

Dr. John King, U.S. Department of Education
U.S. Senate Committee on Health, Education, Labor and Pensions

Questions for the Record
February 26, 2016

Questions from Senator Alexander

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?*
 - 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.
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?*
 - 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.

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 two 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?*
 - 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.
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?*
 - 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.

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 disinvite 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?*

- 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 dialogue, 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.”

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?*

- The Department’s regulations implementing Title IX require that educational institutions adopt “grievance procedures providing for prompt and equitable resolution” of complaints. 34 C.F.R. § 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.

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?*

- 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 established 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.
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?*
- 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 three 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 FY17 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.

9. *In the Inspector General (IG) FY 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. -*

- a. *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?*
- 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.
- b. *What steps is the Department taking to improve its incident response and reporting program?*
- 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 FY16 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.

10. *If confirmed, do you expect schools and universities to comply with every word of Title IX guidance? Please answer yes or no.*

a. *If no, please explain what is required by the guidance and what is not.*

- 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.

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?*

- Title IX and its implementing regulations include the requirement that educational institutions adopt "grievance procedures providing for prompt and equitable resolution" of complaints, 34 C.F.R. § 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.

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?*

- 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.

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, “codif[y] 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?

- 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.

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.*
- 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 website 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.

Questions from Senator Enzi

1. *At a February 2, 2016 hearing before the House Committee on Oversight and Government Reform, you testified about rapid improvements in 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 taking to adopt a proactive cybersecurity posture?

- 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% 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 it implementing best practices to improve the Department's cybersecurity program.

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?

- 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.

Questions from Senator Murkowski

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

- 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 dialogue. 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.

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?*

- 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 seven 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 decision-makers—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 rulemaking 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.

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.*

- 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.

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?*

- 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

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?*

- Over the last seven 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.

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?*

- 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.

7. *How will you ensure that local communities and states will be empowered in the new regulations pertaining to ESSA?*

- 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 rulemaking 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.

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?*

- 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.

Questions from Senator Scott

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 carryover 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?*
 - The Department is pleased that students in Washington, D.C. 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, D.C. improved more than any other state since the creation of the NAEP assessment. In addition, charter schools in Washington, D.C. 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 start-up 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.
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?

- 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.

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% graduation rate?*

- 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.

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?*

- 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 seven 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.

5. *Could you please clarify how states should treat the 95% 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% requirements due to high levels of parental opt-out?*

- 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.

Questions from Senator Hatch

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?

- 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.
2. *I’ve been glad to see the Department move towards 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 servicing 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?

- 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.

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?*

- 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 FY 2017 budget proposes simplifying existing postsecondary 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 shortage predictor models to drive policy making; 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.

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.

Questions from 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?

- 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?

- 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 FY 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 FY 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 3:

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?

- In July of 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.

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?

- 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?

- 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 seven 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.

From 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 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?

- 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 FYs 2010-2015, 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 2010-2015, 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 FY 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 1350 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?

- Over the past few years, and since the President signed the Student Aid Bill of Rights memorandum in March of 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 recompetete.

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 stake holders. These recommendations will inform the process of recompeting 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 payments. 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% 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?

- 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 towards 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 four year old and two states fund three 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 FY 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 FY 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?

- 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 FY 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 postsecondary 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?

- 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.

From 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?

- 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 seven 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 dialogue. 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 dialogue 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?

- 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, Kentucky). 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%) 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?

Lastly, what experience and lessons learned from serving a geographically and demographically diverse state like New York will you bring to your tenure as Secretary?

- 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 five 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% rural set-aside for rural grantees; and the Promise Neighborhoods and Community Schools grant which requires that no less than 15% 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 4500 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?

- 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 example, 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?

- The Department continues its longstanding commitment and efforts to ensure that we help reduce the burden faced by student loan borrowers and make postsecondary

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.

Hearing before the Senate Committee on Health, Education, Labor, and Pensions
“Nomination of Dr. John King to serve as Secretary of Education”
Questions for the Record Submitted by Senator Al Franken

From Senator Franken

1. *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?

- 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 website that hosts these tools along with additional resources to support STEM educators.

Senate Health, Education, Labor, and Pensions Committee
Senator Michael Bennet
QFRs for Dr. John King, Jr.

1. *The reality of Washington, D.C., 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?*
- 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 decision making 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.

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?

