of that by way of background, every bit of it I think you know. Can you walk us through some of the recommendations of the GAO report?

Mr. KING. One of the things that the GAO report asked us to do is to look at the methodology that States were using to make these determinations around disproportionality. So what we've done in the proposed rule is suggested that States develop a risk ratio methodology that will help them figure out which are the districts where there is this disproportionality as a first step to a process of then evaluating why that disproportionality is happening and then addressing resources to intervene.

One of the things that we've tried to extract about this proposed rule is that it's not intended to necessarily reduce the number of students identified as having disabilities. It's about ensuring that students are getting the right services. In some cases it's that students, African American students, Latino students, particularly African Americans and Latino male students are in some places disproportionately assigned to more time outside of the regular classroom even for the same disability issue that other students aren't assigned out of the classroom, where we see students disproportionately suspended from school or assigned to an alternative placement.

We want to see this as an opportunity to get States and districts to take a second look at why that is happening, and that's the goal of this rule. We think it's an important step. We're certainly eager to get public comment on it to ensure that the final rule addresses the public comments.

Senator CASEY. We appreciate that, because I know—I say this as a former State auditor general, where we would have audit findings and make a long series of recommendations, and you wonder if the State agency would be responsive. In this case, you're taking a GAO report addressing a serious problem and actually putting into place rules to improve it and to help our kids. We appreciate your work on this. We appreciate the Department's work.

Mr. KING. Thank you.
 Senator CASEY. Thank you.
 The CHAIRMAN. Thanks, Senator Casey.
 Senator Roberts.

STATEMENT OF SENATOR ROBERTS

Senator ROBERTS. Thank you, Mr. Chairman.

Dr. King, welcome to the committee, and congratulations on your confirmation. It's good to see your family. I just happened to notice that your two daughters—I had two daughters about that age some years ago, so I want to thank them for their patience, No. 1. No. 2, I happened to observe, like my daughters, their countenance. I would urge you sir to get up at 5 in the morning, so you can get home at 6 in the evening. You have no idea how many young men are going to be knocking on your door.

[Laughter.]

I also have a big stick that I can loan you.

[Laughter.]

So come to my office on a courtesy call and I'll give you that stick.

Mr. KING. Absolutely.

Senator ROBERTS. I know that we have differences on Common Core. I don't want to get into that, but it is part of existing legislation and law, and I want to be absolutely clear. The language says, "No officer or employee of the Federal Government, including the Secretary, shall attempt to influence, condition, incentivize, or coerce State adoption of the Common Core State standards or any other academic standards common to a significant number of States, or assessments tied to such standards."

I know that we, again, may have differences, but nevertheless, will you give us your commitment that you will respect the intent, as well as the explicit and binding letter of that prohibition?

Mr. KING. Absolutely.

Senator ROBERTS. Thank you. That's all I need.

Mr. KING. OK.

Senator ROBERTS. You were going to come into my office last week, and then it didn't work out. Now I want to let you know that I held a roundtable discussion in Kansas at Washington University, 12 college presidents, 12 colleges and universities and 12 business stakeholders to discuss business education and workforce development. We heard from the higher education leaders about the impact of Federal programs, policies, and regulations. And since the Chairman and Senator Whitehouse and Senator Enzi and others, and Senator Collins here just a moment ago, mentioned regulations, I want to share this handy chart from one of the participants, Johnson County Community College, that has the most students of any university and/or college in the State of Kansas, even KU, Wichita State.

Thirty-four topic areas of Federal regulation. They have it in bubbles here, and I would hope we could burst the bubbles. Taxes, academic programs, environment, admissions, auxiliary services, financial aid, disabilities, grants, campus safety, international programs, insurance, health care, immigration, privacy, athletics, contracts, fundraising, employment, housing, retirement, intellectual

property, sexual misconduct, research, accreditation, unions, wages, information technology, program integrity—I'm running out of breath—copyright, trademarks, contracts and procurement, diversity, accounting, ethics and lobby.

Here's the deal: every one of these regulations have to be adhered to, and with the cost/benefit here where the cost is exceeding the benefit. And we have an awful lot of people here now that are in charge of these regs and trying to fill these regs out, and this is not unique just to this community college, but it is the same, I suspect, nationwide, and I know in Kansas as well.

My plea to you is that all of these people have jobs to do. You can't hire 34 people to do all of this that have expertise in this area to keep up with the paperwork and the regs. Just like Sheldon Whitehouse said, he said teachers want to be free to teach, and they want to be able to teach with regards to the time, as opposed to filling out paperwork.

So my question to you is can you help us and be a partner in this effort? All of us have obligations with this—we know that—in the education community. But, my goodness, if you total all this up and the money spent and the hours spent, like the Chairman has indicated, we have to do a better job. I just urge you to be a partner in this effort so we can adhere to what we want to accomplish. But, quite frankly, I think a lot of this could be done on the local level.

Now you have 32 seconds to respond.

[Laughter.]

Mr. KING. I am committed to working with you on this issue, and I'm committed to working with the committee to try to identify places where we can make smart improvements to make the system more efficient for higher ed institutions. I will say we are making some progress on recommendations that higher ed institutions have made in the past.

For example, one recommendation was around prior use of tax information from the prior-prior year as part of the FAFSA process. That will be implemented starting next fall, on October 1. We have also been asked to move FAFSA data. We've done that. FAFSA will be available on October 1.

So we are making some progress and are certainly willing to work with you to identify other places.

Senator ROBERTS. I appreciate that.

My time has expired.

I'm from Dodge City, KS. Senator Collins underscored the need to look at rural areas. We think we have some very fine higher institutions of learning, and we have some special problems there as well. Please get in touch with my office, and we'll look forward to a good visit. Thank you.

Mr. KING. Absolutely.

The CHAIRMAN. Thank you, Senator Roberts.

Senator Murray has to leave, so I'm going to ask her to make her closing comments. Then we'll go to Senator Murkowski. Senator Warren I think has additional questions, so you can be first in the second round, and then I will close the hearing.

Senator Murray.

Senator MURRAY. I just simply wanted to thank Dr. King for being here today. This is such an important time for students of all ages. And with all the challenges and opportunities, and you've heard them across the board here, it's really important that we have strong leadership at the Department of Education.

Mr. Chairman, I'm really confident that Dr. King is a strong nominee to transition from Acting Secretary to taking the position of Secretary of Education. I look forward to supporting him, and I want to submit for the record statements from 18 groups in support of his nomination and thank him very much for all he is doing.

Mr. KING. Thank you.

[The information referred to can be found in additional material.]

The CHAIRMAN. Thank you, Senator Murray.

Senator Murkowski.

STATEMENT OF SENATOR MURKOWSKI

Senator MURKOWSKI. Thank you, Mr. Chairman.

Dr. King, welcome. Congratulations on your nomination. I'm sorry that our schedules didn't work so that we could visit. Hopefully we'll still have that opportunity to do so at some point in time.

Both my colleague from Maine and my colleague from Kansas have mentioned the rural component of education, and as you know, coming from a State that's one-fifth the size of the country with about 732,000 people, we've got a lot of rural, we have a lot of spaces, and we have a lot of very small schools.

I had an opportunity just last week to take five of my Senate colleagues to a place in Southwest Alaska, Bethel, a large regional community, primarily Alaska Native. But we went further beyond Bethel to the community of Oscarville, 80 people, 17 kids in the school, two teachers, challenges in delivering education in a very rural, very remote area where broadband is an issue; quite honestly, basic water and sanitation is an issue.

The question to you here this afternoon is actually pretty general in terms of how we address those in very rural communities, how we ensure that these children—and your words are there are children who stand too far behind their peers, and these are rural students, and these are Native American students. Again, Alaska really fills that bill.

You've also indicated as one of your priorities to do more to ensure a diverse pipeline of future educators. One of the things that we're struggling with in Alaska is how we get more Alaska Native children to believe that being a teacher can be a noble calling for them.

Can you give me a little assurance about how you view some of these challenges in educating our rural children and Native American children, Alaska Natives?

Mr. KING. Absolutely. I was State chief in New York, and even though when folks hear New York they think of New York City, we had 700 districts spread all throughout the State, and many of the districts are small rural districts in the North Country, up near the Canadian border or out in Western New York, and I spent a lot of time on rural issues, could see how districts were struggling with declining enrollment, the difficulty of providing art, music, AP

classes, finding a physics teacher, districts that were struggling to try and preserve the sense of community around school in the face of declining opportunity.

I think it's very important that we focus on rural education. I'm proud that we have a competitive priority in many of our grant programs to focus on rural areas. We have about 20 percent of our current innovation grants that are focused in rural communities, and we're seeing some very good results from many of those projects.

One of the things I worked on in New York was a virtual AP initiative to try and ensure that maybe folks couldn't hire an AP teacher but they could share one across a set of districts in a region and, through blended learning, make those classes available to students.

So we want to make sure that rural educators are very much a part of the conversations at the Federal level, at the State level, and at the local level in the implementation of the Every Student Succeeds Act. We're trying to get resources and opportunity. The President's Connect Ed initiative is really focused on trying to improve issues of bandwidth in rural communities, and we want to continue that work together with the FCC.

On the issue of Native students, I'm very worried about the stagnant performance of Native students. If you look at our high school graduation rate, which just reached a record high, we saw increases for every subgroup except for Native American students, which was flat. I think there's more that we can do to support Native communities in trying to infuse Native language and Native culture into the school programs to raise students' aspirations. We have a Native Youth Community Projects program. The President has proposed an increase in funding for that. We're seeing some promising results from those grantees, and I would love to work together with you to do more on Native issues.

Senator MURKOWSKI. I'd like to do that, and I particularly appreciate the fact that you've mentioned the Native languages. That's something Senator Franken and I have worked on and have included within ESSA.

Very quickly, this relates to data and privacy of data. I think we all understand that we want to be making data-informed decisions about effectiveness of programs, but many parents are coming to me with very sincere concerns about the privacy of the data that is collected, especially given the Department's inability to maintain the security of the post-secondary student aid data bases.

What's your message to those parents, and the students and legislators, that are concerned about the data collection, and thus the privacy associated with it?

Mr. KING. Data privacy, data security are top priorities for the Department. As I mentioned earlier, we're doing a lot of work to strengthen our cyber security posture so that we can continue to keep higher education data in particular but all of the personally identifiable information that we have at the Department safe and secure.

States need to be focused on the same thing as do districts. The President has made proposals around additional data security measures we think we can take together, focus on ensuring that

students are not subjected to marketing through the tools that they may be using in school.

I think as a country we have to continue to work to make sure that we protect data privacy, and oftentimes, as you know, parents and teachers may be unaware of how much information is being collected by an application that they have downloaded. We have to make sure that we put in place strong legal protections, but also provide good guidance. We have a FIRPA office that tries to give good guidance to districts and States around issues of data privacy and data security.

Senator MURKOWSKI. I know that that's something also that I would like to work with you on as well. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thanks, Senator Murkowski.

Senator Warren.

Senator WARREN. Thank you, Mr. Chairman. I appreciate your giving me a chance to have a second round of questions here.

And I appreciate, Dr. King, that you have a lot that you're going to deal with at the Department of Education, but I want to raise one more issue before we quit for the day, and that is another ongoing problem at the Department of Education, the students who were cheated by Corinthian College.

Before Corinthian College collapsed, this for-profit college sucked down billions and billions of dollars in Federal student loan aid by roping in students with false and misleading information, and then saddling them with debt that was just going to be impossible to repay. It was outright fraud, and in response the Department made a lot of promises to Corinthian's victims.

Last April, the Department promised to give—and I'm quoting here—"give Corinthian students the relief they are entitled to under Federal law." Two months later, the Department announced that it would "find ways to fast-track relief based on legal findings for large groups of students," and that there would be "no need for students to make any individual showing that they were affected by the school's fraud."

The Department also estimated last summer that about 40,000 former Corinthian students would be eligible for this so-called fast-track relief. Now, that's out of hundreds of thousands of total Corinthian students that the Department acknowledged could be eligible for the relief. It is now 8 months later and just 1,300 of those 40,000 fast-track students have received relief, and I want to know what the plan is here to actually deliver on the promises the Department has made.

It seems to me, Dr. King, that the Department is moving painfully slow, while students who got cheated are struggling under debts that they were conned into taking on. Time is running out for these students.

So what I'd like to know is how do you plan to live up to the Department's promises and actually ensure that each and every student who was defrauded receives debt relief now, not years from now but now?

Mr. KING. I appreciate the question. A few things to know. The Special Master, Joe Smith, is working diligently with a team, and

we're adding capacity to that team to try to respond to the existing claims.

Senator WARREN. Can I just stop you right there, though, Dr. King?

Mr. KING. Yes.

Senator WARREN. Because this is part of what's bothering me. I don't understand why this takes long. This isn't hard, what we're trying to do here. Students are waiting, their credit is getting worse and worse, the interest is accumulating on these loans. The process needs to move faster, and I don't get why it doesn't move faster. You know they've been defrauded.

Mr. KING. Right. We're trying to make it move faster. I can say a promising note is that \$115 million has gone to students, either through borrowed defense or through closed school discharge. We're trying to group claims so that we can respond to them as quickly as possible. We are in the process of a negotiated rulemaking on new borrowed defense rules going forward that will make it easier for the Department to efficiently group claims.

Senator WARREN. That's going to be 2017.

Mr. KING. So the challenge has been that the legal requirement, as you know, is for a demonstration that there was a clear violation of State law. We have students who are in a variety of States, and so we are working through those.

On campuses where we have a clear finding, and this has been true I believe in the Heald and Everest cases where we have a clear finding at the State level of a State law violation, we have been able to group claims or are in the process of grouping claims. But you're right, we need to make the process move faster, and we intend to.

Senator WARREN. I really want to push on this. We potentially have hundreds of thousands of students who have been cheated here. You promised fast-track to 40,000. That was three-quarters of a year ago nearly, two-thirds of a year ago, and we've only gotten about 1,300 people through it.

I want to remind us that Congress gave the Secretary of Education broad authority to cancel the loans of students who attend colleges that broke the law. So I hope if you are confirmed that you will use that authority to ensure that the students get every dime of relief that they deserve without making them jump through a bunch of unnecessary hoops. They have already been hit hard enough, and this is the time for the Department of Education to step up and be on their side.

Mr. KING. Yes. I'm committed to try to protect the interests of borrowers and also to do what we can through the enforcement unit and gainful employment regulations to make sure that we do not have a repeat of Corinthian, that we can avoid that.

Senator WARREN. And that is powerfully important.

Thank you, Dr. King. Thank you very much for your willingness to serve, and thanks for sitting through two rounds of questions on this stuff. These are important issues. Thank you.

Mr. KING. Absolutely.

Senator WARREN. Thank you, Mr. Chairman.

The CHAIRMAN. Yes, thanks, Senator Warren.

Dr. King, I have just a few questions, and then we'll wrap up the hearing.

Senator Roberts asked you questions about academic standards, and you gave an answer, so I don't think I need to ask that. But there's a pattern in this legislation which is pretty unusual, and it comes from the fact that those of us who voted for it—in the Senate 85 to 15, and in the House, the President signed it—it felt like the Department was overreaching.

So there are some literal specific prohibitions in the law about what the Secretary should not do to reemphasize our determination that this is an important shift of direction, which you've acknowledged in your testimony, to try to restore more of the responsibility to those closest to the children.

One of those is on challenging academic standards. I asked Dr. Evers, the Superintendent of Instruction for Wisconsin, on Tuesday. I said, do you read the new law to say that if Wisconsin wants to have Common Core, which it does, I believe, that it may? If it does not want to have Common Core, that it may not? That if it wants part of Common Core or more than Common Core, it can do that? It simply has to have challenging academic standards that are related to the entrance requirements for the public institutions. That's the way he read that.

Let me ask you about teacher evaluation. Under the waivers that the Department granted to 42 States, the Department took the position that if you want a waiver from the provisions of No Child Left Behind, and if you didn't get a waiver, in effect it meant that almost all of your schools were labeled as failing. In order to get a waiver the Department said we'd like you to do a few other things, sort of a "Mother May I" process I described. One of those was teacher evaluation.

I'm a big fan of teacher evaluation. In fact, if the National Education Association could have had a grade of lower than an F, I would have earned it 30 years ago when Tennessee became the first State to pay teachers more for teaching well. I actually think that finding fair ways to reward outstanding teaching is the Holy Grail of public education.

But when I came to Washington, I did not think that we should be telling States how to evaluate teachers. Yet, to get a waiver, there were some very specific definitions about what a teacher evaluation system should be. In fact, three States—Iowa was one, Washington was another, California was another—had their waivers either rejected or revoked because the Secretary didn't believe their teacher evaluation system met his standards.

Now, the new law allows but does not require States and districts to use funds, mostly title II funds, to support teacher and principal evaluations based upon multiple measures, but it prohibits the Secretary or any other officer of the Federal Government from mandating, directing or controlling any aspect of a teacher, principal, or other school leader evaluation system or specific measure of educator effectiveness or quality.

To simplify it, do you agree that that means that the Secretary of Education does not now need to approve the teacher evaluation system in a State?

Mr. KING. Yes, and I think the law is clear that teacher evaluation systems are to be designed by States and districts.

The CHAIRMAN. Do you agree, however, that finding fair ways to evaluate teachers is immensely important to the future of our system of public education and that it would be a good idea for the Secretary to look for ways to encourage it and honor those who do it well and to make States aware that they could use the \$2.5 billion or so that's in the title II money for that purpose, and that we have the teacher incentive fund, which has about \$230 million in it, to help local school districts who wish to find new ways to do that, to do it?

Mr. KING. Absolutely. I think the teacher and school incentive fund creates an opportunity for important local innovation and evidence gathering around effective models of evaluation. I also think the equity plans that States are working on to ensure equitable access to effective teaching is going to foster a set of innovations and evidence that States can share, and we have an opportunity to lift up best practice.

The CHAIRMAN. One of the things we heard most about was testing, and when we started out writing the new law, I suggested that maybe we get rid of the 17 Federal test requirements because we had such a blowback on the testing. But the more I listened and the more we heard from teachers and principals and States, the more it became clear to us, those of us on the committee, that it wasn't the 17 Federal tests that were the problem. It was the State tests. In fact, the 17 Federal tests—which aren't really Federal tests, they're required by the Federal Government but they're State-designed tests from years 3 through 12; they probably don't take more than 2 hours or so per test over a period of time to be done—were important, and those tests needed to be given. We need to know the results. They need to be disaggregated so people will know what was happening.

So the solution we came to and the problem we found was that it was the Federal test-based accountability system, which is fancy language for saying because the Federal Government decided what to do about the results of the test and attached so many consequences to just those tests, that that was incentivizing States to give a lot of tests to prepare for those 17 federally required tests.

So the thrust of this legislation is to say keep the tests, report it so we know how the children are doing, but restore to States and communities and classroom teachers the decisions for what to do about the tests. In other words, the States would come up with the accountability system.

There are some requirements about what the accountability system should have in it—State tests, graduation rates, a few other things—but it also says the Secretary is prohibited from prescribing the weight of any measure or indicator used to identify or meaningfully differentiate schools in the accountability system.

Do you intend to follow that provision and the intent behind it?

Mr. KING. Certainly as we move forward, we intend to follow the letter of the law. I think you're right that we have seen over the last 10 years, because of the narrow focus of No Child Left Behind on test-based accountability, we have seen a proliferation of tests in some places, both at the State level and at the district level, and

I think the new law gives us an opportunity for a reset on that, and for State and local conversations about right-sizing the amount of assessment.

The CHAIRMAN. And, if I'm not mistaken, you've already issued a guidance to suggest to States what might amount to over-testing, but it's not a mandate, it's a suggestion. Am I correct about that?

Mr. KING. We have given them guidance on how they can use Federal funds at the State and district level to review the assessments that are given, figure out if some are unnecessary or redundant, and also figure out if some are of low quality and should be replaced by more performance-based tests.

The CHAIRMAN. But the spirit is here's how you might do that, not how you must do that.

Mr. KING. That's right.

The CHAIRMAN. I applaud that, which is why I bring it up, because I think that's the spirit of the law as well as the letter of the law. The same with identifying and fixing low-performing schools. This was important to a lot of people. Senator Murphy mentioned that. It was important to the President that there be a provision in the bill, and so it's there.

But what's also there is that the Secretary is prohibited from telling States how to fix so-called low-performing schools. Beforehand, with the waivers, there were six different ways to do that, and I remember putting in the legislation a few years ago that a seventh way would be that the State could come up with its own version of how to fix a low-performing school. Next thing I knew, within about a year, the Department had issued a regulation defining how a State could do it, which was contrary to the purpose.

But in the same spirit, do you agree that while it's important that States identify schools that are in need of improvement and that there are a number of steps to take and there are a number of things to do, that in the end the Secretary is prohibited from prescribing the specific methodology used by States to differentiate or identify schools, and any specific school improvement strategy that the State or local education agencies establish and implement to intervene, support, and improve schools and student outcomes?

Mr. KING. Certainly, as we move forward with State flexibility around design of their accountability systems and design of their interventions, we'll adhere to the letter of the law. We think that State and local flexibility is a good thing. Again, I do think it's important that there are parameters around an equity focus, and where those interventions are not helping to close achievement gaps, we all have to remain vigilant that States intensify or change those interventions to make sure they get to closing achievement gaps for better outcomes.

The CHAIRMAN. There will probably be some gray areas as they come up, but we had a spirited debate about that, both in the committee and on the floor of the Senate. Senator Murphy, for example, offered an amendment that would have had more—stricter guardrails I think would be one way to say it, more Federal supervision of what the States were doing in a variety of areas in the accountability system. That amendment lost. It only got 43 votes. It didn't pass. Just as I offered an amendment to give States the ability to take all the Federal money and let it follow the children

to the school of their choice, called Scholarships for Kids. That got about 43 votes. That didn't pass. So I don't expect you to implement a school choice or voucher program because it didn't make it into the law, and we hope you will respect the consensus we came to.

Let me move on and conclude with just a couple of questions about higher education. This is really an area where I think, as we discussed when you and I visited earlier this week, you and the Administration have an opportunity. As you know, my attitude toward you or any of the other President's Cabinet members in our jurisdiction is that once you're confirmed, I want to do my best to create an environment in which you can succeed, because if you succeed, then our country and our children and our schools succeed.

That also applies to our colleges and universities, and this committee has done a lot of important work in two areas. One is making it simpler and easier to apply for student aid and to pay back student loans. That's one. And another is to cut through the jungle of red tape that interferes with the way—to Senator Roberts' point, the way schools, the way our 6,000 colleges and universities are managed.

We have lots of bipartisan agreement on that, and one area is the so-called FAST Act that Senator Bennet and I and Booker and King and Isakson and Burr all support. We want to reduce the number of questions on the Federal student aid application form. The President thinks that's a good idea and has said so. Your Department has already begun to identify some questions that are superfluous. We, Senator Bennet and I, wanted to take the 108 questions that 20 million families fill out down to 2. We may not get to 2, but we'd like to get closer to 2 than to 108. And then you've already taken steps, as you said, to allow the commonsense proposal of students who fill out the form to use the tax forms they've already filled out rather than the ones they haven't filled out, and to do it at an earlier time. That's also a bipartisan proposal here.

We have bipartisan proposals, and the President has talked about this, to streamline student loan repayment options. There are nine ways to do that now. Many students don't know how generous the repayment provisions are, and if we simplify them, we think more will take advantage of that.

We have bipartisan support for a year-round Pell grant, even though we have some disagreement over how to pay for it. And in addition to that, we have a report which I like to call the Mikulski report, but we'll call it the Kerwin-Zeppos report that the Chancellor of Maryland and the Chancellor of Vanderbilt put together over the last 3 years with a group of higher education officials to identify 59 specific burdensome regulations or requirements, a couple of which I've already mentioned.

Chancellor Kerwin and Chancellor Zeppos met with Secretary Duncan and talked with him about a dozen of those 59 the Department itself could do, and you're already taking steps in a couple of cases.

The four Senators I just mentioned are working—we probably have 27 more. We may get up to 35 or 36 that we agree on that

we could pass which would reduce the onerous paperwork that has built up over eight reauthorizations of the Higher Education Act.

So my question is, will you work with us over the next 10 months, if confirmed, to take those specific proposals from the Kerwin-Zeppos Higher Education Report, the jungle of red tape report, and if you can implement them, try to implement them? And will you work with us on the bipartisan legislation I just described on student aid simplification for both the application and the repayment, to see if the Department itself can do some of that; or, if not, to let us know what sort of legislation we need to pass this year so students can take advantage of that?

Mr. KING. Yes. I'd like to work with you on both things, certainly to try and identify places where the Department can reduce burdensome regulations that aren't delivering for students. We should do that. And certainly I'd love to work together on a bipartisan reauthorization of the Higher Education Act.

The one thing I would add to the list that you shared, and I know this is a view that we share, in some way to shift the incentives in the higher education sector toward a focus on completion. I do worry that we know that many of the students who are struggling to pay back their debt are students who start but don't finish. They have some courses, they don't have a degree, they can't get the good job that would come with a degree, and therefore they can't pay back their debt. If we could get institutions paying more attention to completion, not just enrollment, I think that's another opportunity for progress on higher education.

The CHAIRMAN. You're exactly right about that. The default rates are especially high for students who don't complete their degree, so that's an excellent suggestion. I'll be glad to work with you on that. There are other good ideas that we have from both sides of the aisle to discourage over-borrowing. There are some provisions, and this may be an area where you can take executive action that's already authorized that seems to limit what colleges are able to do to counsel students to say, well, if you go into the theater instead of into biomedical engineering, you might have a little harder time getting a job and paying it back over a period of time.

And I would just make the observation, I heard Senator Warren's comments on the Corinthian tragic situation for those students. My general philosophical attitude is a little different. If I buy a car that's a lemon, I sue the car company, not the bank. I know that the Federal law does have a provision about forgiving loans where there's a fraud. It hadn't been used much until recently, and I think it needs to be used carefully, because we have, from the taxpayers' point of view, \$35 or so billion of Pell grants every year to low-income students that do not have to be paid back. We make \$100 billion of loans every year to students that we expect to be paid back, and we have a very generous provision that says for many students in public service that you don't have to pay it while you're in those jobs, or you don't have to pay more than 10 or 15 percent of your disposable income, and if it's not all paid back after 20 years it's forgiven.

I would counsel you to follow the law carefully on those claims of fraud that require forgiveness, and I'd like to continue discussion

with you about any expansion of that authority when the time comes.

Dr. King, those are all the questions I have. There may be some questions that members of the committee submit to you. I would encourage you to answer them as promptly as you can.

The hearing record will remain open until March the 1st. Members may submit additional information for the record within that time if they would like.

Thanks to everyone, especially Dr. King's family and him, for being here today.

The next meeting of the committee will occur at 10 a.m. on Wednesday, March the 9th, to consider the second in a markup of bipartisan innovation legislation—that's biomedical innovation legislation—and to consider the markup of Dr. King's nomination to be the United States Secretary of Education.

The committee will stand adjourned.

[Additional material follows.]

ADDITIONAL MATERIAL

LETTER SUBMITTED BY SENATOR ALEXANDER

FEBRUARY 10, 2016.

JOHN B. KING, JR., *Acting Secretary*,
U.S. Department of Education,
400 Maryland Avenue,
Washington, DC 20202.

DEAR ACTING SECRETARY KING: On behalf of States, school districts, educators and parents, we write to express our strong, shared commitment to making the Every Student Succeeds Act (ESSA) a law that puts students first. We invite you to work with us to ensure that communities determine the best methods of educating our Nation's children.

Although our organizations do not always agree, we are unified in our belief that ESSA is a historic opportunity to make a world-class 21st century education system. We are dedicated to working together at the national level to facilitate partnership among our members in States and districts to guarantee the success of this new law.

ESSA replaces a top-down accountability and testing regime with an inclusive system based on collaborative State and local innovation. For this vision to become a reality, we must work together to closely honor congressional intent. ESSA is clear: Education decisionmaking now rests with States and districts, and the Federal role is to support and inform those decisions.

In the coming months, our coalition—the State and Local ESSA Implementation Network—will:

- Work together to ensure a timely, fair transition to ESSA;
- Coordinate ESSA implementation by Governors, State superintendents, school boards, State legislators, local superintendents, educators and parents;
- Promote State, local and school decisionmaking during implementation; and
- Collaborate with a broader group of education stakeholders to provide guidance to the Federal Government on key implementation issues.

In ESSA, Congress recognizes States and schools as well-suited to provide a high-quality education to every child, regardless of their background. We have long prioritized lifting up those students who need help the most and our members stand ready to continue this work.

Our organizations look forward to a cooperative, collaborative and productive relationship with you and your staff throughout the implementation process.

Sincerely,

Scott D. Pattison, Executive Director/CEO National Governors Association; William T. Pound, Executive Director, National Conference of State Legislatures; Kristen J. Amundson, Executive Director, National Association of State Boards of Education; Daniel A. Domenech, Executive Director AASA: The School Superintendents Association; JoAnn D. Bartoletti, Executive Director, National Association of Secondary School Principals; Lily Eskelsen Garcia, President, National Education Association; Thomas J. Gentzel, Executive Director, National School Boards Association; Gail Connelly, Executive Director National Association of Elementary School Principals; Randi Weingarten, President, American Federation of Teachers; Laura M. Bay, President, National PTA.

TITLE IX LETTERS SUBMITTED BY SENATOR MURRAY

FACULTY AGAINST RAPE (FAR),
FEBRUARY 25, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
455 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
154 Russell Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: We write to commend the DOE and OCR for their unflagging commitment to addressing the problem of sexual violence on campuses, and to urge the HELP committee not to turn the clock back by challenging the Assistant Secretary's right to issue much-needed clarification and guidance—guidance created in consultation with legal scholars and experts.

As members of Faculty Against Rape (FAR), a group of more than 300 faculty and civil rights activists from across the United States, we want to share some of what we have learned in our efforts to make college campuses a safe place for all. We started FAR in the summer of 2014 as an ad-hoc volunteer collective whose mission is to get more faculty involved in preventing sexual assault and sexual harassment and improving response on campus. FAR is also committed to protecting faculty who experience retaliation for doing so. Over the past 2 years, FAR has provided resources for faculty to learn how to best support survivors, tools for faculty who want to get more involved in reform efforts, and support for faculty who face retaliation. We have also developed curriculum and facilitated workshops for faculty around the country on integrating information about campus sexual assault into the curriculum, both as syllabi clauses and as key themes. Collectively, our members have supported literally hundreds of survivors at campuses across the country. Many of them have endured significant retaliation from university administrations who want to protect the university brand, even at the cost of the safety and well-being of students.

Our experience has afforded us a unique perspective on key issues in understanding the efficacy of the DOE's response to the problem. Here are two points we believe the HELP Committee should be aware of:

1. Higher education is at a watershed moment in understanding the problem of faculty sexual predators:

The problem of serial sexual predators who move from campus to campus—of “open secrets,” or known problems within a specific discipline—has become an issue of increasing concern. Over the past 2–3 years, there have been national news exposés about faculty sexual predators at Yale University,¹ the University of Miami,² Northwestern University,³ Berkeley,⁴ UCLA,⁵ Arizona State University,⁶

¹ Cf. Tamar Lewin, “Seven Alleged Harassment by Yale Doctor at Clinic,” *New York Times*, April 13, 2015; Nick DeSantis, “Campaign Raises Money to Aid Lawsuit Accusing Yale Philosopher of Sexual Assault,” *The Chronicle of Higher Education*, May 13, 2014.

² Cf. Tyler Kingkade, “University Of Miami Sued Over Handling Of Colin McGinn Harassment Claims,” *Huffington Post*, October 16, 2015.

³ Cf. Rebecca Schuman, “Title Nine: Northwestern University found that a star professor violated the sexual harassment code in his treatment of a student. Why is he still teaching?,” *Slate*, February 24, 2014.

⁴ Cf. Azeen Ghorayshi, “Famous Berkeley Astronomer Violated Sexual Harassment Policies Over Many Years,” *BuzzFeed*, October 9, 2015.

⁵ Cf. Carla Rivera, “UCLA Graduate Students’ Lawsuit Alleges Sexual Harassment,” *Los Angeles Times*, June 15, 2015.

⁶ Cf. Nicholas Palomino Mendoza, “Students Seek Clarity, Closure in Student-Professor Relationship Investigations,” *The State Press*, May 7, 2014.

Southern Connecticut State University,⁷ Vanderbilt,⁸ Columbia University,⁹ and Montana State University,¹⁰ to name just a few.

Although some of these faculty have been sanctioned by the university or disciplines they work in, it is often impossible to know whether a professor has harassed or assaulted students at other universities due to non-disclosure agreements and/or labor laws.

In other words, in order to deal with the problem of faculty sexual predators, universities need external help. We are dealing with a problem that is likely to be as widespread as the problem of sexual abuse in the Catholic Church. In philosophy alone, for example, there have been three significant cases of faculty sexual misconduct reported in the media over the past 4 years, and some activists in philosophy report that they are aware of as many as 30–40 similar “open secrets,” that is, faculty who are serial predators.

It is not only appropriate—but in fact *necessary*—for the Department of Education to be actively involved in regulating the response to the problem because: (1) faculty predators can move easily across State and national lines, from institution to institution, and (2) unlike the Catholic Church, institutions of higher education have no governing body, no way of ensuring that a serial predator does not simply accept a proverbial “golden parachute” or voluntary severance agreement with a confidentiality clause that enables a problem-free transition to another university.

For each serial predator, there are multiple—even dozens, in some cases—scientists, writers, thinkers who have left the field that they love, whose talents have been lost, because of the discrimination they have been subject to. Clearly, if our goal as a nation is to provide equal access to educational opportunities, to tap the talent of the widest and most diverse pool possible, to avoid the brain drain that is caused by widespread sexual misconduct in academia, we need to talk about the problem—to break the unwritten code of silence implied by the norms of collegiality. Higher education needs the Department of Education to continue to actively provide guidance, clarification, and support. We are a close-knit family, and cannot clean up our own problems without external support.

To put it even more succinctly and explicitly: *with new stories about faculty sexual misconduct breaking every month, this is a watershed moment. Higher education is on the brink of a crisis similar to the sex abuse scandals that rocked the Catholic Church, and the OCR and DOE are the only agencies empowered to provide the guidance needed to chart a path through the storm. We respectfully urge the HELP committee not to undermine Federal oversight at precisely the point at which it is most needed.*

2. The Dear Colleague Letters serve as much-needed non-legal guidance documents:

In the past 3 years, faculty who have served as advocates for survivors on campus have been subjected to both overt and covert forms of retaliation; some were denied tenure, others were prevented from teaching courses on these issue, and a few faculty members were pushed out through legal agreements. Those who remain involved have experienced marginalization. The message of college administrators has been clear: faculty have been discouraged from playing an active role in addressing the problem. Evidence of retaliation against faculty who have demanded accountability has had a chilling effect on junior faculty as well as students.

The 2013 Dear Colleague Letter, which reminds universities of the fact that retaliation for engaging in an action protected under title IX is itself a violation of title IX, has been an absolutely essential tool for faculty, students, and activists on both sides of the debate to use as a means of securing the right to free speech.

The same is true of the 2011 Dear Colleague Letter, which provided important guidance in understanding what constitutes sexual harassment. Although the material provided in the guidance was in theory available in the 1997 and 2001 document, which included citations to relevant case law discussing the types of conduct that might constitute sexual harassment, the reality was that the information was more or less inaccessible. Similarly, although the preponderance of evidence standard described in the 2011 DCL was being used by an estimated 80 percent of insti-

⁷ Cf. Jim Shelton, “SCSU Protest Centers on Sexual Misconduct Claim,” *New Haven Register*, September 13, 2013.

⁸ Cf. Peter Jacobs, “Former Vanderbilt Grad Student Files \$20 Million Lawsuit Claiming Sexual Harassment by Professor,” *Business Insider*, July 17, 2014.

⁹ Cf. Barbara Ross, “Former Students Sue Columbia University, Accuse Professors in Sexual Harassment Suit,” *New York Daily News*, January 23, 2013.

¹⁰ Cf. Gail Schontzler, “MSU Investigation Finds Professor Sexually Harassed Student,” *Bozeman Daily Chronicle*, September 3, 2011.

tutions¹¹ prior to 2011, and is the standard used for all other civil rights laws, there was confusion regarding the appropriate standard due to the fact that certain types of sexual violence are also not just civil rights violations, but also criminal acts. (To arbitrarily require that complainants in title IX cases adhere to a higher standard of proof than is required for other civil rights laws would be to discriminate against the title IX complainants, most of whom are female.)

In other words, the Dear Colleague Letters have been an important tool in helping clarify the requirements—and limits—of title IX as it was already being interpreted in both case law and practice. They were issued at critical junctures, in response to the surge of interest and attention to campus sexual assault, and in response to confusion about specific and well-established aspects of the law that were buried in relatively inaccessible documents. Given current confusion regarding issues such as the acceptable range of sanctions for perpetrators, the permissibility of sharing information about perpetrators who move from campus to campus, and the question of whether faculty accused of sexual misconduct should be permitted to continue teaching, it is reasonable to think that additional guidance will be warranted in the near future.

As faculty who have worked tirelessly supporting hundreds of student survivors across the country, we have seen firsthand, time and again, that the problem of sexual misconduct on college campuses is real and serious; and the on-campus systems meant to address it are, by in large, broken. In virtue of this experience, we believe the OCR's continued ability to offer much needed clarification and guidance is not only welcome, but crucial to achieving gender equity in educational institutions.

Sincerely,

FACULTY AGAINST RAPE (FAR).

FEBRUARY 25, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
455 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
154 Russell Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: As of today, title IX complaints that we filed with the Department of Education's Office for Civil Rights against the University of Notre Dame, have been under open investigation for 898 days. The reasons that prompted our filing complaints necessitated our leaving the university.

Because we are graduate students, though we transferred mid-stream, we still left with degrees—just not the ones we came for. We sometimes wonder if there will ever come a day when we can remember our status as alumnae with pride rather than nausea. For now, we would like to put our time at Notre Dame behind us and focus on finishing our Ph.D.'s, but that's easier said than done, especially when one feels justice has been at best (and hopefully) delayed, at worst, entirely evaded.

We say this not to impugn the OCR's handling of our complaints. We will wait as long as it takes for the right result, we would rather their investigation be thorough than cursory, and we believe they've done an admirable job operating with what little resources they have. We say it instead to underscore the absurdity of the increasingly popular narrative that the OCR is zealously holding institutions hostage to guidance of questionable legal status under threat of revoking Federal funds.

Developing a full picture of the realities of title IX enforcement would require listening to those who have filed complaints, not merely those who have been subject to investigation, nor outside groups with political interests at stake. When we filed our complaints, Notre Dame was already under a resolution agreement with the OCR—a resolution agreement that has been in place since the conclusion of an institutional review prompted by the suicide of Lizzy Seeberg; a resolution agreement that we are alleging Notre Dame violated, repeatedly.

We don't yet know what the outcome of our complaints will be, but we do know that even if the OCR determines our allegations are substantiated by the evidence, there is no sanction at their disposal that would be a genuinely appropriate con-

¹¹ See, for example, <http://www.thefire.org/pdfs/8d799cc3bccca596e58e0c2998e6b2ce4.pdf>.

sequence given the totality of the circumstances. There is no undoing the years we spent anguished yet determined. There is no rewinding the years lost toward the completion of our educations. There is no giving back now, after 898-plus days of waiting, what we were promised when we accepted Notre Dame's offers of admission. There is only the best we can hope for: another resolution agreement, some measure of validation, some measure of closure, and hope that the trouble of dealing with the outcome of this investigation would deter them from simply violating the next in turn. Since a group of current Notre Dame students have reached out to one of us just this academic year for advice because their own experiences have mirrored ours, we strongly suspect that hope would be naive.

That title IX is being used as a weapon by student activists and that the OCR is overreaching in its enforcement of the law makes for an effective framing for incomplete or misleading stories to go viral, but it simply doesn't cohere with reality. What students need are strong policies and procedures in place so that their concerns about discrimination can be brought forward safely, heard equitably, and adjudicated fairly in accordance with standards applicable to other civil rights claims—not only in theory, but also in fact. What the Department of Education needs is more resources rather than less if we are to have any hope of realizing gender equity in education in the United States—we are, quite simply, not there yet.

Sincerely,

JANE DOE, ONE.
JANE DOE, TWO.

KNOW YOUR IX,
FEBRUARY 25, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
455 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
154 Russell Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: For too long, gender-based violence in our Nation's schools has been swept under the rug, impeding victims' access to their civil right to education under title IX of the 1972 Education Amendments.¹ As young people whose educations have been imperiled by gender violence in school, we know firsthand that the clarifying guidance issued by the Department of Education's Office for Civil Rights (OCR) has proved pivotal in protecting student survivors' access to educational opportunities. Before OCR issued its 2011 Dear Colleague Letter, schools routinely allowed hostile environments to persist on campus, instituted disciplinary processes that were neither equitable nor fair, and denied survivors the resources they needed to continue their educations. We write to commend OCR for its steadfast commitment to addressing the issue.

I. Gender-based harassment and violence is pervasive in elementary, secondary, and post-secondary schools across the country, jeopardizing students' ability to access education.

One in five women, as well as many men and gender nonconforming students, will experience sexual violence during their time in college.² This violence often limits, or outright precludes, victims' ability to learn: Many survivors go to great lengths to avoid their perpetrators on campus, skipping shared classes,³ avoiding shared

¹Title IX of the Education Amendments of 1972, Pub. L. No. 92-318 §901(a), 86 Stat. 235, 373 (codified at 20 U.S.C. §1681(a) (2012)).

²See DAVID CANTOR, ET AL., REPORT ON THE AAU CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT, Westat 13–14 (2015), <http://ow.ly/XOLl5>; see generally B.S. Fisher, L.E. Daigle, & F.T. Cullen, *Unsafe in the Ivory Tower: The Sexual Victimization of College Women* (2010); Christopher P. Krebs et al., *The Campus Sexual Assault (CSA) Study*, NAT'L INST. JUST. 5–3 (2007), <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>; [<https://perma.cc/W6MP-X7VE>].

³See Rebecca Marie Loya, *Economic Consequences of Sexual Violence for Survivors: Implications for Social Policy and Social Change* 96 (June 2012) (unpublished Ph.D. dissertation, Brandeis University) (on file with Know Your IX) ("Probably like 95 percent of the time, students will skip class for one reason or another. And, I mean, the reasons are because the perp's in the class, because the perp's friends are in the class, because, sometimes schoolwork just gets to be too much, again in the aftermath of the assault. Sometimes, they've come out to the pro-

spaces, or hiding in their dormitory rooms. Others struggle with post-traumatic stress disorder (PTSD), depression, eating disorders, anxiety, flashbacks, and nightmares,⁴ even attempting suicide or engaging in self-harm.⁵ Without support and accommodation, formerly successful students watch their grades drop as they struggle to participate in, or even attend, their classes.⁶

Courts have long recognized that sexual violence threatens students' ability to learn and that, under title IX, schools receiving Federal funding must take action to address violence and remedy its effects.⁷ Unfortunately, as students have made clear time and time again, too few schools live up to their legal (and moral) obligations to do so.⁸

As current college students and recent graduates, we have witnessed our peers suffer gender violence, only then to be discouraged by campus administrators from reporting, denied counseling and academic accommodations, and pressured to take time off—or withdraw—from school. As a result, victims and their families have incurred steep financial costs, some suffering hundreds of thousands of dollars in lost tuition, lost scholarships, counseling and medical expenses, or accumulated student debt. As one survivor reports:

I took a year off from classes following the assault and the title IX investigation at the school. . . . I was not reimbursed for any costs, although we did request partial reimbursement for tuition and housing costs. . . . I lost a scholarship when I transferred schools, and had to take an entire extra semester of courses at my new institution. . . . It has easily cost me and my family an additional \$100,000 at least.⁹

Still other survivors—particularly those who lack the resources to obtain mental health services or to transfer schools—report withdrawing from their classes or universities as a result.¹⁰ Others remain in school, earning poorer grades, and in some cases, facing consequent academic probation, suspension, or expulsion. When students are forced to drop out of school in the wake of gender violence and institutional neglect, they report suffering long-term penalties to their earning potential well into the future.¹¹ One survivor reports that they dropped out of college and, nearly 3 years later, have yet to return. They describe the impact:

I lost 2 years of income that I would've been in the job market. I was planning to work in politics, earning \$30–40,000 per year before going to get my Ph.D. . . . I have been chronically homeless and housing unstable for 2 years now.¹²

A crushing debt burden, coupled with lost earning potential, can make it impossible for survivors who leave school to return.

fessor as a survivor, and the professor hasn't . . . been particularly supportive, so they won't go back to the class. Sometimes it's because they know that on their way to the class, they'll see the perp because of their schedules or whatever. Sometimes they might be in different majors with different course studies, but they'll have like a 101 class together, so that something will intersect, so they'll stop going to the 101 class. So they won't stop their studies on their own plane, but they'll stop the ones that intersect with the perp." (quoting a legal services provider).

⁴*Id.* at 25–28.

⁵See NAT'L CTR. FOR INJURY PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 1 (2011), http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf [<http://perma.cc/FM4N-UPZW>]; see also Loya, *supra* note 3, at 25–28.

⁶See Loya, *supra* note 3, at 94; Cari Simon, *On Top of Everything Else, Sexual Assault Hurts the Survivors' Grades*, WASH. POST: POST EVERYTHING, (Aug. 6, 2014), <https://www.washingtonpost.com/posteverything/wp/2014/08/06/after-a-sexual-assault-survivors-gpas-plummet-this-is-a-bigger-problem-than-you-think> [<https://perma.cc/2VXN-BE75>].

⁷*Gebser v. Lago Vista Indep. Sch. Dist.* 524 U.S. 274, 292 (1998) (tasking the Department of Education with "administering and enforcing Title IX, see 20 U.S.C. § 1682").

