VIA ELECTRONIC MAIL

FOIA Public Liaison
U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Avenue SW, LBJ 2E320
Washington, DC 20202-4536
EDFOIAManager@ed.gov

Re: Freedom of Information Act Request

Dear FOIA Public Liaison:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, 34 C.F.R. Part 5, American Oversight makes the following request for records.

Spreadsheets produced by the Department of Education’s Federal Student Aid (FSA) office requiring companies competing for a significant procurement solicitation to disclose past legal proceedings related to their consumer protection compliance show a troubling recent change. In January 2019, such forms required companies to disclose legal proceedings that concluded in the last 7 years, but a recently released version of the form shows that companies will now only be required to disclose legal proceedings that concluded in the last 5 years. This change stands to benefit the student loan servicer Navient Corporation and its subsidiaries, as 5 years and one month ago Navient settled a case for $60 million

related to charges that the company’s corporate predecessor (Sallie Mae) had charged military servicemembers excessive rates on student loans.\(^4\)

**Requested Records**

American Oversight requests that the Department of Education (Education) produce the following records within twenty business days:

1. Any final decision memoranda, directives, or guidance regarding the decision to reduce the reporting requirement for Solicitation 91003119R0008 (and any other solicitations) for past legal proceedings that have reached a final disposition from proceedings that have concluded in the past 7 years\(^5\) to proceedings that have concluded in the past 5 years.\(^6\)

2. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials reflecting communications) of the Education employees and officials specified below regarding the decision to reduce the reporting requirement for Solicitation 91003119R0008 (and any other solicitations) for past legal proceedings that have reached a final disposition from proceedings that have concluded in the past 7 years\(^7\) to proceedings that have concluded in the past 5 years.\(^8\)

3. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials reflecting communications) between (1) the Education employees and officials specified below and (2) any employee or representative of Navient Corporation, or its subsidiaries or corporate affiliates (including communications with email

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\(^5\) See Ex. A.

\(^6\) See Ex. B.

\(^7\) See Ex. A.

\(^8\) See Ex. B.
American Oversight requests the records of the following specified Education employees and officials:

a. Betsy DeVos, Secretary of Education;
b. Mitchell ‘Mick’ Zais, Deputy Secretary;
c. Nathan Bailey, Chief of Staff to Secretary DeVos & former Communications Director;
d. Diane Auer Jones, Principal Deputy Under Secretary;
e. James Manning, Federal Student Aid, Chief Operating Officer;
f. Mark LaVia, Federal Student Aid, Executive Director Servicing;
g. Kathleen Smith, Federal Student Aid, Deputy Chief Operating Officer.

Please provide all responsive records from October 1, 2018, through the date the search is conducted.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency’s regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.” The public has a significant interest in whether Education has made a significant policy change in order to benefit an individual corporation to allow the company to avoid reporting past misconduct in bidding on a significant government procurement. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether Navient has received special treatment by Education. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public’s understanding of the government’s activities would be enhanced through American Oversight’s analysis and publication of these records.

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9 American Oversight requested a subset of the records requested by item 3 of this request on March 28, 2019—request 19-01168-F. American Oversight has not yet received a response to that request.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website. Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department’s process for issuing such waivers; posting records received as part of American Oversight’s “Audit the Wall” project to gather and analyze information related to the administration’s proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal; posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis; posting records and analysis relating to the

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federal government’s efforts to sell nuclear technology to Saudi Arabia;\textsuperscript{17} posting records and analysis regarding the Department of Justice’s decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President’s political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.\textsuperscript{18}

Accordingly, American Oversight qualifies for a fee waiver.

**Guidance Regarding the Search & Processing of Requested Records**

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.

- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.

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\textsuperscript{18} *Sessions’ Letter Shows DOJ Acted On Trump’s Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, [https://www.americanoversight.org/sessions-letter](https://www.americanoversight.org/sessions-letter).
• Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.\textsuperscript{19} It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.\textsuperscript{20}

• Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,\textsuperscript{21} and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

• In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.

• Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please

take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Dan McGrath at foia@americanoversight.org or 202.897.4213. Also, if American Oversight’s request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

Austin R. Evers
Executive Director
American Oversight
EXHIBIT A
1. Offerors shall use this template to provide information on past performance failures and proceedings.

2. Please follow these instructions for filling out the "Past legal proceedings" tab: Offeror shall detail legal proceedings that have reached a final disposition (any court, over the past 7 years) concerning allegations of violating federal consumer protection laws (i.e., the Consumer Financial Protection Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Truth in Lending Act, and the Privacy Act of 1974) as pertinent to financial services.
   a. Offeror shall provide full case caption or captions (e.g., Plaintiff, et al v. Defendant).
   b. Offeror shall provide each court venue in which the proceeding was filed or heard.
   c. Offeror shall provide relevant dates for the legal proceeding (e.g., filing date, appeal filing date).
   d. Offeror shall list all parties to the proceeding, identifying parties' roles (e.g., defendant, plaintiff, plaintiff-intervenor).
   e. Offeror shall indicate whether the proceeding was joined by a government agency at any level of government (federal, state, or local).
   f. Offeror shall provide a clear description of the claims and the relief sought.
   g. Offeror shall indicate the ultimate disposition of the case (including both final judgment and remedies ordered, if any).
   h. Offeror shall provide any subsequent and related measures taken by Offeror, whether (a) required as a result of lawsuit or (b) related in fact to allegations in lawsuit.

