In the United States Court of Federal Claims

No. 17-493
Filed: August 2, 2017

****
ACCOUNT CONTROL TECHNOLOGY, INC., *
*
Plaintiff, *
*
v. *
*
*
THE UNITED STATES, *
*
Defendant, *
*
and *
*
PREMIERE CREDIT OF NORTH AMERICA, LLC, GC SERVICES LIMITED PARTNERSHIP, FINANCIAL MANAGEMENT SYSTEMS, INC., VALUE RECOVERY HOLDINGS LLC, CBE GROUP, INC., AUTOMATED COLLECTION SERVICES, INC., WINDHAM PROFESSIONAL, INC., TEXAS GURANTEED STUDENT LOAN CORP., and ALLTRAN EDUCATION, INC. *
*
Intervenor-Defendants. *
****

ORDER

On May 19, 2017, the Department of Education issued a press release that stated the Secretary of the Department of Education planned to select a single student loan servicer. Court Exhibit A. On that date, the Government filed a Notice, informing the court that the Department of Education intended to take Corrective Action, by issuing an amended version of Solicitation No. ED-FSA-16-R-0009 and conducting a new evaluation to be completed on August 25, 2017. ECF 59.

On May 31, 2017, the court issued an Order continuing the May 22, 2017 Preliminary Injunction in the above captioned bid protest, because the court became aware of a *New York Times* article indicating that "the Administration is considering moving responsibility for overseeing more than $1 trillion in student debt from the Education Department to the Treasury Department." Court Exhibit B. Such action would have rendered the bid protest before the court moot. Therefore, the preliminary injunction was issued to preserve the *status quo*, until the viability of the debt collection contracts at issue is resolved. *See Litton Sys., Inc. v. Sundstrand Corp.*, 750 F.2d 952, 961 (Fed. Cir. 1984) ("The function of preliminary injunctive relief is to preserve the *status quo* pending a determination of the action on the merits.").

On August 1, 2017, however, the Department of Education announced that it was no longer seeking to select a single student loan servicer and would be pursuing a new proposal that would award separate contracts to one or more companies. Court Exhibits C, D. Once again, the Department of Justice has failed to inform the court of these developments.

Since the date of the Government's proposed action is only twenty-three days away, the court orders the Government to provide the court and the parties a status report in the above captioned case no later than the close of business on August 4, 2017.

IT IS SO ORDERED.

s/Susan G. Braden
SUSAN G. BRADEN
Chief Judge

Court Exhibit A

U.S. Secretary of Education Betsy DeVos Releases Amended Federal Student Loan Servicing Solicitation

MAY 19, 2017

Contact: Press Office, (202) 401-1576, press@ed.gov (mailto: press@ed.gov)

Today, the U.S. Department of Education formally amended Phase II of the federal student loan servicing solicitation. The amendment maintains superior customer service and key borrower protections while ensuring the project stays on budget, saving taxpayers more than $130 million over the next five years. The amendment further clarifies the Department's expectations of the eventual servicer and formally lists all requirements in the solicitation.

U.S. Secretary of Education Betsy DeVos issued the following statement on the new amendment:

"From day one, my priority as Secretary of Education has been to put students' needs first. This amended solicitation does just that. It maintains superior customer service and borrower protections while increasing oversight and protecting taxpayers.

"The federal student loan servicing solicitation we inherited was cumbersome and confusing—with shifting deadlines, changing requirements and de-facto regulations that at times contradicted themselves. Internal and external stakeholders both agreed it was destined for a massive and unsustainable budget overrun.

"In order to ensure the best outcome for federal student loan borrowers, it was necessary to rescind the previous guidance to free the Department to craft a solution that was more responsive to the needs of both customers and taxpayers.

"With changes in the new amendment, we have simplified the process to ensure meaningful borrower protections while saving taxpayers more than $130 million over the next five years. Savings are expected to increase significantly over the life of the contract. Borrowers can expect to see a more user-friendly loan servicing interface, shorter email and call response times and an improved payment application method that will maximize the benefit of each payment the borrower makes. Our amendment makes no changes to repayment plan requirements.

"I am committed to helping students meet their repayment obligations and reaching their academic goals while also making government more effective and efficient."

The amendment published today is the ninth amendment to the Department's federal student loan servicing solicitation. Federal law and regulations governing the procurement process prohibited Department officials from commenting on the new amendment until it was formally published today.

