

## Promoting Better Loan Servicing for Student and Parent Borrowers

Since 2009, the U.S. Department of Education has used not-for-profit (NFP) and for-profit organizations to provide important services to student and parent borrowers with loans made under the William D. Ford Federal Direct Loan Program. Many of these organizations also service loans made under the federal guaranteed student loan program and education loans made by private providers.

The Department has contracts with nine NFP and for-profit organizations who service the Direct Loan portfolio of over 30 million borrowers. Four of the servicers, the Title IV Additional Servicers or TIVAS, signed original contracts in 2009 and have an overwhelming majority of borrower accounts. The five NFP servicers signed their contracts in 2011 and 2012; each servicer initially received 100,000 borrower accounts, though some organizations formed 'teams' which allowed them to increase their loan volume. The Consolidated Appropriations Act, 2014, required the Department to establish common performance metrics across all student loan servicers. The Consolidated Appropriations Act, 2016, required the Department to allocate new Direct Loan accounts among the student loan servicers on the basis of their performance and capacity. Under the current process, the Department evaluates each servicer quarterly based on a common set of performance metrics: (1) the percentage of borrowers in current repayment status (defined as making their loan payment within 5 days of the established due date); (2) the percentage of borrowers more than 90 but less than 271 days delinquent; (3) the percentage of defaulted borrowers (over 270 days and less than 361 days delinquent); (4) borrower survey results; and (5) Federal Student Aid (FSA) employee survey results. The result is designed to incentivize servicers to help all borrowers select the best repayment option for them and to provide enhanced customer service for student and parent borrowers at all stages of the student loan life cycle. The Consolidated Appropriations Act, 2017, required the Department to allow all of its student loan servicers to originate and service consolidation loans. Previously, NFP services were not allowed to offer consolidation loans, forcing borrowers interested in obtaining such a loan to switch to a new servicer even if they were happy with the performance of their NFP servicer, thereby creating confusion and denying consumer choice.

The current competitive structure - using a mix of state and nonprofit and national for-profit organizations - promotes high levels of customer service; establishes a benchmark for quality servicing; protects the interests of the federal government while providing important localized services to borrowers; and saves taxpayers money. The student loan servicing system is not broken. The nation's student loan servicers provide an array of important, high-quality services to student and parent borrowers at minimal cost to the federal government.

In April, 2016, the Department issued a Request for Proposals (RFP) on student loan servicing centered on establishing common branding and common servicer practices, improving customer service through fewer borrower transfers, and improved oversight, data collection, and analysis. The RFP, which would create one of the largest civilian contracts across the federal government, proposes to select a student loan servicing system provider where all federal student loans will reside on a single platform and where borrowers can access and manage their loans. Under the new system, there would be a single telephone number for contact, a common servicing manual, and the use of social media to improve borrower service. The single student loan platform would use a network of customer service providers to carry out the new requirements. In June 2016, three offerors were selected to submit final proposals, with the award being announced in February 2017. In January 2017, however, one of the offerors filed a protest with the Government Accountability Office (GAO), which is responsible under federal procurement law with reviewing federal contracts. The protest called into question the Department's intention to use past performance on student loan servicing, instead of experience in developing and operating a loan servicing electronic platform, when selecting the winning bid.

On April 11, 2017 (a few days before GAO's deadline to rule on the protest), Education Secretary Betsy DeVos withdrew three policy memos from former Secretary John B. King, Jr. and former Under Secretary Ted Mitchell that make up the core of new requirements included in the pending student loan servicing procurement. The three policy memorandum that were withdrawn include: (1) a June 30, 2016 memo from Secretary King that

described the importance of the procurement and directed the procurement team to make past performance the most important non-cost factor in its evaluation of potential bidders; (2) a July 20, 2016 memo from Under Secretary Mitchell (the so-called “Mitchell Memo”) that provided an overview of the procurement and a detailed description of the student loan servicing system envisioned by the procurement; and (3) an October 17, 2016 addendum to the July 30 memorandum which clarified that multiple customer service providers using the single servicing platform should be allocated borrower accounts on the basis of performance as measured against specified outcome measures. Many observers speculated that the Department’s action was a direct response to the pending protest and the need to eliminate many of the procurement’s potential new requirements in order to significantly reduce the project’s costs in light of the Trump Administration’s effort to reduce discretionary spending to the Department. In light of the Department’s withdrawal of the memos, GAO dismissed the protest against the procurement. Secretary DeVos did not provide a specific reason for her action or indicate the next steps she will take on the servicing procurement.

