



July 13, 2018

The Honorable Betsy DeVos Secretary
U.S. Department of Education
400 Maryland Avenue, SW Washington, DC 20202

RE: Docket ID ED-2018-FSA-0053

Dear Secretary DeVos:

The Center for Responsible Lending¹ appreciates the opportunity to submit this comment urging the US Department of Education to reverse its decision to limit the disclosure of certain student loan information to law enforcement agencies. In our work, we see the importance of collaboration between state and federal law enforcement agencies in protecting the rights of student borrowers and their families against unfair, illegal, deceptive, and abusive practices on the part of industry actors in student lending and higher education. These collaborations are not just beneficial to borrowers and their families, but a recognition of the traditional police powers of the states.

This shared power between state law enforcement officers and the Department of Education has been a reliable partnership for nearly twenty years. Since at least 2000, the Department has routinely shared information about student loan borrowers with state and federal law enforcement agencies, when that information is relevant to their investigatory work and oversight.² Indeed, in the last several years, the relationships between the Department and state and federal agencies have been increasingly cooperative, with the Department allowing access to student borrower information even without suspicion that civil or criminal laws have been violated.³

¹ The Center for Responsible Lending (CRL) is a nonprofit, non-partisan organization that works to protect homeownership and family wealth by fighting predatory lending practices. Our focus is on consumer lending: primarily mortgages, payday loans, credit cards, bank overdrafts and auto loans.

² See Privacy Act of 1974; System of Records, 64 Fed. Reg. 72384, 72399 (Dec. 27, 1999) (“Disclosure for Use by Other Law Enforcement Agencies Concerning Possible Violations of the Criminal Laws or Actions Initiated for Civil Fraud. The Department may disclose information to any Federal, State, local or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of the criminal laws or actions initiated for civil fraud, if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility within the receiving entity’s jurisdiction.”).

³ See Privacy Act of 1974; System of Records, 81 Fed. Reg. 12081, 12083 (Mar. 8, 2016) (“Disclosure for Use by Other Law Enforcement Agencies. The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of

For borrowers and their families, these information-sharing policies have led to a robust law enforcement scheme that has returned millions of ill-gained dollars to borrowers, allowing them to financially recover from abusive or predatory loan practices and resume their educations or continue with their lives. In just the last decade, state and even local law enforcement agencies have:

- Returned \$2.5 million to Colorado borrowers, after Westwood College failed to comply with Colorado’s consumer lending laws and engaged in deceptive advertising practices.⁴ This was followed by the closure of Westwood Colleges after they forgave an additional \$15 million in debt incurred by borrowers in Illinois.⁵
- Returned \$7.25 million to Iowa borrowers from Ashford University, which state laws barring deceptive statements and coercive recruitment.⁶
- Returned \$9.25 million in restitution to New York students as a result of Career Education Corporation being found to be inflating job placement rates. This also resulted in a \$1 million penalty, and a change in how the school calculated and verified job placement rates going forward.⁷ Resulted in a settlement for \$1.375 million to be distributed to eligible Massachusetts graduates of Kaplan Higher Education medical vocational programs through paying off all or some of the students’ debt due to violations of consumer fraud statute for using harassing sales tactics, misrepresenting the nature of the educational program and employment opportunities in their recruitment materials.⁸

It is clear from these settlements that states play an important role in the oversight and prosecution of industry players that target student loan borrowers with predatory or deceptive loan products, and that they play an important and complementary role to the law enforcement efforts of the Department as well as the Department of Justice. Indeed, without state law enforcement, the capacity of the Department to investigate and prosecute claims of fraud and deception in Higher Education would be seriously circumscribed.

Of course, collaboration and cooperation benefits both parties. Not only does the Department need states as an ally in oversight and enforcement, but recent actions by the Department have seriously harmed the ability of states to enforce their own laws. For example, state’s Attorneys General in Illinois, Washington, and California currently have litigation pending against Navient. Without access to student borrower information, these Offices may be unable to enforce their own unfair and deceptive practices laws against the servicing giant.

The change to the information sharing policy not only hinders state-level law enforcement agencies but hampers efforts by other federal agencies as they seek to ensure compliance with federal consumer

administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity’s jurisdiction.”).

