UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CONTINENTAL SERVICE GROUP, INC.,
Plaintiff-Appellee

PIONEER CREDIT RECOVERY, INC.,
Consolidated-Plaintiff-Appellant

COLLECTION TECHNOLOGY, INC.,
PROGRESSIVE FINANCIAL SERVICES, INC.,
Intervenor-Plaintiffs-Appellees

ALLTRAN EDUCATION, INC.,
Intervenor-Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellant

CBE GROUP, INC., GC SERVICES LIMITED PARTNERSHIP, FINANCIAL MANAGEMENT SYSTEMS, INC., VALUE RECOVERY HOLDINGS, LLC,
Intervenor-Defendants-Appellees

PREMIERE CREDIT OF NORTH AMERICA, LLC,
WINDHAM PROFESSIONALS, INC.,
AUTOMATED COLLECTION SERVICES, INC.,
Intervenor-Defendants

2017-2155, -2215, -2342

Appeals from the United States Court of Federal Claims in Nos. 1:17-cv-00449-SGB and 1:17-cv-00499-SGB, Chief Judge Susan G. Braden.

ACCOUNT CONTROL TECHNOLOGY, INC.,
Plaintiff-Appellee

v.

UNITED STATES,
Defendant-Appellant

PREMIERE CREDIT OF NORTH AMERICA, LLC,
AUTOMATED COLLECTION SERVICES, INC.,
WINDHAM PROFESSIONALS, INC.,
TEXAS GUARANTEED STUDENT LOAN CORP.,
Intervenor-Defendants

GC SERVICES LIMITED PARTNERSHIP,
FINANCIAL MANAGEMENT SYSTEMS, INC.,
VALUE RECOVERY HOLDINGS, LLC,
CBE GROUP, INC.,
Intervenor-Defendants-Appellees

ALLTRAN EDUCATION, INC.,
Intervenor-Defendant-Appellant

2017-2156, -2210

Appeals from the United States Court of Federal Claims in No. 1:17-cv-00493-SGB, Chief Judge Susan G. Braden.

ALLTRAN EDUCATION, INC.,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellant

PREMIERE CREDIT OF NORTH AMERICA, LLC,
WINDHAM PROFESSIONALS, INC.,
Intervenor-Defendants

GC SERVICES LIMITED PARTNERSHIP,
FINANCIAL MANAGEMENT SYSTEMS, INC., CBE GROUP, INC., VALUE RECOVERY HOLDINGS, LLC,
Intervenor-Defendants-Appellees

2017-2157, -2216

Appeals from the United States Court of Federal Claims in No. 1:17-cv-00517-SGB, Chief Judge Susan G. Braden.

PROGRESSIVE FINANCIAL SERVICES, INC.,
Plaintiff-Appellee

PERFORMANT RECOVERY, INC.,
Intervenor-Plaintiff

COLLECTION TECHNOLOGY, INC., VAN RU CREDIT CORPORATION, ALLIED INTERSTATE LLC,
Intervenor-Plaintiffs-Appellees

v.

UNITED STATES,
Defendant-Appellant

PREMIERE CREDIT OF NORTH AMERICA, LLC,
Intervenor-Defendant

GC SERVICES LIMITED PARTNERSHIP,
Intervenor-Defendant-Appellee

ALLTRAN EDUCATION, INC.,
Intervenor-Defendant-Appellant

2017-2158, -2214

Appeals from the United States Court of Federal Claims in
No. 1:17-cv-00558-SGB, Chief Judge Susan G. Braden.

COLLECTION TECHNOLOGY, INC.,
Plaintiff-Appellee

PROGRESSIVE FINANCIAL SERVICES, INC.,
Intervenor-Plaintiff-Appellee

v.

UNITED STATES,
Defendant-Appellant

CBE GROUP, INC.,
Intervenor-Defendant-Appellee

PREMIERE CREDIT OF NORTH AMERICA, LLC,
Intervenor-Defendant

ALLTRAN EDUCATION, INC.,
Intervenor-Defendant-Appellant

2017-2159, -2212

Appeals from the United States Court of Federal Claims in
No. 1:17-cv-00578-SGB, Chief Judge Susan G. Braden.

VAN RU CREDIT CORPORATION,
Plaintiff-Appellee

PROGRESSIVE FINANCIAL SERVICES, INC.,
Intervenor-Plaintiff-Appellee

v.

UNITED STATES,
Defendant-Appellant

PREMIERE CREDIT OF NORTH AMERICA, LLC,
Intervenor-Defendant

ALLTRAN EDUCATION, INC.,
Intervenor-Defendant-Appellant

2017-2160, -2221

Appeals from the United States Court of Federal Claims in
No. 1:17-cv-00633-SGB, Chief Judge Susan G. Braden.

BRIEF OF APPELLANT ALLTRAN EDUCATION, INC.

August 14, 2017

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Continental Service Group, Inc. et al. **v.** United States et al.

Case No. 2017-2155 et al.