FACT SHEET: STUDENT LOAN SERVICING RECOMPETE (http://www2.ed.gov/documents/press-releases/05192017-loan-servicing-recompete.pdf)

The full amendment is available at: https://www.fbo.gov/index?tab=documents&tabmode=form&subtab=core&tabid=719f4f79f391241bfd02c15f36680081 (https://www.fbo.gov/index?tab=documents&tabmode=form&subtab=core&tabid=719f4f79f391241bfd02c15f36680081)

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Apply for Pell Grants (http://www.fafsa.ed.gov/?src=ft)

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Laws & Guidance (http://www2.ed.gov/policy/landing.jhtml?src=ft)

Every Student Succeeds Act (ESSA) (http://www.ed.gov/essa?src=ft)

FERPA (http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=ft)

Civil Rights (http://www2.ed.gov/about/offices/list/ocr/know.html?src=ft)

New IDEA Website (https://sites.ed.gov/idea/?src=ft)

Data & Research (http://www2.ed.gov/rschstat/landing.jhtml?src=ft)

Education Statistics (http://nces.ed.gov/?src=ft)

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Court Exhibit B

The New York Times | https://nyti.ms/2s10GHH

DealBook WITH FOUNDER ANDREW ROSS SORKIN

Trump Administration Considers Moving Student Loans from Education Department to Treasury

By JESSICA SILVER-GREENBERG, STACY COWLEY and PATRICIA COHEN MAY 25, 2017

The Trump administration is considering moving responsibility for overseeing more than $1 trillion in student debt from the Education Department to the Treasury Department, a switch that would radically change the system that helps 43 million students finance higher education.

The potential change surfaced in a scathing resignation memo sent late Tuesday night by James Runcie, the head of the Education Department's federal student aid program. Mr. Runcie, an Obama-era holdover, was appointed in 2011 and reappointed in 2015. He cut short his term, which was slated to run until 2020, after clashing with the Trump administration and Betsy DeVos, the education secretary, over this proposal and other issues.

Elizabeth Hill, a spokeswoman for the Education Department, declined to comment on his departure or on talks with Treasury.

"The secretary is looking forward to identifying a qualified candidate to lead and restore trust in F.S.A.," Ms. Hill said, referring to federal student aid.

A shift in handling federal student aid is being weighed as the Trump administration and Ms. DeVos consider overhauling the Department of Education. Mr. Trump's proposed budget for 2018 slashes funding for the department by nearly 50 percent. Moving one of its core functions to Treasury would significantly diminish the agency's power. It could also alter the mission of the student loan program.

"The reason the federal student aid programs live within the Education Department is because that's the agency that has as its goal increasing educational opportunities within the United States," said David Bergeron, who left the Education Department in 2013 after 35 years. "That is not the Treasury Department's goal. Its job is to pay for the business of the government."

Scrapping or shrinking the Education Department has long been a popular Republican goal, dating from the Reagan administration. President Trump embraced the idea, saying in his book "Crippled America" that the department should either be eliminated or have "its power and reach" cut. In February, a House Republican introduced a bill to terminate the agency.

In his resignation memo, a copy of which was obtained by The New York Times, Mr. Runcie said that senior members of his department had met that day with Treasury officials and discussed "holding numerous meetings and retreats" to outline a process for "transferring all or a portion" of the student aid office's functions to the Treasury Department.

"This is just another example of a project that may provide some value but will certainly divert critical resources and increase operational risk in an increasingly challenging environment," Mr. Runcie wrote.

Moving the federal student aid unit probably would require congressional action. But even in a fractured Congress, it could win bipartisan support.

The federal student aid office has been a lightning rod for criticism over the effectiveness and expense of its debt collection programs. Several government audits took issue with the department's handling of its student aid programs. In 2015, for example, the Government Accountability Office faulted the agency for not doing enough to make students aware of all their repayment options. The Consumer Financial Protection Bureau has also pressed for changes in how the department manages its loan servicers.

The Education Department backs and originates $1.4 trillion in student loans. Since 2010, the government has directly funded the loans, cutting out the private lenders that previously doled out government-backed aid. But the agency outsources the work of collecting payments on the loans, and the companies it works with have a troubled record.

During the Obama administration, the idea of shifting responsibility for the student loan program to the Treasury Department had some supporters. As the number and dollar amount of student loans grew, the Education Department found itself managing more than a trillion dollars in assets, a portfolio bigger than most banks.

"The Education Department is a policy shop with a trillion-dollar bank on the side," said Rohit Chopra, a former student loan ombudsman at the Consumer Financial Protection Bureau who also briefly worked for the Education Department.

For students, the move under consideration could simplify the convoluted process of applying for federal student aid and repaying loans. A growing number of borrowers are using income-based repayment plans, which require students to submit information on their earnings. Putting federal student aid in the same department as the Internal Revenue Service could make that easier. (A tool intended to help students automatically import their tax information has been disabled for months because of a security problem.)

"I think it's a good idea," said James Kvaal, a former deputy under secretary of education in the Obama administration. "Because the Education Department and the I.R.S. are separated, we've built these clunky systems that get in the way of achieving the goals of the income-based program. Linking the two would be much easier for students, and have stronger integrity for taxpayers."