- 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-drive 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.

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?*

- 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.

4. *For many families, the cost of college has become a prohibitive barrier to receiving a great education. In Colorado, tuition at several public four year colleges has increased by more than 30% 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?

- 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 two 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 four-year HBCUs and MSIs to provide more new or transfer low-income students with up to two years at a four-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.

From 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?

- 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?

- 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?

- 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 twenty-three 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 three hundred 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 towards both greater fairness and simplification do you support eliminating the drug question on the FAFSA?

- 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 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 wrong 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?

- 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 that colleges understand they will be held accountable for any wrongdoing.

OFFICE OF SENATOR ELIZABETH WARREN

*Questions for the Record: Nomination of Dr. John King to serve as Secretary of Education
(2/25/2016)*

Student Loan Servicing

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:
 - a. *What is the current timeline for announcing recompetes of the Direct Loan servicing contracts?*
 - b. *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.
 - i. *If so, will the Department publish draft standards and protections for public comment?*
 - ii. *If so, will these standards and protections be stated in the publicly available contracts?*
 - iii. *If so, will borrowers be able to enforce the standards?***

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.

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 recompetes process? If not, why not?*

OFFICE OF SENATOR ELIZABETH WARREN

Additional Questions for the Record: Nomination of Dr. John King to serve as Secretary of Education Regarding the Department's Review of Student Loan Servicers and the Education Inspector General 3/1/2016 Report¹

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?*

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.

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?*

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

¹ <http://www2.ed.gov/about/offices/list/oig/misc/scrareport02292016.pdf>

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.

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?*
 - a. *If not, why not?*
 - b. *If so, how did their input factor into the program review?*

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.

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?*
 - a. *When did officials at the Department of Education know the details of the DOJ's May 13, 2014 announcement?*

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.

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?*
 - a. *How many full-time FSA and/or non-FSA employees were assigned to and/or worked on each of these three reviews?*
 - b. *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?*

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 three-fold sample size increase – the second review identified the same results as the first review.

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?*
 - a. *Is it the Department's policy that a certain number of mistakes are appropriate from its servicers?*
 - b. *What number and scope of mistakes would warrant punitive action against a servicer?*

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.

7. *Was the first Navient review (initiated June 2014) completed, or merely stopped before completion?*
 - a. *If it was stopped, then why was it stopped?*
 - b. *Who made the decision to stop it?*

The review was completed.

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.*

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 1 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.

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?*
 - a. *Why didn't the FIOS review of Great Lakes, PHEAA, and Nelnet use the Defense Manpower Data Center to identify potential SCRA-eligible servicemembers?*

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% 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 database or NSLDS.

10. *What percentage of servicemembers with federal student loans are in military grace periods or deferment at any given time?*

We are continuing to collect these data, and will supplement these responses as soon as possible.

11. *How much was Ernst and Young paid to corroborate the FIOS reviews of the TIVAS?*
 - a. *Please provide copies of the contract, guidance, and directive that FIOS/FSA gave Ernst and Young.*

- b. *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?*

Ernst and Young 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.

12. *Why did the Department assert in its May 26th, 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 26th, 2015 press release? Does he or she still oversee financial institution oversight or compliance?*

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 follow up with your staff to provide a more detailed response.

13. *Why did the Department assert in its May 26th, 2015 press release that its reviews showed violations "in less than 1% 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% of reviewed cases?*

- a. *Why did the Department combine the program review of all four TIVAS in its May 26th, 2015 press release?*

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.

14. *Why did the dataset FIOS used to review PHEAA compliance with SCRA not exclude the more than 50% of reviewed loans for which borrowers could not benefit from the 6% interest cap?*

This is attributable to error. The sample was pulled incorrectly, and although the borrower's primary loan had an interest rate of 6% or less, some of the borrowers had secondary loans that had interest rates greater than 6%, so the actual number of borrowers with all loans having an interest rate of 6% or less was 16.

² <http://www.ed.gov/news/press-releases/us-department-education-completes-review-major-student-loan-servicers>

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?

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.

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?*

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 follow up with your staff to provide a more detailed response.

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?

- a. What corrective actions did FSA recommend for SCRA noncompliance with these two servicers?*

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.

18. Why didn't FIOS ask the TIVAS for a sample of SCRA benefit denials?

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.

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?

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.