CERTIFICATE OF INTEREST

Counsel for the:
☐ (petitioner) ☒ (appellant) ☐ (respondent) ☐ (appellee) ☐ (amicus) ☐ (name of party)

Alltran Education, Inc.

certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10 % or more of stock in the party
Alltran Education, Inc.	None	Audax Private Equity Fund III, LP

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court (**and who have not or will not enter an appearance in this case**) are:

Crowell & Moring LLP (Daniel R. Forman, James G. Peyster, Robert J. Sneckenberg, Stephanie L. Crawford)

Aug 14, 2017
Date

/s/ Daniel R. Forman
Signature of counsel

Please Note: All questions must be answered

Daniel R. Forman
Printed name of counsel

cc: counsel of record

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STATEMENT OF RELATED CASES

The above-captioned consolidated appeals of the United States, Alltran Education, Inc. ("Alltran"), and Pioneer Credit Recovery, Inc. ("Pioneer") challenge the identical preliminary injunctions issued by the United States Court of Federal Claims ("COFC") in six related cases on May 31, 2017 (collectively the "May 31 Injunction"). National Recoveries, Inc. ("NRI") has separately appealed the COFC's denial of NRI's motion to intervene in one of those six cases. NRI's appeal has been docketed as No. 2017-2391 and assigned to the same merits panel as these consolidated appeals.

There are two cases currently pending before the COFC—*Coast Professional, Inc. et al.* (No. 15-207 *et al.*), and *Continental Service Group, Inc.* (No. 17-664)—that also involve some of the same Department of Education ("ED") contracts as are at issue in these appeals. However, those cases neither directly affect nor will be directly affected by this Court's decision.

A third COFC case—*Automated Collection Services, Inc.* (No. 17-765)—also involved some of the same contracts that are at issue in these appeals. However, the COFC issued its decision in that case on August 9, 2017, and that decision is irrelevant to these consolidated appeals.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over appeals from interlocutory orders issued by the COFC "granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions." *See* 28 U.S.C. §§ 1292(c)(1), 1292(a)(1), 1295(a)(3). Accordingly, this Court has jurisdiction over these consolidated appeals of the May 31 Injunction.

STATEMENT OF THE ISSUE ON APPEAL

Whether the COFC abused its discretion when it issued the May 31 Injunction without weighing the required injunctive relief factors and based upon multiple errors of law and clearly erroneous factual findings?

STATEMENT OF THE CASE

I. ED'S VARIOUS PCA CONTRACTS

The United States is currently embroiled in a student loan debt crisis. *See* Appx101711; Appx102040-102046 (Declaration of James Manning, Acting Under Secretary for ED).[1] Every month, tens if not hundreds of thousands of borrowers default on their federal student loans. Appx102041, 102043-102044. To manage those unfortunately massive quantities of defaulted accounts, ED relies on private collection agencies ("PCA"), such as Alltran, who specialize in servicing defaulted

[1] The COFC issued the May 31 Injunction without the benefit of an Administrative Record. Thus, the Joint Appendix in this matter draws primarily from pleadings, motions, and declarations submitted by the various parties.

accounts. Appx102042-102043. PCAs work directly with borrowers to inform them of their legal rights, to reestablish reasonable and affordable payment plans, and, when necessary, to administratively collect on their defaulted loans. *Id.* In fiscal year 2016 alone, PCAs assisted 353,000 borrowers in completing rehabilitation programs, and assisted the Government in recovering $1.1 billion from defaulted accounts. *Id.*

ED has contracted with PCAs since 1981. Appx102042. At certain times, ED has had only one active set of PCA contracts; at other times, however, such as when this litigation commenced, ED has had multiple sets of contracts active simultaneously. Relevant to this appeal are four different sets of PCA contracts.

A. The 2009 Contracts

In 2009, ED awarded a single set of 22 contracts, with 17 going to large businesses and 5 to small businesses. Appx101740. Those 22 contracts had virtually identical terms and conditions, and included an "ordering" period followed by a two-year "in-repayment" period. *Id.* ED could assign a PCA defaulted accounts at any point during the PCA's ordering period; during the in-repayment period, however, a PCA could only continue to service accounts it already held. *Id.* At the end of the in-repayment period, ED would administratively recall any accounts remaining on a PCA's contract (unless the

PCA was awarded a subsequent contract, in which case the accounts would be transferred to that new contract). *Id.*

The ordering period for the majority of the 2009 contracts ended in April 2015. *Id.*; *see also* Appx100170. To replace those contracts, ED has utilized three different sets of contracts—two of which were operating unencumbered when this litigation began but are now enjoined by the May 31 Injunction. Appx101740; Appx100170.

B. The Award-Term Extension ("ATE") Contracts

The 2009 contracts included a unique provision that allowed ED to reward its top-performing PCAs by awarding them a separate ATE contract. Appx101740. The ATE contracts were intended to serve as bridge contracts between the expiration of the 2009 contracts and ED's award of follow-on large business contracts. *Id.* Thus, the ordering period for an ATE contract could potentially last up to two years, but would end sooner if ED awarded and performance began under new large business contracts.

Nine PCAs, including Alltran, were eligible to receive an ATE contract. *Id.*; Appx100693. However, when ED made its initial ATE awards in 2015, ED awarded contracts to only five companies. *Id.*; Appx100693. Alltran and the three other eligible companies that did not receive awards filed bid protests with the COFC (docketed as *Coast Professional, Inc. et al.*, No. 15-207 *et al.*). *Id.*;

Appx100693.[2] The COFC initially dismissed those suits for lack of jurisdiction; however, this Court reversed. *Coast Prof'l, Inc. v. United States*, 828 F.3d 1349 (Fed. Cir. 2016). On remand, after the COFC ordered the Government to supplement the record and Alltran filed its Motion for Judgment based on the supplemented record, ED voluntarily took corrective action and reevaluated its initial award decision.