⁸See U.S. Department of Education Releases List of Higher Education Institutions with Open Title IX Sexual Violence Investigations, U.S. DEPT' EDUC., (May 1, 2014), <http://perma.cc/LH9D-Q8FA>; see also Tyler Kingkade, *Harvard Forced Sexual Assault Victim to Live By Abuser, Lawsuit Claims*, HUFFINGTON POST (Feb. 17, 2016), <http://huff.to/1oqH9is>; W. Bogdanich, *A Star Player Accused, and a Flawed Rape Investigation*, N.Y. TIMES (Apr. 16, 2014), <http://www.nytimes.com/interactive/2014/04/16/sports/errors-in-inquiry-on-rape-allegations-against-fsu-jameis-winston.html>.

⁹See Dana Bolger, 125 YALE L.J. *Gender Violence Costs: Schools' Financial Obligations Under Title IX* (forthcoming May 2016) (on file with Know Your IX).

¹⁰*Id.*

¹¹According to the U.S. Census Bureau, students who leave college before graduation can lose up to 30 percent of their future earnings as year-round, full-time workers. See generally J.C. Day & E.C. Newburger, *The Big Payoff: Educational Attainment and Synthetic Estimates of Work-Life Earnings*, U.S. CENSUS BUREAU (2002).

¹²See Bolger, *supra* note 9.

This intolerable status quo—in which victims of gender violence are *still* unable to access their right to education—demands a strong Federal response, one that the Education Department—after decades of administrative under-enforcement—has only just begun to take on.

II. Thanks to the important work of the Office for Civil Rights, schools are finally beginning to take seriously their responsibilities to students.

Courts have long affirmed the Department's authority—and responsibility—to issue and enforce requirements that effectuate title IX's nondiscrimination mandate.¹³ In accordance with this authority, the Department published guidance in 1997 and 2001 that underwent notice-and-comment. These guidance documents explained that a school is liable under title IX if it fails to take “immediate and appropriate corrective action” for sexually harassing conduct about which it knows or should have known and which is “sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from an education program or activity.”¹⁴ OCR named several kinds of corrective action schools might employ in order to satisfy their legal obligations under the statute: place the victim and accused student in separate classes, alter housing arrangements, provide tutoring, offer reimbursement for counseling, or make tuition adjustments.

Over the last 5 years, OCR has helpfully continued its efforts to advise schools and students alike of institutions' specific responsibilities under title IX to eliminate a hostile environment, prevent its recurrence, and remedy its effects. The 2011 Dear Colleague Letter, as well as the 2014 “Questions and Answers,” echoed OCR's earlier guidance,¹⁵ providing clarification to students on just what kinds of services and accommodations they might access in the wake of violence, and to schools on the kinds of circumstances in which they should take action to remedy violence's impacts. This collection of guidance documents, coupled with student activism, has proven widely transformative in allowing survivors en masse to learn their rights and begin, at long last, to enjoy the educational benefits of the law's enforcement. The guidance has similarly provided helpful clarity to schools on OCR's construction of the law that it administers.

Indeed, in accordance with its duty to administer and enforce the law, OCR has opened an unprecedented number of investigations into institutions of higher education that have denied students the accommodations they need, such as academic accommodations and mental health services. OCR has also investigated institutions that have placed uniquely onerous and inequitable challenges, like higher evidentiary burdens, in the way of rape victims who pursue disciplinary charges against their assailants (to which victims of other student conduct code violations, like theft and non-sexual physical assault, are not subject).¹⁶

Displeased with the results of OCR's recent enforcement efforts, some have called into question OCR's authority to issue clarifying guidance or interpretive rules like those contained in the 2011 Dear Colleague Letter. But the law is clear: Just last year in *Perez v. Mortgage Bankers Association*, the Supreme Court confirmed that interpretive rules—“issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers”¹⁷—do not require notice and comment.¹⁸ These are precisely the sort of interpretative rules OCR has set out in its recent guidance. Further, given that other agencies have issued interpretive rules and other guidance of this sort¹⁹ with relatively little objection, it is striking

¹³*Gebser v. Lago Vista Indep. Sch. Dist.* 524 U.S. 274, 292 (1998) (tasking the Department of Education with “administering and enforcing Title IX, see 20 U.S.C. § 1682”).

¹⁴Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12,034, 12,038–39 (Mar. 13, 1997), <http://www.gpo.gov/fdsys/pkg/FR-1997-03-13/pdf/97-6373.pdf> [<http://perma.cc/DP2Z-CC43>].

¹⁵As the Supreme Court unanimously affirmed in March 2015, under the Administrative Procedure Act agencies may issue such guidance without notice-and-comment procedures—and frequently do. See generally *Perez v. Mortgage Bankers Ass'n*, 575 U.S. (2015).

¹⁶Michelle J. Anderson, *The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault*, 84 B.U. L. Rev. 945 (2004).

¹⁷*Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 99 (1995).

¹⁸See generally *Perez v. Mortgage Bankers Ass'n*, 575 U.S. (2015) (“Because an agency is not required to use notice-and-comment procedures to issue an initial interpretive rule, it is also not required to use those procedures to amend or repeal that rule”); see also *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 99 (1995).

¹⁹See U.S. Government Accountability Office, *GAO-13-21, Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments* 8 (2012), <http://www.gao.gov/assets/660/651052.pdf> (“Agencies did not publish a notice of proposed rulemaking (NPRM) [. . .] for about 35 percent of major rules and about 44 percent of nonmajor rules published during 2003 through 2010.”).

that critics have specially singled out OCR's action on this particular issue for searching scrutiny.

Over four decades since the passage of title IX—during which time inequality in education has remained firmly entrenched—we are finally beginning to see promising steps toward change. The Education Department has courageously led the charge, providing clarity and transparency to its construction of the law it is tasked with enforcing. It would be deeply inadvisable to condemn the Department's work to clarify the law, when schools have abdicated their responsibility to ensure educational equity for so long, with such devastating consequences for student survivors.

In sum, without the Federal Government's engaged administration and enforcement of title IX, gender violence will, without a doubt, continue to cost students their educations and their futures.

If you have any questions, please contact Dana Bolger, Executive Director of Know Your IX, at dana@knowyourIX.org.

Sincerely,

Better Sex Talk; Brandeis Students Against Sexual Violence; Bruin Consent Coalition, formerly known as "7000 in Solidarity: A Campaign Against Sexual Assault"; Coalition Against Sexual Violence (Columbia University); Columbia Law Women's Association; The Feminist Society at NYU; Georgetown Take Back the Night; Harvard Law School HALT; Iowa Student Power Network; Know Your IX; NYU Law Women; Our Harvard Can Do Better; #PaceUEndRape; Rebels Against Sexual Assault (University of Mississippi); Sexual Assault Network for Grads; Stand Up! (Brown University); Student Association for Gender Equality (Morehead State University); Student Government of Iowa State University; Students for Sexual Respect at NYU; Title IX at Northwestern; United States Student Association; Women for Change (University of Hartford); Womyn's Awareness Center (Gustavus Adolphus College); Yale Journal of Law & Feminism; Yale Law Students for Reproductive Justice; The 2015–2016 Board of Yale Law Women; The York College Women's Center.

FEBRUARY 25, 2016.

Hon. LAMAR ALEXANDER, *Chairman*,
Committee on Health, Education, Labor, and Pensions,
455 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member*,
Committee on Health, Education, Labor, and Pensions,
154 Russell Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: I write in my individual capacity as a legal scholar and academic to support the U.S. Department of Education Office for Civil Rights' enforcement of Title IX of the Educational Amendments of 1972 in cases involving sexual harassment, sexual violence, and bullying. As a law professor and 15-year university administrator, I have published, to date, 10 academic articles, essays, or book chapters on sexual harassment, sexual violence, and bullying in education, especially on college campuses, including five in peer-reviewed journals or edited volumes. I have also written an amicus brief at the request of a university and State attorney general's office in a State supreme court case involving sexual violence, served as a Negotiator on the Violence Against Women Act (VAWA) Negotiated Rulemaking that amended the Department of Education's regulations under the Clery Act, and consulted with the White House Task Force to Protect Students from Sexual Assault. My law school courses have included legislative and administrative law and a course that I am presently teaching entitled "Sexual Violence & the Law." My most recent publication on this topic is an essay just published in the *Yale Law Journal Forum* (<http://www.yalelawjournal.org/forum/for-the-title-ix-civil-rights-movement-congratulations-and-cautions>).

Because I have, to my knowledge, conducted a significant majority of the published legal research and scholarship on title IX and gender-based violence on college campuses, I can specifically confirm the accuracy and quality the February 17, 2016 letter sent by Assistant Secretary for Civil Rights, Catherine Lhamon, to Senator Lankford (made available by *The Chronicle of Higher Education* at <http://>

chronicle.com/items/biz/pdf/DEPT.%20of%20EDUCATION%20RESPONSE%20TO%20LANKFORD%20LETTER%202-17-16.pdf). This excellent letter gives a clear, research- and precedent-based explanation of the authority of Office for Civil Rights (OCR) to issue guidance in the form of Dear Colleague Letters and similar guidance documents, one that requires no repeat or additional elucidation.

However, I do want to amplify one part of Asst. Secretary Lhamon's letter based not only on black-letter law but also on the realities for practitioners and administrators on the ground in our Nation's educational institutions. The Asst. Secretary explains that her office's guidance documents are designed to "advise the public of [OCR's] construction of the statutes and regulations it administers and enforces," rather than "requiring recipients and members of the public to discern for themselves solely from the text of the regulations what title IX requires as applied to particular facts and what actions would result in OCR initiating proceedings to terminate Federal financial assistance ..." As a professional who has spent nearly 20 years as an administrator or in full-time teaching positions at four different universities and a major higher education professional association, I can say that this guidance is both deeply needed and deeply appreciated by those trying to end the epidemic of sexual harassment and gender-based violence occurring on our campuses.

I do not draw this sense of necessity or appreciation for OCR's guidance only from my own experience. In addition to the inevitably large professional network that one builds during a 20-year career, I served in 2014–15 as Associate Vice President for Equity, Inclusion & Violence Prevention for NASPA, the Nation's largest association of student affairs professionals. With 15,000 members ranging from Vice Presidents of Student Affairs to Residence Hall directors, the vast majority of NASPA members are likely to be first responders in cases involving sexual or other forms of gender-based violence, even graduate and undergraduate student members, who are often in live-in, 24-hour on-call positions like Resident Assistantships. NASPA hired me in large part because it had heard quite clearly from members that they needed a lot more training and education to meet their title IX responsibilities to protect their students' rights to equal educational opportunity. Because the association understood how acute members' needs and desires to improve their abilities to respond to this discriminatory violence were, NASPA approached me to come on board as its subject matter expert on title IX and other such civil rights protections. After I moved on to the faculty post I now hold, NASPA made my position permanent and hired Jill Dunlap, who also served in 2014 as a Negotiator on the VAWA Negotiated Rulemaking.

In the less than a year that I served as Associate Vice President at NASPA, I was constantly reminded of how hungry NASPA members were for guidance on how to improve their understanding and skills for meeting both their moral and legal obligations regarding this violence. I produced a practice brief that was so in demand that members exhausted the many boxes of printed copies in less than 24 hours at the NASPA annual conference. I was asked to develop a webinar series and to keynote, moderate or otherwise lead well-attended presentations on campus gender-based violence at numerous NASPA conferences, including five major programs to packed audiences in only 3 days at the annual conference. During this time, NASPA also worked with a coalition of 18 other higher education professional associations and victim services and advocacy organizations to produce an open letter regarding pending State bills on campus sexual violence (http://www.naspa.org/images/uploads/main/Joint_omnibus_bill_statement_letterhead.pdf). That coalition represented tens of thousands of campus professionals, including in student affairs, student conduct, and campus police, all working together, with victim services organizations, to oppose State legislative interference with title IX's mandates.

While at NASPA, I was in no way surprised by this frenetic activity or the acute needs for title IX guidance that it indicated existed among higher education professionals. Indeed, prior to joining the association's staff, I had seen for several years the numbers of questions and requests for guidance coming from administrators and some faculty regarding how to improve their response and prevention efforts around title IX. Indeed, when OCR released its guidance document addressing frequently asked questions around title IX and sexual violence (<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>), it was nearly three times the length of the 2011 Dear Colleague Letter, showing how much guidance the higher education community asked for—even demanded—from OCR.

In light of these constant requests and sincere needs for guidance, OCR should in fact be commended for being so responsive to higher education institutions and the professionals who are primarily responsible for ensuring that their institutions comply with title IX. While not all in the higher education community will agree

with the way OCR engages in enforcement, whether one agrees with the content of the guidance is separate both from OCR's power to engage in enforcement and its power to publish guidance that explains *how* OCR enforces title IX so that colleges and universities can plan ahead and avoid being investigated in the first place. Asst. Secretary Lhamon's letter clearly and abundantly establishes both of these powers.

In addition, however, Asst. Secretary Lhamon's letter *also* clearly points out the solid legal basis, in notice and comment-based guidance documents, for specific points in OCR's 2010 Dear Colleague Letter. Similarly, Asst. Secretary Lhamon restates the strong legal justification for insisting that schools use a preponderance of the evidence to investigate and resolve cases involving civil rights violations, including cases involving sexual or similar forms of gender-based violence. I have provided several additional reasons for why the preponderance standard is the only standard acceptable for such cases, as with all cases governed by civil rights laws and standards, in the *Yale Law Journal Forum* essay mentioned earlier in this letter.

On these points regarding the content of OCR's guidance, it is also important to note that, as Asst. Secretary Lhamon makes clear, the guidance is *descriptive* of what OCR is likely to *actually* do when exercising its enforcement power and investigating a complaint. In this respect, and like with OCR's many helpful responses to the higher education community's requests for guidance on how to handle sexual violence or other severe forms of sexual harassment, OCR's guidance has done the higher education community a *favor*, and a favor that has a high likelihood of saving educational institutions a lot of money. That is, if an institution follows OCR's guidance, it is much more likely to avoid what is potentially very expensive liability. My research shows consistently that violating a student's title IX rights is quite expensive and on average significantly more expensive than disciplining a student who has been found responsible for sexually assaulting a classmate, even in the very few such cases where a court has found evidence of an administrative due process violation.¹

I summarized my pre-2012 research on this point for *Time* magazine at <http://time.com/99697/campus-sexual-assault-nancy-chi-cantalupo/>, and subsequent years have only added to the number of publicly disclosed title IX settlements in the six- and seven-figures.² Other research confirms that violating title IX is getting more expensive for schools, not less. For instance, a report by United Educators, a major insurer of educational institutions, on claims for campus sexual assault cases from 2011–13 shows that schools paid \$17 million in costs “defending and resolving sexual assault claims.”³ Of these costs, 84 percent, or \$14.3 million, were spent on “victim-driven litigation.”⁴ This is in contrast to a similar report by United Educators on similar claims filed from 2005–10, where schools paid \$36 million in costs related to such claims, with a little over \$10 million going to claims by “accusers.”⁵ Thus, in a little over half the time of the earlier 5-year study, institutions' costs based on claims filed by victims alleging title IX and similar violations have increased by about 43 percent.

In light of these numbers, it is not only a reality, as I have detailed above, that higher education professionals have wanted guidance from OCR, but also completely *logical, rational, and reasonable* that an institution of higher education would want *more*, not *less*, guidance about how to protect their students' title IX rights. I certainly know that I wanted as much guidance as OCR had time to provide, when I was a campus administrator, and I know the many excellent colleagues with whom I worked during those years, as well as the many more such colleagues I met at NASPA, would agree. Indeed, at this moment in time, it would be quite *unreasonable* for any institution of higher education not to want OCR to provide guidance, to read that guidance closely when it is issued, and to follow its advice so the school can get out ahead of this discrimination problem and have the structures and staff in place to handle cases when they inevitably arise and do so in a way that protects the rights of *all* students involved. OCR has devoted hundreds

¹ Note that under U.S. Supreme Court precedent, school disciplinary proceedings are not governed by rules of criminal due process. See generally Nancy Chi Cantalupo, “Decriminalizing” Campus Institutional Responses to Peer Sexual Violence, 38 J.C. & U.L. 481, 513–17 (2012).

² See, e.g., Tatianna Schlossberg, *UConn to pay \$1.3 Million to End Suit on Rape Cases*, N.Y. TIMES (July 18, 2014), <http://www.nytimes.com/2014/07/19/nyregion/uconn-to-pay-1-3-million-to-end-suit-on-rape-cases.html?r=0>.

³ See United Educators, *Confronting Campus Sexual Assault: An Examination of Higher Education Claims* 14 (2015), http://www.bgsu.edu/content/dam/BGSU/human-resources/documents/training/lawroom/Sexual_assault_claim_study.pdf.

⁴ *Id.*

⁵ See United Educators, *Student Sexual Assault: Weathering the Perfect Storm* 1–2 (2011), <https://www.edurisksolutions.org/templates/template-article.aspx?id=379&pageid=136>.

of pages of guidance to schools to help them with these tasks, and both logic and evidence indicate that the higher education profession as a whole appreciates this guidance for both liability- and morality-based reasons.

For all of these legal and practical reasons, I write in support, commendation, and *thanks* to the U.S. Department of Education Office for Civil Rights for issuing their guidance documents. I also thank you and the other members of the Senate Committee on Health, Education, Labor, and Pensions for their attention to these issues.

Sincerely,

NANCY CHI CANTALUPO,
Assistant Professor of Law,
Barry University
Dwayne O. Andreas School of Law.

NATIONAL WOMEN'S LAW CENTER,
WASHINGTON, DC 20036,
February 25, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
525 Dirksen Senate Office Building,
Washington, DC 20510.

Re: In Support of Title IX, the Clery Act & Regulations that Protect Students from Sexual Harassment and Gender-Based Violence in Educational Programs

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: In advance of the confirmation hearing for Education Secretary nominee Dr. John B. King, the National Women's Law Center writes to recognize the core responsibility of the U.S. Department of Education to enforce our Nation's civil rights education laws, including title IX and the Clery Act. We support regulations and guidance issued by the Department to inform institutions of their obligations under these laws and applaud the Department for its enforcement of them to ensure that sexual harassment and sexual violence does not interfere with a student's right to an educational environment free from sex discrimination. Because this work will be key to helping schools create safe spaces for all our Nation's students, we write with the following recommendations to remind schools of their civil rights obligations.

I. Enforcement of Title IX and the Clery Act are Necessary to Create Safe Schools & Reduce Sexual Harassment, including Sexual Violence.

The Clery Act¹ is a consumer protection law that requires colleges and universities to publicly report campus crime statistics on an annual basis so that current and prospective students can evaluate the safety of an institution of higher education. Title IX of the Education Amendments of 1972² is a civil rights law that prohibits discrimination in federally funded education programs based on sex, which includes sexual harassment and violence.³ Although both laws have different goals, they work in conjunction to promote a school climate that is a safe and conducive learning environment for all students.

Sexual harassment in schools is a serious problem with devastating effects for students. It takes many forms, from "unwelcome sexual advances" and "requests for sexual favors" to "other verbal, nonverbal, or physical conduct of a sexual nature."⁴ In a national survey of nearly 2,000 seventh- through 12th-graders conducted in 2011, nearly half of all students surveyed reported experiencing some form of sexual harassment in the 2010–11 school year.⁵ Unwanted sexual comments, jokes, and gestures were the most reported forms of sexual harassment, with 33 percent of students saying that they encountered this kind of conduct at least once in the 2010–

¹ 20 U.S.C. § 1092.

² 20 U.S.C. § 1681.

³ *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629 (1999).

⁴ U.S. DEPT OF EDUC., OFFICE FOR CIVIL RIGHTS, REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES, at 2 (2001), available at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.

⁵ AM. ASS'N OF UNIV. WOMEN, CROSSING THE LINE: SEXUAL HARASSMENT AT SCHOOL 2 (2011), available at <http://www.aauw.org/files/2013/02/Crossing-the-Line-Sexual-Harassment-at-School.pdf>.

11 school year.⁶ However, 8 percent of all students also reported being touched in an unwelcome way in the previous school year and 7 percent reported having someone flash or expose themselves in front of them.⁷ Additionally, public schools recorded 600 incidents of rape or attempted rape and 3,600 incidents of sexual battery not involving rape in 2009–10, the most recent year for which data is available.⁸

The emotional and physical effects of sexual harassment and violence can be devastating for students. Victims of such conduct often find it difficult to study, reduce participation in school or school activities, and/or avoid school altogether.⁹ Sadly, some students have even committed suicide in the face of sexual harassment and violence. One example is Audrie Pott, a 15-year old who took her own life in 2013 after an alleged sexual assault and sexual bullying.¹⁰

There have been widespread reports of sexual harassment and violence at colleges and universities. According to several reports, one in five women and one in 20 men are sexually assaulted in college.¹¹ And before the Department of Education Office for Civil Rights (OCR) issued guidance on title IX and sexual violence, universities were not doing enough to address the prevalence of sexual assault on campus.

For example, in 2014 the University of Connecticut settled a lawsuit with five students who claimed the school failed to handle their complaints of sexual violence properly.¹² In 2013, Occidental College settled a suit with at least 37 students alleging similar claims.¹³ That same year, Yale University refused to expel six students it found guilty of “nonconsensual sex,” and released a semi-annual report on sexual misconduct revealing that the university provided light punishments, such as temporary suspensions, for such actions.¹⁴ In 2012, a U.S.C. student reported a rape to her university and even played authorities a tape of her rapist admitting to the assault, but they dismissed her case for lack of evidence.¹⁵ And the Department of Education is still investigating a 2013 complaint from Swarthmore students alleging that the college violated the Clery Act by failing to report sexual assaults on campus.¹⁶ Students said that resident advisors failed to submit formal reports about their assaults and administrators declined to report conduct like stalking.¹⁷

Because of growing concerns about institutions’ failure to appropriately address sexual violence cases, student activist groups have led national campaigns to educate students about their title IX rights.¹⁸ These groups, which include both survivors of sexual violence and allies, are responding to growing reports of sexual violence on campuses and sharing what they learned from their experiences.¹⁹ As a

⁶*Id.* at 12.

⁷*Id.*

⁸SIMONE ROBERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2013, at 117 (2014), available at <http://nces.ed.gov/pubs2014/2014042.pdf>.

⁹See AM. ASS’N OF UNIV. WOMEN, *supra* note 5 at 3.

¹⁰Christina Sterbenz, *Heartbreaking Details Revealed About 15-Year-Old Who Killed Herself After Alleged Sexual Assault*, BUS. INSIDER (Sept. 20, 2013, 2:30 PM), available at <http://www.businessinsider.com/details-on-audrie-potts-suicide-2013-9>.

¹¹E.g., Nick Anderson & Scott Clement, *1 in 5 college women say they were violated*, WASH. POST (June 12, 2015), <http://www.washingtonpost.com/sf/local/2015/06/12/1-in-5-women-say-they-were-violated/>; C.P. Krebs et al., *College Women’s Experiences with Physically Forced, Alcohol- or Other Drug-Enabled, and Drug-Facilitated Sexual Assault Before and Since Entering College*, 57 J. AM. C. HEALTH 639 (2009).

¹²Jake New, *Major Sexual Assault Settlement*, INSIDE HIGHER ED (July 21, 2014), <https://www.insidehighered.com/news/2014/07/21/u-connecticut-pay-13-million-settle-sexual-assault-lawsuit>.

¹³Tyler Kingkade, *Occidental College Settles Lawsuit with Sexual Assault Victims*, HUFFINGTON POST (Sept. 19, 2013), http://www.huffingtonpost.com/2013/09/19/occidental-lawsuit-sexual-assault_n_3950830.html.

¹⁴Stacy Teicher Khadaroo, *Sexual Assault on Campus: Yale Tries To Clarify Consent*, CHRISTIAN SCI. MONITOR (Sept. 12, 2013), <http://www.csmonitor.com/USA/Education/2013/0912/Sexual-assault-on-campus-Yale-tries-to-clarify-consent>.

¹⁵Claire Groden, *Campus Rape Victims Find a Voice*, TIME (Aug. 08, 2013), available at <http://nation.time.com/2013/08/08/campus-rape-victims-find-a-voice/?iid=tsmodule>.

¹⁶Joe Mariani, *Title IX changes to affect campus procedures*, SWARTHMORE PHOENIX (Sept. 24, 2015), <http://swarthmorephoenix.com/2015/09/24/title-ix-changes-to-affect-campus-procedures/>; Max Nesterak, *Clery Complainants To File Title IX Complaints, Join National Movement Against Sexual Assault*, SWARTHMORE COLL. DAILY GAZETTE (Apr. 19, 2013) <http://daily.swarthmore.edu/2013/04/19/clery-complainants-join-national-movement-against-sexual-assault-to-file-title-ix-complaints/>.

¹⁷Emma Jacobs, *Swarthmore Students File Title IX Complaint over Alleged Inaction on Sexual Assault*, NEWSWORKS (Apr. 26, 2013), <http://www.newsworks.org/index.php/local/item/54084>.

¹⁸See KNOW YOUR IX, <http://knowyourix.org/> (last visited Sept. 26, 2013).

¹⁹About KYIX, KNOW YOUR IX (last visited Sept. 26, 2013), <http://knowyourix.org/about-ky9/>.

result of their advocacy, more survivors have come forward and filed complaints with OCR—with the Department investigating approximately 130 colleges and 40 school districts for title IX violations related to sexual assault, as of July 2015.²⁰

The stakes could not be higher for students at all levels of education; reports of assaults and schools' failure to address them are widespread. Thus, the role of OCR in ensuring that schools prevent and address sexual harassment and violence is critical.

II. OCR's Guidance and Resolution Agreements Are Necessary to Help Address the Pervasive Problem of Sexual Harassment and Violence in Schools.

OCR issues guidance documents—including interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice—to further assist schools in understanding what policies and practices will lead OCR to initiate proceedings to terminate Federal financial assistance under existing regulations under title IX and other civil rights laws. Last year, the Supreme Court unanimously confirmed that the Administrative Procedure Act allows agencies to issue such guidance without notice-and-comment procedures, because such guidance is expressly exempt from these requirements.²¹

OCR's guidance and resolution agreements addressing sexual harassment and violence are essential tools that outline schools' responsibilities to prevent harassment and help combat this serious problem plaguing our Nation's schools. The 2010 Dear Colleague Letter on harassment and bullying provided examples of conduct that can constitute "sexual harassment" in federally funded educational programs.²² The 2011 Dear Colleague Letter on Sexual Violence²³ emphasized prevention, specific procedures, and remedies that schools should use in sexual violence cases, including the preponderance of the evidence standard of proof for sexual harassment investigations. In 2014, the Department also released a Questions and Answers document that provided technical assistance to schools regarding their obligations under title IX and highlighted proactive approaches schools can take to prevent and remedy the prevalence of sexual violence on campus.²⁴ The 2010 and 2011 Dear Colleague Letters and the 2014 Questions and Answers document allowed schools to receive guidance in a timely fashion and implement policies quickly. And OCR resolution letters with individual schools can model holistic approaches for ensuring that sexual violence reports are being handled properly by all parts of a school system. This is precisely the type of enforcement that can prompt reforms to reduce the prevalence of sexual violence in educational institutions.

Despite the utility of OCR guidance, some suggest that OCR erred in not going through the Notice and Comment process before issuing its 2010 and 2011 Dear Colleague. But there was no requirement that OCR do so, as these guidance documents merely provided clarification of OCR's 2001 Dear Colleague letter²⁵ on sexual harassment that was issued after the Supreme Court's decision in *Davis v. Monroe County Board of Education*,²⁶ and the 2001 document *did* go through the Notice and Comment process. Requiring notice and comment on similar clarification documents would be unnecessary and only create further confusion given that the guidance documents clarified existing obligations. In the meantime, survivors and victims of discrimination would be deprived of their educational rights, and institutions would hide behind bureaucracy to delay complying with their obligations under title IX. The Department's ability to enforce our Nation's civil rights laws should not be ob-

²⁰ Morgan Baskin, *Dept. of Ed: UVA fostered "hostile environment" for sexual assault survivors*, USA TODAY (Sept. 21, 2015), <http://college.usatoday.com/2015/09/21/dept-of-ed-uva-fostered-hostile-environment-for-sexual-assault-survivors/>; Tyler Kingkade, *124 Colleges, 40 School Districts Under Investigation For Handling Of Sexual Assault*, HUFFINGTON POST (July 24, 2015), http://www.huffingtonpost.com/entry/schools-investigation-sexual-assault_us_55b19b43e4b0074ba5a40b77.

²¹ *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199 (2015); 5 U.S.C. § 553(b)(3)(A).

²² Russlyn Ali, *Dear Colleague Letter*, U.S. DEPT OF EDUC. OFFICE FOR CIVIL RIGHTS (Oct. 26, 2010) [hereinafter 2010 Dear Colleague Letter], <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

²³ Russlyn Ali, *Dear Colleague Letter*, U.S. DEPT OF EDUC. OFFICE FOR CIVIL RIGHTS (Apr. 4, 2011) [hereinafter 2011 Dear Colleague Letter], <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

²⁴ U.S. DEPT OF EDUC. OFFICE FOR CIVIL RIGHTS, *QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE* (2014), <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

²⁵ See U.S. DEPT OF EDUC., OFFICE FOR CIVIL RIGHTS, *REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES* (2001) [hereinafter 2001 TITLE IX GUIDANCE], available at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.

²⁶ 526 U.S. 629 (1999).

structed—nor should its ability to offer clarifying guidance and technical assistance in a timely manner.

III. Title IX & Clery Should Set the Standard for Disciplinary Hearings Because Both Laws Require Fairness to Both Parties.

To appropriately respond to sexual and gender-based violence on campus, universities must create and maintain policies that are fair for both the complainant/survivor and the respondent/accused. Title IX's ban on sex discrimination in education requires that all parties be treated fairly in the adjudication process, which means, for example, that both complainant and respondent must have the opportunity to present their positions to an impartial investigator who employs an evidentiary standard that distributes the burden of proof equitably.

For these reasons, due process provisions that mirror those guaranteed to defendants in criminal justice proceedings—such as providing respondents exclusive appeal rights or requiring that universities apply a higher evidentiary standard than the preponderance of the evidence standard—are inappropriate in school sexual misconduct proceedings. Implementing such measures would give respondents/the accused more procedural protections than complainants/survivors, which would undermine title IX's goal to promote equality in educational programs.

Both Title IX and Clery contain a number of baseline standards for institutional processes that colleges can increase to fit the needs of their campus. For example, in addition to notice and an opportunity to be heard, title IX requires that grievance procedures be both prompt and equitable, that investigations be adequate, reliable, and impartial and that written notice informing both parties of the outcome of the investigation be provided.²⁷ Title IX also allows schools to provide the right to appeal a determination, as long as it provides this right equally for both parties.²⁸ The same goes for the opportunity to present witnesses or other evidence during the investigation or hearing process.²⁹ The Clery Act also sets forth minimum standards for school discipline procedures, including the right to have others present during disciplinary proceedings/meetings, the right to an advisor of their choice, and a requirement that both parties receive the outcome of a proceeding in writing at the same time.³⁰ Because Title IX and Clery contain procedural protections that promote fundamental fairness in college proceedings while ensuring that both complainant and respondent have equal protections, these laws—not the criminal justice system—should provide the framework for any policies that seek to enhance due process rights for survivor/complainants and accused/respondents.

The Department of Education's guidance on and enforcement of title IX and the Clery Act have been vital in the effort to curb the epidemic of sexual harassment and violence in our Nation's schools. This critical work must continue if the promise of these laws is to be fulfilled. Thank you for your consideration. If you have any questions, please contact Neena Chaudhry at nchaudhry@nwlc.org, Adaku Onyeka-Crawford at aocrawford@nwlc.org, or Fatima Goss Graves at fgraves@nwlc.org of the National Women's Law Center or 202.588.5180.

Sincerely,

FATIMA GOSS GRAVES,
Senior Vice President for Program.
 NEENA CHAUDHRY,
Senior Counsel & Director of Education.
 ADAKU ONYEKA-CRAWFORD,
Counsel.

²⁷ 2001 TITLE IX GUIDANCE *supra* note 25, at 19–20.

²⁸ 2011 Dear Colleague Letter *supra* note 23, at 12.

²⁹ *Id.* at 11.

³⁰ 20 U.S.C. § 1092 (f)(8)(B)(iv).

LETTERS OF SUPPORT

NATIONAL CENTER FOR SPECIAL EDUCATION
IN CHARTER SCHOOLS (NCSECS),
NEW YORK, NY 10170,
February 24, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: The National Center for Special Education in Charter Schools (NCSECS) is dedicated to ensuring that students with disabilities have equal access to charter schools and that public charter schools are designed and operated to enable all students to succeed. We write today to thank you for your consideration of President Obama's nomination of Dr. John King as the Secretary of Education.

Dr. King is an excellent choice to serve as the next Secretary. His track record leading up to his current position as Acting Secretary shows a deep commitment to high standards and his own impatience with entrenched systems that do not serve children well. He demonstrated these traits as the founder of a high performing charter school in Massachusetts, as a leader in a school management organization creating strong new charter schools in several States, and most recently, in his role as New York's Education Commissioner. Dr. King has demonstrated that he sees the public school landscape as a broad one, strengthened by strong districts and a thriving charter sector.

Dr. King has recently met with civil rights and disability organizations where he spoke passionately and firmly about the need to ensure every student has equal access to a quality education in a high quality school. Given the work ahead—to implement The Every Student Succeeds Act (ESSA) and its many important provisions that impact all public title I schools, including charter schools—we believe it is imperative that Dr. King be formally confirmed by the Senate as soon as possible.

NCSECS worked intently with the civil rights community on ESSA and has high hopes the updated law will successfully foster students achievement and equity. NCSECS is deeply interested in the implementation of the new law because charter schools *are* public schools and should be explicitly included in State title I planning. Charter schools must also be open and accessible to all students on par with traditional public schools. Therefore, Dr. King's nomination will help assure States have the appropriate guidance they need to begin the transition to implement the ESSA.

Thank you for the opportunity to recommend Dr. King for this important nomination.

Sincerely,

LAUREN MORANDO RHIM, PH.D.,
Executive Director.

NATIONAL CENTER FOR LEARNING DISABILITIES (NCLD),
NEW YORK, NY 10013,
February 18, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
455 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
154 Russell Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: The National Center for Learning Disabilities (NCLD), which represents the 1 in 5 individuals with learning and attention issues, writes in support of the nomination of John King to Secretary of the U.S. Department of Education.

Dr. King is well qualified to serve as Secretary of the U.S. Department of Education as he has been a champion for students throughout his career. His experience includes serving as a teacher, principal, a charter school founder, and a leader of schools and schools systems. As commissioner of education for the State of New York, Dr. King oversaw 3.1 million elementary and secondary school students and served as president of the University of the State of New York. In this role, he deepened collaboration between the State's preschool through grade 12 schools and its institutions of higher education, strengthening educator preparation. During his tenure, the State's ambitious initiatives included investing in high-quality early learning; raising standards; supporting educators through professional development, access to instructional resources, and innovative career ladder models; expanding career and technical education in high-demand fields; and increasing opportunities for students in the highest-need communities.

Dr. King first joined the U.S. Department of Education in January 2015 as Principal Senior Advisor. In that role, Dr. King carried out the duties of the Deputy Secretary, overseeing all preschool through grade 12 education policies and programs. Dr. King focused on increasing equity, improving outcomes for all students, and closing persistent achievement gaps. Dr. King's emphasis on improving outcomes and his willingness to collaborate indicate his dedication to educational equity and excellence for all students. The ongoing work that Dr. King has led at the U.S. Department of Education is essential and must continue.

NCLD supports the swift confirmation of John King as Secretary of the U.S. Department of Education. We urge you to confirm his appointment as soon as possible so that students with learning and attention issues continue to be supported in their educational success.

Sincerely,

JAMES WENDORF,
Executive Director.

LINDSAY JONES,
Vice President and Chief Advocacy Officer.

ASSOCIATION OF UNIVERSITY CENTERS ON DISABILITIES (AUCD),
SILVER SPRING, MD 20910,
February 22, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the Association of University Centers on Disabilities, I write in strong support of the nomination of John King for Secretary of the U.S. Department of Education.

AUCD promotes and supports a national network of interdisciplinary centers on disabilities. Our members represent every U.S. State and territory and include 67 University Centers for Excellence in Developmental Disabilities (UCEDDs), 45 Interdisciplinary Leadership Education in Neurodevelopmental and Related Disabilities (LEND) Programs and 15 Intellectual and Developmental Disabilities Research Centers (DDRCs).

Having earned a Bachelor of Arts in Government from Harvard University, a Master of Arts in the teaching of social studies from Columbia University's Teachers College, a J.D. from Yale Law School, and a Doctor of Education degree in educational administrative practice from Columbia University's Teachers College, Dr. King is well qualified to serve as Secretary of the U.S. Department of Education. Dr. King also brings to his own personal experience leading urban public schools that are closing the achievement gap and preparing students to enter, succeed in, and graduate from college.

Before becoming Acting Secretary, Dr. King had served since January 2015 at the Department as Principal Senior Advisor. In that role, Dr. King carried out the duties of the Deputy Secretary, overseeing all preschool through 12th-grade education policies, programs and strategic initiatives, as well as the operations of the Department. Dr. King carried out this work with a focus on increasing equity, improving educational outcomes for all students, including those with developmental and other

disabilities, and closing achievement gaps through implementation of key administration priorities in areas including early learning, rigorous academic standards, accessible curricula, universal design for learning, and the inclusion of all groups of students in accountability systems to help schools improve their outcomes.

AUCD strongly supports the confirmation of John King as Secretary of the U.S. Department of Education and we urge you to confirm his appointment as soon as possible so that students with disabilities continue to be supported in their educational success.

Sincerely,

ANDY IMPARATO,
Executive Director.

CHIEFS FOR CHANGE,
WASHINGTON, DC 20004,
February 22, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
154 Russell Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of Chiefs for Change, I am writing in strong support of Dr. John King's nomination to serve as Secretary of Education.

Dr. King joined the Department as Principal Senior Advisor last year and has been overseeing all preschool-through-12th-grade education policies, programs and strategic initiatives, as well as the operations of the Department.

Prior to his work at the Department, Dr. King served as commissioner of education for the State of New York. In that role, he served as chief executive officer of the State Education Department and as president of the University of the State of New York, overseeing the State's elementary and secondary schools (serving 3.1 million students), public, independent and proprietary colleges and universities, libraries, museums, and numerous other educational institutions.

As commissioner of education, Dr. King pursued ambitious educational reforms to increase equity; raise standards for teaching and learning; support teachers and school leaders through strong professional development, access to rich instructional resources, and innovative educator career ladder models; expand career and technical education in high-demand fields; and increase educational opportunity for students in the highest-need communities.

As the Department of Education continues work on the implementation process for the Every Student Succeeds Act, Chiefs for Change is confident that Dr. King's focus on preparing every child for success will lead to better educational outcomes, help to close achievement gaps among students; and better prepare students for college or a career. Importantly, Dr. King brings to this position the unique expertise and dedication that comes from a life-long career in education, beginning first as a teacher and middle- and high-school principal.

As a nonprofit network of diverse State and district education Chiefs dedicated to preparing all students for today's world and tomorrow's, Chiefs for Change strongly endorses Dr. King for Secretary of Education and looks forward to working with the Department of Education to support innovative policies and practices that improve outcomes and create educational equity for all students. Please don't hesitate to contact me if you have any questions or if there is anything that Chiefs for Change could do to assist with Dr. King's nomination for Secretary of Education.

Sincerely,

MIKE MAGEE, *CEO.*

NATIONAL ASSOCIATION OF STATE DIRECTORS
OF SPECIAL EDUCATION, INC. (NASDSE),
ALEXANDRIA, VA 22314,
February 23, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR SENATOR ALEXANDER AND SENATOR MURRAY: On behalf of the National Association of State Directors of Special Education (NASDSE), the national nonprofit organization that represents the State directors of special education in the States, the District of Columbia, the Federal territories, the Freely Associated States and the Department of Defense Education Agency, I write to urge the HELP Committee to take quick action to confirm John King as the Secretary of Education.

The Department of Education needs a strong leadership team to implement the Every Student Succeeds Act starting now. In particular, NASDSE supports John King to be the next Secretary of Education because of the leadership and support he gave to meeting the needs of students with disabilities while serving in leadership positions in New York State.

While in New York, he ensured that the needs of students with disabilities and English Language Learners were specifically considered in all State policy development and implementation across the entire Department of Education. During his administration, the New York State Education Department placed a spotlight on instruction and evidence-based school practices that would ensure that every student had access to learn and be successful in school. John King met with representatives from each of the State's 14 Special Education Parent Centers to personally hear the voices and perspectives of parents of students with disabilities. He addressed all of the State's special education technical assistance providers to provide a vision of high expectations for their work. His policy and initiatives around data-driven instruction and use of assessments to inform instruction led many schools to develop systems of Response to Intervention and Positive Behavioral Interventions and Supports. He also supported transition services for students with disabilities, providing more access to career and technical education coursework and work-based learning opportunities and advancing a credential to recognize a student's work-readiness knowledge and skills at the time of graduation from high school.

During John King's administration in New York, the Education Department also closely aligned the ESEA and IDEA accountability systems, which significantly enhanced the State's school improvement work to address the needs of students with disabilities in low performing schools. While he was commissioner, access to the general education curriculum for students with disabilities took on a renewed focus and more schools began to develop standards-based individualized education programs (IEPs); the use of research-based specially designed instruction increased statewide; and results for students with disabilities improved.

John King has been a voice for all students in the past and NASDSE is confident that he will continue to do so as Secretary of Education. Therefore, NASDSE is pleased to support his nomination.

Sincerely,

THERON (BILL) EAST, JR., ED.D.,
Executive Director.

TEACH +PLUS,
BOSTON, MA 02210,
February 23, 2015.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND SENATOR MURRAY: Thank you for your bipartisan leadership in successfully reauthorizing the Elementary and Secondary Education Act (ESEA)—and for all of your ongoing bipartisan work together. We are particularly grateful to both of you and to your staff members for including teachers in a meaningful way throughout the reauthorization process.

We are writing to let you know of our strong support for the nomination of John King to be U.S. Secretary of Education. As you know, Dr. King is deeply committed to equity and collaboration. He is a consensus-builder, and we believe that quality will serve him well in this role.

Dr. King has been a champion in promoting teacher leadership, and we have appreciated the time he has spent with our teacher leaders. After he met with a group of our teachers in Memphis last year, they said they were struck by his thoughtfulness, warmth and commitment to students. But most of all, they appreciated how much he listened and tried to understand their views, even when they were critical of some of the Department's policies.

We hope you and your colleagues will work together to vote this nomination out of committee and ensure that Dr. King is successfully confirmed by the full U.S. Senate.

Thank you for your consideration.

Sincerely,

CELINE COGGINS,
Founder and CEO.

NATIONAL DISABILITY RIGHTS NETWORK,
WASHINGTON, DC 20002-4243,
February 24, 2016.

TO WHOM IT MAY CONCERN: It is with great pleasure that the National Disability Rights Network (NDRN) enthusiastically supports the nomination of Acting Secretary of Education, John B. King Jr, for the position of Secretary of Education.

NDRN is the national membership association for the Protection and Advocacy (P&A) and Client Assistance Program (CAP) System, the nationwide network of congressionally mandated agencies that advocate on behalf of persons with disabilities in every State, the District of Columbia, Puerto Rico, the U.S. territories of American Samoa, Guam, U.S. Virgin Islands, and the Northern Mariana Islands, and affiliated with the Native American Consortium which includes the Hopi, Navajo and Piute Nations in the Four Corners region of the Southwest. For over 30 years, the P&A/CAP System has worked to protect the human and civil rights of individuals with disabilities of any age and in any setting. A central part of the work of the P&A/CAP System (nearly 12,000 individual cases in 2014) has been to advocate for opportunities for students with disabilities to receive a quality education with their peers. Collectively, the P&A/CAP agencies are the largest provider of legally based advocacy services for persons with disabilities in the United States.

Dr. King brings the invaluable experience of having served as a teacher, a school administrator, the commissioner of education for the State of New York, as Principal Senior Advisor to the Department of Education and most recently as Acting Secretary for the Department of Education. Dr. King has spoken eloquently about his strong belief in the importance of educational opportunity for all students. NDRN fully supports this sentiment as educational opportunity is critical (and often sadly lacking) for the success of students with disabilities. NDRN also had the opportunity to hear Dr. King speak with eloquence on the importance of accountability in the education of all students, including students with disabilities.

It is the strong belief of NDRN that, at this critical juncture in the progression of education policy in the United States, John B. King, Jr. be confirmed as Secretary of Education.

Please do not hesitate to contact Amanda Lowe, public policy analyst, with any questions at Amanda.lowe@ndrn.org.

Sincerely,

CURT DECKER,
Executive Director.

NATIONAL COUNCIL OF LA RAZA,
WASHINGTON, DC 20036-4845,
February 24, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
835 Hart Senate Office Building,
Washington, DC 20510.

DEAR SENATOR ALEXANDER AND SENATOR MURRAY: On behalf of the National Council of La Raza (NCLR), the Nation's largest Hispanic civil rights and advocacy organization, I write to express enthusiastic support of Dr. John B. King to be the next Secretary of Education. During his tenure at the Department of Education and as education commissioner of New York, he has shown a deep dedication to raising academic standards and advancing equity to give opportunity to all children facing the demands of the 21st-century workplace.

In the coming months, the Department of Education will have a daunting task: implementing the Every Student Succeeds Act in a manner consistent with the law's civil rights mission. Dr. King has been a leader in education since the beginning of his career as a public school teacher and is well-suited to oversee ESSA's regulatory process to ensure the legislation fulfills its promise to the 13 million Latino students and 5 million English learners in American schools.

In addition, Dr. King's nomination adds much-needed diversity to the administration's highest ranks. As a Latino, Dr. King's inclusion in the cabinet sends an important signal to the community that Latino and English learner children are the future of this country. They will have a committed voice in Washington who understands their needs and their growing influence in public education.

We are pleased by reports of plans to move Dr. King's confirmation process through the HELP Committee and to the floor as swiftly as possible. We look forward to working with your staff to ensure this occurs. Please feel free to contact Victoria Benner, Senior Legislative Strategist, at (202) 776-1760 or vbenner@nclr.org if you have any questions.

Sincerely,

ERIC RODRIGUEZ,
Vice President.

COUNCIL OF CHIEF STATE SCHOOL OFFICERS (CCSSO),
WASHINGTON, DC 20001,
February 24, 2016.