But critics, including a high level official from Mr. Obama's Treasury Department, warned that the move could hurt students.

"Moving the agency that is supposed to provide stewardship for student loan borrowers to an agency that is working on a shoestring with a skeletal crew strikes me as a recipe for a policy disaster," said Sarah Bloom Raskin, who was the deputy Treasury Secretary under President Obama.

Others worry about how students would fare under the Treasury Department.

The Treasury Department recently conducted a pilot project in which its employees tried to collect on defaulted loans, a job the Education Department contracts out to private companies.

The experiment, which began in mid-2015, did not end well.

The Treasury Department hoped to increase collection rates and help borrowers better understand their repayment options. It failed on both goals. A control group of private collectors recovered more money and got more borrowers out of default.

For now, even without the shift, some at the federal student aid office are rattled, according to one person who requested anonymity because he was not authorized to speak publicly. After Mr. Runcie resigned, at least one employee was in tears, the person said.

A version of this article appears in print on May 26, 2017, on Page A19 of the New York edition with the headline: Plan Would Shift Student Loans to Treasury.

Court Exhibit C

POLITICO

The announcement comes hours after a bipartisan group of senators unveiled legislation that would have blocked the administration's plan.
| Neil Blake/AP

DeVos drops plan to overhaul student loan servicing

By **MICHAEL STRATFORD** | 08/01/2017 05:37 PM EDT | Updated 08/01/2017 10:35 PM EDT

Education Secretary Betsy DeVos on Tuesday abandoned her plan to overhaul how the federal government collects payments from the nation's more than 42 million student loan borrowers after it faced growing resistance from congressional Republicans and Democrats.

The Trump administration announced that it was scrapping plans to award a massive contract to a single company to manage the monthly payments of all student loan borrowers, and said it would come up with a new proposal aimed at improving customer service for student loan payments.

“By starting afresh and pursuing a truly modern loan servicing environment, we have a chance to turn what was a good plan into a great one,” DeVos said in a statement.

DeVos had pitched her initial loan servicing plan in April as an effort to simplify a complicated student loan system and save money for taxpayers. She said that hiring a single servicer would make it easier for the Education Department to hold that company accountable.

But the plan ran into stiff opposition from industry groups and Capitol Hill. Democrats assailed the proposal, saying it would reduce consumer protections for borrowers and lead to a too-big-to-fail federal contractor. Some Republicans also criticized the plan for reducing competition among student loan servicers.

The Education Department announcement came several hours after a bipartisan group of senators unveiled legislation that would have blocked DeVos’ plans. The bill — sponsored by Sens. Roy Blunt (R-Mo.), Elizabeth Warren (D-Mass.), James Lankford (R-Okla.) and Jeanne Shaheen (D-N.H.) — would require the department to keep its current system of “multiple student loan servicers.”

"I'm glad the Education Department is changing course," Warren said. "But it will be important to continue watching the department to evaluate whether its decisions are good for the millions of struggling federal student loan borrowers.”

Liz Hill, a department spokeswoman, told POLITICO that the announcement on Tuesday was not a response to the legislation. The changes, she said, had “been under consideration” since DeVos tapped A. Wayne Johnson as the new head of student aid in June and he “brought his fresh perspective and private sector experience” to the project.

Rep. Virginia Foxx, chairwoman of the House education committee, said she believes DeVos “made the right decision to cancel the single-servicer proposal,” spokesman Michael

Woeste said in a statement to POLITICO.

Foxx (R-N.C.), who has long been critical of the Education Department's office that manages student loans, wants to work with the Trump administration to find "a legislative solution that that ensures high-quality service to borrowers," Woeste said.

Senate HELP Committee Chairman Lamar Alexander (R-Tenn.) also praised DeVos' change in plans, saying the department's new approach "should make it simpler for students to manage their loans" and that he hopes it "will result in competition and better service."

Department officials said they will solicit feedback from student loan industry groups and "various stakeholders and industry technology leaders" as they develop a new plan to overhaul student loan servicing for the federal government's $1.3 trillion portfolio of student loans.

The new plan calls for a single platform for back-end processing and data storage, but department officials said they haven't yet decided whether to hire a single company or multiple providers for the consumer-facing account servicing.

Johnson, the department's new head of federal student aid, said in a statement that the administration "will take the best ideas and capabilities available and put them to work for Americans with student loans."

The Trump administration's new plan will create "a customer support system that is as capable as any in the private sector," said Johnson, a former financial services executive who was tapped by the Trump administration in June. He replaced the previous chief, James Runcie, who quit earlier this year after a dispute with DeVos.