In its reevaluation, and at the urging of the COFC, ED determined to award ATE contracts to all four *Coast Professional* protesters, including Alltran. Appx101992. Thus, on May 1, 2017, ED awarded Alltran a contract similar to those received by the five original ATE awardees. Appx102005.[3] Due to the injunctions in this action, however, Alltran has not yet received any work under its ATE contract. *Id.*

Alltran's ATE plight stands in stark contrast to that of the original 2015 awardees. The 2015 ATE awardees—including Continental Service Group, Inc. ("ConServe")—fully performed their two-year ATE ordering periods and each received over 600,000 defaulted accounts in the process. Appx101739-101741. Thus, requests now by the 2015 ATE awardees for a continuing injunction are merely attempts by those contractors to receive a further windfall. *Id.*

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[2] Alltran was known as Enterprise Recovery Systems, Inc. during the *Coast Professional* litigation.

[3] ED offered ATE contracts to each of the four *Coast Professional* protesters. For reasons not relevant here, only Alltran and Pioneer accepted those awards.

C. The 2014 Small Business Contracts

In September 2014, following a competitive procurement, ED awarded a set of 11 small business PCA contracts. Appx100169-100170. Performance under some of those contracts began in November 2015 and, by July 2016, all 11 small business contracts were receiving new accounts on a monthly basis. Appx100697; Appx100071. Those 11 PCAs would still be receiving new accounts today but for the May 31 Injunction.[4]

D. The New Large Business Procurement

In December 2015, ED issued Solicitation No. ED-FSA-16-R-0009 for a new set of large business contracts that will each last for up to ten years. Appx100028-29. However, each contract minimum—*i.e.*, the amount to which a contractor will be legally entitled—will only be $1,000. Appx100170.

In December 2016, ED awarded contracts to 7 large business PCAs. Shortly thereafter, 22 disappointed offerors filed bid protests with the United States Government Accountability Office ("GAO"). On March 27, 2017, GAO sustained 13 of those protests and recommended that ED reopen the competition, request and evaluate revised proposals, and make a new award decision. *See Gen. Revenue Co. et al.*, B-414220.2 *et al.*, Mar. 27, 2017, 2017 CPD ¶ 106.

[4] Five small businesses moved to intervene before the COFC to oppose the May 31 Injunction, which prohibits ED from assigning accounts to their contracts. However, on July 7, the COFC denied their motions to intervene. Appx000124-000130. That July 7 Order is the subject of NRI's appeal in No. 2017-2391.

On May 19, ED issued its Notice of Corrective Action explaining that it is following GAO's recommendation and reopening the large business procurement. Appx101667-101671. ED anticipates that it will make its new award decision by August 25. Appx101671; *see also* Appx102235-102236. Thereafter, and barring any further injunctions, the 2014 small business contracts and the new large business contracts will run in parallel, and the ordering period for Alltran's and Pioneer's ATE contracts will expire.

II. THE COFC PROCEEDINGS

A. Status Quo: *No Injunction*

GAO's March 27 decision resolved all of the protests before it except for those filed by ConServe and Pioneer, which were due to be decided by April 13 and 19, respectively. Rather than wait for GAO's decision, however, ConServe withdrew from GAO and filed suit in the COFC on March 28.

Notably, when ConServe filed its suit and initiated the COFC litigation that has now led to these appeals, the 2016 large business awards were stayed due to the Competition in Contracting Act ("CICA"), 31 U.S.C. § 3553(d)(3), stay of performance tied to ConServe's GAO protest. However, ED was free to utilize and assign new accounts to both the 2014 small business contracts and the ATE contracts, as those contracts were not the subject of the GAO protests and consequently were unencumbered by the CICA stay. Appx100170-100171.

Moreover, because the CICA stay lasts only so long as its triggering GAO protest remains pending, ConServe effectively abandoned the CICA stay that was applicable to the December 2016 large business awards by voluntarily abandoning its GAO protest and filing suit in the COFC. Thus, at the time ConServe filed its COFC complaint, there was unquestionably no injunction of the small business or ATE contracts, and effectively no injunction of the 2016 large business awards.

B. March 29: The COFC Issues A TRO Based On ConServe's Count VII

ConServe's COFC complaint primarily challenged ED's evaluation of ConServe's proposal under Solicitation No. ED-FSA-16-R-0009 and ED's decision not to award ConServe a new large business contract. *See* Appx100044-100054 (Counts I – VI). However, ConServe also included a single Count—Count VII—alleging a vastly different claim. Although ConServe had already received over 600,000 accounts under its ATE contract, ConServe's Count VII alleged that ED was supposedly taking work away from ConServe's ATE contract and giving that work instead to the small business PCAs. Appx100054-100056 (Count VII). On the basis of that allegation, ConServe requested that the COFC issue an injunction broadly prohibiting ED from placing new accounts with *any* PCA. *Id.*

On March 29, the COFC held a status conference on ConServe's complaint and corresponding application for a temporary restraining order ("TRO"). During that status conference, Government and ED counsel explained that ED was still in

the process of determining its next steps in light of GAO's March 27 decision; however, ED counsel confirmed that the December 2016 awards "have been stayed and . . . have received no work and . . . will not be receiving any work any time soon." Appx100130. Notwithstanding these representations from the Government, the COFC stated that it was going to issue a TRO to "freeze everything for the moment until I can get my hands around this." Appx100129.[5] The COFC was explicit that the TRO "has nothing to do with . . . the merits of [ConServe's] case," but rather was intended to allow the COFC a chance to get up to speed on the pertinent issues in the case. Appx100128.[6]

Government and ED counsel attempted to explain to the COFC the significant difference between enjoining the large business contracts and enjoining all of ED's PCA contracts. However, the COFC ignored those distinctions and issued a broad TRO enjoining all of ED's PCA contracts. Appx100140-100142.