DEAR CHAIRMAN ALEXANDER, RANKING MEMBER MURRAY, AND MEMBERS OF THE COMMITTEE: I am writing on behalf of chief State school officers to express support for the confirmation of Dr. John King as U.S. Secretary of Education.

Today is a critical time in education. In 2015, Congress reauthorized the Elementary and Secondary Education Act, and States now stand ready and willing to implement the new Every Student Succeeds Act with the additional flexibility and authority it provides States. To be successful, States must forge partnerships at the State, local and Federal levels. Just as States sought a stable Federal policy on education, we also are eager for stability within the U.S. Department of Education during this critical time.

As a former State education chief and classroom teacher, John King brings a unique perspective to the Office of the U.S. Secretary of Education. As a State chief and Acting Secretary of Education, he has demonstrated a commitment to make

sure all students have a high-quality education. He is a thoughtful educational leader who understands the important role chief State school officers play in shaping education policy for all kids.

For these reasons, I urge the U.S. Senate to confirm John King as U.S. Secretary of Education. The Council of Chief State School Officers looks forward to continuing to work with John King and his staff to create helpful guidance and maintain State authority and flexibility under the Every Student Succeeds Act in the months to come.

Sincerely,

CHRIS MINNICH,
Executive Director.

COUNCIL OF THE GREAT CITY SCHOOLS,
WASHINGTON, DC 20004,
February 24, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: The Council of the Great City Schools, the coalition of the Nation's largest central city school districts, writes to express strong support for the nomination of Dr. John B. King, Jr. as United States Secretary of Education. The long overdue reauthorization of the Elementary and Secondary Education Act in Congress must now be implemented in States and school districts throughout the Nation, and Dr. King has the experience needed to lead this work at the U.S. Department of Education.

Dr. King began serving in the U.S. Department of Education in January 2015, and has been Acting Secretary of Education since the beginning of 2016. Most importantly, Dr. King served in a number of education positions at the local and State level prior to coming to Washington, starting as a high school classroom teacher. His subsequent roles in founding and managing local schools provided Acting Secretary King with unique experience leading urban public schools that are closing achievement gaps and preparing college- and career-ready students. In 2011, Dr. King was appointed education commissioner for the State of New York, where he oversaw the elementary and secondary schools that serve over 3 million students, as well as the public, private, and proprietary colleges and universities in the State.

In his time at the U.S. Department of Education, both before and since becoming Acting Secretary, Dr. King has focused on improving educational outcomes for all students and closing achievement gaps. His priorities for expanding early learning, delivering high-quality instruction for poor and minority students, and providing special education, English language acquisition, and innovative services in schools aligns with the goals outlined by Congress in the new Every Student Succeeds Act.

The Council of the Great City Schools urges the Senate to confirm Dr. John B. King, Jr. as U.S. Secretary of Education.

Sincerely,

MICHAEL CASSERLY,
Executive Director.

HUMAN RIGHTS CAMPAIGN®,
WASHINGTON, DC 20036,
February 24, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the Human Rights Campaign's more than one and a half million members and supporters nationwide, I write to urge you to support the nomination of John B. King, Jr., to be Secretary of Education. As the Nation's largest organization working to achieve equal rights for the lesbian, gay, bisexual, and transgender (LGBT) community, HRC believes that Dr. King is exceptionally qualified to lead the U.S. Department of Education.

At the Department of Education, Dr. King has emphasized the importance of strong enforcement of civil rights protections and educational equity. Previously, he served the Department as Principal Senior Advisor, carrying out the duties of the Deputy Secretary of Education, including overseeing all preschool-through-12th-grade education policies, programs, and strategic initiatives. He also oversaw the Department's implementation of the *My Brother's Keeper* initiative, a program designed to address the achievement gap among boys and young men of color.

Prior to his tenure at the Department of Education, Dr. King was commissioner of education for the State of New York serving the State's 3.1 million students and overseeing the public university system. Dr. King pursued an ambitious agenda that invested in early learning, supported teachers' professional development, raised standards for students and teachers, and expanded educational opportunities for high risk students.

A lifelong educator, Dr. King understands that the first step toward academic success is freedom from discrimination, bullying, and harassment, which can lead to lower academic achievement. The Department has worked hard to protect students from discrimination, sexual assault, violence, bullying, and harassment through strong enforcement of Title IX of the Education Amendments of 1972 and the Jeanne Clery Act.

We are confident that Dr. King will continue to be an advocate for strong enforcement of students' civil rights, and we urge you to swiftly confirm John B. King, Jr., as Secretary of Education. His experience, lifelong service in education, and commitment to providing every child with a high quality education make him eminently qualified to lead the U.S. Department of Education.

Sincerely,

DAVID STACY,
Government Affairs Director.

THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS,
WASHINGTON, DC 20006,
February 24, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Re: Confirm Acting Secretary John King as U.S. Secretary of Education

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States, we write to urge your support for the

nomination of Acting Secretary John King to be Secretary of Education for the remainder of the Obama administration.

Given the recent enactment of the Every Student Succeeds Act, and the need for active engagement by the Department of Education in the law's implementation, the civil rights community has a deep interest in this nomination. The original Elementary and Secondary Education Act of 1965, which was renamed the Every Student Succeeds Act in its most recent reauthorization, sought to raise achievement for low-income and otherwise disadvantaged children. That intent has carried through to this most recent version of the law and it is critical that the Department of Education is in a position—with the leadership of John King as Secretary—to ensure that that intent is faithfully implemented.

As a former teacher, and school, district, and State leader, Acting Secretary King is well-suited for the role of Secretary and in particular, to facilitate the transition from the No Child Left Behind Act to the new law. For more than two decades, Acting Secretary King has worked on issues affecting underserved communities. He has served as commissioner of education for the State of New York, managing director of one of the largest school networks in the country, and director of curriculum and instruction at a school in Massachusetts. At every stop, Acting Secretary King has worked to close the achievement gap. While Acting Secretary King's experience is impressive, most importantly, we believe Acting Secretary King understands and appreciates the importance of working collaboratively with coalitions like The Leadership Conference, which will be essential as we focus on ensuring ESSA is implemented in a way that provides equity for all students.

We believe Acting Secretary King will serve as an excellent leader for the Department as the agency uses its important and vital role to implement ESSA. Acting Secretary King is well-positioned to ensure that vulnerable students and communities are meaningfully engaged in ESSA implementation and that the Office for Civil Rights continues its good work to enforce civil rights laws nationwide. Having his leadership for the remainder of the Obama administration will be invaluable and we urge the Senate to swiftly confirm Acting Secretary King. If you have any questions, please feel free to contact Nancy Zirkin at zirkin@civilrights.org or Liz King, Director of Education Policy at king@civilrights.org. Thank you for your consideration.

Sincerely,

WADE HENDERSON,
President & CEO.

NANCY ZIRKIN,
Executive Vice President.

NEW LEADERS,
NEW YORK, NY 10010,
February 24, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
154 Russell Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: New Leaders is pleased to support President Obama's nomination of Dr. John B. King, Jr., as the U.S. Secretary of Education.

New Leaders is a national nonprofit organization dedicated to providing all children with a meaningful, high-quality education that prepares and inspires them to be successful in college, career, and citizenship. We develop transformational school leaders to serve the Nation's highest-need communities and advance the policies and practices that enable great leaders to build schools where teachers thrive and students excel. To date, we have trained more than 2,500 leaders who are currently serving 450,000 students across the country.

For the past year, first as Acting Deputy Secretary and most recently as Acting Secretary, Dr. King has demonstrated a deep, unwavering commitment to our Nation's students, their families, and the dedicated teachers and leaders who serve them—particularly in the highest-need schools and communities. His unmatched dedication to equity, coupled with his experience as a successful teacher, principal,

and system leader, make him especially well-suited to lead the U.S. Department of Education as it supports States, districts, and schools to implement new provisions of the Every Student Succeeds Act (ESSA). A former New Leaders board member, Dr. King recognizes that the success of any school improvement effort depends on the quality and strength of our Nation's school leaders. He is uniquely qualified to oversee the Department's support for leaders at the classroom, school, district, and State levels so that they may take advantage of the opportunities ESSA presents.

We have utmost confidence in Dr. King's ability to engage diverse partners across the education sector to ensure that every student in our PK-12 system is prepared for success in college, careers, or whatever their next step in life may be. It is our hope that Congress will confirm Dr. King in a timely fashion so that he may continue providing balanced leadership during this critical period of transition for our Nation's schools.

Sincerely,

JEAN DESRAVINES,
Chief Executive Officer.

ASSOCIATION FOR SUPERVISION AND
CURRICULUM DEVELOPMENT (ASCD®),
ALEXANDRIA, VA 22311-1714,
February 25, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
U.S. Senate,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: ASCD strongly supports the nomination of John King to be the next U.S. Secretary of Education and we hope that your committee moves swiftly to confirm his appointment.

As an organization that represents over 125,000 educators at all levels of the education profession, we appreciate Dr. King's extensive and varied experience as an educational leader and the expertise, perspective, and passion he brings to serving the needs of all students. We are particularly impressed with his commitment to ensuring that each child, in each community is healthy, safe, engaged, supported, and challenged.

Appearing before a congressional panel on the President's fiscal year 2017 budget request yesterday, Dr. King emphasized his intent to continue to focus on excellence and equity for every student, enhancing the teaching profession, and ensuring higher rates of college completion. ASCD applauds these goals and Dr. King's focus on increasing diversity in the educator workforce. Dr. King's experience as a State education leader, principal, and teacher give him a diverse perspective that will be especially beneficial in leading the Department of Education.

We commend your leadership in moving this nomination forward, especially at this critical time when the Department of Education is beginning to develop the regulatory guidance that will govern the Every Student Succeeds Act. The prospects for the successful implementation of the new law will be enhanced by a Secretary confirmed by the Senate rather than one serving in an "acting" capacity. Toward that end, we urge the committee to approve Dr. King's nomination as soon as possible.

Cordially,

DAVID GRIFFITH,
Senior Director of Government Relations.

THE EDUCATION TRUST,
WASHINGTON, DC 20005,
February 25, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
154 Russell Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of The Education Trust, I write to express my enthusiastic support of Dr. John B. King, Jr. to be the next Secretary of Education.

As an educator, Dr. King has important insight into what good teaching and good schools look like. He's drawn on that insight in his role as commissioner of education in New York, where he worked incredibly hard to improve teaching and learning across the State, and in his tenure at the U.S. Department of Education, where he's continued his efforts to improve outcomes for all young people.

His compass is always guided by what he believes is right for kids, particularly the low-income children and children of color whose very futures depend on high-quality education. Like us, he has a driving sense of urgency about closing the gaps in opportunity and achievement that separate low-income students and students of color from their peers.

The hard work of implementation of the Every Student Succeeds Act (ESSA) is underway. Under ESSA, the Department of Education has an important role to play through enforcement, regulation, and guidance, especially when it comes to ensuring that States and localities are taking seriously their responsibility to all children. The confirmation of Dr. King as Secretary of Education would be a significant step in that process.

We are pleased by reports that the committee will move Dr. King's confirmation process expeditiously. We look forward to working with your staffs to ensure this occurs. Please feel free to contact Daria Hall, Vice President of Government Affairs and Communications, at dhall@edtrust.org or 202-293-1217 ext. 349 if you have any questions.

Sincerely,

KATI HAYCOCK, *CEO.*

EASTER SEALS,
WASHINGTON, DC 20005,
February 25, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
154 Russell Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: Easter Seals writes today urging the Senate to confirm John King as Secretary of the U.S. Department of Education. As the leading provider of early education services to young children with and without disabilities and their families, Easter Seals believes strongly that our Nation's children deserve leadership at the U.S. Department of Education that only comes with a confirmed Secretary.

Our experience in working with Dr. King during his tenure at the Department has demonstrated that he is well qualified to serve as Secretary of the U.S. Department of Education. His background as a student, teacher, principal, charter school founder, and leader of schools and schools systems helps him understand the complexity of our education system and why student outcomes must always be its highest priority.

Again, Easter Seals urges the Senate to confirm John King as the Secretary of Education. Thank you for considering our views.

Sincerely,

KATY BEH NEAS,
Executive Vice President, Public Affairs.

THE NEW TEACHER PROJECT (TNTP),
BROOKLYN, NY 11201,
February 25, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
428 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
154 Russell Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: Today, the U.S. Senate Committee on Health, Education, Labor, and Pensions holds its first hearing to consider President Obama's nomination of Dr. John B. King, Jr. to serve as U.S. Secretary of Education. TNTP strongly endorses Dr. King's nomination, and encourages the committee and the full Senate to confirm him as soon as reasonably possible.

TNTP has had the privilege of working with Dr. King since his days as a school leader in New York and his term as New York State Education Commissioner. From our experiences, we know that Dr. King does not see himself as an appointed official navigating politics and policy. Instead, he still sees himself as a kid whose life was changed—and possibly saved—by great public schools.

Despite deep personal challenges that could have led him to become a bleak educational statistic, Dr. King has epitomized hope through a long, accomplished career as a student, an educator, and a leader of outstanding public schools that achieved exceptional outcomes for low-income students. That hope fuels his unbreakable commitment to all students, but especially to those most in need of receiving an outstanding education to fulfill their potential.

Our Nation has precious few education leaders like Dr. King, who personally know what so many of our students know: what it's like to go to bed hungry, or to feel entirely alone, or to be the only dark-skinned face in a sea of white faces. Students across the country deserve a Secretary of Education who will wake up each day fighting to make sure they get the great education they deserve—the same kind of education that changed his own life.

We hope you and your colleagues will vote Dr. King's nomination out of committee and work to ensure that he receives confirmation by the full Senate.

Thank you for your consideration, and for the work you do on behalf of America's students.

Sincerely,

DANIEL WEISBERG,
Chief Executive Officer.

TEACH FOR AMERICA,
NEW YORK, NY 10004,
February 24, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
828 Hart Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
615 Hart Senate Office Building,
Washington, DC 20510.

DEAR SENATOR ALEXANDER AND SENATOR MURRAY: Teach For America writes in support of Acting Secretary John King's confirmation to lead the U.S. Department of Education.

John King is an inspiring leader who has both a personal connection to and deep understanding of the power of educators to change lives. Having grown up in a low-income neighborhood in Brooklyn, Dr. King's academic journey from PS 276 in Canarsie to Harvard University lends him a valuable vantage point on the state of American education. With a wealth of experience in both teaching in and leading urban public schools, we are confident that he will foster collaboration and find strength in diverse viewpoints. We are confident that he will put at the center the voices of teachers, principals, students, and other leaders and advocates working to ensure that every child has the chance to reach her full potential.

As the former commissioner of education in New York State, Dr. King understands the value of State and local decisionmaking in education and personally brought numerous lasting changes that benefited the students of New York. Throughout his tenure, Dr. King demonstrated the courage of his convictions, and worked tirelessly to galvanize the State around policies that benefited New York's students. As Acting Secretary, Dr. King has already shown he is a reliable steward in the fight for educational excellence and equity for all students. We look forward to continued engagement with the Department under his leadership.

We hope that Congress will move swiftly in confirming Acting Secretary John King to be the Secretary of the U.S. Department of Education.

Sincerely,

ELISA VILLANUEVA BEARD,
Chief Executive Officer.

NATIONAL DOWN SYNDROME CONGRESS (NDSC),
ROSSELL, GA 30076,
February 18, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
455 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
154 Russell Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: The National Down Syndrome Congress (NDSC), a member-sustained, nonprofit organization, which works to promote the interests of people with Down syndrome and their families through advocacy, public awareness, and information, writes in support of the appointment of Dr. John King as Secretary of the U.S. Department of Education.

Dr. King has the qualifications to serve as Secretary of the U.S. Department of Education. He has experience as a teacher, principal, a charter school founder, and a leader of schools and schools systems. In his position as commissioner of education for the State of New York, Dr. King was responsible for the education of 3.1 million elementary and secondary school students. Initiatives under his leadership demonstrated a commitment to both students and educators, including initiatives to increase opportunities for high-need students. Dr. King also served as President of the University of the State of New York providing him with experience in higher education.

In January 2015, Dr. King joined the U.S. Department of Education and carried out the duties of the Deputy Secretary. A year later Dr. King became Acting Secretary of Education. In his letter to U.S. Department of Education staff about goals for 2016, Dr. King recognized the progress that has been made for historically underserved students, including students with disabilities, but also made a commitment to address the persistent achievement gaps. It is critically important to continue this focus on equity. NDSC supports the appointment of John King as Secretary of the U.S. Department of Education and urges you to confirm his appointment as soon as possible.

DAVID TOLLESON,
Executive Director.

RICHELLE (RICKI) SABIA,
Senior Education Policy Advisor.

NATIONAL ALLIANCE FOR PUBLIC
CHARTER SCHOOLS (NAPCS),
WASHINGTON, DC 20005,
February 19, 2016.

Hon. LAMAR ALEXANDER, *Chairman,*
Committee on Health, Education, Labor, and Pensions,
455 Dirksen Senate Office Building,
Washington, DC 20510.

Hon. PATTY MURRAY, *Ranking Member,*
Committee on Health, Education, Labor, and Pensions,
154 Russell Senate Office Building,
Washington, DC 20510.

DEAR CHAIRMAN ALEXANDER AND RANKING MEMBER MURRAY: On behalf of the National Alliance for Public Charter Schools I am writing to offer enthusiastic support for the nomination of Dr. John B. King to serve as U.S. Secretary of Education. I urge the Senate to confirm his nomination.

Dr. King has dedicated his career to strengthening educational opportunities for all students. His experience ranges from classroom teacher to commissioner of the New York State Department of Education. Among his vast resume, Dr. King's experience as Managing Director of Uncommon Schools, a charter school network whose core values include high standards, accountability, curiosity and a college-going culture, illustrates his commitment to closing achievement gaps and providing high-quality options for all students.

Further, as the U.S. Department of Education implements the Every Student Succeeds Act of 2015, it is critical that the Department have strong leadership. I am confident that Dr. King's experience and compelling record of commitment to high standards for all students make him a great candidate to fulfill the duties of U.S. Secretary of Education.

Thank you for your consideration on this matter. The National Alliance looks forward to continued work with Congress and the U.S. Department of Education to advance public education for all students.

Sincerely,

NINA S. REES,
President and CEO.

RESPONSE BY JOHN B. KING, JR., PH.D., TO QUESTIONS OF SENATOR ALEXANDER, SENATOR ENZI, SENATOR MURKOWSKI, SENATOR SCOTT, SENATOR HATCH, AND SENATOR CASSIDY

SENATOR ALEXANDER

Question 1. In the Every Student Succeeds Act, the Secretary is prohibited from prescribing the numeric long-term goals or measurements of interim progress for academic progress and graduation rates that States establish for all students, including timelines for those goals, or the progress expected from any subgroups of students in meeting such goals. How do you interpret the new law's prohibitions on the Secretary from prescribing State goals for student achievement and graduation rates? Will you adhere to these prohibitions and congressional intent?

Answer 1. I understand that the statute does not authorize me to prescribe numeric long-term goals or measurements of interim progress that a State may establish as part of its statewide accountability system for student academic achievement and graduation rates, and the Department will adhere to this restriction.

Question 2. In the "Every Student Succeeds Act," the Secretary and political appointees cannot attempt to participate in, or influence, the peer-review process. Additionally, the Secretary cannot use the approval of the State plan, or revisions or amendments to, or approval of a waiver request, to add any requirements that are inconsistent with or outside the scope of the law or require a State to change its standards. How do you interpret the new law's prohibitions on the Secretary from using the State plan or waiver process to add new mandates or conditions to the plan? How will you adhere to these prohibitions?

Answer 2. The statute prohibits me and other political appointees from participating in, or influencing, the peer review process. I will adhere to this prohibition and will ensure that the Department's other political appointees do also. The statute makes clear that peer review of a State plan is to provide an objective review of State plans and to respect State and local judgments, with the goal of supporting

State and local innovation and providing objective feedback on the quality of the State plan. I value this independent review which will provide me with advice on whether the State plan meets the statutory requirements and therefore warrants my approval.

In approving a State plan, amendments, or a waiver, I understand that I cannot add requirements or conditions that are inconsistent with or outside the scope of the law.

Question 3. ESSA explicitly reflects a bipartisan desire to reduce the Federal footprint in America's schools. So can you explain why the Administration's 2017 budget requests the creation of 269 new positions at the U.S. Department of Education? This would represent an increase of 457 positions from 2015, or more than a 10 percent increase in just 2 years. Can you explain why these positions are necessary, and why the Department intends to expand rather than shrink, given congressional intent to reduce the size of the Department?

Answer 3. The Department of Education is the smallest Cabinet agency with 4,538 full-time equivalents (FTE), despite the third largest discretionary appropriation and the \$1 trillion loan portfolio. We spend less than 1 percent of the \$200 billion we make in grants and loans annually on administration. The 457 FTE increase from 2015 to 2017 is almost all to investigate discrimination complaints and to help administer \$100 billion in new loans and service an outstanding portfolio of over a trillion dollars. The Office for Civil Rights would grow by 213 FTE to keep up with the surge in discrimination complaints from 6,933 in 2010 to 10,900 in 2016. Without an increase in staff, resolution of cases will be delayed. Federal Student Aid staff will increase in order for ED to monitor schools and contractors who help provide aid to 12 million students each year. While we rely on private sector contractors to service the 41 million loan borrowers, we need Federal staff to work with the contractors to ensure they are serving our customers. Finally, we also need expert staff to manage our cyber security efforts and control the privacy of data. That said, we are not assigning more staff to ESSA programs.

Question 4. Since you've been at the Department, you've talked repeatedly about the importance of closing racial and economic "achievement gaps." That's a good and important use of the bully pulpit. How will you also shine a focus on addressing the educational needs of middle-class and suburban students?

Answer 4. I have been very clear that I see no task as more critical than advancing educational equity and excellence. The goal is not to advance equal access to a mediocre education, it is to ensure that every student, regardless of race, class, or zip code has access to the truly world-class education they deserve and need in today's economy. As the question notes, the "equity" piece of that equation is fundamental to our ability to live up to our ideals as a nation and I will continue to focus on improving outcomes for students most in need. Despite significant progress over the past several years, students from low-income families and students of color lag behind their peers in nearly every important measure of school achievement. So do our rural students and students with disabilities, our English Learners, Native American students, and homeless students. That must change.

However, we are also pursuing work in a number of areas that inure benefits to all students. The President's proposal to expand preschool for all would give more children—including middle class children—the early start that we know bolsters long-term success. Our Computer Science for All initiative aims to empower *all* students, regardless of background, with the computer science and computational thinking skills to succeed in today's innovation economy. Through our Testing Action Plan, we are working to reduce unnecessary, redundant or poorly designed assessments that eat up instructional time without providing useful feedback for parents and educators. With the passage of the Every Student Succeeds Act, States and districts have an opportunity to reclaim the goal of a well-rounded education for all students: an education that not only promotes strong numeracy and literacy skills but also provides access to science, social studies, the arts, physical education and health, and the opportunity to learn a second or third language.

As I have in my time at the Department to date, I will continue to pursue policies and celebrate local efforts that support excellence in all of these ways.

Question 5. The past year has seen a great deal of turbulence on college campuses. Whatever one makes of the current debates, there has been a worrisome inclination to stifle certain voices and kinds of speech. What do you think of attempts to silence "hurtful" speech or dis-invite unpopular campus speakers? Can we expect you to speak forthrightly and frequently on the vital role of free speech and intellectual diversity in higher education?

Answer 5. On December 31, then Secretary Arne Duncan and I (performing the duties of the Deputy Secretary) issued a Dear Colleague Letter to enlist the help of education leaders and administrators to help promote mutual respect, tolerance, and diversity on our Nation's schools and institutions of higher education and ensure that their schools and institutions of higher education "are learning environments in which students are free from discrimination and harassment based on their race, religion, or national origin." The letter is available at: <http://www2.ed.gov/policy/gen/guid/secletter/151231.html>.

The focus in the letter on these protections, while always essential, is particularly important amid international and domestic events that create an urgent need for safe spaces for students. In the letter, we emphasized that "[t]o be very clear, working to maintain safe learning communities does not, and must not, mean chilling free expression about the issues of the day—this work is about taking thoughtful steps to create space for open and constructive dialog, while dealing swiftly with actions that create an unlawful hostile environment." We indicated that "protecting free speech means protecting the ability of your students, faculty, staff, and members of the public to hold and express views that may be at odds with your institution's strongly held values. Schools should not ignore the dissonance that this creates, but should instead consciously use these moments as opportunities for reflection, discussion, and increased understanding."

Question 6. There is concern that the Department of Education is using title IX to strip basic constitutional rights from those accused of sexual assault on campus. In a letter that 28 members of the Harvard Law School faculty published in late 2014, they wrote that, under pressure from the Department of Education, "Harvard has adopted procedures for deciding cases of alleged sexual misconduct which lack the most basic elements of fairness and due process, are overwhelmingly stacked against the accused, and are in no way required by Title IX law or regulation." What is your response to such concerns? If confirmed as secretary, what would you do to address them?

Answer 6. The Department's regulations implementing title IX require that educational institutions adopt "grievance procedures providing for prompt and equitable resolution" of complaints. 34 CFR §106.8(b). The Department's Office for Civil Rights (OCR) interprets that regulation to require equitable treatment of both complainants and those accused. At the current time, OCR has accepted for investigation around two dozen complaints filed by accused students claiming they were not treated equitably by their schools.

Under OCR's interpretation of title IX, its implementing regulations, and case law as reflected in its guidance documents and enforcement actions, both parties must have equal opportunity to present relevant witnesses and other evidence and to otherwise participate in the process and must be afforded similar and timely access to any information that will be used at the hearing. Additionally, while OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, if a school chooses to allow the parties to have their lawyers participate in the proceedings, it must do so equally for both parties. This interpretation is based on statute and regulation.

Specifically with regard to Harvard Law School (HLS), I would note that the faculty op-ed criticizing the existing HLS sexual violence policy was published before the conclusion of OCR's investigation, which later concluded that the HLS policy violated title IX and its regulations.

Question 7. The Administration has talked at length about the importance of early childhood education. Can you tell us how you will work with Congress to assess the benefits of current Federal pre-K efforts and reduce unnecessary paperwork or bureaucracy, rather than continuing to call for a new Federal pre-K program?

Answer 7. We appreciate your leadership in helping to authorize, and continue, the Preschool Development Grant program as a part of ESSA, which began as an opportunity for States to develop or accelerate their work to provide high-quality, state-funded preschool to children from low- and moderate-income families. We will continue to work closely with Congress and other agencies to assess the benefits of early childhood education and ensure efficient and high-quality early learning programs to meet the need of families, children and States. We have invested in research through our Institute of Education Sciences, and in partnership with HHS and private sector partners, through the National Academies of Science, to identify evidence-based strategies that support children's learning and development. In addition, we continue to work more collaboratively than ever with our partners at the Department of Health and Human Service in jointly administering the Race to the Top-Early Learning Challenge and Preschool Development Grants. We have also es-

tablished an Interagency Policy Board to coordinate and align Federal early learning programs and policies, and to avoid redundancy. As the two largest providers of Federal early learning services we will continue to work together and with Congress to continue identifying best practices in early childhood development and help ensure the needs of our youngest children are met efficiently.

Question 8. I appreciate your willingness to review the Task Force on Federal Regulation of Higher Education's report "Recalibrating Regulation of Colleges and Universities." The report identifies several provisions and regulations that the Department of Education can change or modify on its own, without congressional action. Some of these provisions include changing the Return to Title IV regulations and updates to the financial responsibility standards. Are there specific items or initiatives in the report that the Department of Education will undertake to enact smarter and less burdensome requirements on our 6,000 colleges and universities?

Answer 8. The Administration has already taken steps that are included in the task force report aimed at reducing administrative burden at colleges and universities while maintaining the integrity of the student financial aid programs. In September, President Obama announced that beginning with the 2017-18 award year students and families will be able to access and submit the Free Application for Federal Student Aid 3 months earlier, beginning October 2016. In addition, applicants will submit "prior-prior" income information, meaning that 2015 income information, already available in October through the data retrieval tool, will be used to inform aid decisions for the 2017 award year. Both of these changes will streamline the student aid process and provide families with an earlier picture of their aid eligibility more consistent with the timeline for applying for college and it will also significantly reduce the verification burden for colleges and universities as called for by the task force.

In addition, we have taken administrative steps to improve the Federal financial aid process. Today, more than 99 percent of FAFSAs are submitted online. On average, students complete the online FAFSA in approximately 20 minutes, one third of the time it took 7 years ago. Moreover, last year over 6 million students and parents used the IRS Data Retrieval Tool (DRT), which allows students and parents to access and automatically transfer their IRS tax return information into the FAFSA. Despite these improvements we agree more can be done to make it easier to apply for college. That is why the fiscal year 2017 budget called for the elimination of up to 30 questions related to savings, investments, and net worth, since these have very little impact in determining aid awards, as well as untaxed income and exclusions from income data that are not reported to the IRS. When coupled with the steps the Administration has taken to simplify and streamline the FAFSA process, these policy changes greatly reduce institutional verification burden as called for by the task force. We look forward to continuing to work with Congress on how best to address these issues.

Question 9a. In the Inspector General (IG) Fiscal Year 2015 Federal Information Security Modernization Act (FISMA) Report, the IG conducted a cybersecurity vulnerability audit in which it was able to penetrate one of the Department's networks and move throughout the system undetected. The IG concluded: "We determined that the Department's overall incident response and reporting program was not generally effective because we identified key weaknesses in its detection and prevention of system penetration." The Department's inability to detect an outside actor as it moved throughout the system raises concerns that the Department has already been breached and is unaware of the compromise to its systems. If confirmed, will you commit to promptly conducting a full scan of all of the Department's systems to determine whether outside actors have infiltrated the system undetected? Additionally, will you commit to repeating such scans at regular intervals?

Answer 9a. The Department has taken a number of proactive steps to manage cybersecurity risk factors, and regular scanning and testing is an important part of those efforts. Among other things, the Department has sought technical assistance and information about best practices from across the Federal Government, including components of the Department of Homeland Security. We are committed to aggressively implementing best practices in order to proactively identify and remediate any weaknesses in our systems and continually address evolving cyber risk factors.

Question 9b. What steps is the Department taking to improve its incident response and reporting program?

Answer 9b. I have directed my team to further strengthen our incident response capabilities in the coming year by reviewing and implementing best practices and lessons learned from public and commercial experiences with incident response.

These steps will improve our preparedness and the efficiency and effectiveness of our processes in order to be ready to respond, if necessary. For example, the Department is implementing new and additional incident response capabilities and resources to detect the types of malicious attacks identified during the audit through funding included in the fiscal year 2016 budget. The Department is also taking additional steps to ensure and validate that all intrusion detection/prevention systems supporting the Department's networks are properly configured and monitored. Additionally, we are conducting a review of the EDUCATE and VDC network security architectures in order to identify and implement plans to rapidly address any gaps.

Question 10. If confirmed, do you expect schools and universities to comply with every word of title IX guidance? Please answer yes or no. If no, please explain what is required by the guidance and what is not.

Answer 10. We clearly state in guidance documents when the statute or regulations require specific action, and also provide best practices which do not require compliance. Guidance, by itself, is non-binding. The guidance issued by OCR contains both OCR's interpretations of what title IX and its implementing regulations and case law require and some non-exclusive ways for schools to meet those requirements.

The Department does not expect schools and universities to comply with every word of the Office for Civil Rights' (OCR's) 2011 Title IX Dear Colleague Letter regarding sexual violence, or its 2014 Title IX Frequently Asked Questions (FAQs) regarding sexual violence. For example, OCR's 2014 FAQs regarding sexual violence discourages student participation in conduct review boards in cases involving allegations of sexual violence. But in two recent examples, OCR issued letters resolving investigations at two universities (University of Virginia and Michigan State University) that described their violation of title IX and how they would be resolved; neither letter identified student participation as a title IX violation and both institutions continue to include students on those boards.

Question 11. Does the Office for Civil rights require schools and universities to use a preponderance of evidence standard when deciding whether an allegation of sexual assault occurred?

Answer 11. Title IX and its implementing regulations include the requirement that educational institutions adopt "grievance procedures providing for prompt and equitable resolution" of complaints, 34 CFR § 106.8(b)—OCR's use of the "preponderance of the evidence" standard, as explained in its 2011 Dear Colleague Letter, is based on these statutory and regulatory requirements, and is based on case law.

Question 12. If confirmed, Section 8549 of the Every Student Succeeds Act requires that you develop procedures to review guidance and allow the public to request guidance be modified or rescinded. Have you started that process? If not, when will you begin to work on it?

Answer 12. This is the beginning of an important and long-term process and we want to make sure we are supporting States as they transition to the new law. For new or revised guidance, the Department continues to use its processes for approving guidance documents internally, and to use executive office clearance processes for obtaining White House clearance. A list of significant guidance documents is available <http://www2.ed.gov/policy/gen/guid/significant-guidance.html>, and will continue to be updated. This list provides the date in which the guidance was last issued or revised, and includes instructions by which the public can submit comment on any of the significant guidance documents. For Department guidance that will need to be rescinded as a result of ESSA, the Department will implement the processes outlined in the Office of Management and Budget, Executive Office of the President "Agency Good Guidance Practices," which outlines policies and procedures for the development, issuance, and use of significant guidance documents by executive branch departments and agencies.

Question 13. I have concerns when Federal agencies attempt to institute new policies and rules under the guise of interpretative guidance, and in the Department of Education's case, using Dear Colleague letters to set new requirements instead of using the rulemaking process. In a recent Dear Colleague Letter (DCL GEN 15–14), the Department asserts its intent is to "reState and clarify the rules ..." regarding guaranty agencies. However, the existing regulations, which have been followed for years by guaranty agencies (and for which the Department has conducted audits and oversight), were implemented and were never challenged by the Department until now. After the issuance of this new six-page Dear Colleague Letter, the Department attempted to add this very issue to the current negotiated rulemaking

process regarding borrower defenses in order to, as stated in the corresponding issue paper on the proposed regulation, “codify] the explanation of regulations provided in Dear Colleague Letter GEN-15-14 ...” Given that the Department wanted to codify the Dear Colleague letter, it appears that DCL GEN 15-14 is not simply restating a long-standing rule. While the issue has been removed from the discussion at the ongoing negotiated rulemaking, it is still pending in the courts—an unfortunate result of the Department not following the proper regulatory process.

Will you retract DCL GEN 15-14 and instead follow the rulemaking process? Will you assure this committee that in the future new rules and policies will be promulgated through the rulemaking process?

Answer 13. The Department utilizes Dear Colleague Letters (DCLs) to provide clarification to the field on how the Department interprets our regulations. We believe this helps institutions keep within the law and regulations, and DCLs are often issued in response to questions in the field about the implementation of our regulations. The DCL you reference was issued by the Department to explain the history of the rules governing the imposition of collection costs on borrowers who enter into repayment agreements (including a rehabilitation agreement) within 60 days of a default. As discussed in that letter and in the decision of the United States Court of Appeals for the Seventh Circuit in *Bible v. United Student Aid Funds*, the conclusion that a guaranty agency cannot charge collection costs to a borrower who enters into a repayment agreement within 60 days of default is based on regulations issued by the Department in 1992, which were based in part on earlier regulations governing tax refund offset procedures issued in 1986. As we also noted in the DCL, it is the Department’s experience that few borrowers enter into a repayment agreement within the initial 60 day period. Therefore, the Department’s past reviews of guaranty agencies did not focus on that particular issue. However, as noted in the letter and in the Court’s decision, the Department explained the prohibition on charging collection costs to these borrowers when the issue arose. In light of the claims made by United Student Aid Funds in the *Bible* case (which were ultimately rejected by the court), we offered to make our long-standing and established interpretation of the regulations even more clear under the negotiated rulemaking process.

Question 14. As the committee approaches reauthorizing the Higher Education Act, an organization has raised concerns over student safety abroad. One of their concerns is that students who attend study abroad programs and families of these students are unaware of safety hazards, such as dangerous landscapes, harsh weather, diseases or crime, in the country or region where they plan to travel. Please update the committee on the following:

(1) Steps the Department has taken to disseminate safety information about study abroad locations to institutions of higher education, students or families; and,

(2) Efforts the Department has taken to coordinate with the Department of State on disseminating information to institutions of higher education, students and families about safety concerns in foreign countries or about access to Department of State traveler resources.

Answer 14. The Department of Education’s International & Foreign Language office (IFLE) continues to disseminate information to its listserv and through social media about general study abroad safety. The IFLE office continues to require all grantee travelers to register with the Department of State’s Smart Traveler Enrollment Program (STEP) for up to date information on country-related risks. IFLE has posted a page on Travel Abroad Safety and Health on its Web site at: <http://www2.ed.gov/about/offices/list/ope/iegps/travel-safety.html> and referred the public to study abroad safety resources readily available online through its social media outlets. The IFLE team is also planning a webinar in the spring of 2016 on the subject of study abroad safety. IFLE communicates clearly that all Fulbright-Hays participants are required to have health insurance that must be valid in the host country. The participant’s insurance must include emergency evacuation coverage. Students who use their title VI funded Foreign Language & Area Studies (FLAS) fellowships to study overseas are informed about STEP, and IFLE allows students to use the institutional payment portion of the fellowship to purchase health insurance.

The IFLE team coordinates regularly with the Department of State’s Bureau of Education & Cultural Affairs on issues related to student safety abroad. The IFLE team continually assesses the advisability of supporting programs in specific nations based on the Department of State’s safety assessment. The IFLE team also regularly meets with the Fulbright Foreign Scholarship Board, which jointly oversees Fulbright and Fulbright-Hays programs at the Departments of State and Education, respectively to discuss a number of issues related to the programs, including safety.

Upon notification of a high-risk assessment from the Department of State, IFLE staff quickly communicates with staff at pertinent institutions of higher education as well as with State Department posts or Fulbright Commissions in country to ensure an adequate response to protect the health and safety of students and faculty in that country, including, when necessary, authorizing immediate withdrawal and return to the United States.

SENATOR ENZI

Question 1. At a February 2, 2016 hearing before the House Committee on Oversight and Government Reform, you testified about rapid improvements in the wake of the Department's negative performance in OMB's evaluation of cybersecurity programs. That is good progress, but it is just a first step.

Even if the Department is finally coming into compliance with the cybersecurity audits it faces from the IG, the Department must recognize that cybersecurity cannot solely be compliance based. The Department must have a strong cybersecurity posture that can adapt and respond to the evolving threat actors who seek to use its 139 million student records for nefarious purposes. What steps will you take to adopt a proactive cybersecurity posture?

Answer 1. I agree that the Department has made meaningful progress on cybersecurity in the past year, but the work of addressing cybersecurity is never done, and I have made the continued strengthening of cybersecurity a top management priority for the next year. There are a number of areas I have identified for additional improvements and I have directed my team to immediately undertake additional actions to address those.

First, the team is continuing to work aggressively to accelerate implementation of two-factor authentication for the remaining privileged users in order to achieve 100 percent compliance as projected during March 2016. Additional steps include continuing to use a focused and disciplined approach to systemically resolving—and addressing the root causes behind—any cybersecurity related findings from both our 2015 FISMA Audit and the 2015 Financial Statement Audit. Beyond those compliance measures, I have also directed the team to take additional proactive steps to strengthen the cybersecurity of our networks, increase end user cybersecurity awareness, support and expand further the cybersecurity capacity of our third party partners at guaranty agencies and institutions of higher education, grow our incident response capabilities, and continue to build the capacity of our internal team through hiring of additional professionals with expertise on these issues who can assist us in implementing best practices to improve the Department's cybersecurity program.

Question 2. During your time as Commissioner of Education in New York, you faced significant backlash from virtually all parties with regard to your effort to facilitate the implementation of inBloom. The purpose of inBloom was to amass an extraordinary amount of student data with the intent of sharing it with private software developers to create personalized educational products. This effort was finally stopped by an act of the New York State Legislature.

What did you learn from that lesson with regard to the sensitivity of student data and how it belongs to the students and their parents or guardians until their consent is explicitly provided?

Answer 2. While data can be incredibly transformative and empowering, student privacy must be prioritized. Data is critical to teachers and it allows them to support students, differentiate instruction and make real time decisions to help students to succeed. Analyzing and acting upon data in smart ways can transform teaching and learning and help students, empower parents and inform school leaders in order to enable targeted deployment of scarce resources. Using data in a smart way is also an essential to expanding equity—data can help teachers identify, understand, and address gaps they might not have otherwise recognized.

While we work to harness the power of data to promote access to an excellent education for all, we must also be as diligent about student privacy as we are about the need to use student data. States and districts must adopt best practices to protect student privacy and learn from each other as we all move forward to improve outcomes for all students. The Department plays an essential role in protecting the personal information of our students by ensuring the proper access to and use of student data through its administration and enforcement of the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). In order to stay ahead of the growing number of complex student privacy issues, the Department is committing additional resources to our student privacy operations in order to enhance our ability to administer and enforce these laws, and to promote privacy best practices.

SENATOR MURKOWSKI

Question 1. What is your vision for the Department of Education?

Answer 1. I believe education can be the difference between hope and despair—between life and death, even—because it was for me. Amidst the trauma and uncertainty in my life after my parents passed away, school was a refuge. Teachers saved my life. It was, in large part, because of them that I became a teacher myself. But there are too many children from backgrounds like mine who deserve the same chance. I want school for them to be what it was for me. And I believe every American, regardless of background, deserves the world class education that it will take to succeed in today's economy.

I have laid out three priorities for the Department for the remainder of the year.

First, we must support States, districts, and educators in their work to advance educational equity and excellence for every child. Through implementation of the Every Student Succeeds Act, the Department will continue to play its critical role in ensuring guardrails to protect students' civil rights. At the same time, we will support State and local efforts to seize the new opportunity to establish better, more balanced ways of assessing student learning and to reclaim the goal of a well-rounded education for all students. In addition to implementing the new law, the Department will continue to use our policy tools and our "bully pulpit" to keep the national focus on a first-rate education for every child—including supporting State and local efforts to expand access to high-quality preschool and computer science.

Second, we must lift up the teaching profession, and find more ways to celebrate, support, and sustain our Nation's educators. We all know from research and from personal experience the importance of great teaching. The start of a new era also brings with it an opening for a much-needed reset in the national dialog. Over the last few years, education policy discussions have too often been characterized by more heat than light—especially where educators are concerned. Despite the best of intentions, teachers and principals, at times, have felt attacked and unfairly blamed. All of us—at the local, State, and Federal level—have to take responsibility for the climate that exists. And all of us must do whatever we can to change it.

Finally, we know that in today's skills-based economy, education beyond a high school diploma is more important than ever before. We must continue to work together to ensure that every student has the opportunity to obtain the post-secondary education needed to gain the knowledge to succeed—whether in the form of a 2-year or 4-year college degree, or an industry credential and direct pathway to a well-paying job. The Department will continue to focus on advancing access, affordability, and completion in higher education—including protecting students and taxpayers by cracking down on fraud and abuse by bad actors and supporting student loan borrowers to manage their loan repayment.

Question 2. Your written testimony was not very specific about how you plan to lead the Department to implement the Every Student Succeeds Act. What do you feel the role of the Department is in K–12 education going forward?

Answer 2. The passage of the Every Student Succeeds Act (ESSA) is a major accomplishment and builds on existing efforts to expand educational excellence and equity in partnership with States, districts, communities, and educators. ESSA presents us with a moment of both opportunity and moral responsibility.

ESSA advances equity by upholding critical protections and maintaining dedicated resources for America's most disadvantaged students. Importantly, the law maintains expectations that action will be taken to improve opportunities for students in schools that chronically underperform, that do not improve low graduation rates, and that do not ensure progress for all student groups.

The new law also embodies much of what the Obama administration has supported over the last 7 years. For the first time, ESSA enshrines in law high, state-chosen learning standards so that all students are prepared for college and careers. The law supports local innovation and builds on this Administration's historic investments in quality preschool. It requires that information on student progress is shared through annual, statewide assessments. And it supports State efforts to audit and streamline assessments so that all State and local tests are high quality and worth taking.

Importantly, ESSA builds on work already underway to raise expectations for students and establish locally tailored systems for school improvement in States. The law rightly shifts responsibility for developing strategies to support the highest-need students and schools to State and local decisionmakers—and away from the one-size-fits-all mandates of No Child Left behind. And it creates opportunities for States to reclaim the goal of a rigorous, well-rounded education for every child. The

Department of Education will work to be a good partner to States, districts, and educators as they take on this critical work.

Education is, and should remain, primarily a State and local responsibility. ESSA is a big and complex law with new provisions related to data reporting, accountability, support systems, programs, and authorities. What we plan to do at the Federal level is to support States and districts to improve opportunity for students, invest in local innovation, research and scale what works, ensure transparency, and protect our students' civil rights by providing guardrails to ensure educational opportunity for all children. I, and all my colleagues at the Department, take these responsibilities very seriously.

Ultimately, we all want quality implementation of the law that supports States, districts, and schools in helping every student to succeed.

ESSA implementation will require an incredible amount of work. The Department has heard from stakeholders across the country about where guidance or technical assistance is most needed. We've sought input on areas in need of regulation, received hundreds of comments via our notice in the Federal Register, and held public meetings.

We're still early in the process, but there's urgency in the work. To support States, districts, and educators the Department will engage in negotiated rule-making on assessments and the law's requirement that Federal funds be used to supplement, not supplant local and State investments in education. Sessions will begin in late March and will be open to the public.

As we continue to meet with stakeholders and determine regulations and guidance requiring updates, we look forward to a robust discussion on the new law.

Question 3. The Department of Education has been severely criticized by the Inspector General for not sufficiently protecting the 139 million Social Security numbers of Federal student aid borrowers. The IG successfully hacked the Department's computer network in a 2015 audit and concluded that the Department's ability to protect that private data is not effective. Please list the actions that you, as Acting Secretary, are taking right now to bring the Department's cybersecurity grade from a "D" to an "A" over the next year.