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?*
- a. *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?*
 - b. *Is the Department willing to fine, to cancel the contracts of, or to otherwise penalize Navient based on the DOJ and the FDIC findings?*

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.

21. *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?*
- a. *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?*
 - b. *Will the Department direct every TIVAS to independently review every servicemember student loan based on the Department of Defense's Defense Manpower Data Center database from June 19, 2009 to May 31, 2014 to identify servicemembers eligible for SCRA benefits who did not receive them?*

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.

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.

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?*

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.

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?*

a. *Will the Department move financial institution oversight out of the Office of Federal Student Aid?*

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.

24. *Please provide any and all communication between the Office of Federal Student Aid and Navient regarding this review.*

Attached are communications between FSA and Navient regarding the review. We are continuing to review our records and will supplement this response as appropriate.

25. *What's the Department's full explanation for how this happened, and how will the Department ensure that this never happens again?*

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% 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.

Under Federal statutes such as the Competition in Contracting Act (41 USC 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.

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?*

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.

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.*

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.

5. *More than six years ago, the Department of Education's Inspector General (IG) found that Navient illegally overcharged the federal government for subsidies on government-*

¹ http://www.ihep.org/sites/default/files/uploads/docs/pubs/making_sense_of_student_loan_outcomes_paper.pdf

guaranteed federal student loans.² In September 2013 the Department of Education issued a final determination, agreeing that Sallie Mae had 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

- a. *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.*
- b. *If Navient has not fully repaid the fines:*
 - i. *Has the Department of Education assessed, or does it plan to assess, interest, fees, or penalties for Navient's lack of timely repayment?*
 - ii. *Has the Department of Education approached the Department of Justice about potential actions against Navient under the False Claims Act?*
 - iii. *Does the Department of Education have a detailed timeline for Navient to repay the full amount? If so, please provide details on this timeline.*
 - iv. *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.*

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**.

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.*
 - a. *What steps has the Department taken to address this problem, so that borrowers in bankruptcy are not discriminated against based on their bankruptcy filing?*
 - b. *What is the Department's policy regarding participation in repayment plans when a borrower is in a Chapter 13 case?*

² Office 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>

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>

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 towards 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

1. *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?*

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.
2. *When does the Department intend to stop paying debt collectors that I referenced in the hearing, including Enterprise Recovery Systems, Pioneer Credit Recovery, and West Asset Management?*
- a. *How many borrowers’ accounts are still with these debt collectors?*

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 ten 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.

3. *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.*
 - a. *Is this the Department's policy?*
 - b. *If so, how do the Department and its collectors separate fees that were previously waived from any new fees?*
 - c. *Does the Department track data on borrowers who re-default?*
 - d. *If so, how is this data tracked and is it public?*
 - e. *If so, what are the variables the Department studies regarding causes of re-default?*
 - f. *If the Department does not currently track or study this information, does it have future plans to do so?*

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.

4. *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?*

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.

- a. *Please provide a copy of the Department's Private Collection Agency handbook/manual.*

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.

5. *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;*
- a. 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.*
 - b. Are there requirements that employees disclose contact or job offers from these firms?*
 - c. Are there requirements for employees to recuse themselves from work affecting these firms?*
 - d. Are there post-employment restrictions on these employees if they take jobs with contractors or student loan servicers?*
 - e. 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?*
 - f. Please provide a list of FSA employees who have previously worked at an FSA contractor or a company owned by an FSA contractor.*
 - g. Please provide a list of former FSA employees who currently work at an FSA contractor or a company owned by an FSA contractor.*

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 one 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 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

1. *Shortly after you became the Acting Secretary, the Department issued cease and desist letters to a number of student loan “debt relief” companies.⁵*
 - a. *Have these companies abided by the Department’s request?*
 - b. *In cases where the companies have not, how does the Department plan to respond?*

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 websites. 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

1. *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.*
 - a. *What considerations were given to leveraging the CFPB’s system?*
 - b. *What have been the costs of developing the proposed system, and what does the Department estimate the costs will be going forward?*
 - c. *When will the system be fully operational?*
 - d. *How will the Department’s system interact with the CFPB complaint system?*
 - e. *Will the Department share all applicable completed complaints it receives with Consumer Sentinel? If not, why not?*
 - f. *Will the complaint system be public and searchable? If not, why not?*
 - g. *Will the Department ask borrowers who submit complaints whether they are satisfied with the outcomes? If not, why not?*

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 Education will be able to more quickly respond to issues and strengthen its effort to protect the integrity of the student financial aid programs.”