### **NCHER Reform Proposals**

The National Council of Higher Education Resources (NCHER) supports the important and successful work of the nation’s student loan servicers in helping student and parent borrowers repay their loans. We urge Congress to promote better loan servicing for student and parent borrowers by:

- Reviewing the current procurement to identify necessary changes to the policies and approaches that will result in meaningful and sustainable improvements to federal student loan servicing. As noted above, the Department issued an RFP that includes major changes to student loan servicing. But the RFP lacks details on many basic servicing functions such as the pricing structure for subcontractors, how loans will be allocated to the multiple service providers, whether there will be a second procurement for determining the customer service providers, how loans will be transitioned to the new system, how borrowers will continue to receive high-quality services, and many other important questions. At the core, the Department has failed to answer how this new centralized system will provide better services to student and parent borrowers, including how the system will protect sensitive personal and financial information, mitigate risk since it will serve as a single point of contact and potential failure for all federal student loans, and ensure the timely and accurate transfer of borrower accounts. The prescriptive nature of the procurement may actually increase delinquencies and defaults. Congress should review the current RFP on student loan servicing, consider delaying the upcoming award, and determine what policies and approaches need change or modification to make meaningful, sustainable improvements to federal student loan servicing.
- Promoting the use of state and nonprofit organizations with expertise in helping student and parent borrowers. With federal student loan debt totaling nearly \$1.3 trillion and with unacceptably high delinquency and default rates, it is clear that student and parent borrowers need access to more specialized support services to help them understand their postsecondary education options. State and nonprofit higher education agencies, including lenders, loan holders, servicers, and guaranty agencies, have been highly successful in providing these important services for decades. The Consolidated Appropriations Act, 2017 included language directing the Department to put together a plan under which it will give credit for subcontracting with small businesses, including state and nonprofit organizations with expertise in assisting borrowers in the repayment of their student loan. Congress should monitor this important effort, and build upon the language during the upcoming reauthorization of the Higher Education Act such as making clear that the definition of ‘small business’ in the student loan servicing context includes state and not-for-profit entities so student loan servicers receive credit for subcontracting for services with these organizations.
- Ensuring there are common performance metrics across all servicers. Over the last three years, the House and Senate Appropriations Committees have directed the Department to establish common

performance metrics across all student loan servicers and allow all of its student loan servicers to originate and service consolidation loans. Congress should codify this language in the reauthorization of the Higher Education Act, allowing for an open competition between multiple servicers that will improve the quality of servicing for all borrowers.

- Ensure federal law and contractual requirements preempt state and local rules that impact federal student loan servicing and collections. Over the last two years, several states have passed laws requiring student loan servicers to obtain licenses to service loans to borrowers in their state, and more are considering doing so. Unfortunately, the new laws impose regulatory requirements on federal student loan servicers that are contrary to those under the Higher Education Act. For example, California's Student Loan Servicing Act mandates that servicers notify the borrower who their servicer is, even though the current procurement mandates that borrowers be notified that their servicer is the U.S. Department of Education. The new laws on loan transfer notifications is also contrary to those requirements included in federal regulations, which will be confusing to student and parent borrowers who will receive two notices with different information and instructions. There will be additional disruption if a state pulls the licenses of the federal student loan servicers, all of whom have loans from students randomly assigned by the Department. The new laws would also negatively impact many small, state-based organizations who operate education loan programs established by their state legislatures to promote college access in their states, but whose borrowers move to other states. These servicers would be required to meet significant regulatory requirements, even though they have few impacted borrowers. Congress should provide for the preemption of state student loan servicing laws that overlap with federal requirements, reducing confusion to student and parent borrowers.

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