Answer 3. I take the Department's responsibility for safeguarding sensitive data extremely seriously. While I believe that the Department has made meaningful progress on cybersecurity in the past year, the work of addressing cybersecurity is never done, and I have made clear to my team that we must do better, and continue to do better. That is why I have made the continued strengthening of cybersecurity a top management priority for the next year. There are a number of areas I have identified for additional improvements and I have directed my team to immediately undertake additional actions to address those, including: completing implementation of two factor authentication at the single external vendor by the end of March 2016, systematically resolving and addressing identified root causes for all cybersecurity related audit findings, strengthening the cybersecurity of our networks, as well as the networks of our third party partners at guaranty agencies and institutions of higher education, increasing end user cybersecurity awareness, growing our incident response capabilities, and building the capacity of our internal team through additional hiring of expert professionals.

Question 4. The Every Student Succeeds Act includes two provisions that I worked on with my colleagues on this committee as well as Senator Boxer and others across the Senate. The first is the reauthorization of the 21st Century Community Learning Centers program, which supports afterschool programs. We negotiated a provision within the 21stC program to allow certain high-quality extended learning programs to use 21stC funds for 21stC activities only, and not for the general costs of implementing an extended school day or year program. Will you commit that the Department will abide by this statutory limitation as you develop regulations and guidance under ESSA and as you solicit applications for 21stC funds?

Answer 4. The Department recognizes the important purpose of the 21st Century Community Learning Centers program to support before- and after-school programs, and we will abide by ESSA's requirements for the 21st Century program, in accordance with the statute.

Under ESSA, States may use funding to support 21st Century activities that are included as part of an expanded learning program that provide students at least 300 additional program hours before, during, or after the traditional school day. ESSA provides priorities for the use of funds that focus on providing services to students who attend schools that are implementing comprehensive support and improvement activities, along with several other priorities. These funds may not supplant school day requirements.

Question 5. The second ESSA provision that I would like to ask you about is one that Senator Franken and I worked on—the authorization of funds from Indian Education National Activities to support Native language immersion programs and schools. The purpose of authorizing this support is to assist American Indian and Alaska Native communities throughout the Nation to revitalize their languages, which are so closely tied to their cultures and their children’s future. Native communities are anxious for these funds to become available. When can these communities expect to see the first request for applications for these funds? How do you anticipate implementing this provision to ensure that schools and programs in all regions of the country, serving the maximum variety of languages, are able to benefit from this support?

Answer 5. Over the last 7 years, Indian students and communities have made progress in reinvigorating efforts to preserve and restore Native languages and culture; increasing tribal capacity to influence and control educational decisions for Native students; and raising awareness about school climate issues that are unique to Indian students and communities. The Native language immersion schools and programs provisions are an important continuation of this work.

The administration has begun and will continue to engage tribal communities and other interested stakeholders through the summer of 2016 in order to establish priorities and ensure timely implementation of the new provisions and programs authorized in ESSA. We thank you for your leadership on Native language immersion issues and will remain in close contact with your office as we consider implementation of this, and other provisions, within the new Title VI of ESSA.

Question 6. The committee’s staff have been informed of the ten investigations the Department’s Office of Inspector General has conducted between 2012 and 2015 involving senior officials. In one case that occurred in 2012—before you arrived at the Department—a GS–15 employee sexually harassed three contract employees who were under his operational control. While the Department of Justice declined the matter for prosecution, the Department of Education suspended the employee for 12 days. The Department’s Office of Civil Rights works to ensure that college students who have been harassed or abused are protected under their title IX rights, which includes being protected from having to study or live in proximity to their abusers. Are the Department’s employees afforded the same protection? Was the GS–15 employee removed from proximity to his victims? If not, will you direct that such protections are afforded to all employees in the future?

Answer 6. In 2011, the Department’s Office of the Inspector General (OIG) forwarded information to the U.S. Department of Education’s Office of Management (OM) concerning allegations of sexual harassment by an ED employee against three contract employees who were under the operational control of the ED employee. Immediately upon notification of the allegations, OM removed the ED employee from operational control and proximity over the office where the three employees worked. OM reviewed the information provided by OIG and concluded that the information supported a finding that the ED employee made inappropriate comments to the three contract employees. Based on OM’s findings and conclusion, OM, following ED’s disciplinary procedures, issued a 12-day suspension for “inappropriate behavior.” We take very seriously our responsibility to help ensure a safe working environment for our employees and contractors.

Question 7. How will you ensure that local communities and States will be empowered in the new regulations pertaining to ESSA?

Answer 7. Education is, and should remain, primarily a State and local responsibility and the Department is committed to supporting States and local school districts in that responsibility. Importantly, ESSA empowers State and local decision-makers to develop their own strategies for supporting the students and schools most in need based on evidence, rather than imposing the one-size-fits all approach of No Child Left Behind (NCLB). By providing States and districts with more flexibility to innovate and implement locally driven reform, ESSA moves beyond NCLB in a way that will drive stronger outcomes for all kids.

In considering whether to regulate, we are working to identify areas in which regulations would clarify the law or ensure effective implementation of the law.

This is a big and complex law, with a lot of new pieces and new opportunities for States, districts and their students. As I have mentioned, this is the beginning of a long process and we want to make sure we are supporting States and districts as they transition from NCLB to ESSA. This includes the Department gathering input to determine our regulatory plans under the ESSA, so I cannot speak to specific regulatory provisions here. However, I can say that we are very pleased to have received written and oral comments from hundreds, including those representing

local school districts and States. Further, during our upcoming negotiated rule-making sessions, we will be seating negotiators representing both State and local interests, among other constituencies. Additionally, during the rulemaking process, the public, including local State and district stakeholders, will have an opportunity to comment on specific proposed rules before they are final.

Question 8. In your new role as the Secretary of Education, will you still be supportive of Boards of Cooperative Educational Services, which provide shared educational programs and services to school districts and States, and consider policy decisions that support sustaining and even growing their role?

Answer 8. As Chief State School Officer in NY, I recognized how vital Boards of Cooperative Educational Services (BOCES) can be in building local capacity, supporting implementation, sharing promising practices, and sustaining the work over time. They were an asset to both my team at the State level as well as local districts and educators in the communication, execution, and continuous improvement of our work. This was particularly true for smaller and mid-size LEAs. By leveraging the additional resources, expertise and capacity of the BOCES and through collaboration they were able to make notable progress.

Given my personal experience, I respect the right of a State to establish entities such as the BOCES to provide shared educational services and recognize that they often can help implement Federal education programs. It is a State decision, however, whether to establish these entities.

SENATOR SCOTT

Question 1. When we spoke in my office on 2/24/16, you said that the Administration would prefer to support DC public schools rather than the voucher program. You also said that the Administration is holding onto the \$35 million in excess carry over funds to preserve scholarships for the children currently in the program. You also justified this position by saying that the Department must hold onto the carry-over funds in the case that Congress does not make appropriations for DC OSP in future years. As I'm sure you know, the SOAR Act ties together funding for all three approaches to DC K-12 education: DC Public Schools, Charter Schools, and DC OSP. In fact, as part of this approach, DC public schools have received more resources than DCOSP since 2004. Therefore, under the SOAR Act, if Congress does not appropriate funds for the DC OSP, then they do not appropriate funds for DC Public Schools either. This being the case, why has the Department chosen to withhold administrative funds from the DCOSP, but not DC Public Schools or DC Charter Schools?

Answer 1. The Department is pleased that students in Washington, DC are making tremendous progress. High school graduation rates are improving, and according to last year's National Assessment of Educational Progress (NAEP), fourth grade reading achievement in Washington, DC improved more than any other State since the creation of the NAEP assessment. In addition, charter schools in Washington, DC are producing significant gains in students' learning, especially for students from low-income homes. This progress is the result of hardworking students, families and educators, and has been supported in part by investments from our Department, including through the SOAR Act. As you noted, the SOAR Act's programs are tripartite, and these funding streams serve different functions. Whereas the awards for charter schools support startup costs for new public schools, and investments in DCPS largely incentivize excellent educators, under the SOAR Act, the DC OSP funds are awarded to a grantee that awards scholarships to eligible students seeking to attend private schools. The SOAR Act limits the amount of appropriated funds for administrative purposes. The Department routinely approves the grantee's request for the maximum amount of administrative funds permitted. Also, the Department maintains reserves to ensure that scholarships continue for students currently enrolled in private schools through the DC OSP with minimal disruption to their education.

Question 2. The SOAR Act provides only 2 simple criteria for eligibility for a scholarship: That the student is low income, and that she is a DC resident. However, the department is actively blocking other categories of students from receiving scholarships. This includes students who were previously enrolled in private schools, students previously assigned to control groups, and students not using a scholarship for 2 years or more. If a student loses access to the resources that support their private school education—a common scenario—under your rules that student does not qualify for a scholarship. Do you have a reason for why the Department is excluding these children, and will you commit to returning these eligibility requirements according to the standard made clear in the SOAR Act?

Answer 2. The Department is committed to ensuring that all students can earn an excellent education. In implementing the SOAR Act, the Department considers the current and future needs of all DC OSP scholarship students and families in the context of the statute. All applications received by the DC OSP grantee, including applications from students who attended private school during the previous year and are eligible under the SOAR Act, are reviewed by the grantee to determine whether they meet the definition of “Eligible Student,” in accordance with the law. Furthermore, the SOAR Act prioritizes the awarding of scholarships to students who were previously enrolled in a public school identified for improvement, corrective action or restructuring under the Elementary and Secondary Education Act. In executing the DC OSP lottery, the grantee incorporates these priorities while seeking to ensure a fair process for interested families. In addition, the SOAR Act requires that the Department “target resources to students and families that lack the financial resources to take advantage of available educational options; and . . . provide students and families with the widest range of educational options.” Consistent with the past several years, the Department implements these requirements by giving priority to students who attended public schools in the previous school year over students who attended private school in the previous school year. In addition, this year, the grantee may award scholarships to students previously enrolled in the control group who have a sibling currently receiving a DC OSP scholarship.

Question 3. The Obama administration has consistently zeroed out funding for the DC OSP program in its annual budget request. Why does the Administration continue to zero out funding for a program that can boast a 90 percent graduation rate?

Answer 3. The Administration is committed to ensuring that there is sufficient funding under the DC OSP to provide for the continuity of education for students currently enrolled in the program. Sufficient funds to accomplish that goal are retained in the Department’s DC OSP account, and therefore no new funds are required to accomplish that goal.

The Department has focused its budget authority on ensuring equity and excellence across K–12 public schools.

Question 4. Dr. King, in ESSA, Congress solidified support for charter schools by streamlining existing programs providing accountability measures, and supporting resources to replicate and expand high-quality charter schools. Will you commit to following congressional intent, and implementing the charter school provisions of ESSA so that we may expand and sustain high-quality charter schools?

Answer 4. As the founder of a public charter school, and one of the top performing middle schools in Massachusetts, I know that charter schools can transform the lives of the students they serve. Over the last 7 years, the Department has helped to accelerate both the growth and the improvement of charter schools throughout the Nation. In fact, over 40 percent of public charter schools operating in SY13–14 received funding through the Department’s Charter Schools Programs (CSP) between SY06–07 and SY13–14. We are pleased that as the charter school sector has grown, charter school performance also has improved, as validated by independent researchers. In the year ahead, the Department will continue working closely with our partners under the guidelines of ESSA to support the creation, replication and expansion of high-quality charter schools.

Question 5. Could you please clarify how States should treat the 95 percent testing requirements in light of the opt-out provision in ESSA and provide an estimated timeframe for when we can expect the Department to issue regulations in that regard? What will be the impact on States if they are unable to meet the 95 percent requirements due to high levels of parental opt-out?

Answer 5. ESSA maintained the longstanding ESEA requirement that States assess all students in mathematics and reading/language arts annually in grades 3–8, and at least once in high school, and in science in each of three grade spans. A high-quality annual statewide assessment system that includes all students is important so that local leaders, educators, and parents can have the information they need to help every student succeed and ensure equity by holding all students to the same high expectations. The Department is still in the process of gathering input on what regulations to promulgate and guidance to issue, and at this point I cannot estimate a timeframe by which potential regulation or guidance documents would be ready.

We also recognize and share concerns about the amount of time students are spending on standardized testing in some places. That’s why the President has put in place a Testing Action Plan to improve assessment systems and eliminate unnecessary or low-quality assessments. The Department has taken significant steps forward in implementing that plan and will continue to do so.

SENATOR HATCH

Question 1. I was heartened that Secretary Duncan abandoned trying to calculate a “rating” for each our 6,000 colleges and universities and instead put out the College Scorecard with discreet statistics, so students and families can determine which data points are important for them.

But, I was disappointed to learn that the Department kept no records of how the student borrowing and repayment calculations were made.

Recently, my staff recently submitted a request with the Department asking for technical assistance in order to model the effects of Senator Shaheen’s and my Student Protection and Success Act, which depends on student loan repayment rates. As the College Scorecard featured many years of repayment rates, I wished to use the variables that were part of the mathematic formula used to calculate these rates prominently featured by the Department’s new transparency tool.

However, my staff was informed that the Department did not keep any of the calculations or underlying variables used to calculate the College Scorecard repayment rates.

It is highly unusual to publicize findings, especially ones that are used to compare institutions, without being able to reproduce your calculations or “show your work” as they say in mathematics classes.

Can you explain the Department’s reasoning behind this, and ways in which the Department may act in a more mathematically valid way in the future?

Answer 1. My staff was pleased to provide your office with the information requested last month. After reviewing the initial request, we determined that the exact specifications of the request did not align with the backup data that were maintained for the Scorecard repayment rates. The request for balances at particular points in time could not be accomplished without generating concerns about the privacy of student-level data. Instead, in order to meet your request, we were able to provide a new data run that better matched the nature of the request from your office, and that protected the privacy of borrowers in the cohorts. As we continue to produce the College Scorecard, we will work to refine the calculations, as well as to evaluate ways to maintain other pieces of the underlying data.

Question 2. I’ve been glad to see the Department move toward a more fair, unbiased system of contracting over the past year. To make sure this shift is continued, I would like to know what the Department is doing to cultivate good student loan serving in the upcoming rebidding process for student loan servicing contracts. Do your plans include allowing high-quality, smaller NFP servicers to bid. Will the Department ensure a fair, efficient and transparent process, with a level playing field for participation in that process?

Answer 2. Student loan servicing is one of the Department’s largest and most complex responsibilities, affecting nearly 30 million borrowers and having a portfolio over \$1 trillion. Our first priority is ensuring that all student loan borrowers are afforded a high-quality customer experience as they work to responsibly manage their student loan debt. Accordingly, we have begun to look at future models of loan servicing and we are currently in the planning phase of a new student loan servicing acquisition; this effort will streamline and simplify servicing systems and processes to improve customer service, increase efficiency, and enhance the Department’s ability to effectively oversee and monitor servicing operations.

NFPs will have an opportunity to participate in the solicitation process, both as bidders and as members of teaming arrangements. In managing this undertaking we will work to ensure that borrowers receive the highest quality of service while protecting the interests of taxpayers.

Question 3. The Department of Education has consistently tried, often with underwhelming results, to either incentivize or mandate equitable teacher distribution throughout States. As you know TEACH Grants and other tools have shown to not be effective at incentivizing teacher placement, nor can you require that States achieve equitable distribution. How do you plan to streamline the incentive process for individual teachers, and how do you plan to help States do the same?

Answer 3. Ensuring equitable access to excellent educators for all students—particularly students from low-income families and students of color, continues to be one of ED’s key priorities, and we seek to use the tools we have to support increased equity. For example, the Department recognizes that existing teacher financial assistance programs have proved insufficient to incentivize individuals to join and remain in the teaching profession. That is why the President’s fiscal year 2017 budget proposes simplifying existing post-secondary assistance available to teachers by consolidating existing programs into a single, more generous loan forgiveness program. The new program would reward teachers in high-need schools with forgiveness up

to \$10,000, while those who graduated from effective teacher preparation programs, as determined by States, would be eligible to receive up to \$25,000. This new program would also reward job retention by forgiving increasing shares of student loan balances over time.

Another important effort is the new State Plans to Ensure Equitable Access to Excellent Educators that all 50 States submitted in 2015. The Department approved all plans, and continues to provide technical assistance to the States as they implement their plans. In their plans, States have proposed such strategies as making improvements to their teacher preparation programs to ensure teacher candidates are prepared for success in high-need, hard to staff schools; using data from short-age predictor models to drive policymaking; providing financial compensation for teachers working in hard to staff areas or subjects; and improving working conditions in hard to staff schools. The Department will continue to provide support as States implement and continuously improve their plans to help create incentives for teachers and achieve equitable distribution of teachers throughout their State.

Question 4. Given the Department's own issues with cybersecurity and protecting data, how do you plan to ensure that you can provide adequate technical assistance to States and localities who are dealing with potential student privacy issues? As you know, the Department included third party providers as covered school officials in past FERPA regulations, without ensuring that these providers have adequate contracts in place to prohibit the use of personally identifiable student data for non-academic purposes. Please elaborate on how you plan to ensure all data is used for the correct purpose?

The Department provides substantial technical assistance to schools, districts, and State education agencies around student privacy. Through staff and the Department's Privacy Technical Assistance Center we provide training, make site visits, and develop resources to help schools recognize and manage emerging privacy issues.

With regard to contracting, schools and districts have outsourced institutional services or functions that can be better or more efficiently procured externally. The Department's 2008 amendments to the FERPA regulations recognized this longstanding practice, and provided guidance to schools and districts to ensure that they comply with FERPA when contracting. We issued important guidance in 2014 to assist schools when they contract for online educational resources, <http://ptac.ed.gov/sites/default/files/Student%20Privacy%20and%20Online%20Educational%20Services%20%28February%202014%29.pdf>. In recognition of the importance of FERPA compliance and privacy best practices, in 2016 we have committed additional resources to our student privacy operations, adding an additional 5 FTE so that we can streamline enforcement, provide guidance on emerging policy questions, and provide augmented technical assistance.

SENATOR CASSIDY

Question 1. As you know, there is a strong opt-out movement growing in the country with many parents refusing to allow their children to participate in State assessments. I believe that parents should have the right to make decisions about their children's education.

While the new law does maintain the requirement for annual testing and that at least 95 percent of students participate in those tests, the law clearly gives the States the power to determine how participation rates will factor into their accountability systems and what consequences or interventions, no matter how minimal, there will be for schools that are not compliant. This is Congress' intent.

Yet, on December 22, 2015, the Department sent a letter to Chief State School Officers reiterating to States the consequences for non-compliance with the 95 percent participation rate requirement. The letter also makes suggestions on what sanctions States could impose on school districts and schools that are non-compliant—the new law prohibits the Department from telling States what those consequences should be.

To me, by sending this letter, the Department is coercing States into pressuring their school districts and schools to pressure parents to take these tests. Parents should have a say over their child's education without threat.

Given the current opt-out movement, how will the Department support rather than threaten to punish States?

Answer 1. We have a responsibility to ensure that States comply with their obligations under the law.

The ESSA continues the longstanding ESEA requirement that States assess all students in mathematics and reading/language arts annually in grades 3–8, and at least once in high school and in science in each of three grade spans. A high-quality

annual statewide assessment system that includes all students is important so that local leaders, educators, and parents can have the information they need to help every student succeed and ensure equity by holding all students to the same high expectations.

It is also important to note, however, that in too many schools, there is unnecessary testing and not enough clarity of purpose applied to the task of assessing students, consuming too much instructional time and creating undue stress for educators and students. The Department is working to support States and districts in addressing this problem by implementing the President's Testing Action Plan, which lays out principles for fewer and smarter assessments. We are providing financial support for States to develop better, less burdensome tests, seeking additional funding to help States review their assessments and develop better assessments, and recently issued guidance explaining how Federal funds can be used to support this work.

Question 2. The new law continues the requirement that States annually assess all students in all schools in reading/English language arts, math, and science. And the law maintains that at least 95 percent of students must participate in such assessments. However, I have a concern that students with dyslexia who struggle with reading start at a disadvantage for the State reading assessments.

Dyslexia is an unexpected difficulty in reading due to the difficulty in getting to the individual sounds of spoken language. Research shows that it is the most common learning disability effecting 1 in 5 people.

Knowing the prevalence of dyslexia and that a State's reading assessment may not be appropriate for dyslexic students, how will the Department take this into consideration as they develop their regulations?

Answer 2. Assessments should be fair, including providing fair measures of student learning for students with disabilities—including students with dyslexia—and English learners. Accessibility features and accommodations must level the playing field so tests accurately reflect what students really know and can do. The Department is still in the process of gathering input on what regulations to promulgate and guidance to issue, and unfortunately at this point I cannot comment on the details of any potential regulations or guidance. However, I can assure you that we continue to listen carefully to advocates for students with disabilities of all types, parents, and educators in this process.

Furthermore, using the \$1.5 million provided in the fiscal year 2016 Omnibus the Administration is supporting a new Comprehensive Center for students at risk of not attaining full literacy skills due to a disability. The Department is in the process of developing a priority to fund this new center and will compete and award the center in fiscal year 2016. This new center is only one of several ways in which the Department supports States, LEAs, and families of children with disabilities, including children with dyslexia. For example, as part of Office of Special Education Programs (OSEP's) Results Driven Accountability, which shifts the Department's focus from compliance to outcomes, OSEP is assisting 36 States with improving results for reading or literacy. In addition to \$11.9 billion provided under the Grants to States program, OSEP has committed resources to assist States in improving results through discretionary grant programs under Part D of IDEA. Projects awarded under these programs help to improve outcomes for children with disabilities, including children with dyslexia, through technical assistance, training personnel, professional development, and model demonstrations.

The ESSA provides an opportunity to secure educational equity for all students, including students with disabilities. Specifically, the new provisions helping to ensure educational opportunity, require States to: (1) develop assessments consistent with the principles of universal design for learning; (2) develop, disseminate information on, and provide for appropriate use of certain accommodations, such as interoperability with assistive technology; and (3) describe in the State Plan that general and special education teachers, and other appropriate staff, make appropriate use of accommodations for students with disabilities. These new requirements will help all students with disabilities, including those with Dyslexia.

As the Department provides ongoing guidance and support to States, districts, and schools, we stand ready to provide technical assistance and support to ensure appropriate accommodations are available for students with disabilities. Additionally, our peer review of State assessment systems will continue, and it will ensure all students, including those with dyslexia, are appropriately assessed.

Question 3a. As a parent of a dyslexic child, I want to ensure that students with dyslexia have the resources they need to succeed. What resources are available at

the Department to help such students? If confirmed as Secretary, what will you do to help provide resources for students with dyslexia?

Answer 3a. In July 2015 the congressional Dyslexia Caucus asked the Department to “Affirm that there is no legal reason why the term ‘dyslexia’ should not be used by a State or LEA when referring to the identification of and services for a student who does in fact have this specific Learning disability.” In October 2015, the Department both issued a Dear Colleague Letter and also did a series of blogs and other social media activities to amplify the message that there is no legal reason to avoid the use of the terms dyslexia, dyscalculia and dysgraphia. The letter and activities were very well-received by the dyslexia community.

Please see the response to your Question 2 for additional ways in which the Department provides resources for students with dyslexia.

Question 3b. In addition, as part of ESSA is a new comprehensive center for students at risk of attaining full literacy due to a disability, including dyslexia. I look forward to the center’s creation and hope that the Department awards the center to a highly qualified entity with demonstrated ability and experience in the specific research on dyslexia and knowledge of the use of evidence-based programs that have proven efficacy. If confirmed as Secretary, what will you do to ensure the center is implemented as intended?

Answer 3b. We are in the process of drafting the grant application package (Priority) for the new comprehensive center for students at risk of attaining full literacy due to a disability, including dyslexia. The Priority is being drafted by literacy experts within the Department who have a strong research background in dyslexia and evidence-based literacy interventions. The Center will be competed through the Department’s discretionary grant panel review process. The applicant with the strongest application will be awarded the grant. Literacy experts from the Department who have expertise in evidence-based literacy interventions will serve as Project Officers for the new Center and will ensure that the Center is an efficient, effective and productive national literacy resource.

Question 4. Dr. King, I know you are a supporter of public charter schools. As I mentioned in our meeting, my wife started a charter school in Baton Rouge to help students with dyslexia. If confirmed as Secretary, how will you continue to support the Charter Schools program to ensure it continues to expand so that more charter schools will open, and give parents and children a public educational choice?

Answer 4. As the founder of a charter school, I know that high-quality public charter schools can transform the lives of students, including students with disabilities. Over the last 7 years, the Department has accelerated the growth and improvement of these schools with promising results. Furthermore, in urban areas, special education students enrolled in high-quality public charter schools experience large gains in additional learning in math and reading according to independent evaluators. In the months ahead, the Department will work closely with the Charter Schools Program (CSP) and our partners in the sector to continue scaling and improving high-performing charter schools. We are encouraged that ESSA continues investing in high performing charter schools, and we will work to maximize the impact of these programs.

RESPONSE BY JOHN B. KING, JR., PH.D., TO QUESTIONS OF SENATOR MURRAY, SENATOR SANDERS, SENATOR FRANKEN, SENATOR BENNET, SENATOR WHITEHOUSE AND SENATOR WARREN

SENATOR MURRAY

Question 1. One issue I’ve been very focused on is improving the Impact Aid Program which provides Federal support for school districts serving high populations of military families and children living in tribal communities. More than 50 school districts in my home State of Washington rely on Impact Aid to provide high quality education to their students. I was glad that we were able to include language in the Every Student Succeeds Act that will simplify the application process, ensure timelier payments to school districts and create a new hold harmless which will provide districts funding stability from year to year.

One district in particular—the Central Kitsap School District (CKSD)—is the only district in Washington State that currently qualifies for Heavy Impact Aid (HIA) funding. Unfortunately, due to an unexpected change in the way that the Department of Education accepted tax rate calculations, the CKSD was denied HIA funding between 2010 and 2012 causing them to have to reduce staff and delay critical curriculum and facility updates. I was proud to work to include language in the Every Student Succeeds Act that makes clear that the alternative tax rate calculation

tion used by CKSD is acceptable for determining HIA eligibility and provided them some much needed relief for the years in which they were deemed ineligible.

As you work to implement this law, how will you ensure that the Impact Aid provisions are implemented in the best way possible so that districts like Central Kitsap School District in Washington State and others throughout the country get the support they need to provide a quality education to their students?

Answer 1. The Department is appreciative of the hard work of you and your staff to make critical changes to the Impact Aid program and making permanent a number of the changes you had included in the National Defense Authorization Act of 2013. Section 7003(b)(2)(F)(ii) of the ESEA as amended by the ESSA, which affects school districts that did not meet the average tax rate requirements for heavily impacted districts for fiscal years 2010–15, took effect upon enactment in mid-December 2015. A district such as Central Kitsap School District (CKSD) that meets the criteria of the provision is permitted to use its State's alternative tax rate methodology to retain eligibility for 2010–15, and in addition may use the same tax rate methodology when applying for heavily impacted eligibility for fiscal years after 2015. CKSD had already qualified and received a heavily impacted district payment for fiscal year 2015 using the Department's methodology earlier in 2015 prior to the passage of ESSA. After passage of the provision, the Department worked diligently to implement it quickly with respect to CKSD. Notes regarding the permissibility of the alternative methodology have already been codified in the Impact Aid payment system for the affected and future years, and the \$14 million payment referenced in ESSA was issued to the district on February 2, 2016.

Department staff is also diligently working on the other ESSA Impact Aid provisions that are effective next year. For example, we have already initiated programming changes to the payment system that will enable implementation of the new hold harmless provision you reference. Over 1,350 school districts affected by Federal activities apply for Impact Aid annually. We take our responsibility to each of these districts seriously and are working to ensure that all of the Impact Aid ESSA provisions will be implemented with the same fidelity and accuracy that were executed for this section of the law.

Question 2. A few weeks ago, I launched a tool to enable students and families throughout the country to share their story and struggles to afford higher education. In just a matter of weeks, I heard from so many borrowers who shared how difficult it is to manage the crushing burden of their student debt. One in four student loan borrowers are currently in default or struggling to repay their loans.

Unfortunately, many borrowers have experienced problems getting consistent answers and help from their student loan servicers—a problem that has been well documented by both the U.S. Treasury and Consumer Financial Protection Bureau. Fortunately, your Department and these agencies together issued a “Joint Statement of Principles on Student Loan Servicing” last year to improve student loan servicing practices, promote borrower success, and minimize defaults.

Given that the Department is planning a new competition for Federal contracts on student loan servicing this year, how will you ensure that the student loan servicing process puts customer service front and center, becomes more transparent, and guarantees that servicers are held accountable for their business practices and compliance with the law?

Answer 2. Over the past few years, and since the President signed the Student Aid Bill of Rights memorandum in March 2015, the Department of Education has worked with its partners across the Administration and in the Consumer Financial Protection Bureau to improve service for all student loan borrowers, and in particular, for the most vulnerable borrowers. The Student Aid Bill of Rights included a number of projects and deliverables, some of which have already been completed, some of which are in progress, but on track to complete in the coming months, and additional objectives designed to improve borrower service through the servicing re-compete.

In August, FSA released the recommendations from an interagency task force on best practices in performance-based contracting to better ensure that servicers help borrowers make affordable monthly payments. As directed by the President's Memorandum, the task force reviewed input from its members which consisted of the Departments of Education and Treasury, the Office of Management and Budget, and the Domestic Policy Council, last July. The task force also solicited input from a wide range of other public and private stakeholders. These recommendations will inform the process of re-competing our servicing contracts prior to the expiration of the existing contracts in 2019.

In addition, Education, Treasury and the CFPB continue to work together to ensure student loan borrowers are aware of and can have affordable monthly pay-

ments. For Federal student loans, FSA and its servicing contractors have been certifying and enrolling, on average, over 5,000 borrowers per day into Income Driven Repayment (IDR) plans over the past year. Enrollment in IDR plans has increased more than 50 percent over the past year and is at an all-time high.

On October 1, the U.S. Department of Education released a report on *Strengthening the Student Loan System to Better Protect all Borrowers*, which outlines a series of statutory, regulatory, and administrative recommendations to safeguard student borrowers. The report, developed in consultation with the Department of the Treasury and the Consumer Financial Protection Bureau, builds on years of work by the Administration to help Americans manage their student loan debt and protect the most vulnerable borrowers.

The report includes key recommendations to protect Federal student loan borrowers such as: increasing borrower protections in the Federal student loan program; updating debt collection and offset; enhancing Federal data-sharing to improve the Federal student loan borrower experience; and strengthening Federal student loan servicing. The report also proposed several steps to protect borrowers of private student loans, which do not come with the same consumer protections and benefits as Federal loans, including to allow private student loans that lack sufficient repayment flexibility to be dischargeable in bankruptcy.

The report also included an update on the development of a multi-year recertification process for income-driven repayment plans. As with any policy that provides access to taxpayer data, there are costs to developing and operating a secure system with appropriate authentication and controls, and mechanisms for secure communication with third parties. Both Treasury and Education believe that, with sufficient funding, an electronic multi-year certification system can and should be developed to simplify the repayment process for many borrowers in IDR plans.

In the coming months we expect to continue the work started under the Student Aid Bill of Rights and outline a vision for a borrower centric ecosystem ensures accurate and helpful service for borrowers with Federal student loans.

Question 3. Under Secretary Duncan's leadership, States have invested more than \$1 billion dollars in expanding access to high-quality preschool. I was proud to continue this work by authorizing dedicated funding for early learning for the first time in ESSA.

How do you intend to continue the push to expand access to high-quality preschool and how do you plan to work with HHS to ensure that the Preschool Development Grants program is implemented effectively?

Answer 3. Thank you for your continued partnership and strong leadership to ensure that every child has access to high-quality early learning programs, including your sponsorship of the Strong Start for America's Children Act, which closely resembles the President's proposal to extend high-quality preschool to all children from low- and moderate-income families. We have made tremendous progress toward ensuring that more children gain the benefits of high-quality early learning programs so that they come to school ready to learn. Forty-six States and the District of Columbia fund preschool; five States provide funding for every 4 year old and two States fund 3 year olds as well. If confirmed, I intend to work hard to continue to expand high-quality preschool for all children.

I am proud of the progress the Department in partnership with HHS has made over the past several years. The Department's relationship with HHS around early learning is strong and codified in three MOUs that outline how the two agencies administer the Race to the Top-Early Learning Challenge (RTT-ELC), which has significantly increased quality in early learning programs and placed more at risk children in high quality programs in 20 States; and the Interagency Policy Board, which the agencies set up in 2010 to coordinate Federal early learning programs and the Preschool Development Grants (PDG). In partnership with HHS, we have awarded PDG grants to 18 States, in more than 230 communities, serving over 33,000 children in high-quality preschool this year in schools, Head Start programs and public and private child care centers.

Although funding authority in fiscal year 2017 will shift to HHS, the two departments will continue working closely together to jointly administer the program and will develop a Memorandum of Understanding that includes joint staffing of PDG implementation and ensures a smooth transition for all grantees. In the President's fiscal year 2017 budget request, we propose that \$250 million be used to fund the fourth year of the 18 States, while using the remaining money to fund State efforts to create preschool infrastructure, as called for in ESSA. HHS and ED will continue joint administration of the program and together, work with grantees to continue expanding high quality preschool for our youngest learners.

Question 4. In Washington State, there has been a growing number of individuals and families experiencing homelessness. In fact, in November, the mayor of Seattle declared a State of emergency to combat homelessness. Many of these families have children who attend public schools and face challenges due to their lack of school stability. In regards to higher education, students experiencing homelessness face unique barriers applying for college, attending, and completing their degree.

Under your leadership, what are some ways the Department will be working to help students struggling with homelessness get a quality education and easing the pathway for these students who want to pursue a higher education?

Answer 4. Students experiencing homelessness are one of the most high-risk and vulnerable student populations we serve. We take our obligations to meeting their needs seriously. The programs that we administer include requirements to assist homeless students. For example we administer the Education for Homeless Children and Youth (EHCY) program authorized by the McKinney-Vento Homeless Assistance Act, which was significantly enhanced by ESSA amendments. In addition, we provide technical assistance to States and school districts, and engage in an array of Federal interagency groups to coordinate efforts.

The \$15 million increase proposed for EHCY in the President's fiscal year 2017 budget reflects the Administration's commitment to help States and LEAs address the 45 percent increase in the number of enrolled homeless students reported by States since 2008. The requested increase—from \$70 to \$85 million—would help ensure that States and LEAs can provide the services needed to improve educational outcomes for homeless children and youth, who face significant barriers to success. In addition, the Department allocates McKinney-Vento funding annually by formula to States based on the State's proportion of the ESEA Title I, Part A Federal allocation the State receives. Generally, States must distribute no less than 75 percent of their annual McKinney-Vento allocation to local school districts in subgrants, which are awarded competitively based on need and the quality of the application.

As you know homeless students have numerous rights under Federal law and we work to ensure that every school district in the country has a school district liaison who is aware of these rights and ensures these obligations are met. We are fortunate to have the National Center for Homeless Education (NCHE) serve as the Department's technical assistance and information center. NCHE provides research, resources, and information enabling communities to better address the educational needs of children experiencing homelessness. NCHE also supports SEA staff, school district liaisons, educators, and others by providing training online, at regional and national conferences, and other events. NCHE also has a wealth of technical assistance resources available in print or electronic format.

We are also working to ensure that homeless youth are able to obtain a higher education. Last year, Federal Student Aid issued a Dear Colleague Letter to clarify institutional and applicants' roles and responsibilities related to title IV dependency determinations for unaccompanied homeless youth. Additionally, during the annual Federal Student Aid conference, FSA hosts a session titled "Understanding Federal Aid Policy and Practice for Unaccompanied Homeless Youth." This session explores the unique needs of the homeless student population and offers ways to implement financial aid policies and practices on their behalf. The session also provides information about the education and human service professionals with whom financial aid administrators can collaborate to help these students navigate the post-secondary education system.

Finally, ED staff actively participate in and contribute to numerous interagency groups. I am pleased to co-chair the U.S. Interagency Council on Homelessness (USICH). USICH coordinates the Federal response to homelessness, working in close partnership with other Cabinet Secretaries and other senior leaders across our 19 Federal member agencies. By organizing and supporting leaders such as Governors, Mayors, Continuum of Care leaders, and other local officials, we drive action to achieve the goals of Opening Doors, which was released in 2010. Opening Doors is the Nation's first-ever comprehensive strategic plan to prevent and end homelessness among all populations and is a roadmap for Federal agency action.

Question 5. One issue I am deeply concerned about is discrimination against students based on gender identity. I have been pleased to see the U.S. Department of Education's Office of Civil Rights take action to investigate individual complaints by transgender students against school districts for title IX violations, and pursue resolution in those cases. However, I am deeply concerned about the disturbing and growing trend of discrimination against transgender students by schools, districts, and, most recently, States. For example, in February, the Texas University Interscholastic League decided to disregard a student's gender identity when determining participation in athletics, and the South Dakota legislature passed a law prohibiting

schools from providing equal treatment to transgender students. These actions are in direct conflict with non-discrimination requirements under Title IX of the Education Amendments of 1972.

As you work to ensure the promise of equality in title IX is fulfilled, how will you address this discrimination against transgender students?

Answer 5. The Department is committed to safe and supportive environments for all students, including transgender students. In various policy guidance documents addressing sex discrimination under title IX, the Department's Office for Civil Rights (OCR) has informed educational institutions that OCR interprets title IX and its regulations to prohibit discrimination on the basis of gender identity and transgender status. The Department of Justice and the Department of Education have taken the same position in litigation. As you note, OCR has also investigated complaints by individual students, found violations when a school has failed to treat students consistent with their gender identity, and entered into voluntary resolution agreements with school districts to address those violations.

SENATOR SANDERS

Question 1. Dr. King, I don't think that this will come as news to you, but former Secretary of Education Arne Duncan and I disagreed on a number of issues. While we both held the same belief that every child has a right to a high-quality education, we had different beliefs on how to achieve this goal. Can you tell me how your tenure as Education Secretary will be different than that of Secretary Duncan? What specific policies and approaches will set you apart from your predecessor? Relatedly, under your tenure which policies or approaches will be a continuation with Secretary Duncan's tenure?

Answer 1. While we have a long way to go in ensuring the promise of equity and excellence for all of America's students, we have made critical progress over the last 7 years, and thanks to the work of this committee, the Obama administration, and our Nation's educators and parents, there are many reasons to feel hopeful.

Last year, we achieved the highest high school graduation rate we've ever had as a country—82 percent. This progress was driven in no small part by significant reductions in the dropout rate among African-American, Latino, and low-income students. Since 2008, we have halved the number of “dropout factory” high schools. A million more African-American and Latino students are in college today than when the President took office. Tens of thousands of children now have access to high-quality preschool and millions more students have access to higher education.

I am grateful to Secretary Duncan for his unwavering commitment to America's students, especially those who have too often been underserved. And I hope to continue that unrelenting focus on excellence and equity.

At the same time, the passage of the Every Student Succeeds Act ushers in a new era in American education—and an opportunity for a reset in the national dialog. Over the past decade, our educational system has been through a period of enormous change. Change is hard, and it often brings with it hard conversations and damaged relationships. I intend to seize this new moment in national policy to help bring about a reset in a national dialog that has, despite good intentions, been too often characterized by more heat than light. All of us—at the local, State, and Federal level—have to take responsibility for the climate that exists. And all of us must do whatever we can to change it.

Question 2. I do not believe that funding for the essential elements of a high-quality education—pre-kindergarten, well-rounded course offerings, safe and healthy schools, and more—should be up for competition. Rather these essential elements should be guaranteed and exist in every school. Can you share your philosophy on formula grants and competitive grants for the essential components of a high-quality education? Small, rural States like Vermont often do not have the resources and capabilities to aggressively pursue competitive funding like larger States, putting them at a significant disadvantage. If the Department of Education must rely on competitive grants for some education programs due to constrained appropriations, what safe guards are in place to ensure that small rural States are on an equal footing with larger States that have more administrative resources at their disposal?

Answer 2. I appreciate the concern that you raise and believe that it is important for the Department to take into account the unique needs and characteristics of rural school districts. We are committed to ensuring that all of our programs serve rural students well. Over the past several years we have worked hard to ensure that our competitive reform programs are fair to rural States and communities. For example, the Promise Neighborhoods program made implementation grants to projects serving rural communities (Indianola Promise Community in Mississippi, and the Improving Rural Appalachian Schools project in Berea, KY). Additionally, through

our Investing in Innovation (i3) grant program more than one-fifth—34 out of 156 awards—are serving rural areas, thanks in part to the use of competitive and absolute priorities that help highlight rural proposals. i3 projects serving rural areas have received about one-quarter (26 percent) of all i3 funding since 2010—\$336 million out of \$1.3 billion.

Question 3. As Secretary, how do accomplish the goal of serving the diverse student body of our Nation—from children in large urban centers to those in rural school districts? For small and rural States like Vermont, what additional supports will your Department provide? Will there be additional technical assistance, competitive grant priorities for small or rural States, appropriate flexibility that does not compromise Federal guard rails for States in implementing the new Elementary and Secondary Education law, aid in implementing the assessment pilot in the new law, or other supports?

Last, what experience and lessons learned from serving a geographically and demographically diverse State like New York will you bring to your tenure as Secretary?

Answer 3. We recognize that nearly 60 percent of LEAs and one-third of schools are in rural areas, and that 25 percent of all students attend rural schools. That makes it really important for the Department to take into account the unique needs and characteristics of rural schools districts. The Department has taken concrete actions to level the playing field for rural communities in grant competitions. Over the past 5 years the Department has included priorities for rural applicants or rural-serving applicants in approximately 3 dozen competitions across 10 programs.

There are a number of provisions in the ESSA that will help us to address the unique need of rural communities. Foremost, we are taking our responsibility under section 5005 of the ESSA aimed at increasing the involvement and input of rural schools and districts in developing policies and regulations for Department of Education programs very seriously. As with most aspects of ESSA implementation, we are in the early stages of developing our plans for meeting the requirements of the new law, including the initial review due to Congress within 18 months. We will ensure that the final report will include recommendations for increasing the role of rural stakeholders in Department policies and regulations. Additionally, the Department will support rural communities through implementation of programs in ESSA such as Title IV, Part A, which provides opportunity for districts and schools to use funds under the Supporting the Effective Use of Technology section to expand digital learning opportunities in rural, remote, and underserved areas. In addition, the Department will execute the additional provisions in the ESSA including the required set-asides for discretionary grants including: the STEM Master Teacher Corps grant; the Education Innovation and Research grant where there is a 25 percent rural set-aside for rural grantees; and the Promise Neighborhoods and Community Schools grant which requires that no less than 15 percent of the funds be awarded to entities that propose to carry out activities in rural areas.

As Chief State School Officer in New York, navigating a State with over 700 districts, more than 4,500 schools, and a majority minority student population, I understood that a one-size-fits-all model from Albany did not work. To meet the needs of communities that ranges from dense urban to very rural, it was essential to have policies, rules and strategies that supported and protected our highest need students while still allowing for local flexibility and context, by listening to local practitioners, investing in local and scalable promising practices, differentiating based on need, and adjusting practices along the way. If confirmed, I plan to apply these same principles and respect local practice while still protecting the rights of all students.

Question 4. The Every Student Succeeds Act (ESSA), which I supported, moves away from the one-size-fits-all, test and punish approach of the No Child Left Behind law, which simply did not work for our communities. Instead of just focusing on test scores, ESSA includes multiple measures in evaluating how our students and schools are performing. In implementing this law, how will you ensure that test scores do not again become an outsized metric in which to judge how our students, schools, and teachers are performing?

Answer 4. The Department has made clear, most recently through its implementation of ESEA flexibility and the President's Testing Action Plan, that test scores should be just one of multiple measures used by statewide accountability systems to assess student, teacher, and school performance. And we agree that ESSA provides States with the opportunity to take a broader look at the measures that should be included in school accountability systems and to consider a rich array of data on school performance when differentiating among schools, including, for exam-

ple, English language proficiency for English learners, student growth, graduation rates, chronic absenteeism, college- and career-ready measures, and school climate. While giving States new flexibility to add indicators to their accountability systems for identifying low-performing schools, including a new school quality and student success indicator that encourages States to consider a wide range of academic and non-academic factors, ESSA also requires that certain indicators, such as academic achievement, graduation rates, and English language proficiency, carry “substantial” weight individually and “much greater” weight in the aggregate relative to other measures of school quality and student success. The Department believes that States will work hard to find the right balance among the multiple indicators required by the new law, and plans to provide guidance and technical assistance to States in this area as they develop plans for implementing the ESSA.

Question 5. Today, young people around the country are shouldering outrageous amounts of student loan debt that is holding them back on almost all fronts—purchasing a home, starting a family, saving for retirement, and more. Shockingly, many for-profit schools have made an already challenging terrain even more difficult for our most vulnerable students by saddling them with debt and no degree, or a degree that is not worth the paper it is printed on. I am pleased that the Department has announced the creation of the Student Aid Enforcement Unit, and I hope it will take aggressive action to protect students from predatory and illegal practices.

Under your watch, what policies will be implemented to ensure more students are protected from unscrupulous for-profit schools? I am aware that the Department is currently undergoing a negotiated rulemaking to determine how best to provide debt relief to students defrauded by for-profit schools. The draft rules seem more concerned with limiting the “cost” of the discharges to the Department than giving students a chance to start over, even when our student loan programs are on track to make \$67 billion in profits over the next decade.

What will you do as Secretary to help these students and minimize the burdens for students to get the needed debt relief they deserve?

Answer 5. The Department continues its longstanding commitment and efforts to ensure that we help reduce the burden faced by student loan borrowers and make post-secondary education more affordable and accessible to all American families. I will work to ensure that serving our student borrowers remains a top priority, and that we are doing all we can as an agency to serve and protect students and taxpayers.

The newly created Student Aid Enforcement Unit, and the interagency task force focused on the accountability for poor performing institutions, are key mechanisms that the Department has created toward this goal, and will be a high priority during my tenure. The Student Aid Enforcement Unit will focus on increasing the capacity of the Department to respond quickly and efficiently to allegations of illegal actions by higher education institutions. The Enforcement Unit will include an investigations division that focuses on identifying potential misconduct or high-risk activity among higher education institutions and protecting Federal funding. The purpose of the task force is to provide a means for Federal agencies to share strategies and collaborate on the most effective ways to produce complementary protections for the public. These include streamlining disclosures, developing effective consumer tools, and sharing program expertise to identify best practices. I look forward to working with Federal Student Aid, our agency partners, and Congress to further this critical work.

