

United States Senate

WASHINGTON, DC 20510

July 18, 2019

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

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Secretary DeVos and Director Kraninger:

We write regarding the terminated Memorandum of Understanding (“MOU”) between the U.S. Department of Education (“Department”) and the Consumer Financial Protection Bureau (“CFPB”), an agreement that is both statutorily required and essential to protecting student loan borrowers. Far too many student loan borrowers are being taken advantage of by predatory student loan companies and it is imperative that the Department and the CFPB coordinate to stop bad actors and ensure borrowers have the help they need to manage their student debt. However, in 2017, the Department terminated the required MOU with the CFPB that allowed the agencies to share complaints from student loan borrowers.¹ Your agencies have provided Congress with conflicting explanations about the reasons for the termination and why the agencies have not yet reestablished the MOU.

We expect your agencies to work together to resolve any outstanding issues. If there are roadblocks to reestablishing the MOU, we request that each agency explain them. If there are no roadblocks, we expect the agencies to promptly reestablish the MOU so you can move forward in pursuit of this important work on behalf of student loan borrowers.

In 2010, after a financial crisis caused in large part by a failure to appropriately protect consumers, Congress passed the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (“Dodd-Frank Act”), which established the CFPB and gave it clear and independent authority to enforce federal consumer protection laws and supervise banks and non-banks that provide consumer financial products or services, including student loan servicers and debt collectors.² The *Dodd-Frank Act* also mandates that the CFPB work with the Department to “resolve complaints related to [borrowers’] private education or federal student loans” and specifically instructs the agencies to enter into an MOU to do so.³ However, in 2017, the Department terminated its MOUs with the CFPB. According to the Department:

In the Department’s Memoranda of Understanding (MOU) with the Consumer Financial Protection Bureau (CFPB), the CFPB agreed to direct to the Department all complaints related to federal student loans within 10 days of receipt. **The CFPB ceased sending these complaints to the Department, which was a primary reason the Department terminated its two MOUs with the CFPB in August 2017.**⁴

¹ Arnold, Chris. *NPR. CFPB Chief Says Education Department Is Blocking Student Loan Oversight.* May 16, 2019, available at <https://n.pr/2VHUiBt>.

² 12 U.S. Code § 5491.

³ 12 U.S. Code § 5535.

⁴ Responses by U.S. Department of Education to Senator Patty Murray, Ranking Member, Senate Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies. Questions for the Record regarding the March 28, 2019 Committee Hearing on the FY2020 Department of Education Budget Proposal, available at <https://www.help.senate.gov/imo/media/doc/SenMurrayQFRresponses32819LHHShearing.pdf> (emphasis added).

The CFPB, both under former Director Cordray and now Director Kraninger, has disputed that it ever ceased sharing borrower complaints with the Department. In September 2017, then-Director Cordray explained that the CFPB had made the complaints available to the Department electronically, stating: “I do not understand the claim that we have violated the MOU by not forwarding complaints, when **we make them available to Department staff in near real-time.**”⁵ Likewise, in an April 23, 2019 letter, Director Kraninger explained that “[t]he terminated MOU . . . had allowed the Bureau to refer consumer complaints regarding student loan servicing to the Department **through a secure web portal.**”⁶ There does not appear to be any basis for the Department to claim it was not receiving complaints from the CFPB when they have been available in real time through a secure web portal.

Your agencies have not only disagreed about the reason for the termination of the MOUs but have also provided Congress with conflicting information regarding the CFPB’s efforts to reestablish the MOU required by law. Former Director Cordray wrote to the Department in 2017 stating: “MOUs are executed in order to facilitate effective coordination, and **we stand ready to work toward new MOUs** between the Bureau and the Department Without an MOU in place, the basic information sharing between our agencies that make this collaboration possible will cease.”⁷ In the April 23, 2019 letter to Congress, Director Kraninger reaffirmed this sentiment, stating: “We have a responsibility in statute to have a MOU with the Department and so **it is a priority for us at the Bureau to make progress on a new MOU.**”⁸

However, three weeks after the CFPB sent its latest letter to Congress claiming the MOU was a “priority,” the Department provided formal responses to written questions for a hearing record suggesting the CFPB had not, in fact, attempted to reestablish the MOU at all:

In August of 2017, the Department terminated the memorandum of understanding (MOU) with the CFPB because the CFPB had not been abiding by the terms set forth in the MOU. **The CFPB has not formally attempted to reestablish an MOU** with the Department, under 12 U.S.C. 5535, since the previous MOU was terminated.⁹

These conflicting claims require a clear and immediate explanation. We request that both the CFPB and the Department provide a written explanation of the following: (1) the basis for the termination of the statutorily-mandated MOU; (2) whether there has been an attempt to reestablish the MOU; (3) what issues still need to be resolved in order to reestablish the MOU; and (4) an expected timeline for reestablishing the MOU. In order for both agencies to move ahead with their work on behalf of student loan borrowers, we strongly encourage you to reestablish the MOU immediately.

Sincerely,



PATTY MURRAY
Ranking Member
Senate Committee on Health, Education,
Labor, and Pensions



SHERROD BROWN
Ranking Member
Senate Committee on Banking, Housing,
and Urban Affairs

⁵ Letter from CFPB Director Richard Cordray to Secretary of Education Betsy DeVos regarding federal student loan servicing MOUs. September 7, 2017, available at <https://www.consumerfinancemonitor.com/wp-content/uploads/sites/14/2017/09/Cordray-DeVos-Letter.pdf>.

⁶ Letter from CFPB Director Kathleen Kraninger to Senator Elizabeth Warren regarding federal student loan servicing MOUs. April 23, 2019, available at <https://www.npr.org/documents/2019/may/042319-letter.pdf>.

⁷ See note 5 (emphasis added).

⁸ See note 6 (emphasis added).

⁹ See note 4 (emphasis added).