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[5] As discussed throughout this brief, the COFC did not actually "freeze everything"; rather, the COFC issued a broad injunction where previously there was none.

[6] The COFC also disregarded the Government's representations that no immediate work would be performed under the December 2016 large business awards. *See* Appx100126 ("THE COURT: . . . From now on, I'm never going to trust a government lawyer's representation verbally again. I want it in writing. So you have a TRO that's going to be issued today. It's going to be one sentence. Basically, in the public interest until -- given the fact that you don't know what's going on at GAO and the rest -- we're going to enjoin any performance under this contract or solicitation or whatever number it is.").

Specifically, the COFC's March 29 TRO enjoined ED from:

> (1) authorizing the purported awardees to perform on the contract award under Solicitation No. ED-FSA-16-R-0009 . . . ; and
>
> (2) transferring work to be performed under the contract at issue in this case to other contracting vehicles to circumvent or moot this bid protest . . . .

Id.[7] Although the COFC included in the TRO conclusory findings that ConServe would be irreparably harmed absent a TRO and that the equities favored a TRO, the COFC made no attempt to evaluate the merits of ConServe's protest or how it warranted a broad injunction of ED's entire PCA portfolio. *See* Appx100141 ("the court is not in a position to decide [ConServe's] likelihood of success").

C. May 2: The COFC Dismisses ConServe's Count VII, But Issues A Preliminary Injunction because All Parties Do Not Reach Universal Agreement

After March 29, Account Control Technology, Inc. (No. 17-493), Pioneer (No. 17-499), and Alltran (No. 17-517) filed protests challenging ED's new large business procurement. Additionally, on April 18, out of an abundance of caution, the Government informed the COFC that the in-repayment period for many of the 2009 Contracts was about to expire, and thus that ED would soon begin recalling accounts from those PCAs. Appx100685-100691. That notification prompted a new series of protests by Progressive Financial Services, Inc. (No. 17-558),

[7] The COFC would subsequently extend the TRO on April 10 and April 24, each time carrying forward both prongs of the March 29 TRO. *See* Appx100658-100659; Appx101025-101027.

Collection Technology, Inc. (No. 17-578), and Van Ru Credit Corporation (No. 17-633) seeking to forestall ED's recall of those PCAs' 2009 accounts.

On May 2, 2017, the COFC convened a joint hearing on the various protests. At that hearing, the Government again represented that it was willing to voluntarily stay performance of the large business contracts awarded in December 2016; however, the Government opposed any injunction of the small business or ATE contracts. The Government also argued that ConServe's Count VII should be dismissed because it presented a claim subject to the Contract Disputes Act ("CDA"), not a bid protest. *See* Appx101221-101226 (Government May 1 Motion to Dismiss ConServe Count VII).

The COFC agreed with the Government and dismissed ConServe's Count VII. Appx000092. However, the COFC would not agree to lift the entire TRO. Appx101421 ("THE COURT: . . . I'm just going to tell you, I'm going to issue an injunction today. I don't know what the context of it's going to be, but I'm not going to basically trust the Government again ever."). Instead, the COFC looked to the parties to devise a compromise injunction to which all parties would agree.

Specifically, in the middle of the May 2 hearing, the COFC instructed counsel for a handful of the parties to convene in chambers to craft a compromise injunction. Appx101448. Meanwhile, the COFC instructed counsel for the remaining parties to "go" and only return to the court later that afternoon. *Id.*

Unsurprisingly, the fifteen-plus parties ultimately did not all agree to a specific injunction. However, rather than scrutinizing the various parties' positions and respective harms—or delineating them in any detail—the COFC made conclusory and generalized findings and converted the TRO into a preliminary injunction. Appx000091-000093. The COFC scheduled the May 2 preliminary injunction to last until May 22.

D. May 22: The COFC Issues A New Injunction Solely To Prevent ED From Recalling PCAs' In-Repayment Accounts

On May 19, the Government filed its Notice of Corrective Action in response to GAO's March 27 decision regarding the large business procurement. ED explained that it was following GAO's recommendation and reopening the large business procurement, soliciting and evaluating revised proposals, and making new award decisions. Appx101667-101671. ED further stated that it anticipated making its new award decisions by August 25. Appx101671.

The Government argued that its corrective action rendered moot each of the protests at issue in this appeal, and thus requested that the COFC dismiss the protests. Appx101623.[8] The Government also filed separate motions to dismiss the in-repayment protests, explaining that those cases involved matters of contract administration beyond the COFC's bid protest jurisdiction. Appx500174-500183.

[8] The Government initially included its dismissal request within its Notice of Corrective Action, but later filed standalone motions to dismiss each protest.

In light of the May 19 Notice, the COFC scheduled a status conference for May 22. Prior to that status conference, the Government filed a formal Motion to Vacate the Preliminary Injunction. Appx101680-101697. In that motion, the Government explained that the preliminary injunction was contrary to law given that it was predicated on ConServe's Count VII, which the COFC had already dismissed. *Id.* The Government also filed declarations from ED and Small Business Administration ("SBA") officials detailing the importance of the PCA contracts and the severe harms that were occurring as a result of the COFC's Orders in these matters. For example:

- James W. Runcie, then the Chief Operating Officer for ED's Office of Federal Student Aid, explained that by the end of May the COFC would have already denied 234,000 student loan borrowers service on their defaulted accounts worth $4.6 billion. Appx101713.