We are also taking steps in other ways, such as implementing our Gainful Employment regulations to hold career schools accountable for providing quality education and training to students and making sure they are not saddling students with high levels of debt that they will struggle to repay. In addition, as you note, the Department began a negotiated rulemaking process to revise the borrower defense to repayment regulations to ensure that the regulations are working both for students and for taxpayers. Where students have been harmed by fraudulent practices, we are fully committed to making sure they receive the relief they are entitled to, and where possible, we will recover that money from the schools that created the harm.

SENATOR FRANKEN

Question. When I talk to employers around Minnesota, they often tell me that they're starving for workers who have a good grasp of science, technology, engineering, and math (STEM). And this isn't just a problem for Minnesota—it's an issue all over the country.

Nearly all of the top 30 fastest growing jobs nationwide require STEM skills. But our kids are lagging behind the rest of the world, and part of the problem is that there's a shortage of effective STEM teachers. That's why I wrote the STEM Master Teacher Corps Act to recruit top-notch STEM educators and keep them in the classroom. This program would provide States grants to recruit, recognize, and reward expert STEM educators. These networks of innovative STEM educators would mentor their peers and participate in professional development—while receiving extra pay for their work.

I'm pleased that there is an optional pot of money in ESSA for training STEM teachers that is based on my bill, and ESSA leaves it up to the Secretary of Education to award these grants to States. If confirmed by the Senate, how do you plan to support STEM educators, and will a STEM Master Teacher Corps be included in that effort?

Answer. STEM education continues to be a key priority for our Department, and is incorporated into several initiatives, from early learning through college and career. As part of those efforts, a STEM Master Teacher Corps can play an important role in bolstering STEM equity and excellence. The idea of a STEM Master Teacher Corps originated from a recommendation from the President's Council of Advisors on Science and Technology and has been a priority of the Administration's since the President called for the creation of a national STEM Master Teacher Corps that would enlist America's best and brightest science and math teachers to improve STEM Education. The Department proposed funding to support a STEM Master Teacher Corps in multiple budget requests, beginning in 2012 and including most recently a \$10 million request to continue this work in the 2017 budget. In addition, the Department is proposing a number of investments to support the training and development of STEM educators.

For example, the Computer Science for All initiative, a new investment proposed in the 2017 budget, would provide \$4 billion over 3 years in mandatory funding and \$100 million in discretionary funding to ensure access for all students to high-quality instruction in computer science, and would include support and training for computer science teachers and support staff. Through the Teacher and Principal Pathways program, the Department has proposed \$125 million to support teacher preparation programs and nonprofits partnering with school districts to create or expand high-quality pathways into the teaching profession, particularly into high-need schools and high-need subjects such as STEM. The Department also seeks to use existing resources toward the important work of supporting STEM educators; we leveraged \$1.2 million from the Teacher Incentive Fund's National Activities set aside to create the foundations of a robust STEM Master Teacher Corps during the current fiscal year. In addition, the Department convened expert teacher leaders to build and assemble resources designed for States, districts, and educators to advance STEM teaching. Later this summer, the Department will publish a Web site that hosts these tools along with additional resources to support STEM educators.

SENATOR BENNET

Question 1. The reality of Washington, DC, is divorced from the reality of our schools, students and educators. Sometimes what we try to do from Washington hurts more than helps, but it doesn't happen out of vindictiveness or spite. Washington simply doesn't understand the reality of what is happening in schools, especially those that educate students living in poverty. How will your experiences as an educator and a school leader affect your approach and decisions in this job? How will you ensure that the Department of Education is connected to the reality in our classrooms?

Answer 1. As a former teacher, principal, and State commissioner, I know from personal experience that the best ideas come from classrooms, not conference rooms.

The Every Student Succeeds Act rightly shifts the locus of decisionmaking back to States and districts—and away from the one-size-fits-all mandates of No Child Left Behind—even as it preserves the critical Federal role in constructing guardrails to protect civil rights.

As the Department of Education undertakes implementation of the new law and the rest of our critical work, I recognize that it is hugely important for us to remain connected to the hard work that is happening on the ground every day. My team and I will continue to do regular outreach to stakeholders through engagement at the Department, and across the country. In addition, the Department's Teaching Ambassador Fellows and Principal Ambassador Fellows have played a critical role in anchoring our work here in Washington DC to educators in the field, to gain their perspectives and their day-to-day experiences in the classroom.

In my first weeks as Acting Secretary, I launched the “Opportunity Across America” tour to see what’s working on the ground and meet with students, teachers, principals, educators, parents, and community leaders in five different cities. Since then I have had regular opportunities to visit schools around the country, something I will continue to do.

I will continue to draw on both my own personal experience as a teacher, school leader, and State commissioner as well as these frequent interactions to inform our work in the weeks and months to come.

Question 2. When I was a superintendent, I found the Department of Education to be a compliance driven entity that was often unhelpful and sometimes even a bureaucratic barrier to the change we were trying to make in Denver. That needs to change, and the Department needs to become a source of assistance to States, districts, and schools. As districts and States begin to implement ESSA, technical assistance, best practices, and even partnerships in improvement efforts have never been more important. What is your plan to make the Department useful for States and districts, to make it more responsive, and to support the efforts of States and districts to change and innovate? How will you encourage districts and States to take advantage of the opportunities in ESSA for change, improvement, and innovation?

Answer 2. The Department has taken steps to ensure more partnership-oriented relationships to support shared goals of improving student achievement and closing achievement gaps. For example, through the newly created Office of State Support (OSS) within the Office of Elementary and Secondary Education (OESE), the Department supports State-led reform efforts, consistent with current law, across several programs. Whereas States used to have to deal with multiple program teams in the Department, now each State has dedicated points of contact in the OSS who are in regular communication with States, partnering with them across Federal programs to support implementation and continuous refinement of reform efforts. This approach will continue as the Department works to support States in transitioning to and fully implementing the provisions of the ESSA. As another example, the Office of Special Education Programs (OSEP) uses a Results Driven Accountability monitoring and support system that focuses on improving student results. States identify measurable results to improve and design comprehensive plans to support LEAs in making that improvement. OSEP and OSS are collaborating in the implementation of this results-driven model. In recent joint visits to States to provide support in implementing improvement plans, State staff commented on the collaborative approach both within ED and between ED and States.

The Department has also invested in programs that drive innovation, and encourage learning and improvement in the sector through rigorous evaluation. For example, the Investing in Innovation (i3) program, which has supported several projects in Colorado, offers resources and support to entrepreneurial educators to develop and scale their approaches. i3 also requires every project to measure their performance and outcomes, which will ultimately yield at least 64 Randomized Controlled Trial (RCT) evaluations across the first five cohorts of i3 grantees. These RCTs, which are considered the “gold standard” of evidence, include valuable lessons for local and State leaders that are building innovative models of their own. The Department will continue supporting these district and State-led efforts—and disseminate the knowledge that they produce—under programs in the Every Student Succeeds Act, including the Education Innovation and Research program.

Question 3. Our education system should be a source of opportunity and a path to advancement and social mobility for students across the country. But for too many of our children living in poverty, our current education system is reinforcing the income inequality in this country, rather than creating the opportunity for our kids to succeed in life. At its core, ESSA is a civil rights law, focused on improving equity across the country and helping ensure our kids in high-poverty communities receive a great education. But we still have a long way to go to reach a place where a child’s zip-code doesn’t determine the quality of his or her education. What do you see as the biggest challenges in addressing educational inequity? What are the most important things States and districts can do to improve education equity, as they work to implement ESSA?

Answer 3. Equity in education is a core tenet of the Federal Elementary and Secondary Education Act (ESEA), and I am pleased that Congress has reinforced this principle in the Every Student Succeeds Act (ESSA)—equity is the impetus for nearly everything we do at the Department. From its inception, ESEA was a civil rights law intended to ensure, in the words of President Johnson, that “full educational opportunity” should be “our first national goal.” ESSA honors the law’s civil rights

heritage, and the responsibility to ensure that its implementation also honors that heritage rests with each State, district, and school—and at the Federal level. One of the biggest challenges is recognizing and understanding where and how some students may be falling behind or not receiving the same opportunities that other students receive. Once these problems are identified, the challenge is to address them promptly and effectively so they do not hold back multiple cohorts of students. Accordingly, in implementing ESSA, State and local leaders must ensure that they have timely and accurate information about student performance across their schools and disaggregated by subgroup, and they have systems of support and intervention to ensure that problems are swiftly addressed. The new law makes it clear that States and districts should establish policies and programs that target resources to the most disadvantaged and should take care to ensure true comparability of resources, both across and within districts, that levels the playing field and allows historically disadvantaged students, particularly those from low-income families, students with disabilities, English learners, and students of color, to have access to excellent educators, challenging and enriching course offerings and extracurricular activities, and modern and relevant instructional materials. The role of the Federal Government in meeting these challenges is to provide States the guidance and technical assistance they need, while monitoring and enforcing the law's requirements.

Question 4. For many families, the cost of college has become a prohibitive barrier to receiving a great education. In Colorado, tuition at several public 4 year colleges has increased by more than 30 percent in just the last 5 years. At the same time, the Federal Government has set up barriers through complexity and bureaucracy that make it more difficult for kids to apply for aid. We need to address these problems and make it easier for our colleges, universities, and post-secondary providers to innovate and find new solutions to make college more affordable and accessible for our students. As we work to re-authorize the Higher Education Act and potentially consider a package on higher education this year, what in our current budget climate could we include to help drive down the costs of college and to encourage greater support for innovation by our high-quality schools?

Answer 4. Every hard-working student deserves a real opportunity to earn an affordable, high-quality degree or credential that leads to greater economic security and civic engagement. But too many recent college graduates feel the weight of their student loan payments holding them back from fulfilling their full potential, and far too many prospective college students feel as though they are priced out of the education they need to set themselves up for future success. Since the beginning of this Administration, President Obama has focused on expanding college access, improving college affordability and regaining our leadership internationally in college attainment. Our Administration has taken strong action to ensure college stays within reach of American families, doubling investments in tax and scholarship aid by increasing investments in Pell grants and creating the American Opportunity Tax Credit, and making student debt more manageable by providing loan repayment options that cap payments based on income.

Building on those efforts, the President's America's College Promise proposal would make 2 years of community college free for responsible students, effectively reducing the cost of obtaining a bachelor's degree to about half. America's College Promise also provides grants to 4-year HBCUs and MSIs to provide more new or transfer low-income students with up to 2 years at a 4-year college at zero or significantly reduced tuition. Further, in addition to seeking full funding for the Pell grant maximum award and continuing to index the grant to inflation indefinitely in this year's budget request, the Administration is making it easier for students to access Federal financial aid. In September, President Obama announced significant changes in the process for filing FAFSAs starting in the 2017–2018 award year, allowing students to apply earlier and using "prior-prior" income information. Both of these changes will streamline the student aid process and provide families with an earlier picture of their aid eligibility more consistent with the timeline for applying for college. For too long, though, America's higher education system has lacked a focus on outcomes and value for students and families—the degree students truly can't afford is the one they don't complete, or that employers don't value. That's why, in this year's Budget Request, we proposed a number of completion-focused reforms, including Pell for Accelerated Completion and the On-Track Pell Bonus. I look forward to working with you and the committee to address these critical issues.

SENATOR WHITEHOUSE

Question 1. During the implementation of ESSA how will you work to support greater innovation, unshackling schools and teachers, so that they have higher degrees of autonomy and can actually act to improve academic outcomes?

Answer 1. We know that the best ideas about education always come from educators closest to students—those in schools and districts. We encourage States, LEAs and schools to use the flexibility they have under the ESSA to design school accountability and support systems that work best in their local context while being attentive to the serious equity issues that are too often present in our schools. We will continue our efforts to support the development, evaluation, and scaling of innovative practices through the new Education Innovation and Research authority, which is the successor to the Investing in Innovation (i3) program and a key means for the Department to balance the ESSA's recognition of the need to use both innovation and evidence to ensure effective use of taxpayer dollars in improving student outcomes. In addition, the Institute for Education Sciences will continue its work through the Regional Educational Laboratories and other efforts to build our collective knowledge about what works.

Question 2. In ESSA, I authored several provisions to help keep kids who encounter the juvenile justice system stay on track, including having States establish procedures around timely transitions, upon release, to schools or re-entry programs, and to better facilitate transferring academic credits and records between school and juvenile justice facilities. Is the Department open to issuing regulatory guidance to States on best practices around these issues?

Answer 2. Students who encounter the juvenile justice systems are one of the most high-risk and vulnerable student populations we serve. Thank you for all of your work and leadership in helping these students stay engaged and on track to graduate college- and career-ready.

We take our obligations to meeting their needs seriously. The Department has issued guidance over the past several years on juvenile reentry, from best practices to putting the spotlight on facilities and programs around the country with good reentry outcomes. Last summer, the Department released a guidance package specifically addressing issues facing students in juvenile detention facilities—which included clarifying students' rights under the Individuals with Disabilities Education Act while they are in correctional facilities. We plan to continue issuing technical assistance on this complex and inherently inter-agency challenge. These products are available at <http://www.neglected-delinquent.org/topic-areas/transition>.

In April 2013 the Department issued guidance on juvenile justice records transfers through a myth buster which explains what is required and permissible under the Family Educational Rights and Privacy Act. In addition, at a correctional education symposium we hosted in 2014, along with DOJ, ED issued guidance on having well-coordinated transition and reentry plans for youth.

The ESSA is a big and complex law, with a lot of new pieces and new opportunities for States, districts and their students. As I have mentioned, this is the beginning of a long process, and we want to make sure we are supporting States and districts as they transition from NCLB to ESSA. We appreciate your attention to this critical issue and will continue to listen to and are open to feedback from stakeholders on guidance priorities for ESSA.

In the meantime, the Department continues to strive to improve juvenile reentry education outcomes through our monitoring and performance management of the ESSA Title I, Part D and IDEA, Part B programs as they pertain to juvenile detention and corrections programs.

Question 3. In ESSA I also authored provisions requiring States to outline how they will work to better support transitions for students from middle school to high school, and better identify and support middle schools students who are at-risk of falling off track. Is the Department open to issuing regulatory guidance to States on best practices on how they can best support middle school students at-risk?

Answer 3. I agree, the transition from middle to high school is one that can be critical to the future success of a student and is an important piece for States and districts to consider as they work to ensure that all students graduate high school college- and career-ready. As a high school teacher, I saw the critical importance of middle school and that was what inspired me to start a high-performing middle school to ensure students had the foundational skills they needed to succeed. Thank you for your leadership and interest in supporting middle school students. We will take your recommendations under advisement as we continue to engage with and hear from stakeholders on the implementation of the ESSA and are working closely to support States and districts as they prepare to implement the new law.

Question 4. Question 23 on the FAFSA asks about a student's conviction for possessing or selling drugs. Drug convictions are one of the only infractions which can cause students to lose financial aid eligibility. And more than 300 organizations have called for repealing the question and the aid penalty because it is a collateral consequence. In 2005, the congressionally created Advisory Committee on Student Financial Assistance recommended Congress remove the drug question FAFSA, calling it "irrelevant" to eligibility. In an effort toward both greater fairness and simplification do you support eliminating the drug question on the FAFSA?

Answer 4. As you know, Congress included in the Higher Education Act (HEA) a requirement that eligibility for student aid be suspended for certain drug-related offenses. I know that many are concerned about this policy and the implications it has, not only in terms of the barriers it presents to applicants in submitting applications, but also in the inequity of imposing a consequence that is effectively targeted at lower- and middle-income students who, unlike their wealthier peers, are more reliant on Federal student aid in accessing a higher education. In addition, I am aware of the questions about whether the policy actually helps to deter drug use. As a result of these issues, the upcoming reauthorization of the HEA provides a great opportunity to the Department to work with Congress in evaluating the efficacy of this policy and whether it should be removed from the HEA.

Question 5. The Department of Education is currently in the midst of negotiated rulemaking on borrower defense to repayment. I am concerned that the Department's chief concern in this seems to be the Federal fiscal impact of forgiving loans and not that students are currently on the hook for loans they took out to go to schools that were engaged in misrepresentation and fraud. I believe that first and foremost the Department needs to focus on is setting up a fair process for students who are in debt and who were wronged by their school. In this rulemaking process is the Department's primary concern providing relief to student borrowers or the Federal fiscal impact of forgiving loans? How will you be weighing those two issues in this rulemaking?

Answer 5. This Administration is committed to ensuring that students are protected from unscrupulous institutions that misrepresent educational opportunities, and holding institutions accountable for actions that violate the law. While many colleges play a critical role in helping students succeed in their educational and training pursuits, the unfortunate reality is that some of America's colleges are failing to provide the education and training promised to advance students' careers. Rather than providing students with promised quality education, some institutions have only left students with significant debt and few job prospects due to the institutions' actions or omissions. Not only does this jeopardize the students' future, but also puts the taxpayers' investment at risk. For those reasons, last year the Department began the negotiated rulemaking process to revise the borrower defense to repayment regulations to ensure that the regulations are working both for students and for taxpayers. Where students have been harmed by fraudulent practices, we are fully committed to making sure they receive the relief they are entitled to, and where possible, we will recover that money from the schools that created the harm to ensure that colleges understand they will be held accountable for any wrongdoing.

SENATOR WARREN

STUDENT LOAN SERVICING

Question 1. In your nomination hearing, you mentioned servicer recompetes as an opportunity to improve student loan servicing. Regarding the recompetes of student loan servicing contracts:

What is the current timeline for announcing recompetes of the Direct Loan servicing contracts? Will the new servicer contracts include specific servicing standards and borrower protections? If so, please describe how the Department will write those standards and protections. If so, will the Department publish draft standards and protections for public comment? If so, will these standards and protections be stated in the publicly available contracts? If so, will borrowers be able to enforce the standards?

Answer 1. The Department is committed to supporting borrowers and strengthening student loan servicing is a key priority for the Administration. We expect to begin the procurement process this fiscal year. New contracts will include specific servicing standards, as well as a requirement to comply with all Federal and State consumer protection laws. These standards will reflect the President's vision for student loan servicing outlined in the Student Aid Bill of Rights and include input from an interagency task force that included the Department of the Treasury and the

Consumer Financial Protection Bureau, as well as responses to a Request for Information and conversations with borrowers, schools, consumer advocates, loan servicers, and other program participants. While procurement law and regulations prevent us from publishing specific contract provisions prior to the release of the final contract, the Department has greatly benefited from the public input received to date. Also, the Department plans on providing opportunities for additional public input in the coming weeks on ways to further strengthen the student loan borrower customer experience. Additionally, a key goal of the Department's efforts include ensuring strong borrower protections are available to allow borrowers the opportunity to reach out to the Department in cases where standards are not met to see their concerns resolved, and will have all rights available to them under the law to enforce violations of consumer protection laws. We look forward to working with your office throughout this process.

Question 2. If confirmed, will you commit to barring any servicer under investigation or any servicer that owes fines from previous investigations from competing in the new recompetete process? If not, why not?

Answer 2. Under Federal statutes such as the Competition in Contracting Act (41 U.S.C. 253), the Department is not allowed to exclude specific vendors from submitting a proposal for a solicitation issued for a full and open procurement. Consistent with the Federal Acquisition Regulations, however, the procurement process includes a formal determination of responsibility prior to any award. This determination is conducted by the contracting officer and explicitly includes an assessment of whether the potential vendor has a satisfactory record of integrity and business ethics. If this assessment determines that the prospective vendor does not meet required standards of integrity and ethics, the vendor would not receive an award.

Question 3. How many full-time employees spend at least 50 percent of their time overseeing the department's loan servicers' compliance with Federal and State rules and laws?

Answer 3. There are currently 84 full-time staff whose primary responsibility is conducting oversight of private collection agencies and servicers. Most of these staff focus on compliance with contractual requirements, which include adherence to Federal and State laws.

Federal Student Aid's Financial Institution Oversight Service (FIOS) provides oversight of guaranty agencies, lenders, and servicers participating in the Department of Education Federal Family Education Loan (FFEL) Program. In addition, FIOS oversight responsibilities include reviewing the Department's Title IV Additional Servicers (TIVAS) and Not-for-Profit (NFP) Servicers that service Department-held student loans and Private Collection Agencies (PCAs) that service Department-held defaulted student loans.

Question 4. In 2015, the Department released repayment rate data for institutions. These data represents a huge step forward in exposing how our students and borrowers are struggling to repay their debts. A 2016 report by the Institute for Higher Education Policy¹ indicated substantial variation in repayment rate by student loan servicer. Please provide repayment rate data that were included on the college scorecard disaggregated by each of the student loan servicers in the Direct Loan program.

Answer 4. The Department is working hard to make more information available to the public about the Federal student loan portfolio. While we appreciate the interest in repayment rates disaggregated by student loan servicer, those data are not readily available at this time. Through the FSA Data Center, however, the Department has released in recent years new performance data on the Federal student loan portfolio disaggregated by student loan servicer, including the loan status of each servicer's portfolio, delinquency rates, as well as repayment plan usage for the borrowers in each servicer's portfolio.

Question 5. More than 6 years ago, the Department of Education's Inspector General (IG) found that Navient illegally overcharged the Federal Government for subsidies on government guaranteed Federal student loans.² In September 2013 the Department of Education issued a final determination, agreeing that Sallie Mae had

¹http://www.ihep.org/sites/default/files/uploads/docs/pubs/making_sense_of_student_loan_outcomes_paper.pdf.

²Office of Inspector General, Department of Education, *Special Allowance Payments to Sallie Mae's Subsidiary, Nellie Mae, for loans Funded by Tax-Exempt Obligations*, Final Audit Report, August 2009 <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2009/a03i0006.pdf>.

overcharged taxpayers, and instructed Sallie Mae to change its billing practices.³ To date, the Department of Education has still not recovered these funds, and according to Navient's public SEC filings, the Department has not ordered the immediate return of the funds. Instead, the Department of Education has given multiple extensions to Navient.⁴

Has Navient fully repaid the \$22.3 million in illegal overbillings related to the 2009 Inspector General report? Please provide dates and amounts of all payments made to date by Navient.

If Navient has not fully repaid the fines:

Has the Department of Education assessed, or does it plan to assess, interest, fees, or penalties for Navient's lack of timely repayment? Has the Department of Education approached the Department of Justice about potential actions against Navient under the False Claims Act? Does the Department of Education have a detailed timeline for Navient to repay the full amount? If so, please provide details on this timeline. Please provide all documents sent to and received from Sallie Mae and Navient regarding delays in payment or requests for extension, including the Final Audit Determination Letter that the Department has sent to Navient.

Answer 5. The Department is committed to recovering funds that were overbilled to taxpayers. We cannot provide further details as this is an ongoing enforcement matter. A copy of the Final Audit Determination letter is attached as **Attachment A**.

Question 6. Many student loan borrowers who file Chapter 13 bankruptcy would like to participate in administrative income-based repayment plans (IBR, PAYE, etc.) while they are in bankruptcy. However, borrowers in Chapter 13 are typically placed in a forbearance status by student loan servicers and are prevented from remaining in good status on IBR plans, and from enrolling in such plans, while the bankruptcy is pending.

What steps has the Department taken to address this problem, so that borrowers in bankruptcy are not discriminated against based on their bankruptcy filing? What is the Department's policy regarding participation in repayment plans when a borrower is in a Chapter 13 case?

Answer 6. The Department is always looking for ways to better assist borrowers in distress, including those who have filed for bankruptcy protection.

Due to financial constraints leading up to a bankruptcy filing, a borrower in bankruptcy may not be making payments under the repayment plan. Borrowers in bankruptcy are protected by an automatic stay, which prevents creditors, including the Federal Government, from making any attempts at collection of a debt while the borrower is in bankruptcy. Due to the automatic stay, what would otherwise be normal student loan servicing activity (i.e., switching repayment plans) may be suspended by loan servicers to ensure that no violation of the automatic stay occurs.

The Department has helped borrowers establish alternative repayment arrangements in several recent Chapter 13 bankruptcies, where the student loan borrowers' Chapter 13 plans contained language that provided for a student loan debtor to repay his or her student loan debt under one of our income driven repayment plans, rather than have the Department receive the allotment that would otherwise be provided to the unsecured non-priority creditor class in the bankruptcy.

The borrowers wanted to pursue this option so that the time period in repayment could count toward the maximum time required prior to loan forgiveness in those plans. The plans were confirmed, permitting the debtor to participate in an income driven repayment plan during the Chapter 13 bankruptcy. The Department worked with the attorneys in those specific cases to ensure that the borrower could repay under repayment plans for which the borrower was otherwise eligible and that the Department and/or loan servicers were protected from any servicing activity that resulted from such accommodation while the automatic stay was in place.

DEBT COLLECTION

Question 7. In the hearing, I mentioned problems with abusive debt collection practices. How does the Office of Federal Student Aid measure and track debt collection success? Is it based only on dollars collected? If other measures are used, what are they and how are they tracked?

³ James W. Runcie, Chief Operating Officer, Federal Student Aid, Letter to Senator Elizabeth Warren, December 9, 2013.

⁴ Navient has disclosed to its investors that "[t]he last date to file an appeal in this matter has been extended by ED several times and is currently November 12, 2015." Navient, Form 10-Q, Quarterly Report, October 30, 2015 <https://investor.shareholder.com/navi/secfiling.cfm?filingID=1193125-15-360320&CIK=1593538>.

Answer 7. The Department is deeply committed to ensuring that all borrowers in default on a student loan are treated fairly and has taken a number of steps to ensure that borrower customer service is at the center of measuring PCA performance.

First, the Administration has put into place new rules that allow many defaulted borrowers an opportunity to rehabilitate their loans and get into an affordable repayment plan more easily, an important step to improve their credit and ensure continued eligibility for Federal financial aid for future education pursuits.

For new private collection agency (PCA) contracts beginning last year and under any future awards, the Department has implemented a performance evaluation approach called Continuous Performance Monitoring and Evaluation (CPME). This methodology drives allocations of new accounts to the PCAs, which we believe is the most effective way of incentivizing agencies to pursue Department priorities that reflect the interest of borrowers. CPME focuses on three factors: borrowers resolved, quality of service, and dollars collected.

- Under “borrowers resolved,” PCAs will receive equal credit for every borrower that resolves their account by, for example, paying in full, rehabilitating, consolidating, or being approved for a total and permanent disability discharge. We believe this will provide a significant incentive for the PCAs to promote the resolution option most appropriate for each borrower and keep borrowers from remaining in default.

- The “quality of service” factor will be based on the number of complaints each PCA receives and on quality reviews conducted by FSA. FSA will define a minimum acceptable service quality score PCAs must meet in order to be eligible for any new placements.

Question 8. When does the Department intend to stop paying debt collectors that are accused of breaking Federal consumer protection laws that I referenced in the hearing, including Enterprise Recovery Systems, Pioneer Credit Recovery, and West Asset Management? How many borrowers’ accounts are still with these debt collectors?

Answer 8. The Department believes that every borrower—including those in default—deserve to be treated with dignity and respect. These borrowers should also get accurate information from our contractors about their options.

Regarding your specific question, we have already recalled all non-paying accounts from these PCAs and will continue to do so on a monthly basis for borrowers who stop making payments. The only accounts still placed with these PCAs are active accounts from borrowers who are making voluntary payments, being garnished, or are under review for a disability discharge to avoid any disruption in the borrower’s resolution efforts, particularly to ensure continuity for borrowers who are working toward rehabilitation. FSA plans to recall all remaining accounts under these contracts, but to allow all borrowers to have the requisite 10 months to complete the terms of a rehabilitation agreement.

Following the Department’s findings that these PCAs had violated Federal consumer protection laws, each satisfactorily documented that it had taken action to put in place stronger controls to address those problems. As a result, pursuant to Federal procurement law, those entities were then eligible to continue competing for Department contracts. The Department also has put in place increased monitoring of PCAs.

Question 9. Some recent default rehabilitation agreements state that the Department of Education will charge collection fees that have been previously waived if a borrower re-defaults after a successful rehabilitation.

Is this the Department’s policy? If so, how do the Department and its collectors separate fees that were previously waived from any new fees? Does the Department track data on borrowers who re-default? If so, how is this data tracked and is it public? If so, what are the variables the Department studies regarding causes of re-default? If the Department does not currently track or study this information, does it have future plans to do so?

Answer 9. While default rehabilitation agreements include a provision that allows the Department to charge previously waived fees, in practice the Department does not pursue additional collection fees from borrowers who have re-defaulted after a successful rehabilitation.

The Department believes that tracking the success of borrowers enrolled in rehabilitation is critical. We are in the process of analyzing preliminary numbers on borrowers who re-default and we intend to make data on re-defaults public in the future.

Question 10a. How many full-time employees spend at least 50 percent of their time overseeing the Department's private debt collectors' compliance with Federal and State rules and laws?

Answer 10a. There are currently 84 full-time staff whose primary responsibility is conducting oversight of private collection agencies and servicers. Most of these staff focus on compliance with contractual requirements, which include adherence to Federal and State laws.

Question 10b. Please provide a copy of the Department's Private Collection Agency handbook/manual.

Answer 10b. The Department has not made the manual public based on the advice of the Office of the General Counsel and the Inspector General's Office. However, we would be pleased to provide your office with an opportunity to review the manual at your convenience and can make staff available to help answer any questions that arise from that review. I will instruct the Department's Office of Legislation and Congressional Affairs to reach out to your office to make arrangements for such a review upon submission of this response.

Question 11. During the hearing, you said that you are "deeply committed to ensuring that Federal Student Aid serves students well, serves borrowers well, and protects the taxpayer interest." I share this commitment, but in order to achieve this, FSA's staff must be able to hold its contractors—particularly student loan servicers and debt collectors—more accountable. The problems I've identified are about FSA's employees consistently prioritizing the interests of its contractors over the interests of taxpayers and students. And one of my concerns in this area is that there seems to be a number of FSA staff that have left the government and gone to work for student loan servicers or contractors—presenting the appearance of a revolving door. As Acting Secretary, you currently oversee FSA and its staff;

Please provide a copy of your policies for employees who are leaving or considering leaving government service and are considering jobs with student loan servicers, contractors, or other entities that have business before FSA. Are there requirements that employees disclose contact or job offers from these firms? Are there requirements for employees to recuse themselves from work affecting these firms? Are there post-employment restrictions on these employees if they take jobs with contractors or student loan servicers? Similarly, provide a copy of your policies for employees who are moving from FSA contractors or student loan servicers into ED employment. Are there disclosure or recusal requirements? Please provide a list of FSA employees who have previously worked at an FSA contractor or a company owned by an FSA contractor. Please provide a list of former FSA employees who currently work at an FSA contractor or a company owned by an FSA contractor.

Answer 11. Every agency, including the Department of Education, must ensure that the public is fully confident that the agency's actions are in the best interest of the public and are not—or even appear to be—influenced by the so-called "revolving door."

Attached as Attachments B and C are the guidance documents shared with employees specific to seeking employment, including post-employment rules. These documents are distributed by the Department's Ethics Division. As you will see from the documents, the April 15, 2014 document provides guidance on specific laws and regulations that govern employment matters. The second document provides employees information in a conversational tone to help ensure the technical aspects of the laws and regulations are understood. Both documents make clear that there are certain restrictions on Federal employees, particularly those that have been involved in procurement activities.

The Department makes clear that all new employees are subject to the Standards of Ethical Conduct and other ethics laws. Among other things, new employees are required to disqualify themselves from participating in particular matters involving specific parties in which their former employer is, or represents, a party for 1 year. In addition, under the Standards of Ethical Conduct and the criminal conflict of interest statute at 18 U.S.C. § 208, employees must be recused from any particular matter that will have a direct and predictable effect on an entity with which they are seeking employment.

Per the Procurement Integrity Act (41 U.S.C. §§ 2101–2107), the law imposes job-search restrictions on Federal employees who have been involved in agency procurements. This means an employee who is participating personally and substantially in procurement for a contract in excess of the simplified acquisition threshold and is contacted by a bidder regarding non-Federal employment or is seeking employment with a bidder must report the contact, in writing, to his or her supervisor and the Designated Agency Ethics Official. Additionally, the employee must either reject

the offer of non-Federal employment or disqualify himself or herself from further personal and substantial participation in the procurement until authorization to resume participation is granted in accordance with the conflict of interest rules (18 U.S.C. § 208) on the grounds that the offeror is no longer a bidder or all discussions with the offeror regarding possible non-Federal employment have terminated without an agreement for employment.

Additionally, Section 17 of the STOCK Act requires employees who file public financial disclosure reports to notify the Designated Agency Ethics Official within three business days of commencing post-government employment negotiations or entering into an agreement for post-government employment.

The Department's hiring process has resulted in hiring staff from current or former vendors. We believe this has been of benefit to the Department as there are limited opportunities for individuals to become familiar with the student loan process. The Department has a thorough vetting process to ensure the skills and requirements of the vacant position meet the needs necessary for the advertised position. We immediately provide new hires with information as to the legal restrictions with respect to their interactions with their former employers. We do not keep a list of current or former employees that once worked for a contractor. However, other than the legal restrictions surrounding employee conduct with former employers (oftentimes known as the "cooling off" period), there are no restrictions in the government's hiring protocol with regards to applicants that once were employed by a current or former contractor.

The Department does not require employees to provide post-governmental employment information, nor do we track the employment activities of our staff once they leave the agency. Therefore, I am unable to provide a list of former staff that now work for a contractor or a company owned by an FSA contractor.

I share your desire to ensure that the Department meets the highest standards of ethics and integrity, and I appreciate feedback on ways that the public can remain confident in the Department's work.

STUDENT LOAN DEBT RELIEF SCAMS

Question 12. Shortly after you became the Acting Secretary, the Department issued cease and desist letters to a number of student loan "debt relief" companies.⁵ Have these companies abided by the Department's request? In cases where the companies have not, how does the Department plan to respond?

Answer 12. Both companies that were sent cease and desist letters on January 28, 2016 no longer include the seal of the U.S. Department of Education on their Web sites. If companies do not comply with our cease and desist letters, we will work internally and with our partners at the Department of Justice to determine the most appropriate response.

STUDENT LOAN COMPLAINTS

Question 13. In April 2015, Senators Reed, Durbin, Brown, and I sent a letter to the Office of Management and Budget, with copies to the Department of Education and the Consumer Financial Protection Bureau (CFPB), asking the Administration to examine the feasibility of using the existing student loan complaint system at the CFPB for Federal student loans. Since that time, the Department of Education has announced plans to develop its own complaint system.

What considerations were given to leveraging the CFPB's system? What have been the costs of developing the proposed system, and what does the Department estimate the costs will be going forward? When will the system be fully operational? How will the Department's system interact with the CFPB complaint system? Will the Department share all applicable completed complaints it receives with Consumer Sentinel? If not, why not? Will the complaint system be public and searchable? If not, why not? Will the Department ask borrowers who submit complaints whether they are satisfied with the outcomes? If not, why not?

Answer 13. The Enterprise Complaint System is being developed in response to the directive in the President's Student Aid Bill of Rights, published on March 10, 2015, for the Department to "Create a Responsive Student Feedback System" to "give students and borrowers a simple and straightforward way to file complaints about Federal student loan lenders, servicers, collections agencies, and institutions of higher education." The Student Aid Bill of Rights notes that, as a result of such a system, "[s]tudents and borrowers will be able to ensure that their complaints will be directed to the right party for timely resolution, and the Department of Edu-

⁵ <http://blog.ed.gov/2016/01/dont-be-fooled-you-never-have-to-pay-for-student-loan-help/>.

cation will be able to more quickly respond to issues and strengthen its effort to protect the integrity of the student financial aid programs.”

In developing the Complaint System, the Department has consulted with other entities including the Consumer Financial Protection Bureau, and others in its consideration of the design of a new system to leverage the knowledge and experience of other systems currently in use.

The Department expects total development costs to be approximately \$7.4 million across fiscal years 2015 and 2016. The Department has estimated annualized ongoing costs, including operations and maintenance, software licenses, and contractor customer service support, to be approximately \$2.5 million per year. In accordance with the President’s Student Aid Bill of Rights, the Enterprise Complaint System will be implemented by July 1, 2016.

Interactions between the Enterprise Complaint System and the CFPB complaint system are governed by the Memorandum of Understanding (MOU) between the CFPB and the Department regarding Federal Student Aid (FSA) Ombudsman data. Cases that are determined to be related to the scope of the CFPB complaint system and not the Department, e.g., cases related to private student loans, will be forwarded to the CFPB for resolution through a process that is seamless to the customer. The customer will be informed when this occurs.

The Department will continue to share all applicable completed complaints it receives with Consumer Sentinel, in accordance with existing processes and data-sharing agreements. The information and data gathered through the complaint system will also be used to aid in compliance reviews and improve servicer oversight.

Although the Department recognizes the value that a searchable public database can provide to customers, this functionality is not planned for initial implementation. However, the Department is exploring ways to develop this capability for a future release, and does plan to provide reports to the public. For example, the Department will release an annual report on complaint data beginning in October 2016, and is exploring the possibility of releasing standardized complaint data at more frequent intervals on the FSA Data Center in addition to improvements to the usability of the data presented, as well as periodic reports on significant or timely issues.

The Department will ask borrowers who submit complaints whether they are satisfied with the outcomes. For technical reasons, this capability will not be available by July 1, 2016, but is expected to be included as an enhancement soon afterwards.

BORROWER DEFENSE, OTHER DISCHARGES, AND CORINTHIAN

Question 14. My last question at the hearing was about borrower defense to repayment and Corinthian. You said that you are committed to protect the interests of borrowers and taxpayers, yet the Department still has not established and published a policy for proactively identifying and reaching out to borrowers who are eligible for discharges. Besides borrower defense rulemaking, when will the Department create and make publicly available its policies for identifying and reaching out to borrowers who are currently eligible for discharges (not borrowers who might be eligible after a new rule is written in 2017)?

Answer 14. Our goal is to ensure that every student who is eligible for relief—either because they were defrauded by their college or because their school closed down—receives every penny of the debt relief they are entitled to in an efficient manner. For students who may be implicated by our findings of wrongdoing by schools, we have engaged in multiple rounds of e-mail or postal mail outreach to notify borrowers that they may be eligible for relief. For example, last month we sent out nearly 50,000 followup e-mails to Heald borrowers that included links to the form that borrowers could fill out to seek relief. We tested different subject lines to see which would create the highest e-mail open rate. Preliminary data about the open rates for these e-mail outreach campaigns show they are performing relatively well.

However, we still are not satisfied with the response and plan to begin another round of postal mail outreach, which will include a copy of the attestation form for Heald students and a return envelope.

Question 15. Please provide the guidance that the Department currently gives student loan servicers regarding borrower defense discharges, closed school discharges, and other student loan discharges.

Answer 15. The goal of the Department’s direction to student loan servicers regarding discharges is aimed at ensuring borrowers understand the options available to them to obtain relief on the loans eligible for discharge. We would be pleased to further discuss our guidance to the student loan servicers in a meeting with you or your staff.

Question 16. Is the Education Department advising the Treasury Department not to garnish wages or offset Federal payments for students attending schools where the Department of Education has an open investigation into potential misconduct?

Answer 16. No. The Treasury Department administers the Federal offset program, and we would direct any questions related to program operations to that Department.

Question 17. The Treasury Department is conducting a debt collection pilot program in coordination with the Department of Education to examine if debt collection should be brought in-house rather than managed by private contractors. Is the Department of Education working with Treasury to ensure that no students eligible for relief under borrower defense to repayment have their wages garnished through this joint debt collection pilot program?

Answer 17. The Department of Education and the Treasury Department have discussed Treasury's debt collection pilot. Although we have not specifically discussed whether students eligible for relief under borrower defense to repayment should have their wages garnished, we are in regular contact about the debt collection pilot, and I will be sure to keep your views in mind as we continue through this process.

Question 18. Federal Student Aid has provided information on its Web site suggesting that former Corinthian Colleges students seeking to assert a defense to repayment on their loans should submit "transcripts and registration documents indicating your specific program of study and dates of enrollment." However, in June 2015, a lawyer representing Corinthian warned that the records of former students might soon be abandoned. What is the Department of Education doing to ensure that former students of the now defunct Corinthian Colleges—or future schools that go out of business—can actually track down copies of the documentation the Department requests?

Answer 18. Prior to a closure, institutions are required to make accommodations for the storage and maintenance of student records and for communicating information about the location of academic transcripts and records once the location has been determined. Additionally, closed institutions are required to provide State licensing agencies with information regarding the location of those student records.

In the case of Corinthian and other institutions that have recently closed, the Department worked closely with the requisite State licensing agencies to ensure information regarding the location of student records was widely available but, ultimately, the storage and maintenance of student records rests with the State licensing agencies.

When Corinthian closed, the school directed students who needed transcripts to their State authorizing agencies. This reflects the important role States have in authorizing institutions to operate within their borders, as well as in protecting consumers. The Department looks forward to a continued partnership with State authorizing agencies for such situations.

COLLEGE ACCOUNTABILITY/FOR-PROFITS

Question 19. Many of us have expressed concern that the Department of Education failed to shut off the spigot of Federal aid to Corinthian when it should have despite overwhelming evidence that it was cheating its students. There are currently dozens of State and Federal investigations and lawsuits into other predatory schools like Corinthian. I commend the Department for setting up its new enforcement unit to better address these types of problems, but my understanding is that the enforcement unit will report to Federal Student Aid.

Why does this unit, which will include borrower defense, report to FSA, whose mission is to maximize collections for the student loan program? Would you be open to having this enforcement unit report directly to you?

Answer 19. The Department has a track record of taking aggressive action against bad-acting schools when it has evidence; several such actions have been taken quite recently. In the most recent case of Corinthian Colleges, the FSA's efforts resulted in findings of misrepresentation by the colleges that led to progressive sanctions and eventual closure. Still, FSA and other Federal agencies, including the Government Accountability Office and the U.S. Securities and Exchange Commission, have highlighted the need to build FSA's institutional enforcement capacity significantly, which led to the creation of the Enforcement Unit.

The Department decided to organize the new enforcement unit in Federal Student Aid for several reasons. First, many cases that the Enforcement Unit could investigate include issues that are found via the routine institutional review processes conducted by FSA's Program Compliance unit. Placing the Enforcement Unit within FSA will foster close coordination and collaboration between these units, enhancing

information flows that are often critical to conducting effective investigations. Second, as the Enforcement Unit is built out, Federal Student Aid, as a Performance Based Organization, has more flexible hiring authorities, thus enhancing our ability to put in place a strong leadership team and staff. Third, the Enforcement Unit will be an independent part of Federal Student Aid and Robert Kaye, the head of the Enforcement Unit, will report directly to the Chief Operating Officer of FSA under the overall management of Under Secretary Ted Mitchell. I am confident that our leadership team throughout the Department understands and will implement my vision for a strong, rigorous and effective compliance and enforcement regime that will better protect students.

Question 20. The Department of Education has the authority under the Higher Education Act to claw back the compensation of executives of colleges and universities should that school be found to not be financially responsible under the general standards and provisions in § 668.171. If confirmed, will you be willing to use this authority?

Can you please provide all the instances in the last 5 years where the Department has exercised this authority, including details on each individual subject to a claw back and how much compensation was collected in each instance?

Answer 20. In certain limited situations, ED has the authority to require financial guarantees from or the assumption of liability by owners, board members and executives of an institution with regard to liabilities to/financial losses of the United States, student assistance recipients or other program participants. 20 U.S.C. 1099c(e). We have not used this authority in the last 5 fiscal years; the HEA limits the imposition of these types of consequences only to certain, narrowly defined, cases. We'd be pleased to talk with you or your staff about other possible authority in this area.

Question 21. The Department currently has other tools to hold predatory schools more accountable. Currently, when an institution's cohort default rate exceeds 30 percent, the institution must create a task force and develop a default management plan.

Please provide a list of all institutions that have developed a default management plan and the outcomes of such plans on default rates. What have been the features of successful default management plans?

Answer 21. We are continuing to collect these data, and will supplement these responses as soon as possible.

Question 22a. Colleges are subject to a number of rules that require judgment by you as the Secretary of Education. For each of the following authorities, please list each instance in which Department has used that authority in enforcement actions.

Rules that prohibit an institution from making "any statement that has the likelihood or tendency to deceive" students "about the nature of its educational program, its financial charges, or the employability of its graduates." (34 CFR 668.71)

Answer 22a. The spreadsheet **attached as Attachment D** reflects administrative actions taken in the last 5 fiscal years that were based on non-compliance with 34 CFR § 668.71 concerning misrepresentations as outlined in the regulations and as further defined in §§ 668.72–668.74 regarding the nature of educational programs, nature of financial charges, and employability of graduates.

Question 22b. Rules that require an institution to provide "adequate" counseling to students regarding students' "rights and responsibilities ... with respect to enrollment at the institution." (34 CFR 668.16)

Answer 22b. This request specifically refers to paragraph (h)(3) of the administrative capability standards under 34 CFR § 668.16. We did not have any adverse actions in the last 5 fiscal years that were based upon this specific ground.

Question 22c. Rules that require an institution to "act with the competency and integrity necessary to qualify as a fiduciary" on behalf of taxpayers, "in accordance with the highest standard of care and diligence." (34 CFR 668.82)

Answer 22c. While all enforcement actions inherently result from a failure to meet the fiduciary standard of conduct, the adverse actions in the spreadsheet **attached as Attachment E** specifically reference the fiduciary standard of conduct set forth in 34 CFR § 668.82.

Question 22d. Rules that require an institution to administer Federal aid "with adequate checks and balances in its system of internal controls." (34 CFR 668.16)

Answer 22d. This request regarding adverse actions is based upon the administrative capability standards outlined in 34 CFR § 668.16(c)(1), which requires that in-

stitutions administer Federal aid with adequate checks and balances in its system of internal controls. The spreadsheet **attached as Attachment F** specifically outlines adverse actions in the last 5 fiscal years that were based on that particular ground.

Question 22e. Rules that prohibit an institution from receiving Federal aid if “any criminal, civil, or administrative proceeding” reveals “evidence of significant problems that affect ... the institution’s ability to administer” Federal aid. (34 CFR 668.16)

Answer 22e. The administrative capability standards at 34 CFR § 668.16(j) has two sections. The information requested related to 34 CFR § 668.16(j)(2). We did not have any adverse actions in the last 5 fiscal years that were based on this specific ground.