⁴https://www.coloradoattorneygeneral.gov/press/news/2012/03/14/attorney_general_announces_45_million_settlement_westwood_college_address_dece

⁵ [http://abc7chicago.com/education/westwood-college-to-forgive-\\$15m-in-student-loans/1068354/](http://abc7chicago.com/education/westwood-college-to-forgive-$15m-in-student-loans/1068354/)

⁶ https://www.iowaattorneygeneral.gov/media/cms/Bridgepoint_Ashford_Iowa_Attorney_G_F0271005A595B.pdf

⁷ <https://ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit>

⁸ <http://www.mass.gov/ago/news-and-updates/press-releases/2015/2015-07-30-for-profit-schools-settlements.html>

protection laws. For example, the policy change has already impeded the Consumer Financial Protection Bureau's case against Navient as well. Indeed, the agency has been so frustrated by the lack of information and transparency from the Department that they filed a letter with the Court requesting an extension of the discovery period – precisely because Navient has been able to shield itself from producing the requested documents due to the Department's actions.

Were this to continue, it would result in the Department putting its finger on the scale of justice, disadvantaging state and federal law enforcement, while guarding servicers from accountability. Indeed, this policy change, coupled with other recent actions taken by the Department, have the effect of leaving student loan borrowers harmed by illegal practices by debt collectors or servicers with few, if any, avenues for redress, as the Department does not hold the same police powers as state and federal law enforcement agencies.

Further, the enforcement actions previously mentioned represent just a sample of concluded actions and do not delve into the ongoing actions and investigations currently underway by various agencies. In fact, in the last six months, state Attorneys General have been vocal about the importance of their role, with a bi-partisan group of 30 state offices officially sending comments to the Department of Education decrying the overreach of the Department into state authority.⁹ In a statement to Politico, Colorado Attorney General Cynthia Coffman (R-CO), said that the Department “simply does not have the authority to unilaterally preempt the right of states to protect their citizens from student loan servicers and debt collectors who violate state consumer protection law.”¹⁰

State financial industry regulators, too, have made clear their opposition to the attempt by the Department to limit the oversight and enforcement authority of state agencies, a foreseeable consequence of the current proposition. New York Financial Services Supervisor Maria T. Vullo, responding to the notice of pre-emption of state laws published by the Department of Education in March, said, “the U.S. Department of Education’s attempt to undermine states’ protections for student loan borrowers exceeds the scope of authority Congress granted to the Department of Education, disrupts states’ traditional role of protecting their residents and regulating financial services providers, and would harm the very borrowers the Department should be aiming to protect.”¹¹ The national Conference of State Bank Supervisors similarly opposes attempts by the Department to interfere with state regulatory responsibilities.¹²

Finally, the bi-partisan National Governor’s Association has expressed dismay at the recent overreach into state authority as well, saying that they “are concerned the Department is heading in a direction that runs counter to the principles of collaborative federalism.”¹³

Consumers and borrowers want to see a Department of Education that works with states, not against them. In a recent poll of Maryland voters, the Center for Responsible Lending found that 87.4% of Marylanders polled believe that the Department should work with, not against, state law enforcement

⁹ https://ag.ny.gov/sites/default/files/ag_letter_student_loan_preemption.pdf

¹⁰ <https://subscriber.politicopro.com/education/whiteboard/2018/03/gop-attorney-general-protests-federal-overreach-in-student-loan-plan-728361>

¹¹ <https://www.dfs.ny.gov/about/statements/st1803091.htm>

¹² <https://www.csbs.org/csbs-opposes-department-education-plan-preempt-state-authority-student-loans-0>

¹³ <https://www.nga.org/cms/govs-voice-concerns-over-new-student-borrower-proposal>

agencies to protect student loan borrowers. Cooperation is a priority for state law enforcement agencies, state legislators, and borrowers themselves.¹⁴

Collaboration between states and the federal government has always been a hallmark of the American political system. And it has been an important piece of protecting student loan borrowers for the last two decades. As organizations dedicated to the protection of consumers and growth of the middle class, we stand with state Attorneys General, state banking supervisors, and the Governors of all 50 states in urging you to protect the ability of states to enforce state laws against predatory student lenders, servicers, and schools by continuing to allow the information sharing that makes such important work possible.

Thank you for your consideration of these issues.

Sincerely,

Center for Responsible Lending

¹⁴ <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/gonzales-poll-student-loan-debt-apr2018.pdf>