Court Exhibit D

PBS NEWSHOUR

DeVos abandons plan to award federal student loan servicing to a single company

BY ANDREW KREIGHBAUM, INSIDE HIGHER ED *August 2, 2017 at 3:28 PM EDT*

U.S. Secretary of Education Betsy DeVos speaks at the Conservative Political Action Conference (CPAC) in National Harbor, Maryland, February 23, 2017. REUTERS/Joshua Roberts

The Department of Education plans to overhaul its system for federal student loan servicing for the third time in the last year, officials announced Tuesday.

It will scrap a plan Secretary Betsy DeVos unveiled in May to award servicing of all federal student loans to a single company. Instead, the department will award separate contracts for database housing, system processing and customer service functions to one or more companies possibly handling direct interactions with borrowers. The department plans to deliver, meanwhile, on creating a single web portal for borrowers to make payments on student loans regardless of their borrowers — a change promised by the Obama administration last year and long sought by student advocates.

“Doing what’s best for students will always be our No. 1 priority,” DeVos said. “By starting afresh and pursuing a truly modern loan-servicing environment, we have a chance to turn what was a good plan into a great one.”

Current loan-servicing contracts are set to expire in 2019, but a department spokeswoman, Liz Hill, said officials fully expect to have the procurement completed and contracts awarded before then. That’s possible, she said, because of work already put into the process.

It’s not clear how many of the consumer protections included in two separate Obama administration memos last year — such as requirements for specialized outreach to high-risk borrowers — would be incorporated into the new procurement process.

The plans to have the new contracts awarded before current contracts expire met with immediate skepticism from some observers.

“By starting afresh and pursuing a truly modern loan-servicing environment, we have a chance to turn what was a good plan into a great one.” — Education Secretary Betsy DeVos

“We don’t know the details of the new plan, or whether it will retain the strong borrower protections included in the first version, but restarting the process midway will absolutely mean delaying any future improvements for borrowers who deserve a better experience now,” said Clare McCann, the deputy director for federal higher education policy with New America’s education policy program and a former Obama administration official.

The Office of Federal Student Aid contracts with multiple private companies, nonprofit servicers and state-based organizations to manage federal student loans. The four major servicers are Navient, Great Lakes Educational Loan Services Inc., Nelnet and the Pennsylvania Higher Education Assistance Agency.

DeVos has taken heat since May from members of Congress and representatives from the loan-servicing sector over the plan to pick a single servicer that would hire subcontractors to collect loan payments. Department officials at the time argued that the plan would make oversight of servicers by the government more efficient.

But the proposal found critics among both Republicans like Senator Roy Blunt of Missouri, who argued that the system would remove choice and competition, and Democrats like Massachusetts Senator Elizabeth Warren, who warned against creating a federal contractor "too big to fail."

Blunt and Warren were part of a bipartisan group of senators who introduced legislation ahead of the department's announcement Tuesday to block the single-servicer plan. Their bill would instead require the participation of multiple loan servicers.

Wayne Johnson, the chief operating officer at the Office of Federal Student Aid since July, said the department's new procurement plan would allow for the introduction of the most up-to-date technology and practices from the private sector into the loan-servicing system.

"When FSA customers transition to the new processing and servicing environment in 2019, they will find a customer-support system that is as capable as any in the private sector," he said in a statement. "The result will be a significantly better experience for students — our customers — and meaningful benefits for the American taxpayer."

Blunt and Warren were part of a bipartisan group of senators who introduced legislation ahead of the department's announcement Tuesday to block the single-servicer plan.

Representative Virginia Foxx, a North Carolina Republican and chairwoman of the House education and workforce committee, has been a frequent critic of the Office of Federal

Student Aid. A spokesman for Foxx said the department made the right decision to cancel the single-servicer proposal.

"Mr. Johnson is well aware of Chairwoman Foxx's concerns with the FSA's mismanagement, and moving to a single servicer does not resolve these concerns or promote competition in the marketplace for borrowers and taxpayers when it comes to repaying student loans," the spokesman said. "Chairwoman Foxx looks forward to working with Johnson, Secretary DeVos and her colleagues in Congress to find a legislative solution that that ensures high-quality service to borrowers."

A task force from the National Association of Student Financial Aid Administrators about a year ago examined challenges for borrowers in the student loan servicing system.

"One of the biggest challenges we identified is the fact that there were multiple servicers with multiple systems," said Justin Draeger, president and CEO of NASFAA.

NASFAA was not committed to a loan-servicing system involving either one or multiple servicers. Draeger said the group's highest priority is ensuring borrowers have the same experience paying student loans regardless of their servicer.

Inside Higher Ed is a free, daily online publication covering the fast-changing world of higher education. Read the original story here.

Andrew Kreighbaum, Inside Higher Ed
Andrew Kreighbaum is the federal policy reporter for Inside Higher Ed. Kreighbaum worked at The Investigative Reporting Workshop and received his master's in data journalism at the University of Missouri. Before getting his master's, Kreighbaum spent three years covering government and education at local papers in El Paso, McAllen and Laredo, Texas.

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