Question 23a. Colleges submit independent annual audits that, under the audit guide, are supposed to check for possible violations of the incentive compensation rule, among other things. Do the audits that the Department receives include evidence of a college’s compliance with the incentive compensation rule?

Answer 23a. Yes, for audits that include a finding questioning a school’s compliance with the incentive compensation provisions, they will have that specific finding identified. The auditor’s finding will explain the violation. In this sense, the audit and the finding provide “evidence” of the institution’s possible violation.

Question 23b. Please list all instances in which a school has reported violations or possible violations of the incentive compensation rule and how the Department responded in each instance.

Answer 23b. The spreadsheet **attached as Attachment G** reflects in the comment section how the Department responded to each identified violation/possible violation of the incentive compensation rules during the relevant time period.

Question 23c. Are there any rules or regulatory safe-harbors that currently prevent the Department from fully enforcing the incentive compensation rule?

Answer 23c. This Administration successfully removed through regulations all of the safe harbors that previously plagued meaningful enforcement of the incentive compensation ban. In addition, it withdrew a directive put in place by the prior Administration that directed the Office of Federal Student Aid to avoid recovering student aid dollars that were improperly received as a result of illegal recruitment activity and, instead, seek to fine institutions for noncompliance. There remains at least one False Claims Act case that was initiated under the prior regulatory regime, which has been made more complicated because of these prior rules. Going forward, the Department has no current regulatory barriers to fully enforcing the ban. In 2015, ED also repealed a Bush administration directive that inhibited ED’s enforcement of the statutory ban on incentive compensation and re-trained enforcement staff to utilize ED’s full authority to hold violating colleges accountable.

Question 24. The Department’s auditors are expected to look for risk indicators, including those listed below. How do the auditors assess these indicators and how do the auditors respond when the audits indicate a potential problem?

- Rapid growth in a short period of time.
- Use of high-pressure recruitment tactics.
- High turnover of management, faculty, and other staff.
- Large number of students dropping/withdrawing after the last date when funds would have to be returned to the Education Department.
- High student enrollment but low student attendance.
- High rate of withdrawals or defaults.
- Signs of inadequate or overworked faculty.

Answer 24. Audits of for-profits institutions are conducted in accordance with the OIG Audit Guide, “Audits of Federal Student Financial Assistance Programs at Participating Institutions and Institution Servicers (<http://www2.ed.gov/about/offices/list/oig/nonfed/sfgd2000.pdf>).” Audits of private non-profits and public institutions are conducted in accordance with the OMB A-133 Compliance Supplement (https://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2015). The audits are submitted to the Department for resolution of the findings that have been identified. The testing procedures provided in the audits do not provide the level of detail to respond to this question.

Question 25. The audit guide has not been updated since 2000. If you are confirmed, when will the Department update this audit guide?

Answer 25. The Office of Inspector General (OIG) is responsible for issuing the “GUIDE FOR AUDITS OF PROPRIETARY SCHOOLS.” The OIG intends to issue the updated guide by the end of April 2016.

Question 26. The Higher Education Act was amended in 2008 to require Education Department investigators to share their findings with colleges before ever notifying the public of the exposed problems, and permanently prohibits public disclosure of those original investigator findings.

How is this provision affecting the Department’s ability to act on its findings, and on the type and timing of information that is available to the public? What types of changes have been made to program reviews before they have been made public?

Answer 26. The HEA prohibits the public disclosure of a program review report until an institution has had an opportunity to respond and a final determination is issued. However, the final determination which becomes public includes a copy of the program review report with the original findings. This provision does not impact the Department’s ability to act on its finding. It does delay program review information being publicly available.

Changes are not typically made to a program review report that has been issued to the institution. Those that are made are generally to correct an administrative error. Even findings that are resolved remain in the report and the final determination will indicate that the issue has been satisfactorily resolved. Final Program Review Determinations are posted on the FSA Data Center.

LEGAL RIGHTS OF STUDENTS

Question 27. Many predatory schools require forced arbitration clauses, prevent students from joining together with other students to file complaints, or take other steps to limit students’ recourse and prevent regulators and law enforcement agencies from gaining information about these students. What steps is the Department taking to ensure that students who enroll in college are not forced to sign away their legal rights, and that the Department and other agencies have timely information about complaints and disputes?

Answer 27. It is absolutely critical that students are able to obtain redress if they have been taken advantage of by bad actors. The Department recently established an Enforcement Unit which will beef up oversight over higher education institutions, and, as part of the President’s Student Aid Bill of Rights, we will be launching a state-of-the-art student feedback and complaint system by July 1, 2016. Regarding your specific question, we share your concern about avenues for adequate legal remedy being restricted for students and borrowers and we are looking broadly at how students can pursue disputes, and we will include the specific issue you raise—of students being forced to sign away their legal rights—in our analysis and efforts. We plan to report on the progress of this work in the coming months.

ACCREDITATION

Question 28. You spoke briefly about accreditation in response to a question from Senator Murphy.

How will you ensure that accreditation agencies are proactively protecting students during upcoming National Advisory Committee on Institutional Quality and Integrity (NACIQI) review hearings?

Does the Department have the legal authority to ask for and obtain accreditation team reports and self studies? If yes, when will the Department work to make these public? If not, please provide me with the legal rationale for why that is not the case.

Does the Department have the legal authority to require accreditors to disclose accreditation team reports, self studies, or at least the personnel who participate in team visits? If yes, when will the Department work to make these public? If not, please provide me with the legal rationale for why that is not the case.

Has the Department obtained or will it obtain and publish any of the accreditation documents related to Corinthian Colleges, FastTrain, Westwood, or other large college companies that have closed in recent years or are in the process of closing?

Answer 28. The Department shares many of the concerns that Members of Congress have raised about accrediting agencies.

Accrediting agencies must play a key role in ensuring quality in post-secondary education and protecting students. The Department’s Office of Post-Secondary Education (OPE) provides recognition, oversight, and monitoring of accreditation agency compliance with statutory and regulatory requirements. In addition to the ongoing accreditation oversight that OPE has provided, the Department announced a num-

ber of executive actions in November 2015 to improve transparency, accountability, and focus on student outcomes in its recognition and oversight processes.

The Department is taking a number of steps in order to better inform staff and NACIQI recommendations, particularly related to student outcomes and problematic institutions. First, the Department has made publicly available, via its Web site, performance data for institutions sorted by accreditor, as well as information regarding each recognized accrediting agency's student achievement standards. At its last NACIQI meeting, NACIQI expressed interest in incorporating these data into its review processes for the June 2016 meeting. Toward this end, NACIQI adopted a plan for the June 2016 meeting which includes analysis of key data points that NACIQI wishes to include as part of its review of accrediting agencies, and NACIQI identified questions regarding student achievement measures that it will pose to agencies in a systematic format. In addition, Department staff incorporate the number of complaints received for each accrediting agency and provides that information to NACIQI.

All of these actions, taken together, are increasing accountability of agencies for the performance of their institutions. We also make the documents collected in the agency recognition process available to the public for inspection in accordance with the Federal Advisory Committee Act. This includes accreditation team reports and self-studies provided by agencies to the Department.

The Department is working to conduct a rigorous review of the accreditors scheduled for re-recognition in June 2016, including some that accredited recently closed institutions. The Department is gathering relevant information that will inform staff and NACIQI recommendations. We will continue to work to strengthen accreditation and ultimately ensure high-quality options for students.

As you know, in addition to the executive actions we are taking to strengthen accreditation, the Administration has called for legislative action to advance a focus on student outcomes in accreditation. We look forward to continuing to work with you and your colleagues on this effort.

TCPA

Question 29. In December 2015, Senators Lee, Markey, Hatch and I sent your predecessor a letter to express our concerns about using “robocalls” to collect student loan debt.⁶ While a caller must generally have a person's consent before using autodialers and pre-recorded messages to “robocall” the person's cell phone or residential line, Title III of the Bipartisan Budget Act of 2015 creates an exemption allowing anyone to robocall a person's phone—without consent—for the purpose of collecting a debt owed to or guaranteed by the Federal Government.

Our letter asked the Department not to use this new authority until the Department can demonstrate with data that robocalling is in the best interest of student loan borrowers and taxpayers and will not result in abusive debt collection practices. The Department's response dated February 24, 2016 indicated that the Department would “provide a detailed cost-benefit analysis and burden assessment [] in accordance with Executive Orders 12866 and 13563.” In other words, the Department responded to our request for this specific data with a commitment to conduct a general cost-benefits analysis that agencies must provide anyway as part of a rule-making process.

In addition, our letter asked two questions: whether the Department agrees with our reading of the Bipartisan Budget Act of 2015 that robocalling is not permitted until after the Federal Communications Commission (FCC) has issued implementing regulations; and whether the Department interprets the new authority to permit robocalling to the relatives and references of student loan borrowers. The Department responded that it has not concluded its “review of implementation issues” and that the Department “has not developed guidance on the scope of the authority under Title III.” In other words, the Department did not answer our questions.

Given the Department's inadequate response, I ask again for the Department to provide the data requested in our letter and answers to our questions—specifically:

Will you commit to not permitting robocalling under this authority until the FCC issues implementing regulations? Will you commit to ensuring that this authority cannot be used to robocall relatives or references who may be secondarily responsible for student loan debt? Will you commit to providing the data we requested, rather than simply committing to conduct the standard cost-benefit analysis?

⁶Letter from Senators Elizabeth Warren, Michael S. Lee, Edward J. Markey and Orrin G. Hatch to Hon. Arne Duncan, Secretary, U.S. Department of Education (Dec. 21, 2015) available at http://www.warren.senate.gov/?p=press_release&id=1038.

Answer 29. We continue to support efforts to protect borrowers from harassing phone calls and recognize the important role the TCPA plays in safeguarding consumers from excessive, unsolicited phone calls. Shortly after the Bipartisan Budget Act of 2015 was passed, we sent a notice to our servicers to not implement any changes related to the TCPA provision. The Department will not permit robocalling under this authority until the FCC issues implementing regulations and we will not allow our servicers to use this authority to robocall relatives or references who may be secondarily responsible for student loan debt.

Regarding data and analysis to show whether this is in the public interest, we are determining the best way to be responsive to this request and plan to followup with your staff and staff of other interested offices.

Please contact Josh Delaney (202–224–4543) in my office if you have any questions.

[Editor's Note: The attachments indicated above were not available at time of print.]

ADDITIONAL QUESTIONS OF SENATOR WARREN

Regarding the Department's Review of Student Loan Servicers and the Education Inspector General 3/1/2016 Report. See <http://www.ed.gov/about/offices/list/oig/misc/scrareport02292016.pdf>.

Question 1. How and why did the Department make the decision not to rely on DOJ's and the FDIC's investigation, and instead conduct separate reviews of Navient's conduct to determine whether Navient should be subject to penalties in the student loan program as a result of its settlement with DOJ and the FDIC?

Answer 1. The misconduct of Sallie Mae/Navient that was alleged by the Justice Department and the Federal Deposit Insurance Corporation was disturbing, and the Education Department was greatly concerned by this development. While the Department worked closely with the Justice Department in developing the relief provided to Federal student loan borrowers under the Consent Order, under the Department's contracts with loan servicers, we needed to determine whether Navient had complied with the terms of that contract, the HEA and regulations, and the guidance we provided to determine if we had a legal basis to take any action under the contract. Additionally, while working with Justice on the Consent Order we discussed how to apply the procedures required of Navient going to other servicers and to the FFEL Program. As a result, the Department issued new guidance to ensure that servicemembers could automatically receive the interest rate reduction on their Federal student loans and operationalized that guidance to ensure that every servicemember is guaranteed the benefits to which they are entitled on their Federal student loans under the Servicemembers Civil Relief Act.

Question 2. Given that neither the Department of Education nor its Office of Federal Student Aid—the Department's student loan bank—administers or enforces the SCRA, why was this review conducted by the Office of Federal Student Aid, and not a certified auditor with SCRA expertise or an arm of the Department that does not regularly engage with student loan servicers?

Answer 2. Every office within the Department, including offices within the Office of Federal Student Aid, is deeply committed to protecting the interests of students and borrowers.

The Department's review was to determine whether or not the servicers were in compliance with the requirements of the Higher Education Act, our regulations and guidance, and the servicers' contracts with the Department. That expertise is in Financial Institutions Oversight Service Group (FIOS), which is located within the Office of Program Compliance, a separate component within FSA that is not involved in the business operations of the loan servicers. FIOS is responsible for monitoring the servicers' compliance with the statutory and regulatory requirements for the Federal loan programs. Federal Student Aid did engage a certified auditor, CPA firm Ernst & Young, to conduct an independent review. The results of the Ernst & Young review aligned with those of the FIOS review. We are in the process of reviewing the OIG's recommendations to determine what additional action can be taken.

Question 3. Did the Office of Federal Student Aid seek input on the scope of the review from the Department of Justice or the Consumer Financial Protection Bureau's Office of Servicemember Affairs, or from elsewhere in the Department of Education?

If not, why not? If so, how did their input factor into the program review?

Answer 3. The Department worked closely with DOJ to understand the scope of its review and the differences between our compliance standard applicable under our contracts and the standard DOJ incorporated into the Consent Order.

Since the scope of the Department's review was significantly different from the scope of the action taken by DOJ, neither DOJ nor CFPB was contacted regarding the scope of the FSA review.

More broadly, the Department has benefited from a close working relationship with both the Department of Justice and the CFPB, and will continue to look for ways to ensure our oversight responsibilities meet the highest standards for servicemembers, students, and borrowers by seeking opportunities to incorporate the expertise of other agencies where they may have relevant expertise. As an example, most recently, the Department's FSA has added an enforcement unit that includes a focus on protecting Federal student loan borrowers headed by Robert Kaye, one of the Nation's top enforcement attorneys and a leader in the consumer protection work at the Federal Trade Commission. In addition, Mr. Kaye coordinates enforcement activities with the Department's Office of the Inspector General.

Question 4. When the Department was first briefed by both the Consumer Financial Protection Bureau and Department of Justice on possible SCRA violations by Sallie Mae/Navient? When did officials at the Department of Education know the details of the DOJ's May 13, 2014 announcement?

Answer 4. The Department is in regular contact with partner agencies, particularly our Federal law enforcement agencies, such as the Department of Justice and the CFPB. We continue to strengthen our cooperation through strong Memoranda of Understanding with such agencies that allow for greater information sharing to aid in investigative efforts. And we lead an interagency working group under the Principles of Excellence for Educational Institutions Serving Service Members, Veterans, Spouses, and Other Family Members focused on ensuring better educational resources and strong protections for our Nation's military families.

While it was before I arrived at the Department, my understanding is that the Department first learned about the Department of Justice's investigation and findings of Sallie Mae's compliance with the SCRA during the summer of 2013. The Department learned about the details of the investigation during a series of communications primarily with the Department of Justice. As noted in the Department of Justice's press release of May 13, 2014, the Department of Justice's settlement with Navient was the product of a joint effort with the Department of Education, the Consumer Financial Protection Bureau and the Federal Deposit Insurance Corporation. The Consent Order that resulted from the settlement was negotiated over a period of months and the Department of Justice consulted with the Department of Education throughout that period.

Question 5. For each of the following reviews, who oversaw the first FIOS review of Navient, the second FIOS review of Navient, and the review of the other three TIVAS? How many full-time FSA and/or non-FSA employees were assigned to and/or worked on each of these three reviews? How was the methodology for each of these three reviews established and reviewed? Who set the parameters for the methodology and sampling methods for each of these three reviews?

Answer 5. As with all reviews, Departmental employees receive training and guidance on conducting appropriate compliance activities in order to protect the interests of students, borrowers, and taxpayers. The reviews were managed by the Director of the Financial Institution Oversight Service Group. The Department's internal review was undertaken by 15 employees in FSA's Program Compliance office.

The methodology was established based on the Department's requirements—mirroring statutory requirements of the SCRA—that borrowers request in writing the SCRA interest rate and provide a copy of their military orders. For the first review, FIOS relied on more limited data that were accessible in NSLDS to conduct the four TIVAS reviews in the timeframe provided. Since FSA's first review of Navient resulted in substantially different results than DOJ, FSA management wanted to do a second review utilizing the data match. We also engaged a CPA firm, Ernst & Young, to conduct an independent review. Ernst & Young selected a sample from the results of a data match with DMDC. FIOS used this same sample to conduct the second review. Despite the DMDC match used for the second review—and the threefold sample size increase—the second review identified the same results as the first review.

Question 6. What policies and procedures guide FIOS' approach to a review such as these, and how are these policies and procedures similar to the reviews of other Department guaranty agencies, private debt collectors, contractors, and other financial institutions? Is it the Department's policy that a certain number of mistakes

are appropriate from its servicers? What number and scope of mistakes would warrant punitive action against a servicer?

Answer 6. FSA has policies and procedures to guide oversight activities, such as those related to the review of the TIVAS for compliance with SCRA-related regulations and guidance under the Higher Education Act. This review was not designed to be a formal statistical study. Rather, it was to review data for management's assessment of compliance and to determine the need for corrective or other actions.

In certain situations, the Department can assess fines, such as when a guaranty agency's or lenders' violation, failure, or substantial misrepresentation is material and the entity knew or should have known that its actions violated the provisions of the HEA or Department's regulations. In the case of a violation by a contractor, the Department can pursue remedies available under the contract.

Typically, if the cause of any instances of noncompliance were systemic in nature, such as a lack of controls, inaccurate controls, or a system coding issue, then the entity is instructed to take corrective actions, including adjusting individual accounts or implementing accurate controls or system changes. If FSA determines that the nature of the noncompliance is severe or willful, the Department may seek additional remedies, including contract termination.

In addition, later this year, the Department will begin a new loan servicing procurement process to create a limited set of streamlined, consistent systems and processes that will allow Department staff to more effectively manage and oversee vendors' performance, leading to better outcomes for borrowers. Providing high quality service to servicemembers, and ensuring they receive all benefits to which they are entitled, will be among our top priorities.

We appreciate any feedback you may have related to our policies and procedures as we consider steps to ensure that the Department's reviews of financial institutions meet the highest standards.

Question 7. Was the first Navient review (initiated June 2014) completed, or merely stopped before completion? If it was stopped, then why was it stopped? Who made the decision to stop it?

Answer 7. The review was completed.

Question 8. Please provide the results of the first Navient review and explain why its existence and its content have not been previously disclosed to the public. If the review was not completed, then please provide materials produced as part of the review.

Answer 8. For the first Navient review, the sample was selected from a National Student Loan Data System (NSLDS) population of 33,837 unique records of military deferment and military grace periods granted from June 17, 2009, through April 14, 2014, for FFEL Program and Direct Loan Program loans owned by the Department with an interest rate in excess of 6 percent that were serviced by Navient under the TIVAS contract. The DMDC match was not available at that time, and the NSLDS selection criteria were used to yield a more likely population of borrowers to have requested the SCRA benefit. The review identified one borrower out of the sample being incorrectly denied.

The second review was conducted using the DMDC data match, which was unavailable when the first review was conducted. FSA decided to initiate a second review utilizing the data match. The second review, based on the larger sample, also identified one borrower that had been incorrectly denied. Since the second review was based on the larger DMDC data match and resulted in similar results as the first review, we had greater confidence in the results and focused efforts on the development of a public report on this second review.

Question 9. Why didn't FIOS attempt to determine whether the TIVAS has information in their own servicing systems that could have helped them to identify a complete universe of servicemembers who might be eligible for the SCRA benefit? Why didn't the FIOS review of Great Lakes, PHEAA, and Nelnet use the Defense Manpower Data Center to identify potential SCRA-eligible servicemembers?

Answer 9. The Department appreciates the importance of understanding the architecture of key servicing systems used by the TIVAS. This understanding helps to inform data sources for conducting oversight activities.

Regarding your specific question, FIOS reviewed DOJ's sampling method and understands that Deloitte, on behalf of DOJ, first identified a population by matching the Navient borrowers against DMDC. They then determined if the borrower's active duty was in scope, then removed loans with an interest rate less than 6 percent or loans that were not eligible because they were originated during the borrowers active duty.

From that they matched the population against Navient's imaging system to determine if any of the borrowers had a military document in the system (as designated by a code). Deloitte then manually reviewed the files of 12,400 borrowers (their "sample"), and only 2,800 borrowers had both orders and a notice in the file, even after using the data that Navient had in their imaging system. Therefore FIOS believed the data in the imaging system was not sufficient to identify the population of eligible servicemembers.

If, as stated by the OIG, Navient instituted a computer system code as a result of the settlement, that code would not have been effective during the time of the first FIOS Navient review because the settlement had not been implemented. Although FIOS did not inquire directly of the other three servicers as to whether there was information in their system to identify SCRA eligible borrowers, FIOS did have a familiarity with these systems and did not believe that to be the case.

During the time that the reviews were being performed, July/early August, 2014, Great Lakes, PHEAA and Nelnet had not yet fully implemented the data match. FIOS' goal at the time was to provide a timely response to inform management's assessment prior to the full implementation of this data match; however, FIOS did not have ready access to the information. In addition, based upon the results of the two Navient reviews, we concluded that there was not a meaningful difference between using the DMDC data base or NSLDS.

Question 10. What percentage of servicemembers with Federal student loans are in military grace periods or deferment at any given time?

Answer 10. We are continuing to collect these data, and will supplement these responses as soon as possible.

Question 11. How much was Ernst and Young paid to corroborate the FIOS reviews of the TIVAS? Please provide copies of the contract, guidance, and directive that FIOS/FSA gave Ernst and Young. Did Ernst and Young ever raise concerns about the FIOS methodology? If so, what were those concerns and who received them? How did the Department respond to these concerns?

Answer 11. Ernst and Young (EY) was paid \$94,471.00 to offer its independent perspective. A copy of the contract and RFP are attached. In order to maintain independence, EY did not have a copy of the FIOS review methodology.

Question 12. Why did the Department assert in its May 26, 2015 press release that its reviews showed violations in "less than 1 percent of cases" when the "acceptance" sampling methodology used by FIOS to analyze the non-Navient services makes it impossible to draw such conclusions?² Who at FSA approved the substantive content of the May 26, 2015 press release? Does he or she still oversee financial institution oversight or compliance?

Answer 12. Improving transparency in all we do is an important principle for the Department and I am very committed to it. We are currently reviewing the facts of this situation and the findings of the Inspector General. We will followup with your staff to provide a more detailed response.

Question 13. Why did the Department assert in its May 26, 2015 press release that its reviews showed violations "in less than 1 percent of its cases" when the small sample and methodology of its sampling design preclude the reporting of a statistically valid aggregate denial rate, and its own reported raw data indicated incorrect denials in 8 percent of reviewed cases? Why did the Department combine the program review of all four TIVAS in its May 26, 2015 press release?

Answer 13. We summarized the reviews to provide a brief and simple explanation of the results. Our summary was not based on only those borrowers who applied for the SCRA interest rate cap. We modeled our review after the universe that DOJ used which was all eligible servicemembers; not only those who applied.

We also provided in the press release a link to all of the underlying reports completed in order to provide all of the details about the reviews to be fully transparent.

Question 14. Why did the dataset FIOS used to review PHEAA compliance with SCRA not exclude the more than 50 percent of reviewed loans for which borrowers could not benefit from the 6 percent interest cap?

Answer 14. This is attributable to error. The sample was pulled incorrectly, and although the borrower's primary loan had an interest rate of 6 percent or less, some of the borrowers had secondary loans that had interest rates greater than 6 percent,

² <http://www.ed.gov/news/press-releases/us-department-education-completes-review-major-student-loan-servicers>.

so the actual number of borrowers with all loans having an interest rate of 6 percent or less was 16.

Question 15. Why did the second FIOS analysis of Navient credit Navient with providing SCRA benefits to three servicemembers who did not receive those benefits during the designated review period, and only received them after the review period as the result of new SCRA compliance procedures implemented in the wake of the Navient SCRA scandal?

Answer 15. The borrowers were correctly included in the sample and therefore should have been in the program review, but the borrowers should not have been reported as having requested and been granted the benefit. This situation had no impact on the number of borrowers incorrectly denied within the sample. Ernst & Young was also engaged to provide assurance regarding the accuracy of the results, mitigating any potential errors by staff in the first review.

Question 16. Second Navient Review Methodology: a. Did this review sample at the loan level or the borrower level? b. What was the rationale for the sample design? c. What was the expected deviation rate for the sample design? d. What was the tolerable deviation rate for the sample design? e. What was the expected precision for the sample design? f. Why has the Department never previously disclosed the level of the review sample, the rationale for the sample design, the expected deviation rate for the sample design, the tolerable deviation rate for the sample design, and the expected precision for the sample design? g. Why didn't FSA consult with or use a statistician to assist with designing the sample it used in its program reviews?

Answer 16. Improving transparency in all we do is an important principle for the Department and I am very committed to it. We are currently reviewing the facts of this situation and the findings of the Inspector General. We will followup with your staff to provide a more detailed response.

Question 17. Why didn't FIOS recommend that all of the TIVAS—especially PHEAA and Great Lakes, whose program reviews identified SCRA compliance errors—review their borrowers to identify and correct all potential instances of incorrect denial of the SCRA interest rate cap? What corrective actions did FSA recommend for SCRA noncompliance with these two servicers?

Answer 17. As a result of our oversight work and engagement with our partner agencies, the Department has taken a series of steps to ensure that any borrower who may have been improperly denied relief will receive the benefit.

Recently, the Department has directed our servicers to review their SCRA records, going back to the start of their contracts, to determine whether there were any instances of servicemembers being improperly denied the SCRA benefit based on the guidance that existed at that time. In addition, I am pleased to report that we have initiated a process to conduct a data match, based on current guidance, to automatically provide credit for any servicemember who was on active duty since Federal student loans became eligible for the benefit in 2008, including servicemembers who did not apply for the benefit.

Importantly, servicers were also directed to develop and implement internal controls to prevent future errors. See the response to Question 25 for additional actions taken by the Department to protect servicemembers.

Question 18. Why didn't FIOS ask the TIVAS for a sample of SCRA benefit denials?

Answer 18. Based on its knowledge of the servicers' systems, FIOS did not believe that the servicers' databases contained data related to SCRA benefit eligibility or denials. This has been confirmed by FSA Business Operations. We wanted to look at all instances of compliance and non-compliance with the SCRA-related regulations under the Higher Education Act.

Question 19. The Department of Education told the Inspector General that "it was a management decision not to require further [TIVAS] corrective actions for the periods reviewed." The Department also said that this decision was "not primarily based on a statistical analysis." Please explain how this decision was made, who made it, and what factors formed the basis for this decision. Similarly, what was the basis for the Department's decision not to pursue further corrective actions against Navient?

Answer 19. Due to the urgency of the issue, the Department's review was not designed to be a formal statistical study but rather the review of data to quickly assess compliance and to determine the need for corrective or other actions. We currently are reviewing the findings of the OIG report. We take OIG's feedback very

seriously and will take any appropriate steps to ensure that the Department's reviews of financial institutions meet the highest standards. I am pleased to report that we have initiated a process to conduct a data match and automatically provide credit for any servicemember who was on active duty since Federal student loans became eligible for the benefit. This would provide the benefit to any servicemember who was on active duty, going back to 2008, whether or not they had applied for the benefit. We look forward to engaging with you as we move forward with that process.

Based upon the level of non-compliance, the Department used a corrective action plan focused on the limited number of incidences, and ensuring that the broader issue of servicemembers not ever applying for the benefit was addressed prospectively in order to ensure that all servicemembers receive the benefits they are entitled to automatically. The corrective action plan already in place uses a DMDC data match so that all eligible servicemembers will automatically get the SCRA benefit without applying. In addition, we modified the servicing contracts to provide premium service to all servicemembers and include (i) specially trained staff to work with servicemembers, (ii) dedicated web and phone services, and (iii) established premium pricing for servicemember accounts to ensure the highest quality services and resources. We also expanded our monitoring staff and increased focus on explicit reviews of SCRA compliance. We established a dedicated mailbox on StudentAid.gov where servicemembers can notify the Department of potential harm. Separately, we also posted a notification of the DOJ settlement and provided DOJ contact information for servicemembers.

Question 20. Given FSA's demonstrated inability to conduct an accurate program review, does the Department plan to act to penalize Navient based on the Department of Justice and FDIC findings? Does the Department feel the need to conduct another review of Navient based on those findings or will the Department defer to the investigation and conclusions of the DOJ and the FDIC? Is the Department willing to fine, to cancel the contracts of, or to otherwise penalize Navient based on the DOJ and the FDIC findings?

Answer 20. We take very seriously the issues raised by the Inspector General and will take any appropriate steps to ensure that the Department's reviews of financial institutions meet the highest standards.

As noted, while the Department worked closely with the Justice Department in developing the relief provided to Federal student loan borrowers under the Consent Order, under the Department's contracts with loan servicers, we needed to determine whether Navient had complied with the terms of that contract, the HEA and regulations and the guidance we provided to determine if we had a legal basis to take any action under the contract.

Question 21a. Given FSA's demonstrated inability to conduct an accurate program review, how will the Department ensure that an independent, thorough, reliable, statistically sound review of whether Great Lakes, PHEAA, and Nelnet complied with SCRA during the time period in question occurs? Is the Department willing to fine, to cancel the contracts of, or to otherwise penalize the Great Lakes, PHEAA, and/or Nelnet based on the results of any additional, reviews?

Answer 21a. We are currently reviewing and take very seriously the issues raised by the Inspector General and will take any appropriate steps to ensure that the Department's reviews of financial institutions meet the highest standards.

Question 21b. Will the Department direct every TIVAS to independently review every servicemember student loan based on the Department of Defense's Defense Manpower Data Center data base from June 19, 2009 to May 31, 2014 to identify servicemembers eligible for SCRA benefits who did not receive them?

Answer 21b. The Department has directed our servicers to review their records going back to 2008. In addition, we have been working to find additional measures we can take to ensure that any Direct student loan borrowers who were entitled to the interest rate cap and did not receive it are made whole. To that end, I am pleased to report that we have initiated a process to conduct a data match and automatically provide credit for any servicemember who was on active duty since Federal student loans became eligible for the benefit. This would provide the benefit to any servicemember who was on active duty, going back to 2008, whether or not they had applied for the benefit. We look forward to engaging with you as we move forward with that process.

Question 22. Will the Department take corrective action to require TIVAS to make whole any and all borrowers who were eligible for SCRA benefits from June 19, 2009 to May 31, 2014 and didn't receive them?

Answer 22. After recent conversations with the OIG, on February 23, 2016, we asked each servicer to review its SCRA records, going back to the beginning of their contract with the Department—to ensure that there are no borrowers who should have received the benefit but did not, in accordance with the Department's guidance at the time. If the servicer discovers borrowers who did not receive the benefit even though they submitted a written request and appropriate military orders, they will apply the benefit and submit to FSA the number of corrections made.

As noted above, we have been working to find additional measures we can take to ensure that any Direct student loan borrowers who were entitled to the interest rate cap and did not receive it are made whole. To that end, I am pleased to report that we have initiated a process to conduct a data match and automatically provide credit for any servicemember who was on active duty since Federal student loans became eligible for the benefit. This would provide the benefit to any servicemember who was on active duty, going back to 2008, whether or not they had applied for the benefit. We look forward to engaging with you as we move forward with that process.

Question 23. Given the serious and basic flaws here, do you feel that the Office of Federal Student Aid is equipped to do these kinds of reviews? Will the Department move financial institution oversight out of the Office of Federal Student Aid?

Answer 23. We are always seeking to improve our training, operations, and policies to work in the best interest of borrowers.

FSA is equipped to conduct these types of reviews and is familiar with the servicing records required by the Department's servicers under the contracts and can determine if the servicer properly determined if a borrower was eligible and the rate was properly applied. We take very seriously the issues raised by the Inspector General and will take any appropriate steps to ensure that the Department's reviews of financial institutions meet the highest standards. The Department and FSA are both committed to continuous improvement and will continue to look across government and private industry for best practices in performing reviews.

Question 24. Please provide any and all communication between the Office of Federal Student Aid and Navient regarding this review.

Answer 24. Attached are communications between FSA and Navient regarding the review. We are continuing to review our records and will supplement this response as appropriate.

Question 25. What's the Department's full explanation for how this happened, and how will the Department ensure that this never happens again?

Answer 25. We take very seriously the issues raised by the Inspector General and will take any appropriate steps to ensure that the Department's reviews of financial institutions meet the highest standards.

In addition, when the issues regarding SCRA arose, the Department embarked on a comprehensive effort to ensure that all eligible servicemembers received the SCRA benefit to which they are entitled.

In December 2013, we instructed our Direct Loan servicers to do a match with a DOD database to identify SCRA eligible borrowers.

In April 2014, we instructed servicers to conduct outreach to the potentially eligible SCRA borrowers identified through the match and make them aware of the benefit and solicit, and process, the paperwork required at that time to grant the borrowers the benefit.

In the few months that followed, we further simplified the process and requirements for servicers and borrowers. In May 2014, we instructed our servicers to match their portfolios against the DOD database of active duty service members and proactively and automatically grant the benefit to servicemembers.

More specifically, we instructed our servicers to identify all servicemembers who were on active duty during the year, and automatically grant the SCRA benefit for the entire time the eligible borrower was on active duty.

As a result of the new process, eligible Direct Loan borrowers on active duty and in the DOD database receive the benefit without having to apply for the benefit or submit copies of their orders, as was the case under our prior regulations. This addresses the most significant issue of potentially more than 90 percent of eligible servicemembers not applying for the benefit.

To help address borrowers with loans issued under the older bank-based FFEL program, we issued guidance in August 2014 to the FFEL community informing them of our actions for Direct Loan borrowers and permitting them to take similar actions for FFEL borrowers.

We modified our servicing contracts to provide enhanced service to all servicemembers, including specially trained staff to work with servicemembers,

dedicated support, and have established premium pricing for servicemember accounts to ensure that servicers provide high quality services and resources.

We established a mailbox on StudentAid.gov where servicemembers and other borrowers can notify the Department of potential harm. Separately, we also posted a notification of the DOJ settlement and provided DOJ contact information for servicemembers.

We now perform quarterly SCRA reviews of servicers to ensure they are correctly applying the match and automatically granting the benefit. The first review of servicers' compliance with SCRA requirements illustrates consistent servicer processing of these borrower benefits, as 332 of the 335 accounts reviewed passed examination. And beginning this month, we will monitor as many as 200 calls per servicer each month on SCRA.

And, in October 2015, we issued regulations requiring FFEL servicers to follow the same procedures we developed for Direct Loan borrowers.

As noted above, we have been working to find additional measures we can take to ensure that any Direct student loan borrowers who were entitled to the interest rate cap and did not receive it are made whole. To that end, I am pleased to report that we have initiated a process to conduct a data match and automatically provide credit for any servicemember who was on active duty since Federal student loans became eligible for the benefit. This would provide the benefit to any servicemember who was on active duty, going back to 2008, whether or not they had applied for the benefit. We look forward to engaging with you as we move forward with that process.

ATTACHMENTS

U.S. DEPARTMENT OF EDUCATION,
OFFICE OF FEDERAL STUDENT AID,
NEW YORK, NY 10005,
May 20, 2014.

JOHN F. REMONDI,
Chief Executive Officer,
Navient Corporation,
300 Continental Drive,
Newark, DE 19713.

UPS Tracking# 1ZA879640293294699

Re: Program Review, Servicer ID: 700578, PRCN: 20143025005

DEAR MR. REMONDI: This letter notifies Navient Corporation (Navient) that a program review has been scheduled at your institution beginning on June 2, 2014 through June 6, 2014. The review will assess Navient's participation in the William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Loan Programs and its compliance with provisions of the Servicemembers Civil Relief Act of 2003 (SCRA) and the Higher Education Opportunity Act (HEOA), dated August 14, 2008. The HEOA amended Sections 428(d) and 438 of the Higher Education Act of 1965, as amended. The review will cover the period July 1, 2008 through April 30, 2014, but may be expanded as appropriate.

The U.S. Department of Education's (ED) authority to examine program and financial records and conduct reviews is reflected at 34 CFR § 682.414(c). We will contact you in writing concerning the documents, records and data files that Navient must supply prior to and during the review. Please make arrangements for all required information, hard copy, and electronic, to be available when requested.

Included with this letter is Attachment A: Information Required for the Review which lists the general information Navient must supply for the review. Please provide the remaining information to this office by May 22, 2014. Also, please make arrangements for the review team to have access (view and print capability) to any computer databases containing information related to the FFEL and Direct Loan Programs. The review team will also require access to Navient's administrative staff.

At the start of the review, the review team will conduct an entrance conference with you and your staff. We will contact you to establish a time for the conference. Please inform the appropriate program administrative staff, so they or their designees can attend the entrance conference and remain available during the review.

During the review, we request that Navient provide a secure working space for the review team to ensure the confidentiality of the financial records being reviewed and the security of ED equipment. We will also require access to a telephone, Internet connections, copier, fax machine, and printer.

At the conclusion of the review, the review team will conduct an exit conference to discuss the preliminary review findings. Your presence at the exit conference would be appreciated. If it is not possible for you to attend, we request that you designate a representative.

If you have any questions, please contact Naomi Facey at 646-428-3853 or by e-mail at Naomi.Facey@ed.gov. Thank you for your cooperation.

Sincerely,

SUSAN C. FERRAIOLE,
Compliance Manager, Eastern Division.

ATTACHMENT A: INFORMATION REQUIRED FOR THE REVIEW

Please provide all remaining information to the lead reviewer by May 22, 2014. Provide as much information as possible in electronic format. If any of this information cannot be provided, please note it in writing.

Servicer ID: 700578

General:

- All policies and procedures for acceptance, review, approval, and denial of requests for Servicemember Civil Relief Act (SCRA) benefits for borrowers in active military service.¹

Sample:

- Universe of borrowers considered for SCRA benefits including all borrowers in the Department of Defense database identified as having military service.

U.S. DEPARTMENT OF EDUCATION,
OFFICE OF FEDERAL STUDENT AID,
NEW YORK, NY 10005,
May 30, 2014.

PATRICIA POTOMIS, *Senior Director,*
Navient Corporation,
220 Lasley Avenue,
Wilkes-Barre, PA 18706.

Re: Program Review, Servicer ID: 700191 and 700578, PRCN: 20143025006 and 20143025005

DEAR MS. POTOMIS: On May 20, 2014, we notified Navient Corporation (Navient) of an upcoming program review scheduled to begin on June 2, 2014, at your institution.

Included with this letter is Attachment A which lists the information Navient must supply to the U.S. Department of Education. Also included is the selected borrower samples in a password-protected WINZIP file; please note the tabs within the Excel files that identify the review populations for both of the referenced reviews. The password will be sent separately. This data should be made available at the beginning of the program review on June 2, 2014.

Documentation may be provided in hard copy or electronically. If any of the information submitted contains sensitive personal data, Navient must place the file(s) in a password-protected WINZIP archive or other secure means.

Thank you for compiling the materials referenced in the attachments, and for your cooperation. If you have any questions, please call 646-428-3771 or e-mail at Susan.Ferraiole@ed.gov.

Sincerely,

SUSAN C. FERRAIOLE,
Compliance Manager, Eastern Division.

¹ Sallie Mae has provided all policies, procedures, and training associated with SCRA guidance, as of May 16, 2014.

Attachment A – Information Required for the Program Review

LIDs

700191
700578

Information can be provided electronically or in paper format; electronic information is preferred.

GENERAL INFORMATION:

- a.) Transaction Codes with Definitions
- b.) Acronym definitions used in all historical and system information
- c.) Hard copies of all procedures for both TIVAS and Commercial Portfolios for processing Servicemember Civil Relief Act (SCRA) requests

SAMPLE SPECIFIC INFORMATION:

Please provide the following for each loan in the respective samples:

- a.) Borrower Demographic Information, including:
 - o Principal balance disbursed, including cancellations
 - o Actual Interest Rate for the life of the loan
 - o Last Date of Attendance information
 - o Date Entered Repayment
 - o Deferment History (month /type)
- b.) Monetary Transaction / Payment History
 - o Payment due date
 - o Payment date (processing and effective, as applicable)
 - o Payment amount and application of the payment, including declining principal balance
 - o Late fee payment information for all fees assessed to the account
 - o Interest rate for each payment (if different from the rate disclosed)
- c.) Status History. For each military deferment, provide:
 - o Signed deferment request
 - o SCRA request form(s) with substantiating documentation (e.g. Military Orders)
 - o Actual effective dates of deferment
 - o All correspondence regarding any approval/denial of a military deferment
- d.) Correspondence / Collection History for the review scope. If standardized letters are used to respond to military deferment issues, a copy of the standard letter(s) must also be provided.

Attachment A – Information Required for the Program Review**TIVAS ID: 700578**

Information can be provided electronically or in paper format; electronic information is preferred.

GENERAL INFORMATION:

1. Transaction codes with definitions for the scope period
2. Acronym definitions used in all historical and system information
3. Hard copies of all procedures for the TIVAS portfolios for processing Servicemember Civil Relief Act (SCRA) requests (Received)

SAMPLE SPECIFIC INFORMATION:

Please provide the following for each borrower (all loans) in the respective samples:

1. Borrower Demographic Information. For each borrower and loan, provide:
 - a. Principal balance disbursed, including cancellations
 - b. Actual Interest Rate for the life of the loan
 - c. Last Date of Attendance information
 - d. Date Entered Repayment
2. Monetary Transaction / Payment History. For each borrower and loan:
 - a. Payment due date
 - b. Payment date (processing and effective, as applicable)
 - c. Payment amount and application of the payment, including declining principal balance
 - d. Late fee payment information for all fees assessed to the account
 - e. Interest rate for each payment (if different from the rate disclosed)
3. Loan Status History. For each borrower and loan, provide the status of each loan for the review scope period.
4. Correspondence/Collection History. For each borrower and loan, provide a copy of all correspondence related to loan collection and the availability and processing of SCRA benefit requests.

From: Milek, Michael
Sent: Friday, May 30, 2014 10:41 AM
To: 'Potomis, Patricia (Patricia.M.Potomis@salliemae.com)'
Cc: 'Noone, Katie (Kathryn.Noone@salliemae.com)'; 'Hildebrand, Tina (Tina.L.Hildebrand@salliemae.com)'; Shinn, Robin; Ferraiolo, Susan; Facey, Naomi
Subject: Navient SCRA Review Sample Information Document Request Letter and Sample Sets
Attachments: Navient Commercial SCRA Information Required for Samples Letter 2014 0530.pdf; Navient SCRA Attachment A - Information Required for Review 2014 0530.pdf; Navient Samples - Commercial and TIVAS 2014 0530.zip

Good Morning Patti,

Attached, please find the Sample Information Document Request Letter as well as the WinZip file containing both the TIVAS and Commercial platform sample sets for the review.

The WinZip file is password protected and I will send the password under separate cover.

If you have any questions, please feel free to contact me.

Thank You,
Michael

Michael J. Milek
 Senior Guarantor and Lender Review Specialist, Financial Institution Oversight Service - Eastern Division
 (466) 428-3776 | (646) 428-3773 Fax | Michael.Milek@ed.gov | StudentAid.gov

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October 8, 2014

Subject: Request for Quote (RFQ) for Review of Navient's Compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965
Solicitation Number ED-FSA-15-R-0001

Dear Contractor:

This is an urgent requirement. The U.S. Department of Education, Federal Student Aid is seeking services from an independent public accounting firm (IPA) in performing an onsite program review to determine Navient's compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965.

This Request for Quote is issued in accordance with contract clause C.26.a. A Task Order (TO) will be awarded to fulfill this requirement on a Firm-Fixed Price basis with the base period to commence on the award date and end on December 29, 20014. No option periods are anticipated.

The above stated solicitation number has been assigned to this acquisition, which should be referenced in all correspondence.

Task Order Statement of Work, and Pricing Template are embedded as attachments at the bottom of this letter.

The terms and conditions of the Schedule Contract shall apply to the resultant task order.

The Instructions to Offerors are enclosed below.

Submission of Quotes:

Proposal Due Date: No Later Than 5pm (EST) on October 13, 2014

One (1) Electronic Copy emailed to Peter Janssen, Contracting Officer at pete.janssen@ed.gov

Any questions related to this solicitation must be received by **no later than 2pm (EST) on October 9, 2014** for response by Federal Student by no later than October 10, 2014.

All communications prior to award and correspondences shall be directed Peter Janssen, Contracting Officer.

Quotes that are not submitted in accordance with the Instructions to Offerors may be considered non-responsive and may be eliminated from further consideration for award.

The Government may reject any or all proposals if such action is in the Government's interest.

If there are any problems with accessing embedded documents or a general question on this solicitation, please feel free to call me at 202-377-3489.

830 First St. N.E., Washington, DC 20202
www.FederalStudentAid.ed.gov
 1-800-4-FED-AID

FEDERAL STUDENT AID  START HERE. GO FURTHER.

Review of Navient's Compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965
Solicitation Number ED-FSA-15-R-0001

Sincerely,

//s//

Peter Janssen
Contracting Officer

Embedded Attachments:

- 1) Statement of Work, October 7, 2014
- 2) Pricing Template

**Federal Student Aid
Office of the Chief Operating Officer**

Request for Quote ED-FSA-15-R-0001

**Review of Navient Corporation's Compliance
with the Servicemembers Civil Relief Act as
required by the Higher Education Act of 1965**

Statement of Work (SOW)
October 7, 2014

US Department of Education, Federal Student Aid
RFQ# ED-FSA-15-R-0001

TABLE OF CONTENTS

SECTION 1: INTRODUCTION	3
1.1 BACKGROUND	3
1.2 OBJECTIVE AND SCOPE	4
1.3 PERIOD OF PERFORMANCE	5
1.4 PLACE OF PERFORMANCE	5
1.5 SECURITY CLEARANCE REQUIREMENT	6
1.6 REFERENCE MATERIALS	6
1.7 RIGHT OF ON-SITE PRESENCE DURING PROGRAM REVIEW/RIGHT TO PERSONNEL AND WORKPAPERS	6
SECTION 2: WORK TO BE PERFORMED	7
2.1 GENERAL	7
2.2 TASK ACTIVITIES	7
2.2.1 Task #1 – Draft and Maintain Project Plan & Prepare and Deliver Status Reports	7
2.2.2 Task #2 – Develop Program Review Quality Standards	8
2.2.3 Task #3 – Develop Program Review Methodology	8
2.2.4 Task #4 – Perform On-site Compliance Reviews	9
SECTION 3: STAFFING AND RESPONSIBILITIES	10
3.1 FSA STAFFING AND RESPONSIBILITIES	10
3.1.1 FSA Staffing	10
3.1.2 FSA Responsibilities	10
3.2 CONTRACTOR STAFFING AND RESPONSIBILITIES	10
3.2.1 Contractor Staffing	10
3.2.2 Contractor Responsibilities	11

SECTION 1: INTRODUCTION**1.1 Background**

On December 19, 2003, the *Servicemembers Civil Relief Act of 2003 (SCRA)* [Public Law 108-189] expanded the former Soldiers' and Sailors' Civil Relief Act. The SCRA provides a wide range of protections for individuals entering or called to active duty in the military or already deployed service members. The SCRA is intended to postpone or suspend certain civil obligations so that the service-member may devote full attention to duty and relieve the stress on the family members of those deployed service members.