- Mr. Runcie also explained that, if the COFC's injunction was not lifted, then by the end of June the Government would have failed to collect at least $2.4 million. *Id.*

- Finally, Robb N. Wong, Associate Administrator for the SBA's Office of Government Contracting and Business Development, explained that the COFC's injunctions threatened the continuing viability of the 11 small business PCAs whose contracts were lawfully awarded in 2014. Appx101705-101710.

Similarly, Alltran filed an Opposition to a Further Injunction. Appx101736-101743. In that Opposition, Alltran explained that the primary argument advanced by ConServe in favor of a broad injunction—that allowing ED to assign work to the small business and ATE contracts would supposedly "dilute" work that was

"destined" for the large business contracts—was both meritless and directly contrary to the position that ConServe had taken for the prior two years when ConServe readily accepted work under its own ATE contract, without ever complaining of any supposed "dilution." *Id.*

At the May 22 hearing, the COFC repeatedly indicated that it was inclined to lift the injunction. Moreover, the COFC endorsed Alltran's explanation that there is no "dilution"; specifically, the COFC explained that it was "past that argument" and "won't . . . keep the injunction for that purpose." Appx101875.

However, as the hearing progressed, the COFC became concerned that ED may treat certain companies unfairly in recalling the in-repayment accounts from their expired 2009 contracts. Thus, the COFC issued another preliminary injunction for the limited purpose of having ED consider whether it could award bridge contracts to the in-repayment contractors. Appx000106-000108.

In issuing the May 22 injunction, the COFC failed to address any of the four required injunctive relief factors. Nor did the COFC address the pending motions to dismiss the in-repayment cases. Nor did the COFC explain how the in-repayment issue was in any way related to or justified a broad injunction prohibiting ED from assigning accounts to any of its PCA contracts.

E. May 31: The COFC *Sua Sponte* Enjoins ED Indefinitely Based On Online News Articles

The May 22 injunction was scheduled to last until June 1. However, on May 31, the COFC *sua sponte* continued the broad injunction—this time based on three news articles (one an opinion piece) that the COFC had found online:

- The first article, from www.politico.com, reported on a supposed political dispute between Congress and ED.
- The second article, from www.thehill.com, was an opinion piece advocating that ED should discontinue its use of PCA contracts.
- The third article, from the *New York Times* website, asserted that the Trump administration was supposedly "considering" moving ED's defaulted student loan portfolio to the Treasury Department.[9]

Appx000001-000015.

Notably, none of the articles addressed the current litigation. Nor did the COFC address any of the four injunctive relief factors or how they were supposedly impacted by these articles. Rather, the COFC noted that the parties had not brought the articles to its attention,[10] and then stated that it was continuing the injunction to "preserve the *status quo* until the viability of the debt collection contracts at issue is resolved." Appx000002. The only "status quo" preserved, however, was the prior injunction that the COFC itself had issued.

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[9] As discussed *infra*, the COFC would later clarify that this *New York Times* article was the primary, if not sole, basis for the May 31 Injunction. Appx102208.

[10] The COFC also stated that the Government had not yet updated the COFC as to whether ED would award bridge contracts to the in-repayment contractors. Appx000002. That assertion appears incorrect based on the dockets in those cases.

III. ALLTRAN'S AND THE GOVERNMENT'S EMERGENCY MOTIONS FOR STAY PENDING APPEAL, WHICH REMAIN PENDING BEFORE THE COFC AND THIS COURT

Shortly after the COFC issued the May 31 Injunction, Alltran moved to intervene—for the express purpose of appealing the May 31 Injunction—in each COFC case in which it was not yet a party. On June 9, the COFC granted Alltran's final motion to intervene. That same day, Alltran filed its notices of appeal.

Along with its notices of appeal, Alltran also filed with the COFC a motion to stay the May 31 Injunction pending the resolution of Alltran's appeals. Appx101988-102008. In that motion, Alltran explained that the May 31 Injunction was contrary to law and would cause Alltran irreparable harm if not stayed; namely, Alltran's entire ATE contract would likely expire before Alltran's appeal was ever resolved on the merits. Appx102004-102005. Given the urgency of the issue, as well as the expeditious nature of the COFC's rulings up to that point, Alltran requested that the COFC expedite its consideration of Alltran's motion and issue a stay by Wednesday June 14. Appx101993.

On June 13, the Government filed a response in support of Alltran's motion for stay pending appeal. Appx102016-102039. In addition to endorsing each of Alltran's legal arguments, the Government provided additional declarations detailing the severe and unwarranted harms that the COFC's May 31 Injunction is causing. For example:

- James Manning, Acting Under Secretary for the United States Department of Education, explained that, in addition to the 234,000 student loan borrowers who had already been denied service on their defaulted accounts, every month an additional 118,000 borrowers—with accounts worth $2.285 billion—would similarly be left in limbo. Appx102043-102044. Such borrowers would not be contacted by PCAs and would not receive information about possible repayment plans and rehabilitation programs that may be available to them. *Id.*

- Under Secretary Manning also confirmed that, due to the COFC's injunctions, the Government had already failed to collect at least $2.4 million, and he explained that such losses would only increase as long as the May 31 Injunction remained in place. Appx102044.

- Finally, Under Secretary Manning explained that the May 31 Injunction prevented the Government from meeting its obligations under federal law to collect on student loans and assist borrowers in repaying and rehabilitating their loans. Appx102045 (citing 31 U.S.C. § 3711(a)(1) & 31 C.F.R. § 901.1 (requiring agencies to collect on all debts); 20 U.S.C. §§ 1078-6(a), 1087e(a)(1), 1087dd(h) (providing student loan borrowers a statutory right to rehabilitation, among other things); 20 U.S.C. §§ 1087f, 1082(a)(3-5) (authorizing ED Secretary to contract for origination, servicing, and collection of loans)).

