The Special Counsel

June 7, 2023

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-21-000028

Dear Mr. President:

I am forwarding you reports transmitted to the Office of Special Counsel (OSC) by the Department of Education (Education) in response to the Special Counsel’s referral of disclosures of wrongdoing at the Office of Federal Student Aid, Office of Student Aid and Experience Delivery (SEAD), San Francisco, California. The whistleblower, who chose to remain anonymous, alleged gross mismanagement, a gross waste of funds, and an abuse of authority. I have reviewed the agency reports and whistleblower comments, and, in accordance with 5 U.S.C. §1213(e), have determined that the reports contain the information required by statute and the findings appear reasonable. ¹

The Allegations

First, the whistleblower alleged that SEAD officials failed to enforce agency regulations and policies regarding Health Education Assistance Loans (HEALS). Specifically, the whistleblower alleged that SEAD officials inappropriately paid permanently denied lender claims dating back to 2014—without cause and contrary to agency policy—and that SEAD officials failed to prevent loan servicers, including the Pennsylvania Higher Education Assistance Agency (PHEAA) and Navient, from misapplying interest rates to the detriment of borrowers. The whistleblower explained that Education insures HEALS. If a borrower defaults on a HEAL, the HEAL lender can file a claim with Education for repayment. During the claims process, SEAD analysts determine if there are deficiencies in the claim that require correction. If so, the agency issues a letter to the lender, called an R1 letter, indicating what, if any, deficiencies require addressing. If the lender does not correct the deficiency in a timely manner, the SEAD analyst will issue a permanent denial—called an R2 letter—to the lender. The whistleblower asserted the identified claims, in which the agency ultimately paid $712,706.91, were neither triggered by appeals from lenders nor overturned because of errors in the claims analysis process. Rather, the agency allegedly paid the claims spontaneously even though they had been permanently denied, constituting a violation of policy, gross mismanagement, and a gross waste of agency funds.

¹ The allegations were referred to former Secretary of Education Betsy DeVos pursuant to 5 U.S.C. §1213(c) and (d). The Secretary forwarded the referral to the Assistant General Counsel for Postsecondary Education who appointed an investigator. Secretary DeVos delegated the authority to review and sign the report to the Deputy Secretary of Education Cindy Marten.
Second, the whistleblower further alleged that SEAD officials failed to ensure that loan servicers properly administered HEAL loans. The whistleblower explained that lenders contract with servicers such as Navient and PHEAA to manage their borrowers’ relationships. The whistleblower asserted that SEAD officials are aware that Navient has, for several years, incorrectly informed HEAL borrowers that they cannot consolidate their loans and denied HEAL consolidation requests.\(^2\) The whistleblower further asserted that Navient misinformed borrowers, who may otherwise benefit from repayment options such as income-driven repayment and public interest loan forgiveness, resulting in defaults which servicers submit to SEAD as insurance claims. The whistleblower said that during the claims process, SEAD officials were on notice of Navient’s ongoing violations, but took no steps to correct them. Similarly, the whistleblower alleged that SEAD officials failed to ensure that PHEAA-serviced HEALS are charged the correct interest rates pursuant to the law and individual promissory notes. Additionally, the whistleblower claimed that PHEAA claims frequently reflect the highest available interest rate, regardless of whether a lower interest rate was agreed to in the borrower’s original promissory note.

**The Investigative Findings**

The agency did not substantiate the allegations. The agency concluded that SEAD officials appropriately paid permanently denied claims, noting that the relevant regulation provides that “[t]he Secretary may permit a lender or holder to cure certain defects in a specified manner as a condition for payment of a default claim.”\(^3\) The agency also concluded that the statute does not further limit the Secretary’s discretion to allow lenders to cure defects following the collection requirements. Moreover, the agency emphasized that while the R2 letter signifies that the loan is permanently uninsured, the lender may appeal the decision to deny the claim, and Education’s procedures do not include a deadline for a lender to appeal this determination. In accordance with these conclusions, the agency reviewed each of the identified claims and determined each was paid in accordance with applicable laws, rules, and regulations.