The SCRA clarified and restated the existing law that limits interest rates on credit obligations that were incurred prior to qualifying military service or activation to a six percent cap. The interest accruing during military service that is above six percent cannot be charged to the borrower and is considered forgiven. Furthermore, the borrower's monthly payment must be reduced by the amount of interest saved during the covered period. When the service-member completes active duty, the interest rate should return to the original rate. This law applies to student loans incurred prior to the qualifying military service period. This law did not apply to loans made under *Title IV of the Higher Education Act (HEA) of 1965*, as amended, until it was modified by the Higher Education Opportunity Act (HEOA), dated August 14, 2008. The HEOA amended the HEA, Sections 428(d) and 438 to include these loans under the SCRA benefit.

ED issued Dear Colleague Letter (DCL) GEN-08-12/FP-08-10, dated December 2008, to provide guidance to holders of commercial loans. Page 120 of the DCL discussed the changes made by the HEOA. The change applies to borrowers in military service as of August 14, 2008. The interest rate limit does not apply to an endorser of a PLUS loan made to a parent or graduate/professional student unless that individual is also performing eligible military service. The DCL states that

... Under the SCRA, the borrower must contact the creditor (loan holder) in writing to request the interest rate adjustment and provide a copy of the borrower's military orders. For this purpose, the term "in writing" may include a borrower's email request the term "copy of the borrowers' military orders" includes a scanned copy of the orders attached to that email request. Borrowers serving before the effective date of this change in the HEA may not receive a refund of the interest paid in excess of the SCRA six percent limit before August 14, 2008....The Department will apply the SCRA interest rate limit to Direct Loan borrowers in the same manner.

On October 29, 2009, ED published a final rule in the Federal Register providing additional guidance to entities. This guidance was effective July 1, 2010. This Federal Register made changes to add 34 CFR 682.202(a)(8), as follows:

The charges that entities may impose on borrowers, either directly or indirectly, are limited to the following:

(a) Interest. The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) and (a)(8) of this section.

(8) Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207). Notwithstanding paragraphs (a)(1) through (a)(4) of this section, effective August 14, 2008, upon the loan holder's receipt of the borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on FFEL Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

This Federal Register also changed 34 CFR 685.202(a)(4), as follows:

(4) Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207). Notwithstanding paragraphs (a)(1) through (3) of this section, effective August 14, 2008, upon the Secretary's receipt of a borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on Direct Loan Program loans made prior to

US Department of Education, Federal Student Aid
RFQ# ED-FSA-15-R-0001

the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

1.2 Objective and Scope

Federal Student Aid is seeking services from an independent public accounting firm (IPA) in performing an onsite program review of Navient Corporation's (Navient) compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965. The program review must be performed in accordance with quality standards that provide for competence, integrity, objectivity and independence, established by the contractor and approved by FSA. The program review must also be performed in accordance with the provisions of the HEA, applicable regulations, Dear Colleague Letters, and program review methodology approved by FSA.

The independent public accounting firm, hereafter referred to as "Contractor", shall be a licensed-certified public accounting firm by the regulatory authority of a State or other political sub-division of the United States and shall meet applicable State Board of Accountancy requirements. The Contractor shall comply with the applicable provisions of the public accountancy law and rules of the jurisdiction(s) where the work is being performed and the jurisdiction(s) where the Contractor is licensed. The Contractor shall possess demonstrated expertise with the HEA and/or the SCRA. The Contractor shall provide qualified personnel to perform the work required under the SOW, and any other services performed under the SOW.

The Contractor must determine *whether with respect Navient and this requested program review*, the Contractor and/or staff assigned to perform work under this contract, lack independence or appear to lack independence and thus are precluded from performing the program review. Also, if any subcontractors are engaged to perform work under this contract, a like determination must be made by and with respect to them as well.

Under this contract, conditions causing the Contractor, subcontractors or employees assigned to work on this contract to lack independence or appear to lack independence include:

- With respect to the program review, having contractual, employment or other relationships, arrangements or understandings to provide audit or non-audit services; or
- With respect to the program review, being, having been, or planning to be involved in any lawsuits; and/or any business, personal or other relationships that could actually impair (or create the appearance of impairing) independence in performing the contracted work, under professional standards and codes of ethics and/or conduct to which the Contractor and its principles and employees are bound.

These assessments must be reflected in Independence Assurance Statements submitted by the Contractor and any Subcontractors.

An award will not be made if the Contractor lacks independence, and/or has the appearance of lacking independence.

Navient signed a contract on June 17, 2009 to be a Title IV Additional Servicer (TIVAS) contractor with the Department to service Federal Family Education Loan (FFEL) Program loans purchased by the Department from FFEL Program lenders under the Ensuring Continued Access to Student

US Department of Education, Federal Student Aid
RFQ# ED-FSA-15-R-0001

Loans Act of 2008 (ECASLA). Although the Loan Purchase Commitment Program expired September 30, 2010, the Asset-Backed Commercial Paper Conduit Put Program allowed FFEL lenders to sell loans to the Department until January 19, 2014. With the enactment of the Student Aid and Fiscal Responsibility Act of 2010 (SAFRA) by Congress, the TIVAS contract was extended to include servicing of the William D. Ford Direct Loan (Direct Loan) Program, as well as FFEL Program loans owned by the Department.

The objective of the program review is to determine whether eligible borrowers of federal student loans, serviced by Navient as a TIVAS, received the benefit of the 6 percent interest rate cap provided by the SCRA in accordance with the Department's statute, regulations and guidance.

The scope of the program review must include the following:

1. Determine whether Navient, as a TIVAS, complied with all Departmental statutes, regulations, and guidance in determining whether a borrower was eligible to receive the interest rate cap provided by the SCRA, and
2. Ensure that eligible borrowers who met the requirements for the interest rate cap under the SCRA were granted the benefit on all their eligible federal student loans.

A statistically valid sample of loans must be tested to determine whether Navient:

- Notified the borrower that they may be eligible for the SCRA interest rate cap.
- Granted the SCRA interest rate cap when the borrower requested the benefit in writing and submitted a copy of their military orders, and applied the interest rate cap to all eligible loans, both FFEL Program and Direct Loan Program loans.
- Denied the SCRA interest rate cap in accordance with the Department guidelines.
- Granted the interest rate cap for the correct time period for borrowers approved for the SCRA interest rate cap.
- Adjusted the SCRA interest rate cap back to the original rate if the borrower left active duty military service or was otherwise found to be ineligible for the SCRA interest rate cap.

The contractor must provide a risk mitigation strategy for completion of the program review when some or all of the original documentation is not available.

The specific actions to satisfy the objectives and meet expectations for task outcomes are documented in Section 2 of this Statement of Work (SOW).

1.3 Period of Performance

The base period of performance shall commence on the date of award and end on December 29, 2014 with no option periods.

1.4 Place of Performance

The program review will be performed at Navient's office at 220 Lasley Avenue, Wilkes-Barre, PA 18706.

The Government will reimburse the cost of travel in accordance with contract clause C-16 FSA 31-1 Contractor Travel Expenses (April 2013), if required, and with prior written approval by the Contracting Officer.

US Department of Education, Federal Student Aid
RFQ# ED-FSA-15-R-0001

All such costs require documentation support to accompany all invoices. Local travel is not subject to reimbursement.

1.5 Security Clearance Requirement

For contractor employees and subcontractor employees who will perform under this effort are required to have or obtain Moderate Risk (5C) security clearances in accordance with the Department's Directive OM:5-101, *Contractor Employee Personnel Security Screening* below.



Directive_Contractor

1.6 Reference Materials

The contractor will obtain a thorough knowledge of the applicable provisions of the HEA and regulations and related Dear Colleague Letters.

- Code of Federal Regulations
- DCL

Dear Colleague Letter: <http://www.ifap.ed.gov/dpcletters/GEN0812FP0810.html>

Regulations:

FFEL: http://www.ecfr.gov/cgi-bin/text-idx?SID=4dd8351a8d8940c1e2324b17752eb4fc&node=se34.4.682_1202&rgn=div8

DL: http://www.ecfr.gov/cgi-bin/text-idx?SID=4dd8351a8d8940c1e2324b17752eb4fc&node=se34.4.685_1202&rgn=div8

1.7 Right of On-Site Presence During Program Review/Right to Personnel and Workpapers

Federal Student Aid shall have access to Contractor personnel and workpapers to review work performed for compliance with this SOW.

SECTION 2: WORK TO BE PERFORMED**2.1 General**

Federal Student Aid may provide additional direction and/or information based on the goals and objectives for all activities below.

For each activity, the contractor shall identify the applicable legislation, regulation, industry guidance, and/or best practice to their stated methodology, quality control structure, and performance of the program review, where applicable.

2.2 Task Activities**2.2.1 Task #1 – Draft and Maintain Project Plan & Prepare and Deliver Status Reports**

Description	<p>The contractor shall draft, submit, and maintain to FSA's senior management an overall Project Plan & Schedule that outlines the methodology for conducting the program review, including quality standards that provide for competence, integrity, objectivity, and independence, and the approach for the site visit.</p> <p>The plan & schedule will include the level of effort for all tasks outlined in this SOW as well as all activities required for the successful performance of this program review.</p> <p>In addition, contractor shall prepare and deliver weekly status reports identifying activities completed, planned activities for the next week, tentative findings, and any issues.</p>
Deliverables	<p>Deliverable #1: Project Plan (MS Project) including WBS schedule, level of effort, resource allocation, and milestones - Due five (5) business days after award date.</p> <p>Deliverable #2: Weekly Status Report (MS Word) – due 1st week after acceptance of project plan and afterward on the every Monday at 9am EST for prior week's activities.</p>
Acceptance Criteria	<p>Upon receipt, FSA Project Manager or his/her designee will review deliverable for completeness, accuracy, and consistency. FSA Contracting Officer will submit a written notice of acceptance or rejection within five (5) business days.</p>

The contractor shall develop and maintain the Project Plan based on Contractor's proposal. This plan will correspond to Contractor's project methodology and quality standards. The project plan shall be maintained and provided to Federal Student Aid when significant changes occur or upon request of the Project Manager.

Contractor shall produce and deliver a weekly Status Report to summarize progress and identify anticipated problems. This report shall include activities that occurred during the reporting period and to be acceptable shall include at a minimum:

- Activities performed and deliverables submitted during the past reporting period
- Activities performed involving the coordination with FSA program team and stakeholders
- Identified risks and issues with associated recommendations or proposed contingency

- Activities and deliverables planned for the upcoming reporting period
- Changes to the date or composition of deliverables

[Note: Contractor shall separately notify the FSA Contracting Officer (CO) regarding any material effects. Material effects include, but are not limited to, changes in value (money), time, or project scope. As examples, a change in a deliverable due date, a change in staff assignments (affecting travel), or the addition or deletion of an activity requires CO notification.]

2.2.2 Task #2 – Develop Program Review Quality Standards

Description	The contractor shall develop and submit to FSA quality standards for the performance of the program review. The quality standards must provide for competence, integrity, objectivity and independence.
Deliverables	Deliverable #3: Program Review Quality Standards – due five (5) business days after acceptance of project plan.
Acceptance Criteria	Upon receipt, FSA Project Manager or his/her designee will review deliverable for completeness, accuracy and consistency. FSA Contracting Officer or his/her designated representative will submit a written notice of acceptance or rejection within five (5) business days.

In developing the quality standards, the contractor should ensure that the standards cover:

- Assurance that the staff doing the work are independent of the entity under review
- Establishment of a process to ensure that there is adequate documentation of the work performed, including adequate documentation to support an review findings
- Establishment of a process for supervisory review of the work performed by staff.

2.2.3 Task #3 – Develop Program Review Methodology

Description	The contractor shall develop and submit to FSA Project Manager a program review methodology that addresses the requirements identified in the scope section of this SOW, including a risk mitigation strategy for completion of the program review when some or all of the original documentation is not available.
Deliverables	Deliverable #4: Program Review Methodology - due five (5) business days after FSA acceptance of project plan.
Acceptance Criteria	Upon receipt, FSA Project Manager or his/her designee will review deliverable for completeness, accuracy, and consistency. FSA Contracting Officer or his/her designated representative will submit a written notice of acceptance or rejection within five (5) business days.

In developing the methodology, the contractor should employ proficient knowledge of the requisite statute, regulation and guidance in order to achieve a complete evaluation of Navient's compliance with the SCRA as required by the HEA.

US Department of Education, Federal Student Aid
RFQ# ED-FSA-15-R-0001

2.2.4 Task #4 – Perform On-site Program Review

Description	The contractor, in accordance with the project plan and schedule, shall implement the approved program review methodology at Navient and submit a report on its findings as well as any recommendations for corrective action.
Deliverables	Deliverable #5: Program Review Reports (MS Word) including copies of any workpapers and/or supporting documentation. – Two (2) weeks after completion of program review field work. The program review report will be submitted to FSA by no later than 12/15/14.
Acceptance Criteria	Upon receipt, FSA Project Manager or his/her designee will review deliverable for completeness, accuracy, and consistency. FSA Contracting Officer or his/her designated representative will submit a written notice of acceptance or rejection within five (5) business days.

SECTION 3: STAFFING AND RESPONSIBILITIES

3.1 FSA Staffing and Responsibilities

3.1.1 FSA Staffing

Federal Student Aid shall provide a project manager who will serve as the primary point of contact on technical matters. As needed and requested by the Contractor, Federal Student Aid shall also provide a Subject Matter Expert experienced with SCRA program reviews.

3.1.2 FSA Responsibilities

Federal Student Aid shall designate a Contracting Officer's Representative (COR) to perform the following activities:

- Define, monitor, and assess Contractor activities and deliverables
- Provide clarification on business requirements and technical design issues
- Review and approve the Contractor's project plans and proposed technical solutions

3.2 Contractor Staffing and Responsibilities

Any access to necessary facilities, IT systems, and/or data will be based on the contractor's personnel ability to obtain the requisite security clearance stated in Section 1.5.

Ownership of information and documents prepared in accordance with this contract shall become and remain property of the Federal Student Aid. It is the contractor's responsibility to ensure system and data security as well as all individual personal data security.

3.2.1 Contractor Staffing

3.2.1.1 Key Personnel Requirements

Audit Manager

- a. Minimal qualifications: a bachelor's or graduate degree with at least 8 years of auditing experience and is a Certified Public Accountant. Two or more years in managerial positions.

Supervising Senior Auditor

- a. Minimal qualifications: a bachelor's or graduate degree in area of accounting, finance, or related discipline with at least 5 years of auditing experience. Certified Public Accountant certification is preferable but not required.

Senior Auditor

- a. Minimal qualifications: may have a bachelor's degree in area of accounting, finance, or related discipline with at least 4 years of auditing experience. Certified Public Accountant certification is preferable but not required.

The Contractor shall provide key personnel who are committed to this project and available as needed. Key personnel are defined as personnel assigned to the labor categories that the Federal Student Aid has designated as essential to the work to be performed.

Federal Student Aid retains the right to review qualifications for all staff assigned or proposed to be assigned to this agreement.

Key personnel identified in the Contractor's proposal must perform the work defined unless the Contracting Officer has approved any substitutions in writing. Any proposed substitutions shall possess qualifications equal or superior to those of the key person being replaced. Before removing, replacing, or diverting, any of the proposed key personnel, the Contractor shall:

- Notify the Contracting Officer, Contracting Officer's Representative (COR), and Project Manager a minimum of five (5) calendar days in advance
- Submit justification in sufficient detail to permit evaluation of the impact on this replacement
- Provide a resume and qualification's statement for the proposed substitute
- Ensure that the replacement is fully aware of the status of work in progress and is briefed on key decisions and upcoming deadlines
- Demonstrate that the replacement has been sufficiently prepared so that work may continue without interruption or delay.

All contractor personnel working in direct support of this contract must submit to, and pass, the requisite Contractor Employee Personnel Security Screening and be able to obtain the required security clearance commensurate with the level of responsibilities and access.

Security clearance requirements, required screenings, and forms are explained in the current U.S. Department of Education Department Directive, OM: 5-101. Security screening forms and paperwork may be obtained from the COR. With the exception of those individuals to begin performance on Task Order award, these forms must be completed and submitted to the COR a minimum of fourteen (14) business days prior to the expected employees' arrival/work start date.

3.2.2 Contractor Responsibilities

The contractor shall furnish all necessary resources and materials required to meet the requirements defined in this SOW, except those outlined in Section 3.2.

All deliverables shall be delivered hard copy or electronically to the Contracting Officer, his/her designee as well as to the Project Manager.

Review of Navient's Compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965
Solicitation Number ED-FSA-15-R-0001

INSTRUCTIONS TO OFFERORS:

Please follow the guidelines below in preparing your response. All documents should be submitted electronically in MS Office or compatible format.

Proposal shall consist of two (2) components: technical and pricing.

MANDATORY REQUIREMENTS:

1. Certified Public Accountants (CPAs) currently licensed by the regulatory authority of a State and that meets applicable state licensing requirements for CPAs including no disciplinary action within the last three (3) years from the date of this solicitation. Offeror shall submit a copy of valid license and verifiable proof that there are not disciplinary actions within the past 3 years from the date of this solicitation.
2. Demonstrated expertise performing audits or program reviews of the Higher Education Act (HEA) of 1965 and/or the Servicemembers Civil Relief Act.
3. Offeror shall submit the following Independence Assurance Statement on its letterhead and signed by the firm's authorized official:

"I certify that our firm and the staff that will be assigned to perform program review work under the contract for Review of Navient's compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965 are independent. With respect to this work, we (our firm and staff that will perform work on this contract) have no contracts, arrangements or understandings to provide audit or non-audit services; nor have we been, are not, nor plan to be involved in any lawsuits; and/or business, personal or other relationships that could actually impair (or create the appearance of impairing) our independence in performing the contracted work, under professional standards and codes of ethics and/or conduct to which our firm and its principles and employees are bound."

If subcontractors (including "independent contractors") are used by the Contractor to perform the work on this contract, each subcontractor for each program review included in the Contractor's proposal must also submit an Independence Assurance Statements in the same form as above.

For each subcontractor firm, a statement must be completed on subcontractor firm letterhead and signed by a principle of the firm. For each subcontractor individual, a statement must be submitted and signed by the individual.

TASK ORDER ISSUANCE:

Federal Student Aid may award one task order to the offeror who represents the best value in performance of the work outlined in the with the **Review of Navient's Compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965** (Attachment 1).

1. **Technical Capability & Staffing Approach** (MS Word or Adobe PDF Formats)
Offeror shall submit a proposal that includes, at minimum:
 - Examples of work products that demonstrate the offeror's expertise in performing audits/program reviews of loan servicers implementation of the the HEA and/or the Servicemembers Civil Relief Act.

Review of Navient's Compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965
Solicitation Number ED-FSA-15-R-0001

- Detailed management plan articulating the overall approach to manage effort including a quality control plan and work breakdown structure (WBS – level 2), with the level of effort identified for each task, in order to ensure successful performance of quality work and delivery of deliverables for all tasks;
- Proposed staffing complement that demonstrates the appropriate expertise, experience, and depth of knowledge in audit and/or program compliance review services. Staffing complement is defined as the specific personnel proposed by the offeror to perform on this particular task effort.
- Resumes of proposed Key Personnel (Audit Manager, Supervising Sr Auditor and Sr Auditor)

The proposal shall not exceed 15 pages excluding resumes and shall affirm that the offer remains in effect for a period of 15 days from the proposal due date.

2. Price Proposal (MS Excel Format)

Using the attached template (*Attachment 2*), offeror shall propose a Firm Fixed Price, supported by a labor summary section of all tasks and labor detail by task activity in which the proposal labor categories and applicable labor rates with discounts are included. Offerors are strongly encouraged to offer discounts.

Travel costs or other direct charges related to performance of the services should be submitted in the Site Travel worksheet of the Pricing Template. Estimates shall adhere to Federal Acquisition Regulation (FAR) 31.205-46, *Travel Costs* clause.

If the offeror's price is bound by any special conditions, these conditions must be stated in the price proposal under the Assumptions worksheet. The offeror should propose its best pricing for the services required to successfully perform this requirement.

In a separate document, offeror must provide the following:

1. Technical Capability & Staffing Approach
2. Price - Firm-Fixed Price with supporting documentation addressed in paragraph 2. Price Proposal

The Government will use the following factors to evaluate each offer: Factors are listed in descending order of importance with Technical Capability & Staffing Approach somewhat more important than Price

1. Technical Capability & Staffing Approach
2. Price

Attachment 1: *Statement of Work*

Attachment 2: *Pricing Table*



October 21, 2014

Subject: Request for Proposals (RFP) for Review of Navient's Compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965
Solicitation Number ED-FSA-15-R-0001

Dear Contractor:

This is an urgent requirement. The U.S. Department of Education, Federal Student Aid is seeking services from an independent public accounting firm (IPA) in performing an onsite program review to determine Navient's compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965.

This Request for Proposal is issued in accordance with contract clause C.26.a. A Task Order (TO) will be awarded to fulfill this requirement on a Firm-Fixed Price basis with the base period to commence on the award date and end on December 31, 2014. No option periods are anticipated.

The above stated solicitation number has been assigned to this acquisition, which should be referenced in all correspondence.

Task Order Statement of Work, and Pricing Template are embedded as attachments at the bottom of this letter.

The terms and conditions of the Schedule Contract shall apply to the resultant task order.

The Instructions to Offerors are enclosed below.

Submission of Proposals:

Proposal Due Date: No Later Than 4pm (EST) on October 27, 2014

One (1) Electronic Copy emailed to Peter Janssen, Contracting Officer at pete.janssen@ed.gov

Any questions related to this solicitation must be received by **no later than 1pm (EST) on October 23, 2014** for response by Federal Student by no later than October 24, 2014.

All communications prior to award and correspondences shall be directed Peter Janssen, Contracting Officer.

Proposals that are not submitted in accordance with the Instructions to Offerors may be considered non-responsive and may be eliminated from further consideration for award.

The Government may reject any or all proposals if such action is in the Government's interest.

If there are any problems with accessing embedded documents or a general question on this solicitation, please feel free to call me at 202-377-3489.

830 First St. N.E., Washington, DC 20202
www.FederalStudentAid.ed.gov
 1-800-4-FED-AID

FEDERAL STUDENT AID  START HERE. GO FURTHER.

Review of Navient's Compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965
Solicitation Number ED-FSA-15-R-0001

Sincerely,

//s//

Peter Janssen
Contracting Officer

Embedded Attachments:

- 1) Statement of Work, October 21, 2014
- 2) Pricing Template

Review of Navient's Compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965
Solicitation Number ED-FSA-15-R-0001

INSTRUCTIONS TO OFFERORS:

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2. Demonstrated expertise performing audits, program reviews or assessments of the HEA, the SCRA or other similar Federal statutes or major programs.
3. Offeror shall submit the following Independence Assurance Statement on its letterhead and signed by the firm's authorized official:

"I certify that our firm and the staff that will be assigned to perform program review work under the contract for Review of Navient's compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965 are independent. With respect to this work, we (our firm and staff that will perform work on this contract) have no contracts, arrangements or understandings to provide audit or non-audit services; nor have we been, are not, nor plan to be involved in any lawsuits; and/or business, personal or other relationships that could actually impair (or create the appearance of impairing) our independence in performing the contracted work, under professional standards and codes of ethics and/or conduct to which our firm and its principles and employees are bound."

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Federal Student Aid may award one task order to the offeror who represents the best value in performance of the work outlined in the with the **Review of Navient's Compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965 (Attachment 1)**.

1. **Technical Capability & Staffing Approach** (MS Word or Adobe PDF Formats)
Offeror shall submit a proposal that includes, at minimum:
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Review of Navient's Compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965
Solicitation Number ED-FSA-15-R-0001

- Detailed management plan articulating the overall approach to manage effort including a quality control plan and work breakdown structure (WBS – level 2), with the level of effort identified for each task, in order to ensure successful performance of quality work and delivery of deliverables for all tasks;
- Proposed staffing complement that demonstrates the appropriate expertise, experience, and depth of knowledge in audit and/or program compliance review services. Staffing complement is defined as the specific personnel proposed by the offeror to perform on this particular task effort.
- Resumes of proposed Key Personnel (LC Level 1, LC Level 2 and LC Level 3)

The proposal shall not exceed 15 pages excluding resumes and shall affirm that the offer remains in effect for a period of 15 days from the proposal due date.

2. Price Proposal (MS Excel Format)

Using the attached template (*Attachment 2*), offeror shall propose a Firm Fixed Price, supported by a labor summary section of all tasks and labor detail by task activity in which the proposal labor categories and applicable labor rates with discounts are included. Offerors are strongly encouraged to offer discounts.

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The Government will use the following factors to evaluate each offer: Factors are listed in descending order of importance with Technical Capability & Staffing Approach somewhat more important than Price

1. Technical Capability & Staffing Approach
2. Price

Attachment 1: *Statement of Work*

Attachment 2: *Pricing Table*

**Federal Student Aid
Office of the Chief Operating Officer**

**Fair Opportunity
Request for Quote ED-FSA-15-R-0001 (revised)**

**Review of Navient Corporation's Compliance
with the Servicemembers Civil Relief Act as
required by the Higher Education Act of 1965**

**Statement of Work (SOW)
October 21, 2014**

TABLE OF CONTENTS

SECTION 1: INTRODUCTION	3
1.1 BACKGROUND	3
1.2 OBJECTIVE AND SCOPE.....	4
1.3 PERIOD OF PERFORMANCE	5
1.4 PLACE OF PERFORMANCE.....	5
1.5 SECURITY CLEARANCE REQUIREMENT	6
1.6 REFERENCE MATERIALS	6
1.7 RIGHT OF ON-SITE PRESENCE DURING PROGRAM REVIEW/RIGHT TO PERSONNEL AND WORKPAPERS ..	6
SECTION 2: WORK TO BE PERFORMED	7
2.1 GENERAL.....	7
2.2 TASK ACTIVITIES	7
2.2.1 Task #1 – Draft and Maintain Project Plan & Prepare and Deliver Status Reports	7
2.2.2 Task #2 – Develop Program Review Quality Standards.....	8
2.2.3 Task #3 – Develop Program Review Methodology.....	8
2.2.4 Task #4 – Perform On-site Compliance Reviews	9
SECTION 3: STAFFING AND RESPONSIBILITIES	10
3.1 FSA STAFFING AND RESPONSIBILITIES	10
3.1.1 FSA Staffing	10
3.1.2 FSA Responsibilities	10
3.2 CONTRACTOR STAFFING AND RESPONSIBILITIES	10
3.2.1 Contractor Staffing	10
3.2.2 Contractor Responsibilities.....	11

SECTION 1: INTRODUCTION**1.1 Background**

On December 19, 2003, the *Servicemembers Civil Relief Act of 2003 (SCRA)* [Public Law 108–189] expanded the former Soldiers' and Sailors' Civil Relief Act. The SCRA provides a wide range of protections for individuals entering or called to active duty in the military or already deployed service members. The SCRA is intended to postpone or suspend certain civil obligations so that the service-member may devote full attention to duty and relieve the stress on the family members of those deployed service members.

The SCRA clarified and restated the existing law that limits interest rates on credit obligations that were incurred prior to qualifying military service or activation to a six percent cap. The interest accruing during military service that is above six percent cannot be charged to the borrower and is considered forgiven. Furthermore, the borrower's monthly payment must be reduced by the amount of interest saved during the covered period. When the service-member completes active duty, the interest rate should return to the original rate. This law applies to student loans incurred prior to the qualifying military service period. This law did not apply to loans made under *Title IV of the Higher Education Act (HEA) of 1965*, as amended, until it was modified by the Higher Education Opportunity Act (HEOA), dated August 14, 2008. The HEOA amended the HEA, Sections 428(d) and 438 to include these loans under the SCRA benefit.

ED issued Dear Colleague Letter (DCL) GEN-08-12/FP-08-10, dated December 2008, to provide guidance to holders of commercial loans. Page 120 of the DCL discussed the changes made by the HEOA. The change applies to borrowers in military service as of August 14, 2008. The interest rate limit does not apply to an endorser of a PLUS loan made to a parent or graduate/professional student unless that individual is also performing eligible military service. The DCL states that

...Under the SCRA, the borrower must contact the creditor (loan holder) in writing to request the interest rate adjustment and provide a copy of the borrower's military orders. For this purpose, the term "in writing" may include a borrower's email request the term "copy of the borrowers' military orders" includes a scanned copy of the orders attached to that email request. Borrowers serving before the effective date of this change in the HEA may not receive a refund of the interest paid in excess of the SCRA six percent limit before August 14, 2008...The Department will apply the SCRA interest rate limit to Direct Loan borrowers in the same manner.

On October 29, 2009, ED published a final rule in the Federal Register providing additional guidance to entities. This guidance was effective July 1, 2010. This Federal Register made changes to add 34 CFR 682.202(a)(8), as follows:

The charges that entities may impose on borrowers, either directly or indirectly, are limited to the following:

(a) Interest. The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) and (a)(8) of this section.

(8) Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207). Notwithstanding paragraphs (a)(1) through (a)(4) of this section, effective August 14, 2008, upon the loan holder's receipt of the borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on FFEL Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

This Federal Register also changed 34 CFR 685.202(a)(4), as follows:

(4) Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207). Notwithstanding paragraphs (a)(1) through (3) of this section, effective August 14, 2008, upon the Secretary's receipt of a borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on Direct Loan Program loans made prior to

the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

1.2 Objective and Scope

Federal Student Aid is seeking services from an independent public accounting firm (IPA) in performing an onsite program review of Navient Corporation's (Navient) compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965. The program review must be performed in accordance with quality standards that provide for competence, integrity, objectivity and independence, established by the contractor and approved by FSA. The program review must also be performed in accordance with the provisions of the HEA, applicable regulations, Dear Colleague Letters, and program review methodology approved by FSA.

The independent public accounting firm, hereafter referred to as "Contractor", shall be a licensed-certified public accounting firm by the regulatory authority of a State or other political sub-division of the United States and shall meet applicable State Board of Accountancy requirements. The Contractor shall comply with the applicable provisions of the public accountancy law and rules of the jurisdiction(s) where the work is being performed and the jurisdiction(s) where the Contractor is licensed. The Contractor shall possess demonstrated expertise performing audits, program reviews or assessments of the HEA, the SCRA or other similar Federal statutes or major programs. The Contractor shall provide qualified personnel to perform the work required under the SOW, and any other services performed under the SOW.

The Contractor must determine *whether with respect Navient and this requested program review*, the Contractor and/or staff assigned to perform work under this contract, lack independence or appear to lack independence and thus are precluded from performing the program review. Also, if any subcontractors are engaged to perform work under this contract, a like determination must be made by and with respect to them as well.

Under this contract, conditions causing the Contractor, subcontractors or employees assigned to work on this contract to lack independence or appear to lack independence include:

- With respect to the program review, having contractual, employment or other relationships, arrangements or understandings to provide audit or non-audit services; or
- With respect to the program review, being, having been, or planning to be involved in any lawsuits, and/or any business, personal or other relationships that could actually impair (or create the appearance of impairing) independence in performing the contracted work, under professional standards and codes of ethics and/or conduct to which the Contractor and its principles and employees are bound.

These assessments must be reflected in Independence Assurance Statements submitted by the Contractor and any Subcontractors.

An award will not be made if the Contractor lacks independence, and/or has the appearance of lacking independence.

Navient signed a contract on June 17, 2009 to be a Title IV Additional Servicer (TIVAS) contractor with the Department to service Federal Family Education Loan (FFEL) Program loans purchased

by the Department from FFEL Program lenders under the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA). Although the Loan Purchase Commitment Program expired September 30, 2010, the Asset-Backed Commercial Paper Conduit Put Program allowed FFEL lenders to sell loans to the Department until January 19, 2014. With the enactment of the Student Aid and Fiscal Responsibility Act of 2010 (SAFRA) by Congress, the TIVAS contract was extended to include servicing of the William D. Ford Direct Loan (Direct Loan) Program, as well as FFEL Program loans owned by the Department.

The objective of the program review is to determine whether eligible borrowers of federal student loans, serviced by Navient as a TIVAS, received the benefit of the 6 percent interest rate cap provided by the SCRA in accordance with the Department's statute, regulations and guidance.

The scope of the program review must include the following:

1. Determine whether Navient, as a TIVAS, complied with all Departmental statutes, regulations, and guidance in determining whether a borrower was eligible to receive the interest rate cap provided by the SCRA, and
2. Ensure that eligible borrowers who met the requirements for the interest rate cap under the SCRA were granted the benefit on all their eligible federal student loans.

A statistically valid random sample of 300 borrowers must be tested to determine whether Navient:

- Notified the borrower that they may be eligible for the SCRA interest rate cap.
- Granted the SCRA interest rate cap when the borrower requested the benefit in writing and submitted a copy of their military orders, and applied the interest rate cap to all eligible loans, both FFEL Program and Direct Loan Program loans.
- Denied the SCRA interest rate cap in accordance with the Department guidelines.
- Granted the interest rate cap for the correct time period for borrowers approved for the SCRA interest rate cap.
- Adjusted the SCRA interest rate cap back to the original rate if the borrower left active duty military service or was otherwise found to be ineligible for the SCRA interest rate cap.

The Department will provide the contractor with the file from which the contractor will select the sample.

The specific actions to satisfy the objectives and meet expectations for task outcomes are documented in Section 2 of this Statement of Work (SOW).

1.3 Period of Performance

The period of performance shall commence on the date of award and end on December 31, 2014.

1.4 Place of Performance

The program review will be performed at Navient's office at 220 Lasley Avenue, Wilkes-Barre, PA 18706.

The Government will reimburse the cost of travel if required, in accordance with contract clause C-16 FSA 31-1 Contractor Travel Expenses (April 2013), and with prior written approval by the Contracting Officer.

US Department of Education, Federal Student Aid
RFQ# ED-FSA-15-R-0001

All such costs require documentation support to accompany all invoices. Local travel is not subject to reimbursement.

1.5 Security Clearance Requirement

For contractor employees and subcontractor employees who will perform under this effort are required to have or obtain Moderate Risk (5C) security clearances in accordance with the Department's Directive OM 5-101, *Contractor Employee Personnel Security Screening* below.



*ACS
Directive_Contractor

1.6 Reference Materials

The contractor will obtain a thorough knowledge of the applicable provisions of the HEA and regulations and related Dear Colleague Letters.

- Code of Federal Regulations
- DCL

Dear Colleague Letter: <http://www.ifap.ed.gov/dpcletters/GEN0812FP0810.html>

Regulations:

FFEL: <http://www.ecfr.gov/cgi-bin/text-idx?SID=4dd8351a8d8940c1e2324b17752eb4fc&node=se34.4.682.1202&rgn=div8>

DL: <http://www.ecfr.gov/cgi-bin/text-idx?SID=4dd8351a8d8940c1e2324b17752eb4fc&node=se34.4.685.1202&rgn=div8>

1.7 Right of On-Site Presence During Program Review/Right to Personnel and Workpapers

Federal Student Aid shall have access to Contractor personnel and workpapers to review work performed for compliance with this SOW.

SECTION 2: WORK TO BE PERFORMED**2.1 General**

Federal Student Aid may provide additional direction and/or information based on the goals and objectives for all activities below.

For each activity, the contractor shall identify the applicable legislation, regulation, industry guidance, and/or best practice to their stated methodology, quality control structure, and performance of the program review, where applicable.

2.2 Task Activities**2.2.1 Task #1 – Draft and Maintain Project Plan & Prepare and Deliver Status Reports**

Description	<p>The contractor shall draft, submit, and maintain to FSA's senior management an overall Project Plan & Schedule that outlines the methodology for conducting the program review, including quality standards that provide for competence, integrity, objectivity, and independence, and the approach for the site visit.</p> <p>The plan & schedule will include the level of effort for all tasks outlined in this SOW as well as all activities required for the successful performance of this program review.</p> <p>In addition, contractor shall prepare and deliver weekly status reports identifying activities completed, planned activities for the next week, tentative findings, and any issues.</p>
Deliverables	<p>Deliverable #1: Project Plan (MS Project) including WBS schedule, level of effort, resource allocation, and milestones - Due five (5) business days after award date.</p> <p>Deliverable #2: Weekly Status Report (MS Word) – due 1st week after acceptance of project plan and afterward on the every Monday at 9am EST for prior week's activities.</p>
Acceptance Criteria	<p>Upon receipt, FSA Project Manager or his/her designee will review deliverable for completeness, accuracy, and consistency. FSA Contracting Officer will submit a written notice of acceptance or rejection within five (5) business days.</p>

The contractor shall develop and maintain the Project Plan based on Contractor's proposal. This plan will correspond to Contractor's project methodology and quality standards. The project plan shall be maintained and provided to Federal Student Aid when significant changes occur or upon request of the Project Manager.

Contractor shall produce and deliver a weekly Status Report to summarize progress and identify anticipated problems. This report shall include activities that occurred during the reporting period and to be acceptable shall include at a minimum:

- Activities performed and deliverables submitted during the past reporting period
- Activities performed involving the coordination with FSA program team and stakeholders
- Identified risks and issues with associated recommendations or proposed contingency

- Activities and deliverables planned for the upcoming reporting period
- Changes to the date or composition of deliverables

[**Note:** Contractor shall separately notify the FSA Contracting Officer (CO) regarding any material effects. Material effects include, but are not limited to, changes in value (money), time, or project scope. As examples, a change in a deliverable due date, a change in staff assignments (affecting travel), or the addition or deletion of an activity requires CO notification.]

2.2.2 Task #2 – Develop Program Review Quality Standards

Description	The contractor shall develop and submit to FSA quality standards for the performance of the program review. The quality standards must provide for competence, integrity, objectivity and independence.
Deliverables	Deliverable #3: Program Review Quality Standards – due five (5) business days after acceptance of project plan.
Acceptance Criteria	Upon receipt, FSA Project Manager or his/her designee will review deliverable for completeness, accuracy and consistency. FSA Contracting Officer or his/her designated representative will submit a written notice of acceptance or rejection within five (5) business days.

In developing the quality standards, the contractor should ensure that the standards cover:

- Assurance that the staff doing the work are independent of the entity under review
- Establishment of a process to ensure that there is adequate documentation of the work performed, including adequate documentation to support an review findings
- Establishment of a process for supervisory review of the work performed by staff.

2.2.3 Task #3 – Develop Program Review Methodology

Description	The contractor shall develop and submit to FSA Project Manager a program review methodology that addresses the requirements identified in the scope section of this SOW, including a risk mitigation strategy for completion of the program review when some or all of the original documentation is not available.
Deliverables	Deliverable #4: Program Review Methodology - due five (5) business days after FSA acceptance of project plan.
Acceptance Criteria	Upon receipt, FSA Project Manager or his/her designee will review deliverable for completeness, accuracy, and consistency. FSA Contracting Officer or his/her designated representative will submit a written notice of acceptance or rejection within five (5) business days.

In developing the methodology, the contractor should employ proficient knowledge of the requisite statute, regulation and guidance in order to achieve a complete evaluation of Navient's compliance with the SCRA as required by the HEA.

US Department of Education, Federal Student Aid
RFQ# ED-FSA-15-R-0001

2.2.4 Task #4 – Perform On-site Program Review

Description	The contractor, in accordance with the project plan and schedule, shall implement the approved program review methodology at Navient and submit a report on its findings as well as any recommendations for corrective action.
Deliverables	<u>Deliverable #5: Program Review Reports (MS Word)</u> including copies of any workpapers and/or supporting documentation. – Two (2) weeks after completion of program review field work. The program review report will be submitted to FSA by no later than 12/26/14.
Acceptance Criteria	Upon receipt, FSA Project Manager or his/her designee will review deliverable for completeness, accuracy, and consistency. FSA Contracting Officer or his/her designated representative will submit a written notice of acceptance or rejection within five (5) business days.

SECTION 3: STAFFING AND RESPONSIBILITIES

3.1 FSA Staffing and Responsibilities

3.1.1 FSA Staffing

Federal Student Aid shall provide a project manager who will serve as the primary point of contact on technical matters. As needed and requested by the Contractor, Federal Student Aid shall also provide a Subject Matter Expert experienced with SCRA program reviews.

3.1.2 FSA Responsibilities

Federal Student Aid shall designate a Contracting Officer's Representative (COR) to perform the following activities:

- Define, monitor, and assess Contractor activities and deliverables
- Provide clarification on business requirements and technical design issues
- Review and approve the Contractor's project plans and proposed technical solutions

3.2 Contractor Staffing and Responsibilities

Any access to necessary facilities, IT systems, and/or data will be based on the contractor's personnel ability to obtain the requisite security clearance stated in Section 1.5.

Ownership of information and documents prepared in accordance with this contract shall become and remain property of the Federal Student Aid. It is the contractor's responsibility to ensure system and data security as well as all individual personal data security.

3.2.1 Contractor Staffing

3.2.1.1 Key Personnel Requirements

LC Level 1: Executive or Industry-wide recognized SME

- a. Minimal qualifications: 10+ years, very limited supervision, Masters or Higher.

LC Level 2: Sr. Manager or Sr. Professional

- a. Minimal qualifications: 8+ years, limited supervision, Bachelors or Higher.

LC Level 3: Manager or Professional

- a. Minimal qualifications: 6+ years, general supervision, Bachelors or Higher

The Contractor shall provide key personnel who are committed to this project and available as needed. Key personnel are defined as personnel assigned to the labor categories that the Federal Student Aid has designated as essential to the work to be performed.

Federal Student Aid retains the right to review qualifications for all staff assigned or proposed to be assigned to this agreement.

Key personnel identified in the Contractor's proposal must perform the work defined unless the Contracting Officer has approved any substitutions in writing. Any proposed substitutions shall

possess qualifications equal or superior to those of the key person being replaced. Before removing, replacing, or diverting, any of the proposed key personnel, the Contractor shall:

- Notify the Contracting Officer, Contracting Officer's Representative (COR), and Project Manager a minimum of five (5) calendar days in advance
- Submit justification in sufficient detail to permit evaluation of the impact on this replacement
- Provide a resume and qualification's statement for the proposed substitute
- Ensure that the replacement is fully aware of the status of work in progress and is briefed on key decisions and upcoming deadlines
- Demonstrate that the replacement has been sufficiently prepared so that work may continue without interruption or delay.

All contractor personnel working in direct support of this contract must submit to, and pass, the requisite Contractor Employee Personnel Security Screening and be able to obtain the required security clearance commensurate with the level of responsibilities and access.

Security clearance requirements, required screenings, and forms are explained in the current U.S. Department of Education Department Directive, OM: 5-101. Security screening forms and paperwork may be obtained from the COR. With the exception of those individuals to begin performance on Task Order award, these forms must be completed and submitted to the COR a minimum of fourteen (14) business days prior to the expected employees' arrival/work start date.

3.2.2 Contractor Responsibilities

The contractor shall furnish all necessary resources and materials required to meet the requirements defined in this SOW.

All deliverables shall be delivered hard copy or electronically to the Contracting Officer, his/her designee as well as to the Project Manager.

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. Contract ID Code	Page of Pages
2. AMENDMENT MODIFICATION NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (if applicable)		17
0001	DEC 19, 2014	EDOFSA-15-000006			
6. ISSUED BY US Department of Education FSA - Acquisitions, 830 First St NE - Suite 91F3 Washington DC 20202 Melanie Kynard 202-377-4260 melanie.kynard@ed.gov		7. ADMINISTERED BY (if other than item 6) See Block 6			
8. NAME AND ADDRESS OF CONTRACTOR (NO., Street, Country, State and ZIP Code) ERNST & YOUNG LLP 1101 NEW YORK AVENUE, NW WASHINGTON DC 200054213		DUNS: 095347159 Cage Code: 07EQ4			
		(X)	9A. AMENDMENT OF SOLICITATION NO.		
			9B. DATED (SEE ITEM 11)		
		X	10A. MODIFICATION OF CONTRACT/ORDER NO. ED-FSA-14-D-0007-0001		
			10B. DATED (SEE ITEM 13) SEP 24, 2014		
CODE 00028067		FACILITY CODE			
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					
<input type="checkbox"/> The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of offers <input type="checkbox"/> is extended. <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning _____ copies of amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.					
12. ACCOUNTING AND APPROPRIATION DATA (if required)					
See Schedule					
Modification Amount: \$94,474.00 Modification Obligated Amount: \$94,474.00					
13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.					
Check One	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.				
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).				
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR Part 16.505				
	D. OTHER (Specify type of modification and authority)				
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible) The purpose of this modification is to award a contract to EY to perform an onsite program review of Navient Corporation's compliance with the Servicemembers Civil Relief Act required for Higher Education Act of 1965, and in accordance with provisions of HEA. The services will begin on the Task Order award date and ...See Continuation Page					
Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as herebefore changed, remains unchanged and in full force and effect.					
15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)			
		Peter Janssen 202-377-3489 pete.janssen@ed.gov			
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED		16B. UNITED STATES OF AMERICA	
				DEC 19, 2014	
(Signature of person authorized to sign)		(Signature of Contracting Officer)			

NSN 7540-01-152-8070
Previous Edition Unusable

STANDARD FORM 30. (Rev. 10-83)
Prescribed by GSA FPMR (48 CFR) 53.243

Continuation Page

Continued from Block 14...

end within 2 months according to the deliverable schedule. This contract award will be for \$94,471.00. In accordance with FAR Part 16.505 this task order was competed under multiple award Fair Opportunity protocol.