Notwithstanding these compelling harms, the COFC took no action on Alltran's motion for stay pending appeal.

On Monday June 19, Alltran filed an Emergency Motion for a Stay Pending Appeal with this Court. *See* 2017-2155, Doc. 12. In that Emergency Motion, Alltran reiterated the harms above, and also provided a declaration from Alltran's Chief Operating Officer, Sean Dickson, regarding the specific harms to Alltran. Appx840061-840064. In that declaration, Mr. Dickson explained that Alltran is still reeling from the two-plus years of litigation in the *Coast Professional* matter

where ED delayed the award of Alltran's ATE contract, and that Alltran may not survive if it is forever precluded from performing under its ATE contract—as is currently the case under the COFC's May 31 Injunction. *Id.*

Shortly thereafter, the Government filed its own notices of appeal of the May 31 Injunction, as well as its own Emergency Motion for Stay Pending Appeal. 2017-2155, Doc. 62. In its Emergency Motion, the Government once again fully endorsed Alltran's arguments and also emphasized the readily apparent flaws in the May 31 Injunction and the critical need for immediate relief.

This Court set expedited briefing schedules for Alltran's and the Government's respective Emergency Motions. Briefing was complete on July 5. However, on July 18, this Court determined to hold the Emergency Motions in abeyance until the COFC first rules on Alltran's still pending COFC motion for stay pending appeal. *See* 2017-2155, Doc. 122.

In light of this Court's July 18 Order, Alltran filed a motion with the COFC requesting that the COFC expedite ruling on Alltran's June 9 motion for stay pending appeal. However, three additional weeks have now passed and the COFC has taken no action—nor indicated any intent to do so—on Alltran's motion, which was first filed nearly two months ago.

IV. FURTHER COFC RELIANCE ON IRRELEVANT NEWS ARTICLES

Instead of ruling on Alltran's pending motions for stay pending appeal, the COFC issued an Order on August 2 requiring the Government to file a status report regarding the ongoing large business corrective action. Appx102208. The COFC's inquiry was apparently prompted by recent news articles regarding certain ED contract programs. *Id.* Two aspects of the COFC's August 2 Order are notable for the current appeal.

First, the COFC confirmed that the basis for the May 31 Injunction was the *New York Times* article reporting that the Trump Administration was "considering" moving ED's defaulted student loan portfolio to the Treasury Department. *Id.* The COFC speculated that such a change might one day moot the current COFC protests; thus, the COFC entered the May 31 Injunction to preserve the supposed "*status quo*"—even though there was no injunction when the litigation began. *Id.*

Second, as explained in the Government's subsequent August 4 Status Report, the COFC was conflating two entirely distinct ED contracting programs. Appx102237-102240. The PCA contracts at issue in this appeal are for servicing already defaulted student loans; the procurement referenced in the COFC's Order, however, concerns ED contracts to service non-defaulted student loans. *Id.* That is why the Government did not bring these supposed developments to the COFC's attention: they are completely irrelevant.

SUMMARY OF THE ARGUMENT

There are four independent ways in which the COFC abused its discretion in issuing the May 31 Injunction:

- First, the COFC failed to evaluate any of the four required injunctive relief factors. Instead, the COFC *sua sponte* enjoined ED's entire PCA portfolio based on unsubstantiated and irrelevant new articles.

- Second, the COFC inverted the status quo. When this litigation began, there was no injunction: ED was free to assign work to, at a minimum, its small business and ATE contracts. Thus, the May 31 Injunction is the exact opposite of the status quo, and only serves to perpetuate, without justification, the COFC's own prior TROs and injunctions in this matter.

- Third, the May 31 Injunction is facially overbroad. The May 31 Injunction is impermissibly vague and indefinite, and the COFC has failed to articulate any legitimate rationale for enjoining ED's entire PCA portfolio, especially ED's lawfully awarded small business and ATE contracts.

- Fourth, the COFC usurped Congressional and Executive authority and interfered with ED's statutory and regulatory obligations to collect on student loans and assist borrowers in repaying and rehabilitating their loans.

For each and all of these reasons, the COFC abused its discretion when it issued the May 31 Injunction. Accordingly, that Injunction must now be vacated.

ARGUMENT

A preliminary injunction is a "drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 142 (2010). Because the grant of an injunction is "extraordinary relief," a trial court must apply "exacting standards" in deciding to

afford a plaintiff such relief. *Lermer Germany GmbH v. Lermer Corp.*, 94 F.3d 1575, 1577 (Fed. Cir. 1996).

This Court will reverse a preliminary injunction where the lower court "made a clear error of judgment in weighing relevant factors or exercised its discretion based upon an error of law or clearly erroneous factual findings." *Abbott Labs. v. Andrx Pharm., Inc.*, 452 F.3d 1331, 1335 (Fed. Cir. 2006) (quotation omitted) (vacating injunction). Here, there are multiple independent flaws in the COFC's May 31 Injunction, each of which require that this Court vacate the May 31 Injunction.

I. THE COFC FAILED TO EVALUATE THE REQUIRED INJUNCTIVE RELIEF FACTORS

It is well-settled that, prior to issuing a preliminary injunction, a court "must balance each of [the four injunctive relief] factors against the others and against the magnitude of the relief requested to determine whether a preliminary injunction should be granted or denied." *Filmtec Corp. v. Allied-Signal Inc.*, 939 F.2d 1568, 1571 (Fed. Cir. 1991). And, "[a]lthough the factors are not applied mechanically, *a movant must establish the existence of both of the first two factors [likelihood of success and irreparable harm]* to be entitled to a preliminary injunction." *Altana Pharma AG v. Teva Pharm. USA, Inc.*, 566 F.3d 999, 1005 (Fed. Cir. 2009) (emphasis added).