The investigation also concluded that there are no laws, rules, or regulations requiring Navient and PHEAA to provide information to HEAL borrowers about consolidation or, similarly, to agree to consolidation of the loan. The agency noted that while a Family Federal Education Loan (FFEL) lender is required to provide information to borrowers about consolidation of their loans pursuant to 43 C.F.R. § 682.205(a)(2)(vii), the HEAL program is governed by the Public Health Service Act, 42 U.S.C. § 292, *et. seq.*, which does not have the same requirements.

Further, the investigation did not conclude that SEAD officials failed to ensure that PHEAA- and Navient-serviced HEAL loans were charged the correct interest rates pursuant to the law and individual promissory notes under 42 C.F.R. § 60.13(a). The agency determined that the statute provides that the interest rate on the HEAL loan may be calculated on a fixed rate. However, the rate selected must continue over the life of the loan, except when the loan is consolidated with another HEAL loan.\(^4\) After reviewing each of claims the whistleblower identified, the agency found no evidence that either Navient or PHEAA, the loan servicers, charged a higher interest rate than that provided for in the borrowers’ promissory notes.

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\(^2\) Per the whistleblower, 34 C.F.R. §682.100(a)(4) specifically permits consolidation of HEALs as part of the Federal Consolidation Loan Program.

\(^3\) 34 C.F.R. § 681.41(d), Determination of Amount of loss on Claims.

\(^4\) 42 C.F.R. § 60.13(a).
In comments, the whistleblower challenged the legal basis for SEAD’s paying the claims following issuance of the R2 letters, particularly regarding Borrower 3 in the identified group. Additionally, the whistleblower voiced concern that some of the records on the claim tracker were missing or incomplete, compounding the issue. OSC requested clarification on whether the agency had a standard operating procedure in place notifying agency employees that there is a process for lenders to appeal R2 determinations. Additionally, OSC sought clarification on the basis for the agency’s decision to pay the claim for Borrower 3, as it appeared that Navient was both the HEAL servicer and the Title IV consolidation lender. OSC asked whether the ultimate determination to grant Navient’s appeal and pay the claim would have been different had Navient informed the borrower that the Title IV loan could not be consolidated.

In its supplemental report, the agency noted that Lender Policy Memorandum L-2003-1 outlines the appeals process for servicers and is included in the R2 letter sent to lenders when a claim on a loan was rejected. With respect to Borrower 3, the agency indicated that a borrower who has both Title IV and HEAL loans can consolidate those loans into a Consolidation Loan under the Direct Loan Program. Lenders and loan servicers may participate in both the HEAL Program and the FFEL Program, but the programs are separate and are governed by different standards. Therefore, the agency concluded that the payment determination was only made pertaining to the HEAL servicer, Navient, so the agency was not under an obligation to permit consolidation. Consequently, the agency noted that, in examining the case of Borrower 3, the borrower defaulted on repayment of the loan and Education paid Navient’s claim on the default in 2019. The agency determined nothing in the rules requires a loan’s servicer to consolidate a loan under the separate FFEL program in order for the servicer’s claim to be paid.

The whistleblower disagreed with the agency’s conclusions, asserting the records indicate Navient misinformed the borrower concerning consolidation and did so habitually. Further, the whistleblower commented that even assuming Navient was under no obligation to advise the borrower he could consolidate, the failure to advise violates the spirit of the Federal Consolidation Loan Program, which encourages making loans to borrowers for the purpose of consolidation, so, the agency should not have allowed payment of the claim.

I thank the whistleblower for bringing this issue to OSC’s attention. I have determined that the reports meet all statutory requirements, and the findings appear reasonable. As required by 5 U.S.C. §1213(e)(3), I have sent copies of this letter, the agency reports, and the whistleblower comments to the Chairs and Ranking Members of the Senate Committee on Health, Education, Labor, and Pension and the House Committee on Education and Labor. OSC has also filed a copy of these documents and a redacted copy of the referral letter in our public file, which is available at www.osc.gov. This matter is now closed.

Respectfully,

Henry J. Kerner
Special Counsel

Enclosures