⁵ <http://blog.ed.gov/2016/01/dont-be-fooled-you-never-have-to-pay-for-student-loan-help/>

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 1st, 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 1st, 2016, but is expected to be included as an enhancement soon afterwards.

Borrower Defense, Other Discharges, and Corinthian

- 1. 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 publically 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)?*

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 email or postal mail outreach to notify borrowers that they may be eligible for relief. For example, last month we sent out nearly 50,000 follow-up emails 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 email open rate. Preliminary data about the open rates for these email 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.

- 2. Please provide the guidance that the Department currently gives student loan servicers regarding borrower defense discharges, closed school discharges, and other student loan discharges.*

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.

- 3. 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?*

No. The Treasury Department administers the federal offset program, and we would direct any questions related to program operations to that Department.

- 4. 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?*

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.

5. *Federal Student Aid has provided information on its website 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 of 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?*

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

1. *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.*
 - a. *Why does this unit, which will include borrower defense, report to FSA, whose mission is to maximize collections for the student loan program?*
 - b. *Would you be open to having this enforcement unit report directly to you?*

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.

2. *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?*

a. Can you please provide all the instances in the last five 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?

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 U.S., student assistance recipients or other program participants. 20 USC 1099c(e). We have not used this authority in the last five 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.

3. *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.*

a. Please provide a list of all institutions that have developed a default management plan and the outcomes of such plans on default rates.

b. What have been the features of successful default management plans?

We are continuing to collect these data, and will supplement these responses as soon as possible.

4. *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.*

a. *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)*

The spreadsheet **attached as Attachment D** reflects administrative actions taken in the last five fiscal years that were based on non-compliance with 34 C.F.R. § 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.

b. *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)*

This request specifically refers to paragraph (h) (3) of the administrative capability standards under 34 C.F.R. § 668.16. We did not have any adverse actions in the last five fiscal years that were based upon this specific ground.

c. *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)*

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 C.F.R. § 668.82.

d. *Rules that require an institution to administer federal aid “with adequate checks and balances in its system of internal controls.” (34 CFR 668.16)*

This request regarding adverse actions is based upon the administrative capability standards outlined in 34 C.F.R. § 668.16(c) (1), which requires that institutions 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 five fiscal years that were based on that particular ground.

e. *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)*

The administrative capability standards at 34 C.F.R. § 668.16(j) has two sections. The information requested related to 34 C.F.R. § 668.16(j) (2). We did not have any adverse actions in the last five fiscal years that were based on this specific ground.

5. *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.*
 - a. *Do the audits that the Department receives include evidence of a college's compliance with the incentive compensation rule?*

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.

- b. *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.*

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.

- c. *Are there any rules or regulatory safe-harbors that currently prevent the Department from fully enforcing the incentive compensation rule?*

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.

6. *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.*

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.

7. *The audit guide has not been updated since 2000. If you are confirmed, when will the Department update this audit guide?*

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.

8. *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?*

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 publically 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

1. *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?*

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

1. *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?*
2. *Does the Department have the legal authority to ask for and obtain accreditation team reports and self studies?*
 - a. *If yes, when will the Department work to make these public?*
 - b. *If not, please provide me with the legal rationale for why that is not the case.*
3. *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?*
 - a. *If yes, when will the Department work to make these public?*
 - b. *If not, please provide me with the legal rationale for why that is not the case.*
4. *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?*

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 postsecondary education and protecting students. The Department's Office of Postsecondary 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 number 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 website, 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

1. *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 rulemaking 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:

- (1) *Will you commit to not permitting robocalling under this authority until the FCC issues implementing regulations?*
- (2) *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?*
- (3) *Will you commit to providing the data we requested, rather than simply committing to conduct the standard cost-benefit analysis?*

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

⁶ Letter from Senators Elizabeth Warren, Michael S. Lee, Edward J. Markey and Orrin G. Hatch to the Honorable Arne Duncan, Secretary, U.S. Department of Education (Dec. 21, 2015) available at http://www.warren.senate.gov/?p=press_release&id=1038.

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 follow up with your staff and staff of other interested offices.

Please contact Josh Delaney (202-224-4543) in my office if you have any questions.