Here, the COFC neither identified any specific movant for the May 31 Injunction nor analyzed *any* of the four required factors. Appx000001-000015. Rather, the COFC based the injunction on three website articles that do not even relate to or address this litigation. This was a clear abuse of discretion and error of law. *See, e.g.*, *Filmtec Corp.*, 939 F.2d at 1571 (vacating injunction where lower court made insufficient factual finding as to likelihood of success); *Pretty Punch Shoppettes, Inc. v. Hauk*, 844 F.2d 782, 784 (Fed. Cir. 1988) (vacating order on request for preliminary injunction because trial court failed to make sufficient findings of fact); *see also, e.g.*, *Celgard, LLC v. LG Chem, Ltd.*, 624 F. App'x 748, 752 (Fed. Cir. 2015) (reversing preliminary injunction as conclusory).

Moreover, as clarified in the COFC's August 2 Order for a status report, the primary, if not sole, basis for the May 31 Injunction was an online *New York Times* article reporting that the Trump Administration was "considering" moving ED's portfolio of defaulted accounts to the Treasury Department; the COFC asserted that such a move might potentially moot the pending COFC protests, and thus warranted a preliminary injunction. Appx102208.[11]

[11] In response to Alltran's and the Government's Emergency Motions for a Stay Pending Appeal, various parties argued that the COFC's May 31 Injunction was supported by the rationales identified in the COFC's prior TROs and injunctions. However, the COFC's August 2 Order dispels any such notion. Moreover, as discussed in the facts above, prior to issuing the May 31 Injunction, the COFC had already repudiated the bases for its initial TROs and preliminary

As a threshold matter, the online article did not include any timeline or guarantee that any move would actually occur; nor did it address what affect, if any, such a move would have on ED's current PCA contracts and the pending COFC lawsuits. Thus, the COFC's May 31 Injunction rested entirely on unsubstantiated speculation.

Additionally, even if the article were accurate and ED's defaulted loan portfolio were on the move, the COFC still failed to tie that move to any of the four required injunctive relief factors.

- The COFC failed to consider whether any of the pending protests were likely to succeed on the merits—which would be doubtful if the protests would be rendered moot before they could be resolved, as the COFC assumed;[12]

- The COFC failed to consider whether any of the protesters could demonstrate irreparable harm absent an injunction—or how such harm would be impacted by the potential move;

- The COFC failed to identify—let alone consider—the comparative harms to the individual parties; and

- The COFC failed to consider whether the public interest favored an injunction.

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injunctions. Thus, those earlier bases could not rationally support the May 31 Injunction.

[12] Prior to issuing the May 31 Injunction, the COFC also failed to address the Government's pending requests to dismiss each of the COFC protests. This, too, was clear legal error and requires that the May 31 Injunction be vacated. *See, e.g.*, *Celgard, LLC*, 624 F. App'x at 751-52 (vacating injunction where jurisdiction was contested and court failed to address issue prior to issuing injunction).

Without considering each and all of these factors, it was clear legal error for the COFC to issue the May 31 Injunction. Accordingly, for this reason alone, this Court should vacate the May 31 Injunction.

II. THE COFC INVERTED THE STATUS QUO

As stated in the May 31 Injunction and further emphasized in the COFC's August 2 Order, the COFC's intent in issuing the May 31 Injunction was "to preserve the *status quo*." Appx000002 (citing *Litton Sys., Inc. v. Sundstrand Corp.*, 750 F.2d 952, 961 (Fed. Cir. 1984)). Unfortunately, the COFC inverted the status quo.

As explained in the very case cited by the COFC, "[t]he status quo to be preserved is *that state of affairs existing immediately before the filing of the litigation*, the last uncontested status which preceded the pending controversy." *Litton Sys.*, 750 F.2d at 961 (emphasis added; citation omitted). Here, immediately before the filing of the current litigation (*i.e.*, ConServe's March 28, 2017 Complaint in No. 17-449), there was *no injunction* and *ED was free to assign work to any of its small business and/or ATE contracts*.[13] It is not clear whether the COFC misunderstood this fact or mistakenly considered the status quo on May 31

[13] As discussed above, when ConServe filed its COFC suit, the CICA stay tied to ConServe's GAO protest prohibited ED from assigning accounts to the December 2016 large business contracts; however, in filing with the COFC, ConServe deprived GAO of jurisdiction over ConServe's GAO protest, thus eliminating the CICA stay. Thus, effectively, there was no longer any CICA stay of the large business awards, either.

to be that state of affairs existing on May 31. Either way, however, the COFC's mistake is reversible error: the COFC cannot indefinitely perpetuate its own injunction by erroneously claiming that its own injunction is the status quo.

Accordingly, for this reason, as well, the COFC committed clear legal error in issuing the May 31 Injunction, which should be vacated.