3. Please follow these instructions for filling out the "Ongoing legal proceedings" tab: Offeror shall detail ongoing legal proceedings that have not reached a final disposition (any court) concerning allegations of violating federal consumer protection laws (i.e., the Consumer Financial Protection Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Truth in Lending Act, and the Privacy Act of 1974) as pertinent to financial services. This information is being requested for informational purposes only and will not be used for evaluation.
   a. Offeror shall provide full case caption or captions (e.g., Plaintiff, et al v. Defendant).
   b. Offeror shall provide each court venue in which the proceeding has been filed or heard.
   c. Offeror shall provide relevant dates for the legal proceeding (e.g., filing date, appeal filing date).
   d. Offeror shall list all parties to the proceeding, identifying parties' roles (e.g., defendant, plaintiff, plaintiff-intervenor).
   e. Offeror shall indicate whether the proceeding was joined by a government agency at any level of government (federal, state, or local).
   f. Offeror shall provide a clear description of the claims and the relief sought.
   g. Offeror shall indicate the current posture of the case.
   h. Offeror shall provide any subsequent and related measures taken by Offeror, whether (a) required as a result of lawsuit or (b) related in fact to allegations in lawsuit.

4. Please follow these instructions for filling out the "Past other proceedings" tab: Offeror shall detail federal-level administrative, suspension and debarment proceedings, or any proceedings in or investigations by any federal adjudicative, deliberative, or investigative body that have reached a final disposition (over the past 5 years) concerning allegations of violations of federal consumer protection regulations and/or laws as pertinent to financial services.
   a. Offeror shall provide full proceeding/matter name.
   b. Offeror shall provide each venue in which, or body before, the proceeding/matter was filed or heard.
   c. Offeror shall provide relevant dates for the proceeding/matter (e.g., filing/imposition and closing/resolution dates).
   d. Offeror shall list all parties to the proceeding/matter, identifying parties' roles if any (e.g., respondent, claimant, subject).
   e. Offeror shall indicate whether the proceeding/matter was joined by a government agency at any level of government (federal, state or local).
   f. Offeror shall provide a clear description of the claims, allegations, concerns raised, and/or the relief sought.
   g. Offeror shall indicate the ultimate disposition (including both the findings/determination of proceeding and remedies ordered, if any).
   h. Offeror shall provide any subsequent and related measures taken by Offeror, whether (a) required as a result of proceeding/matter or (b) related in fact to allegations in proceeding/matter.

5. Please follow these instructions for filling out the "Ongoing other proceedings" tab: Offeror shall detail ongoing proceedings that have not reached a final disposition concerning allegations of violating federal consumer protection laws (i.e., the Consumer Financial Protection Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Truth in Lending Act, and the Privacy Act of 1974) as pertinent to financial services. This information is being requested for informational purposes only and will not be used for evaluation.
   a. Offeror shall provide full proceeding/matter name.
   b. Offeror shall provide each venue/body in which the proceeding/matter has been filed or heard.
   c. Offeror shall provide relevant dates for the proceeding/matter (e.g., filing/imposition date).
   d. Offeror shall list all parties to the proceeding/matter, identifying parties' roles if any (e.g., respondent, claimant, subject).
   e. Offeror shall indicate whether the proceeding/matter was/is joined by a government agency at any level of government (federal, state or local).
   f. Offeror shall provide a clear description of the claims, allegations, concerns raised, and/or the relief sought.
   g. Offeror shall indicate the posture of the proceeding/matter.
   h. Offeror shall provide any subsequent and related measures taken by Offeror, whether (a) required as a result of proceeding/matter or (b) related in fact to allegations in proceeding/matter.

6. Offeror may submit a narrative (limited to one page, in total) clearly providing any context, fact, or argument, as well as any corrective or subsequent action, that the Offeror believes should be considered. Narrative may relate to any of the legal or other proceedings/matters listed as required by this template, or may be an unrelated narrative pertaining to Offeror's practices to ensure compliance with consumer protection laws and regulations. For every item of information provided, the entity involved (whether the Offeror, its teaming partner(s)/subcontractor(s), and/or an agent or other affiliated entity) should be specified, and the project or contract involved be specified.

7. The information listed above must be submitted for all Offerors, teaming partner(s)/subcontractor(s), and/or agents or other affiliated entity, that will be performing 10% or more of the work (as measured by dollars).
EXHIBIT B
Vendors shall use this template to provide information on past performance failures and proceedings.