Please view attachments added to this contract.

**Federal Student Aid
Office of the Chief Operating Officer**

**Fair Opportunity
Request for Quote ED-FSA-15-R-0001 (revised)**

**Review of Navient Corporation's Compliance
with the Servicemembers Civil Relief Act as
required by the Higher Education Act of 1965**

Statement of Work (SOW)
October 21, 2014

TABLE OF CONTENTS

SECTION 1: INTRODUCTION	3
1.1 BACKGROUND	3
1.2 OBJECTIVE AND SCOPE.....	4
1.3 PERIOD OF PERFORMANCE	5
1.4 PLACE OF PERFORMANCE.....	5
1.5 SECURITY CLEARANCE REQUIREMENT	6
1.6 REFERENCE MATERIALS	6
1.7 RIGHT OF ON-SITE PRESENCE DURING PROGRAM REVIEW/RIGHT TO PERSONNEL AND WORKPAPERS ..	6
SECTION 2: WORK TO BE PERFORMED	7
2.1 GENERAL.....	7
2.2 TASK ACTIVITIES	7
2.2.1 Task #1 – Draft and Maintain Project Plan & Prepare and Deliver Status Reports	7
2.2.2 Task #2 – Develop Program Review Quality Standards.....	8
2.2.3 Task #3 – Develop Program Review Methodology.....	8
2.2.4 Task #4 – Perform On-site Compliance Reviews	9
SECTION 3: STAFFING AND RESPONSIBILITIES	10
3.1 FSA STAFFING AND RESPONSIBILITIES	10
3.1.1 FSA Staffing	10
3.1.2 FSA Responsibilities	10
3.2 CONTRACTOR STAFFING AND RESPONSIBILITIES	10
3.2.1 Contractor Staffing	10
3.2.2 Contractor Responsibilities.....	11

SECTION 1: INTRODUCTION**1.1 Background**

On December 19, 2003, the *Servicemembers Civil Relief Act of 2003 (SCRA)* [Public Law 108–189] expanded the former Soldiers' and Sailors' Civil Relief Act. The SCRA provides a wide range of protections for individuals entering or called to active duty in the military or already deployed service members. The SCRA is intended to postpone or suspend certain civil obligations so that the service-member may devote full attention to duty and relieve the stress on the family members of those deployed service members.

The SCRA clarified and restated the existing law that limits interest rates on credit obligations that were incurred prior to qualifying military service or activation to a six percent cap. The interest accruing during military service that is above six percent cannot be charged to the borrower and is considered forgiven. Furthermore, the borrower's monthly payment must be reduced by the amount of interest saved during the covered period. When the service-member completes active duty, the interest rate should return to the original rate. This law applies to student loans incurred prior to the qualifying military service period. This law did not apply to loans made under *Title IV of the Higher Education Act (HEA) of 1965*, as amended, until it was modified by the Higher Education Opportunity Act (HEOA), dated August 14, 2008. The HEOA amended the HEA, Sections 428(d) and 438 to include these loans under the SCRA benefit.

ED issued Dear Colleague Letter (DCL) GEN-08-12/FP-08-10, dated December 2008, to provide guidance to holders of commercial loans. Page 120 of the DCL discussed the changes made by the HEOA. The change applies to borrowers in military service as of August 14, 2008. The interest rate limit does not apply to an endorser of a PLUS loan made to a parent or graduate/professional student unless that individual is also performing eligible military service. The DCL states that

...Under the SCRA, the borrower must contact the creditor (loan holder) in writing to request the interest rate adjustment and provide a copy of the borrower's military orders. For this purpose, the term "in writing" may include a borrower's email request the term "copy of the borrowers' military orders" includes a scanned copy of the orders attached to that email request. Borrowers serving before the effective date of this change in the HEA may not receive a refund of the interest paid in excess of the SCRA six percent limit before August 14, 2008...The Department will apply the SCRA interest rate limit to Direct Loan borrowers in the same manner.

On October 29, 2009, ED published a final rule in the Federal Register providing additional guidance to entities. This guidance was effective July 1, 2010. This Federal Register made changes to add 34 CFR 682.202(a)(8), as follows:

The charges that entities may impose on borrowers, either directly or indirectly, are limited to the following:

(a) Interest. The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) and (a)(8) of this section.

(8) Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207). Notwithstanding paragraphs (a)(1) through (a)(4) of this section, effective August 14, 2008, upon the loan holder's receipt of the borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on FFEL Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

This Federal Register also changed 34 CFR 685.202(a)(4), as follows:

(4) Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207). Notwithstanding paragraphs (a)(1) through (3) of this section, effective August 14, 2008, upon the Secretary's receipt of a borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on Direct Loan Program loans made prior to

the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

1.2 Objective and Scope

Federal Student Aid is seeking services from an independent public accounting firm (IPA) in performing an onsite program review of Navient Corporation's (Navient) compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965. The program review must be performed in accordance with quality standards that provide for competence, integrity, objectivity and independence, established by the contractor and approved by FSA. The program review must also be performed in accordance with the provisions of the HEA, applicable regulations, Dear Colleague Letters, and program review methodology approved by FSA.

The independent public accounting firm, hereafter referred to as "Contractor", shall be a licensed-certified public accounting firm by the regulatory authority of a State or other political sub-division of the United States and shall meet applicable State Board of Accountancy requirements. The Contractor shall comply with the applicable provisions of the public accountancy law and rules of the jurisdiction(s) where the work is being performed and the jurisdiction(s) where the Contractor is licensed. The Contractor shall possess demonstrated expertise performing audits, program reviews or assessments of the HEA, the SCRA or other similar Federal statutes or major programs. The Contractor shall provide qualified personnel to perform the work required under the SOW, and any other services performed under the SOW.

The Contractor must determine *whether with respect Navient and this requested program review*, the Contractor and/or staff assigned to perform work under this contract, lack independence or appear to lack independence and thus are precluded from performing the program review. Also, if any subcontractors are engaged to perform work under this contract, a like determination must be made by and with respect to them as well.

Under this contract, conditions causing the Contractor, subcontractors or employees assigned to work on this contract to lack independence or appear to lack independence include:

- With respect to the program review, having contractual, employment or other relationships, arrangements or understandings to provide audit or non-audit services; or
- With respect to the program review, being, having been, or planning to be involved in any lawsuits, and/or any business, personal or other relationships that could actually impair (or create the appearance of impairing) independence in performing the contracted work, under professional standards and codes of ethics and/or conduct to which the Contractor and its principles and employees are bound.

These assessments must be reflected in Independence Assurance Statements submitted by the Contractor and any Subcontractors.

An award will not be made if the Contractor lacks independence, and/or has the appearance of lacking independence.

Navient signed a contract on June 17, 2009 to be a Title IV Additional Servicer (TIVAS) contractor with the Department to service Federal Family Education Loan (FFEL) Program loans purchased

by the Department from FFEL Program lenders under the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA). Although the Loan Purchase Commitment Program expired September 30, 2010, the Asset-Backed Commercial Paper Conduit Put Program allowed FFEL lenders to sell loans to the Department until January 19, 2014. With the enactment of the Student Aid and Fiscal Responsibility Act of 2010 (SAFRA) by Congress, the TIVAS contract was extended to include servicing of the William D. Ford Direct Loan (Direct Loan) Program, as well as FFEL Program loans owned by the Department.

The objective of the program review is to determine whether eligible borrowers of federal student loans, serviced by Navient as a TIVAS, received the benefit of the 6 percent interest rate cap provided by the SCRA in accordance with the Department's statute, regulations and guidance.

The scope of the program review must include the following:

1. Determine whether Navient, as a TIVAS, complied with all Departmental statutes, regulations, and guidance in determining whether a borrower was eligible to receive the interest rate cap provided by the SCRA, and
2. Ensure that eligible borrowers who met the requirements for the interest rate cap under the SCRA were granted the benefit on all their eligible federal student loans.

A statistically valid random sample of 300 borrowers must be tested to determine whether Navient:

- Notified the borrower that they may be eligible for the SCRA interest rate cap.
- Granted the SCRA interest rate cap when the borrower requested the benefit in writing and submitted a copy of their military orders, and applied the interest rate cap to all eligible loans, both FFEL Program and Direct Loan Program loans.
- Denied the SCRA interest rate cap in accordance with the Department guidelines.
- Granted the interest rate cap for the correct time period for borrowers approved for the SCRA interest rate cap.
- Adjusted the SCRA interest rate cap back to the original rate if the borrower left active duty military service or was otherwise found to be ineligible for the SCRA interest rate cap.

The Department will provide the contractor with the file from which the contractor will select the sample.

The specific actions to satisfy the objectives and meet expectations for task outcomes are documented in Section 2 of this Statement of Work (SOW).

1.3 Period of Performance

The period of performance shall commence on the date of award and end on December 31, 2014.

1.4 Place of Performance

The program review will be performed at Navient's office at 220 Lasley Avenue, Wilkes-Barre, PA 18706.

The Government will reimburse the cost of travel if required, in accordance with contract clause C-16 FSA 31-1 Contractor Travel Expenses (April 2013), and with prior written approval by the Contracting Officer.

US Department of Education, Federal Student Aid
RFQ# ED-FSA-15-R-0001

All such costs require documentation support to accompany all invoices. Local travel is not subject to reimbursement.

1.5 Security Clearance Requirement

For contractor employees and subcontractor employees who will perform under this effort are required to have or obtain Moderate Risk (5C) security clearances in accordance with the Department's Directive OM 5-101, *Contractor Employee Personnel Security Screening* below.



*ACS
Directive_Contractor

1.6 Reference Materials

The contractor will obtain a thorough knowledge of the applicable provisions of the HEA and regulations and related Dear Colleague Letters.

- Code of Federal Regulations
- DCL

Dear Colleague Letter: <http://www.ifap.ed.gov/dpcletters/GEN0812FP0810.html>

Regulations:

FFEL: <http://www.ecfr.gov/cgi-bin/text-idx?SID=4dd8351a8d8940c1e2324b17752eb4fc&node=se34.4.682.1202&rgn=div8>
DL: <http://www.ecfr.gov/cgi-bin/text-idx?SID=4dd8351a8d8940c1e2324b17752eb4fc&node=se34.4.685.1202&rgn=div8>

1.7 Right of On-Site Presence During Program Review/Right to Personnel and Workpapers

Federal Student Aid shall have access to Contractor personnel and workpapers to review work performed for compliance with this SOW.

SECTION 2: WORK TO BE PERFORMED**2.1 General**

Federal Student Aid may provide additional direction and/or information based on the goals and objectives for all activities below.

For each activity, the contractor shall identify the applicable legislation, regulation, industry guidance, and/or best practice to their stated methodology, quality control structure, and performance of the program review, where applicable.

2.2 Task Activities**2.2.1 Task #1 – Draft and Maintain Project Plan & Prepare and Deliver Status Reports**

Description	<p>The contractor shall draft, submit, and maintain to FSA's senior management an overall Project Plan & Schedule that outlines the methodology for conducting the program review, including quality standards that provide for competence, integrity, objectivity, and independence, and the approach for the site visit.</p> <p>The plan & schedule will include the level of effort for all tasks outlined in this SOW as well as all activities required for the successful performance of this program review.</p> <p>In addition, contractor shall prepare and deliver weekly status reports identifying activities completed, planned activities for the next week, tentative findings, and any issues.</p>
Deliverables	<p>Deliverable #1: Project Plan (MS Project) including WBS schedule, level of effort, resource allocation, and milestones - Due five (5) business days after award date.</p> <p>Deliverable #2: Weekly Status Report (MS Word) – due 1st week after acceptance of project plan and afterward on the every Monday at 9am EST for prior week's activities.</p>
Acceptance Criteria	<p>Upon receipt, FSA Project Manager or his/her designee will review deliverable for completeness, accuracy, and consistency. FSA Contracting Officer will submit a written notice of acceptance or rejection within five (5) business days.</p>

The contractor shall develop and maintain the Project Plan based on Contractor's proposal. This plan will correspond to Contractor's project methodology and quality standards. The project plan shall be maintained and provided to Federal Student Aid when significant changes occur or upon request of the Project Manager.

Contractor shall produce and deliver a weekly Status Report to summarize progress and identify anticipated problems. This report shall include activities that occurred during the reporting period and to be acceptable shall include at a minimum:

- Activities performed and deliverables submitted during the past reporting period
- Activities performed involving the coordination with FSA program team and stakeholders
- Identified risks and issues with associated recommendations or proposed contingency

- Activities and deliverables planned for the upcoming reporting period
- Changes to the date or composition of deliverables

[**Note:** Contractor shall separately notify the FSA Contracting Officer (CO) regarding any material effects. Material effects include, but are not limited to, changes in value (money), time, or project scope. As examples, a change in a deliverable due date, a change in staff assignments (affecting travel), or the addition or deletion of an activity requires CO notification.]

2.2.2 Task #2 – Develop Program Review Quality Standards

Description	The contractor shall develop and submit to FSA quality standards for the performance of the program review. The quality standards must provide for competence, integrity, objectivity and independence.
Deliverables	Deliverable #3: Program Review Quality Standards – due five (5) business days after acceptance of project plan.
Acceptance Criteria	Upon receipt, FSA Project Manager or his/her designee will review deliverable for completeness, accuracy and consistency. FSA Contracting Officer or his/her designated representative will submit a written notice of acceptance or rejection within five (5) business days.

In developing the quality standards, the contractor should ensure that the standards cover:

- Assurance that the staff doing the work are independent of the entity under review
- Establishment of a process to ensure that there is adequate documentation of the work performed, including adequate documentation to support an review findings
- Establishment of a process for supervisory review of the work performed by staff.

2.2.3 Task #3 – Develop Program Review Methodology

Description	The contractor shall develop and submit to FSA Project Manager a program review methodology that addresses the requirements identified in the scope section of this SOW, including a risk mitigation strategy for completion of the program review when some or all of the original documentation is not available.
Deliverables	Deliverable #4: Program Review Methodology - due five (5) business days after FSA acceptance of project plan.
Acceptance Criteria	Upon receipt, FSA Project Manager or his/her designee will review deliverable for completeness, accuracy, and consistency. FSA Contracting Officer or his/her designated representative will submit a written notice of acceptance or rejection within five (5) business days.

In developing the methodology, the contractor should employ proficient knowledge of the requisite statute, regulation and guidance in order to achieve a complete evaluation of Navient's compliance with the SCRA as required by the HEA.

US Department of Education, Federal Student Aid
RFQ# ED-FSA-15-R-0001

2.2.4 Task #4 – Perform On-site Program Review

Description	The contractor, in accordance with the project plan and schedule, shall implement the approved program review methodology at Navient and submit a report on its findings as well as any recommendations for corrective action.
Deliverables	<u>Deliverable #5: Program Review Reports (MS Word)</u> including copies of any workpapers and/or supporting documentation. – Two (2) weeks after completion of program review field work. The program review report will be submitted to FSA by no later than 12/26/14.
Acceptance Criteria	Upon receipt, FSA Project Manager or his/her designee will review deliverable for completeness, accuracy, and consistency. FSA Contracting Officer or his/her designated representative will submit a written notice of acceptance or rejection within five (5) business days.

SECTION 3: STAFFING AND RESPONSIBILITIES

3.1 FSA Staffing and Responsibilities

3.1.1 FSA Staffing

Federal Student Aid shall provide a project manager who will serve as the primary point of contact on technical matters. As needed and requested by the Contractor, Federal Student Aid shall also provide a Subject Matter Expert experienced with SCRA program reviews.

3.1.2 FSA Responsibilities

Federal Student Aid shall designate a Contracting Officer's Representative (COR) to perform the following activities:

- Define, monitor, and assess Contractor activities and deliverables
- Provide clarification on business requirements and technical design issues
- Review and approve the Contractor's project plans and proposed technical solutions

3.2 Contractor Staffing and Responsibilities

Any access to necessary facilities, IT systems, and/or data will be based on the contractor's personnel ability to obtain the requisite security clearance stated in Section 1.5.

Ownership of information and documents prepared in accordance with this contract shall become and remain property of the Federal Student Aid. It is the contractor's responsibility to ensure system and data security as well as all individual personal data security.

3.2.1 Contractor Staffing

3.2.1.1 Key Personnel Requirements

LC Level 1: Executive or Industry-wide recognized SME

- a. Minimal qualifications: 10+ years, very limited supervision, Masters or Higher.

LC Level 2: Sr. Manager or Sr. Professional

- a. Minimal qualifications: 8+ years, limited supervision, Bachelors or Higher.

LC Level 3: Manager or Professional

- a. Minimal qualifications: 6+ years, general supervision, Bachelors or Higher

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Federal Student Aid retains the right to review qualifications for all staff assigned or proposed to be assigned to this agreement.

Key personnel identified in the Contractor's proposal must perform the work defined unless the Contracting Officer has approved any substitutions in writing. Any proposed substitutions shall

US Department of Education, Federal Student Aid
RFQ# ED-FSA-15-R-0001

possess qualifications equal or superior to those of the key person being replaced. Before removing, replacing, or diverting, any of the proposed key personnel, the Contractor shall:

- Notify the Contracting Officer, Contracting Officer's Representative (COR), and Project Manager a minimum of five (5) calendar days in advance
- Submit justification in sufficient detail to permit evaluation of the impact on this replacement
- Provide a resume and qualification's statement for the proposed substitute
- Ensure that the replacement is fully aware of the status of work in progress and is briefed on key decisions and upcoming deadlines
- Demonstrate that the replacement has been sufficiently prepared so that work may continue without interruption or delay.

All contractor personnel working in direct support of this contract must submit to, and pass, the requisite Contractor Employee Personnel Security Screening and be able to obtain the required security clearance commensurate with the level of responsibilities and access.

Security clearance requirements, required screenings, and forms are explained in the current U.S. Department of Education Department Directive, OM: 5-101. Security screening forms and paperwork may be obtained from the COR. With the exception of those individuals to begin performance on Task Order award, these forms must be completed and submitted to the COR a minimum of fourteen (14) business days prior to the expected employees' arrival/work start date.

3.2.2 Contractor Responsibilities

The contractor shall furnish all necessary resources and materials required to meet the requirements defined in this SOW.

All deliverables shall be delivered hard copy or electronically to the Contracting Officer, his/her designee as well as to the Project Manager.

Attachment Page

SITE VISIT TRAVEL COST ESTIMATE

Roundtrip Scenario (basis of estimate)
Departure City:
Arrival City: Wiles-Barre, PA
Trip Duration: based on proposal
Resources: based on proposal

Site Visit Travel	Estimate Per Traveler (Unit Cost)			
	Round-Trip (Airfare)	Hotel (6 Nights)	Per Diem (7 Days)	Taxi
Unit Cost				
Total # of Travelers:				
Total Cost:	\$ -	\$ -	\$ -	\$ -

* Travel will be considered in total price. Offeror should propose travel in most cost efficient manner

Attachment Page

Attachment A

3.0 Pricing Summary

The table below and table on the following page summarize CY's proposed labor cost on a Firm Fixed Price (FFP) basis in the format requested by LID-ISA. To evaluate total price, the \$78,295 in labor cost should be added to the estimated cost of cost, to be reimbursed in accordance with Federal Acquisition Regulations (FAR), of \$16,176 as detailed on page 5 of this volume:

PRICE SCHEDULE


Task Number	Task Name	Total Price
1	Draft & Deliver Project Plan and Report & Deliver Status Reports	\$ 6,055.00
2	Develop Program Review Quality Standards	\$ 1,830.00
7	Develop Program Review Methodology	\$ 18,375.00
3	Perform On Site Program Review	\$ 54,135.00
TOTAL PROPOSED COST (FFP)		\$ 78,295.00

Attachment Page**Attachment B**

Deliverable due dates:
Please refer to Section 2.2.1 of the SOW.

TO award:	Dec 19 th
Task 1 due COB:	Dec 26 th
FSA rev due COB:	Jan 2 nd
Tasks 2-3 due COB:	Jan 9 th
FSA rev due COB:	Jan 16 th
Task 4 due COB:	Feb 13 th
FSA rev due COB:	Feb 20 th
Award end:	Feb 27 th

SCHEDULE Continued					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE \$	AMOUNT \$
	<p>Contracting Officer: Peter Janssen, 202-377-3489, pete.janssen@ed.gov</p> <p>Primary Contracting Officer Representative: Christopher Dursin, 202-377-3875, Christopher.Dursin@ed.gov</p> <p>Alternate Contracting Officer Representative(s): Tammy Connelly, 202.377.3298, tammy.connelly@ed.gov</p> <p>Primary Technical Point of Contact: None</p> <p>Alternate Technical Point of Contact(s): None</p> <p>(New Line Item)</p>				
0002	<p>Federal Student Aid is seeking services from an independent public accounting firm (IPA) in performing an onsite program review of Navient Corporation's compliance with the Servicemembers Civil Relief Act as required by the Higher Education Act of 1965. The program review must be performed in accordance with quality standards that provide for competence, integrity, objectivity and independence, established by the contractor and approved by FSA. The program review must also be performed in accordance with the provisions of the HEA, applicable regulations, Dear Colleague Letters, and program review methodology approved by FSA.</p> <p>Accounting and Appropriation Data: 0202M2015.A.2015.ENA00000.6N2.2521A.PC0.000.0000.000000 \$78,298.00 PR NUMBER: EDOFSA-15-000006 FOB : Destination</p>	1.00	SE	78,298.00	78,298.00
0003	<p>(New Line Item)</p> <p>Estimated travel costs are in accordance with the Federal Travel Regulations, and all travel will be billed as time and material for the entire contract.</p> <p>Accounting and Appropriation Data: 0202M2015.A.2015.ENA00000.6N2.2521A.PC0.000.0000.000000 \$16,176.00 FOB : Destination</p>	1.00	SE	16,176.00	16,176.00

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				1. Contract ID Code	Page of Pages	
2. AMENDMENT MODIFICATION NO.		3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (if applicable)		
0002		DEC 19, 2014				
6. ISSUED BY U.S. Department of Education FSA - Acquisitions, 630 First St. NE - Suite 91F3 Washington DC 20202		CODE FSA-ACQ	7. ADMINISTERED BY (If other than item 6) See Block 6		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (NO., Street, Country, State and ZIP Code) ERNST & YOUNG LLP 1101 NEW YORK AVENUE, NW WASHINGTON DC 200054213			DUNS: 095347159 Cage Code: 07EQ4		(X)	
			9A. AMENDMENT OF SOLICITATION NO.			
			9B. DATED (SEE ITEM 11)			
			10A. MODIFICATION OF CONTRACT/ORDER NO. 50-FSA-14-D-0007-0007			
			10B. DATED (SEE ITEM 13)		SEP 24, 2014	
CODE 00028067		FACILITY CODE				
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS						
<input type="checkbox"/> The above numbered solicitation is amended as set forth in item 14. The hour and date specified for receipt of offers <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning _____ copies of amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.						
12. ACCOUNTING AND APPROPRIATION DATA (If required)						
See Schedule						
13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.						
Check One	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.					
X	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).					
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:					
	D. OTHER (Specify type of modification and authority)					
E. IMPORTANT: Contractor <input checked="" type="checkbox"/> is not, <input type="checkbox"/> is required to sign this document and return _____ copies to the issuing office.						
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible) The purpose of this modification is address typing error in the system related to total cost of the procurement for the Review of Navient Corporation's Compliance with the Servicemembers Civil Relief Act by the Higher Education Act of 1995. The previous cost was listed as \$94,474.00. The correct total cost is ...See Continuation Page						
Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as herebefore changed, remains unchanged and in full force and effect.						
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)			
			Peter Janssen 202-377-3489 pete.janssen@ed.gov			
15B. CONTRACTOR/OFFEROR		15C. DATE SIGNED	16B. UNITED STATES OF AMERICA		16C. DATE SIGNED	
(Signature of person authorized to sign)					DEC 19, 2014	
		(Signature of Contracting Officer)				
NSN 7540-01-152-8070 Previous Edition unusable			STANDARD FORM 30, (Rev. 10-83) Prescribed by GSA FAR (48 CFR) 53.243			

Continuation Page

Continued from Block 14...

\$94,471.00

SCHEDULE Continued					
ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE \$	AMOUNT \$
0002	<p>Contracting Officer: Peter Janssen, 202-377-3489, pete.janssen@ed.gov</p> <p>Primary Contracting Officer Representative: Christopher Dursin, 202-377-3875, Christopher.Dursin@ed.gov</p> <p>Alternate Contracting Officer Representative(s): Tammy Connelly, 202.377.3298, tammy.connelly@ed.gov</p> <p>Primary Technical Point of Contact: None</p> <p>Alternate Technical Point of Contact(s): None</p> <p>(Changed Line Item)</p> <p>The original price was for \$78,298.00. The correct price for the procurement is \$78,295.00. A deobligation of \$3.00 was made.</p> <p>Accounting and Appropriation Data: 0202M2015.A.2015.ENA00000.6N2.2521A.PC0.000. 0000.000000 \$78,295.00 PR NUMBER: EDOFSA-15-000006 FOB : Destination</p>	1.00	SE	78,295.00	78,295.00

From: Ferraiole, Susan
Sent: Thursday, January 08, 2015 4:06 PM
To: 'Potomis, Patricia'; 'Noone, Katie'
Cc: Facey, Naomi
Subject: Documentation Request: Navient SCRA Review Beginning January 20
Attachments: Attachment A - Information Request 2015 0108.pdf

On January 8, 2015, I notified Navient that an upcoming program review is scheduled to begin on January 20, 2015. Included with this email is an attachment listing the information Navient must supply prior to the review. The sample of 300 borrowers is forthcoming. All information must be provided by COB January 16, 2015, and directed to the review lead, Naomi Facey, at Naomi.Facey@ed.gov.

If any of the information submitted contains sensitive personal data, Navient must place the file(s) in a password-protected WINZIP archive or other secure means. Any passwords must be telephoned to me.

Thanks,

Susan C. Ferraiole
 Compliance Manager, Financial Institution Oversight Service - Eastern Division
 US Department of Education | Federal Student Aid | Program Compliance
 32 Old Slip, 25th Floor - Financial Square
 New York, NY 10005 (646) 428-3771 | (646) 428-3773 Fax | susan.ferraiole@ed.gov | StudentAid.gov

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"There are two ways of exerting one's strength: one is pushing down, the other is pulling up."
 --Booker T. Washington, educator, author, orator, and advisor to presidents of the United States.

This message is for the designated recipient only and may contain sensitive or confidential information. If you have received this message in error, please notify the sender immediately and delete the original and all copies. If you received this message in error or are not a designated recipient, information in this message should not be disclosed and any use of the information is prohibited.

U.S. DEPARTMENT OF EDUCATION,
 FEDERAL STUDENT AID,
 NEW YORK, NY 10005,
 January 8, 2015.

JOHN F. REMONDI,
 Chief Executive Officer,
 Navient Corporation,
 300 Continental Drive,
 Newark, DE 19713.

UPS Tracking# 1Z A87 964 01 9477 6794

Re: Program Review, Servicer ID: 700578, PRCN: 20152025099

DEAR MR. REMONDI: This letter notifies Navient Corporation (Navient) that a program review has been scheduled to begin on January 20, 2015 through January 30, 2015. The review will assess Navient's participation in the William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Loan Programs and its compliance with provisions of the Servicemembers Civil Relief Act of 2003 (SCRA) and the Higher Education Opportunity Act (HEOA), dated August 14, 2008. The HEOA amended Sections 428(d) and 438 of the Higher Education Act of 1965, as amended. The review will cover the period June 19, 2009 through May 31, 2014, but may be expanded as appropriate.

The U.S. Department of Education's (ED) authority to examine program and financial records and conduct reviews is reflected at 34 CFR § 682.414(c). We will contact you in writing concerning the documents, records and data files that Navient must supply prior to and during the review. Please make arrangements for all required information, hard copy, and electronic, to be available when requested.

If any of the information submitted contains sensitive and/or personal data, Navient must place the file(s) in a password-protected WINZIP file or other secure means. Any passwords must be telephoned or emailed under separate cover to Naomi Facey.

At the start of the review, the review team will conduct an entrance conference via conference call with you and your staff to discuss the review process. We will contact Navient to establish a time for the conference. Please inform the appropriate program administrative staff, so they or their designees can attend the entrance conference and remain available during the review.

At the conclusion of the review, the review team will conduct an exit conference via conference call. Your presence at the exit conference would be appreciated. If it is not possible for you to attend, we request that you designate a representative.

If you have any questions, please contact Naomi Facey at 646-428-3853 or by e-mail at Naomi.Facey@ed.gov. Thank you for your cooperation.

Sincerely,

SUSAN C. FERRAIOLE,
Compliance Manager, Eastern Division.

Federal Student 
An OFFICE of the U.S. DEPARTMENT of EDUCATION

PROUD SPONSOR of
the AMERICAN MIND™

Prepared for:
U.S. Department of Education
Federal Student Aid
Business Operations

Entity Reviewed:
Navient Corporation
220 Lasley Avenue
Wilkes-Barre, PA 18706

Prepared by:
U.S. Department of Education
Federal Student Aid
Financial Institution Oversight Service – Eastern Division

Internal Review Report

May 26, 2015

TABLE OF CONTENTS

	<u>Page</u>
A. Review Information	2
B. Entity Information	2
C. Review Objectives.....	4
D. Purpose and Scope of Review.....	4
E. Summary of Element Reviewed.....	5
Element: Servicemember Civil Relief Act	5
Issue 1 – Incorrectly Granted the SCRA Interest Rate Cap.....	7
Issue 2 – Denial of SCRA Interest Rate Cap Despite a Valid Request	7
Issue 3 – Incorrect Active Duty Military Service Dates Used for SCRA Interest Rate Cap Periods and Interest Rate Not Always Adjusted Back to Original Rate.....	8
F. Conclusion	9

A. Review Information**SID Number:** 700578**Program Review Control Number (PRCN):** 20143025005**Name and Address:**

Navient Corporation
 220 Lasley Avenue
 Wilkes-Barre, PA 18706

Dates of Review: June 2, 2014, through June 6, 2014**Review Period:** June 17, 2009, through April 30, 2014**B. Entity Information**

Navient Corporation, formerly known as Sallie Mae¹, signed a contract on June 17, 2009, to be a Title IV Additional Servicer (TIVAS) contractor with the U.S. Department of Education (Department) to service Federal Family Education Loan (FFEL) Program loans purchased by the Department from FFEL Program lenders under the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA). Although the Loan Purchase Commitment Program expired September 30, 2010, the Asset-Backed Commercial Paper Conduit Put Program allowed FFEL Program lenders to sell loans to the Department until January 19, 2014. In 2010, the TIVAS contract was extended to include servicing of the William D. Ford Direct Loan (Direct Loan) Program, as well as FFEL Program loans owned by the Department. The FFEL and Direct Loan programs are authorized by Title IV of the Higher Education Act of 1965, as amended (HEA).

Background

On May 13, 2014, the Department of Justice (DOJ) announced a settlement agreement with Navient and Sallie Mae Bank that addressed violations of the Servicemembers Civil Relief Act (SCRA) on federal and private student loans serviced by the companies. In connection with the announcement of the settlement agreement, the Secretary of Education announced that Federal Student Aid (FSA) would review the Department's servicers' compliance with the SCRA. This report presents the results of FSA's review of Navient's compliance with the SCRA for federally-held FFEL Program and Direct Loan Program loans it serviced under the TIVAS contract.

The SCRA provides a wide range of protections for individuals entering or called to active duty in the military or servicemembers already deployed. In regard to FFEL loans and Direct Loans, the SCRA limits the interest rate a borrower may be charged on a loan made to the servicemember entering qualifying military service to six percent. When the servicemember

¹ Navient was not created until May 2014. Some of the events discussed in this report were performed by Sallie Mae but, to avoid confusion, this report will use the name Navient to refer to the company acting as TIVAS contractor, whether those actions occurred before or after Navient was created.

ends a period of active duty military service, the interest rate should return to the original rate. The six percent interest rate applies during any period when the borrower is on active duty military service.

The SCRA's interest rate limit first became applicable to the FFEL and Direct Loan programs with the passage of the August 14, 2008, Higher Education Opportunity Act (HEOA) which amended §§428(d) and 438 of the HEA to incorporate the SCRA's interest rate limitation.

The Department's Dear Colleague Letter (DCL) GEN-08-12/FP-08-10 issued December 2008 included guidance to FFEL loan holders regarding the application of the SCRA for FFEL Program and Direct Loan Program loans.² Page 120 of the DCL noted that the interest rate limitation applies to borrowers in active duty military service as of August 14, 2008, but did not apply to an endorser of a PLUS loan unless the endorser is also performing eligible active duty military service. The DCL also stated that:

...Under the SCRA, the borrower must contact the creditor (loan holder) in writing to request the interest rate adjustment and provide a copy of the borrower's military orders. For this purpose, the term "in writing" may include a borrower's email request and the term "copy of the borrowers' military orders" includes a scanned copy of the orders attached to that email request.... The Department will apply the SCRA interest rate limit to Direct Loan borrowers in the same manner.

On October 29, 2009, the Department published final regulations in the Federal Register that included changes to implement the SCRA interest rate cap. The regulations became effective July 1, 2010. The final regulations added 34 CFR §682.202(a)(8) which provides:

The charges that lenders may impose on borrowers, either directly or indirectly are limited to the following:

(a) *Interest.* The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) and (a)(8) of this section.

(8) *Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207).* Notwithstanding paragraphs (a)(1) through (a)(4) of this section, effective August 14, 2008, upon the loan holder's receipt of the borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on FFEL Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

² Section C.1.4.3 (Constraints) of Navient's TIVAS contract states that "[t]he contractor(s) will be responsible for maintaining a full understanding of all federal and state laws and regulations and FSA requirements and ensuring that all aspects of the service continue to remain in compliance as changes occur." The Department's DCL system provides FSA program direction and compliance guidance.

The final regulations also changed the Direct Loan Program regulations at 34 CFR §685.202(a)(4), to similarly provide:

(4) Applicability of the Servicemembers Civil Relief Act (50 U.S.C. 527, App. sec. 207). Notwithstanding paragraphs (a)(1) through (3) of this section, effective August 14, 2008, upon the Secretary's receipt of a borrower's written request and a copy of the borrower's military orders, the maximum interest rate, as defined in 50 U.S.C. 527, App. section 207(d), on Direct Loan Program loans made prior to the borrower entering active duty status is 6 percent while the borrower is on active duty military service.

On December 12, 2013, FSA issued Change Request (CR) 2278 which states that "FSA needs to ensure that active duty personnel are receiving the active duty student loan benefits they are entitled to receive." This CR instructs all of FSA's servicers to "...do a match with the Department of Defense (DoD) database to identify active duty military personnel for purposes of applying active duty military benefits to eligible loan recipients." On April 7, 2014, FSA issued CR 2409 which states that the "[t]he servicers shall outreach to all eligible active duty personnel identified in the DoD match (per CR 2278) and ongoing annually....The servicers should track the results of this outreach activity and report to FSA any problems or successes with this effort." On May 19, 2014, CR 2658 instructed the TIVAS to use the Defense Manpower Data Collection (DMDC) database to "...replace the requirement for the receipt of orders...as long as the servicer notifies the service member that the benefit is being applied and provides the service member an opportunity to request additional information." Navient has implemented CR 2658 which is expected to address issues identified in this report.

C. Review Objectives

The objective of this review was to determine whether eligible borrowers of eligible FFEL loans and Direct Loans received the benefit of the 6 percent interest rate cap provided by the SCRA in accordance with applicable statutes and the Department's regulations and guidance.

D. Purpose and Scope of Review

The purpose of this review was to:

- (1) Determine whether Navient complied with all Departmental statutes, regulations, and guidance in determining whether a borrower was eligible to receive the interest rate cap provided by the SCRA, and
- (2) Ensure that eligible borrowers who met the requirements for the interest rate cap under the SCRA were granted the benefit on all their eligible federal student loans.

Financial Institution Oversight Service (FIOS) conducted a program review at Navient from June 2, 2014, through June 6, 2014. The review covered the period June 17, 2009, (the effective date of Navient's TIVAS contract) through April 30, 2014. The review was limited to loans owned by the Department and serviced by Navient under the TIVAS contract. The review did

not cover whether Navient applied the SCRA interest rate cap correctly on FFEL loans it held and loans it serviced for other holders or private student loans.

E. Summary of Element Reviewed

FIOS selected a random sample of 99 loans, representing 99 distinct borrowers, from a National Student Loan Data System (NSLDS) population of 33,837 unique records of military deferment and military grace periods granted from June 17, 2009, through April 14, 2014, for FFEL Program and Direct Loan Program loans owned by the Department with an interest rate in excess of 6 percent that were serviced by Navient under the TIVAS contract. These 33,837 records represent 10,110 borrowers with 25,474 FFEL and DL loans. FIOS used its standard expected deviation rate of 0.0 percent, tolerable deviation rate of 3 percent, and confidence level rate of 95 percent, based on the population of 33,837 records, to arrive at the sample size of 99, as defined by IDEA data analysis software. FIOS reviewed a judgmental sample of an additional five borrowers referred from FSA's Ombudsman Group due to SCRA processing complaints.

Element: Servicemember Civil Relief Act

Borrowers in active duty military service may have the interest rate charged on eligible FFEL Program and Direct Loan Program limited to 6 percent. Under the Department's regulations, to receive the benefit of the interest rate cap under the SCRA during the period covered by the review³, the borrower must have provided the servicer with a written request for the benefit and a copy of the appropriate military orders. These documents may be provided in paper form or by email. In some cases, a representative with the borrower's power of attorney may present the documents on behalf of the borrower. The servicer must grant the benefit based on the military orders provided and may use information obtained through the DMDC system to augment the information in the request.

Methodology:

FIOS interviewed key Navient officials responsible for servicing loans under the TIVAS contract, including the company's Senior Director of Compliance & Audit Support, Senior Director of the Office of the Customer Advocate, Director of CollegeServ, Manager of Military Processing, and Business Technical Coordinator – Military Processing. FIOS reviewed Navient's processes and procedures to ensure that they adhered to the requirements in the HEOA and the Department's regulations, and other guidance in regard to SCRA. To determine active duty military service dates and SCRA eligibility, data from NSLDS, Navient's internal system, and borrower records were reviewed and any inconsistencies were reconciled. For all loans in the sample, copies of monetary transaction histories, collection activity histories, and deferment histories were also reviewed. Regarding the borrowers referred from the Ombudsman Group, interviews were conducted and loan files reviewed to determine if the borrower was qualified for and received the SCRA interest rate cap of 6 percent rate, if the complaint resulted in borrower account correction, or if Navient correctly managed the account without Ombudsman intervention.

³ Since the period covered by the review, the Department has changed the process for ensuring that eligible borrowers receive the benefit of the interest rate cap under the SCRA.

All samples were tested to determine whether Navient:

- Notified the borrower that they may be eligible for the SCRA interest rate cap,
- Granted the SCRA interest rate cap when the borrower requested the benefit in writing and submitted a copy of their military orders, and applied the interest rate cap to all eligible loans, both FFEL Program and Direct Loan Program loans,
- Denied the SCRA interest rate cap in accordance with the Department guidelines,
- Granted the interest rate cap for the correct time period for borrowers approved for the SCRA interest rate cap, and
- Adjusted the SCRA interest rate cap back to the original interest rate if the borrower left active duty military service or was otherwise found to be ineligible for the SCRA interest rate cap.

Results:

For the 99 borrowers tested:

- Navient notified 68 borrowers of their potential eligibility. Navient used the borrower's request for a military deferment or grace period to determine which borrowers might be eligible for the SCRA interest rate cap. Not all borrowers who submitted a request for a military deferment or grace period would have been eligible for the SCRA interest rate cap. Notifying the borrower of their potential SCRA eligibility was not required during the period covered by the review.
- 29 borrowers requested the SCRA interest rate cap:
 - Navient granted the SCRA interest rate cap to 27 borrowers:
 - Navient correctly granted the benefit to 20 borrowers.
 - Navient incorrectly granted the benefit to 7 borrowers.
 - Navient denied the SCRA interest rate cap to 2 borrowers:
 - Navient correctly denied the benefit to 1 borrower.
 - Navient incorrectly denied the benefit to 1 borrower.
 - Navient used incorrect active duty military service dates to determine the benefit period for 13 of the 27 borrowers granted the benefit.
 - Navient correctly adjusted the interest rate cap back to the original interest rate for 14 of the 27 borrowers granted the benefit.

For the 5 borrowers referred from the Ombudsman Group:

- 2 borrowers requested and properly received the SCRA interest rate cap benefits.
- 1 borrower request pertained only to private loans and could not be reviewed.
- 2 borrowers were not qualified for and did not receive SCRA benefits.

The following issues were identified.

FIOS found that Navient did not fully comply with the requirements in the applicable statutes and, the Department's, regulations and guidance for granting the SCRA interest rate cap to eligible servicemembers. Specifically, Navient incorrectly approved the SCRA interest rate cap for seven borrowers, denied SCRA interest rate cap for one eligible borrower despite the borrower's valid request, used incorrect active duty military service dates in granting SCRA

benefits to 13 borrowers, and did not always adjust the interest rate cap back to the original interest rate when the borrower was no longer eligible.

Issue 1 – Incorrectly Granted the SCRA Interest Rate Cap

Navient incorrectly granted the SCRA interest rate cap to seven borrowers.

Navient granted the SCRA interest rate cap based on the borrower's request for a military deferment rather than requiring a separate request. Although the Department's December 2008 DCL required the borrower to file a written request for the application of the SCRA interest rate cap, Navient's procedures were to grant the SCRA interest rate cap when only a request for military deferment was received. Navient's procedures were updated in October 2010, and Navient stated that it "[d]iscontinued the process of granting SCRA benefits when only a request for military deferment is received." As a result, six borrowers were incorrectly granted the SCRA interest rate cap.

Navient incorrectly granted the SCRA interest rate cap on a loan that had been disbursed after the beginning of the borrower's active duty military service. Documentation in the borrower's file indicated that the loan was not eligible for the SCRA interest rate cap because the loan was disbursed after the borrower's active duty military service. Navient did not reconcile the information in the borrower's file with the documentation the borrower submitted with their written request for the SCRA interest rate cap. As a result, one borrower was incorrectly granted the SCRA interest rate cap.

Recommendations:

We recommend that Business Operations direct Navient to—

- 1.1 Review the portfolio of borrowers granted the SCRA interest rate cap to ensure that only eligible borrowers were approved for the benefit and adjust borrower accounts or allow benefits already provided to borrowers, as appropriate.
- 1.2 Comply with all Department requirements and seek assistance in the implementation of new regulatory requirements.

Issue 2 – Denial of SCRA Interest Rate Cap Despite a Valid Request

Navient incorrectly denied the SCRA interest rate cap to one eligible borrower.

The borrower had multiple loans which were made both before and after the borrower's active duty military service date. This created a condition where some loans were eligible for the SCRA interest rate cap and other loans were not eligible. One eligible loan was incorrectly grouped with the ineligible loans when Navient processed the borrower's SCRA request. A Navient official confirmed that the borrower was mistakenly denied the SCRA interest rate cap on an eligible loan because the request came in for three loans where two of the loans were not eligible, resulting in the manual processing error.

Recommendations:

We recommend that Business Operations direct Navient to—

- 2.1 Retroactively apply the SCRA interest rate cap to the eligible loan and adjust the borrower's account accordingly.
- 2.2 Develop and implement a control to prevent future processing errors of this nature.

Issue 3 – Incorrect Active Duty Military Service Dates Used for SCRA Interest Rate Cap Periods and Interest Rate Not Always Adjusted Back to Original Rate

Navient used incorrect active duty military service dates to apply the SCRA interest rate cap for 13 eligible borrowers. Additionally, Navient did not always appropriately adjust the interest rate back to the original rate when there was a change in a borrower's eligibility status.

Navient did not retroactively apply adjustments to reflect the correct dates of the borrower's active duty military service. As a result, some SCRA eligible borrowers did not receive the full benefit of the SCRA interest rate cap or received the interest rate cap when they were not in active duty military service. In the cases where the borrower did not receive the full benefit, Navient did not adjust the active duty military service date if the date occurred before Navient began servicing the account. When making retroactive adjustments to a borrower's active duty military service end dates, rather than use the date on the orders, if the date Navient obtained the information was later, Navient used the later date. Navient also did not reverse the benefit for borrowers who were subsequently found to be ineligible. Navient used the later date and did not reverse the benefit because this would negatively impact the borrowers. As a result, 13 borrowers who qualified for the 6 percent interest rate under the SCRA had improperly processed SCRA benefits due to incorrect dates used for the borrowers' active duty military service. Additionally, the interest rate for borrowers with a change in eligibility status was not always changed back to the original interest rate.

Recommendations:

FIOS recommends that Business Operations direct Navient to—

- 3.1 Review the portfolio of borrowers in SCRA status to ensure that: 1.) correct begin and end dates are used for determining the eligible benefit period and 2.) the interest rate is accurately adjusted back to the original rate for borrowers who had a change in eligibility status and adjust borrower accounts or allow benefits already provided to borrowers, as appropriate.
- 3.2 Comply with all Department requirements regarding the use of correct active duty service dates.

F. Conclusion

The program review identified the following issues:

- The requirement that the borrower make a written request for the SCRA interest rate cap was not correctly implemented. Instead, the SCRA interest rate cap was incorrectly granted based on the borrower's submission of a request for a military deferment.
- The requirement that to be eligible for the SCRA interest rate cap, a loan must have been made prior to the borrower's active duty military service was not correctly implemented. The interest rate cap was incorrectly granted for a loan made after the beginning of the borrower's active duty military service.
- For a borrower with multiple loans, a loan that was eligible for the SCRA interest rate cap request was denied solely because the other loans were not eligible.
- Incorrect begin and end dates were used to apply the interest rate cap under the SCRA. Retroactive adjustments were not made to reflect the correct active duty military service dates and benefits were not always reversed for changes in a borrower's eligibility status.

[Whereupon, at 4:10 p.m., the hearing was adjourned.]