2. Please follow these instructions for filling out the "Past legal proceedings" tab: Vendor shall detail legal proceedings that have reached a final disposition (any court, over the past 5 years) concerning allegations of violating federal consumer protection laws (i.e., the Consumer Financial Protection Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Truth in Lending Act, and the Privacy Act of 1974) as pertinent to financial services.
   a. Vendor shall provide full case caption or captions (e.g., Plaintiff, et al. v. Defendant).
   b. Vendor shall provide each court venue in which the proceeding was filed or heard.
   c. Vendor shall provide relevant dates for the proceeding (e.g., filing date, closing date).
   d. Vendor shall list all parties to proceeding, identifying parties' roles (e.g., defendant, plaintiff, plaintiff-intervenor).
   e. Vendor shall indicate whether the proceeding was joined by a government agency at any level of government (federal, state, or local).
   f. Vendor shall provide a clear description of the claims and the relief sought.
   g. Vendor shall indicate the ultimate disposition of case (including both final judgment/ruining and remedies ordered, if any).
   h. Vendor shall provide any subsequent and related measures taken by Vendor, whether (a) required as a result of lawsuit or (b) related in fact to allegations in lawsuit.

3. Please follow these instructions for filling out the "Ongoing legal proceedings" tab: Vendor shall detail ongoing legal proceedings that have not reached a final disposition (any court) concerning allegations of violating federal consumer protection laws (i.e., the Consumer Financial Protection Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Truth in Lending Act, and the Privacy Act of 1974) as pertinent to financial services. This information is being requested for informational purposes only and will not be used for evaluation.
   a. Vendor shall provide full case caption or captions (e.g., Plaintiff, et al. v. Defendant).
   b. Vendor shall provide each court venue in which the proceeding has been filed or heard.
   c. Vendor shall provide relevant dates for the proceeding (e.g., filing date, appeal filing date).
   d. Vendor shall list all parties to proceeding, identifying parties' roles (e.g., defendant, plaintiff, plaintiff-intervenor).
   e. Vendor shall indicate whether the proceeding was joined by a government agency at any level of government (federal, state, or local).
   f. Vendor shall provide a clear description of the claims and the relief sought.
   g. Vendor shall indicate the current posture of the case.
   h. Vendor shall provide any subsequent and related measures taken by Vendor, whether (a) required as a result of lawsuit, or (b) related in fact to allegations in lawsuit.

4. Please follow these instructions for filling out the "Past other proceedings" tab: Vendor shall detail federal-level administrative, suspension and debarment proceedings, or any proceedings in or investigations by any federal adjudicative, deliberative, or investigative body that have reached a final disposition (over the past 5 years) concerning allegations of violations of federal consumer protection regulations and/or laws as pertinent to financial services.
   a. Vendor shall provide full proceeding/matter name.
   b. Vendor shall provide each venue in which, or body before, the proceeding/matter was filed or heard.
   c. Vendor shall provide relevant dates for the proceeding/matter (e.g., filing/notice of hearing).
   d. Vendor shall list all parties to proceeding/matter, identifying parties' roles (e.g., respondent, claimant, subject).
   e. Vendor shall indicate whether the proceeding/matter was joined by a government agency at any level of government (federal, state, or local).
   f. Vendor shall provide a clear description of the claims, allegations, concerns raised, and/or the relief sought.
   g. Vendor shall indicate the ultimate disposition (including both findings/determination of proceeding and remedies ordered, if any).
   h. Vendor shall provide any subsequent and related measures taken by Vendor, whether (a) required as a result of proceeding/matter or (b) related in fact to allegations in proceeding/matter.

5. Please follow these instructions for filling out the "Ongoing other proceedings" tab: Vendor shall detail ongoing proceedings that have not reached a final disposition concerning allegations of violating federal consumer protection laws (i.e., the Consumer Financial Protection Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, the Truth in Lending Act, and the Privacy Act of 1974) as pertinent to financial services. This information is being requested for informational purposes only and will not be used for evaluation.
   a. Vendor shall provide full proceeding/matter name.
   b. Vendor shall provide each venue in which the proceeding/matter has been filed or heard.
   c. Vendor shall provide relevant dates for the proceeding/matter (e.g., filing/notice of hearing).
   d. Vendor shall list all parties to proceeding/matter, identifying parties' roles (e.g., respondent, claimant, subject).
   e. Vendor shall indicate whether the proceeding/matter was joined by a government agency at any level of government (federal, state, or local).
   f. Vendor shall provide a clear description of the claims, allegations, concerns raised, and/or the relief sought.
   g. Vendor shall indicate the posture of the proceeding/matter.
   h. Vendor shall provide any subsequent and related measures taken by Vendor, whether (a) required as a result of proceeding/matter or (b) related in fact to allegations in proceeding/matter.

Vendor may submit a narrative (limited to one page, in tab) clearly providing any context, fact, or argument, as well as any corrective or subsequent action, that the Vendor believes should be considered. Narrative may relate to any of the legal or other proceedings listed as required by this template, or may be an unrelated narrative pertaining to Vendor’s practices to ensure compliance with consumer protection laws and regulations. For every item of information provided, the entity involved (whether the Vendor, its learning partner(s)/subcontractor(s), and/or an agent or other affiliated entity) should be specified, and the project or contract involved may be specified.

The information listed above must be submitted for all vendors, learning partner(s)/subcontractor(s), and/or agents or other affiliated entity, that will be performing 10% or more of the work (as measured by dollars).