III. THE MAY 31 INJUNCTION IS FACIALLY OVERBROAD

Even if the COFC had considered the four required factors and not misapplied the status quo, the May 31 Injunction would still fail because it is facially overbroad. This Court has made clear that it "do[es] not uphold vague or overly broad injunctions." *Metalcraft of Mayville, Inc. v. The Toro Co.*, 848 F.3d 1358, 1369 (Fed. Cir. 2017). Likewise, other Circuits have routinely overturned injunctions that were not "narrowly tailored to remedy the specific harm shown." *Aviation Consumer Action Project v. Washburn*, 535 F.2d 101, 108 (D.C. Cir. 1976) (reversing overbroad aspects of injunction); *see also, e.g.*, *Meinhold v. United States Dep't of Def.*, 34 F.3d 1469, 1480 (9th Cir. 1994) ("injunction should be no more burdensome to the defendant than necessary").

Here, the COFC has broadly enjoined ED's entire PCA program "until the viability of the debt collection contracts at issue is resolved." Appx000002. That vague timeframe is not tailored to any harm to any movant. Rather, it stems from the COFC's apparent concern—based on irrelevant and unsubstantiated news

articles—that, at some unspecified time in the future, ED's role in managing defaulted student loans may change. Such speculation cannot rationally justify an indefinite injunction of ED's entire debt collection program.

That is especially the case here, where the COFC has not even attempted to tie the supposed harm to any movant to the specific scope of the injunction granted. For example, at no point in time has the COFC explained why either the small business or ATE contractors must be enjoined to prevent harm to other parties. To the contrary, the COFC has expressly rejected ConServe's "dilution" theory, and has made no attempt to explain how ED's recall of certain contractors' in-repayment accounts in any way impacts the small business and ATE contracts. Put simply, there is no impact.[14]

Thus, the May 31 Injunction is unlawfully vague and overbroad, and, for this reason as well, should be vacated.

[14] Were the COFC correct—a point Alltran does not concede—in seeking to protect the in-repayment contractors from having their accounts recalled, the COFC could have simply issued an injunction prohibiting ED from recalling those accounts. There was never any need for the COFC to enjoin separate and distinct, lawfully awarded contract vehicles.

IV. THE COFC USURPED CONGRESSIONAL AND EXECUTIVE AUTHORITY OVER ED POLICY AND PROGRAMS

Finally, while 28 U.S.C. § 1491(b) grants the COFC authority to issue declaratory and injunctive relief as necessary to afford relief in specific cases, that statute does *not* authorize the COFC to control an executive agency's policy agenda. Yet, that is precisely what the COFC has done in the May 31 Injunction. In questioning the "viability" of ED's various PCA contracts, the COFC has effectively determined that ED should no longer utilize those lawfully awarded contract vehicles. However, that is directly contrary to ED's own policy and programmatic interests—for example, the Government has repeatedly opposed the COFC's injunctions in this action, including with declarations from high-ranking ED officials—and directly contrary to Congressional statute and regulation. *See* Appx102045 (identifying statutory and regulatory provisions governing ED debt collection program).

Constitutional separation of powers exists for a reason: it is not the role or place of the courts to effect sweeping policy change—especially not based on unsubstantiated news articles and against the express wishes of the agency responsible for the program at issue. Thus, for this reason, as well, the May 31 Injunction is contrary to law and an abuse of discretion, and should be vacated.

CONCLUSION

For each and all of the foregoing reasons, the COFC abused its discretion when it issued the May 31 Injunction without weighing the required factors and based upon multiple errors of law and clearly erroneous factual findings. Accordingly, Alltran respectfully requests that this Court vacate the May 31 Injunction.

August 14, 2017

/s/ Daniel R. Forman

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ADDENDUM

May 31 Injunction

In the United States Court of Federal Claims

Nos. 17-449, 17-499
Filed: May 31, 2017

CONTINENTAL SERVICES GROUP, INC., and PIONEER CREDIT RECOVERY, INC.,	*
Plaintiffs,	*
and	*
COLLECTION TECHNOLOGY, INC., PERFORMANT RECOVERY, INC., ALLTRAN EDUCATION, INC., and PROGRESSIVE FINANCIAL SERVICES, INC.,	*
Intervenor-Plaintiffs,	*
v.	*
THE UNITED STATES,	*
Defendant,	*
and	*
CBE GROUP, INC., PREMIERE CREDIT OF NORTH AMERICA, LLC, GC SERVICES LIMITED PARTNERSHIP, FINANCIAL MANAGEMENT SYSTEMS, INC., VALUE RECOVERY HOLDINGS, LLC, and WINDHAM PROFESSIONALS, INC.,	*
Intervenor-Defendants.	*

CONTINUATION OF PRELIMINARY INJUNCTION

On May 25, 2017, the court became aware of press reports indicating that James Runcie, Chief Operating Officer of the Office of Federal Student Aid, Department of Education, resigned rather than testify before the House Oversight Committee about approximately $3.86 billion in fiscal year 2016 that was erroneously paid under the Department of Education's student loan program and approximately $2.21 billion in Pell grants. Court Exhibit A.

In addition, the court became aware of another recent press report, based on a Consumer Financial Protection Bureau Report, concluding that, "[t]he value added by the private collection agencies working for the Department of Education is highly questionable[,] but unquestionably expensive. Student loan borrowers deserve to understand their options and be set up for success. Taxpayers deserve to get their money's worth." Court Exhibit B.

Neither of these relevant developments were brought to the attention of the court by the Department of Justice attorneys representing the Department of Education in the above captioned bid protest cases. Of course, none of the counsel of record for the private debt collection companies did so either, because these reports belie numerous representations to the court about the "so-called" harm to the student debtors and the public fisc from the preliminary injunction pending in this case. Nor has the Department of Justice or Department of Education responded to the court's May 22, 2017 inquiry of Dr. Patrick Bradfield, Head of Contracting at the Office of Federal Student Aid, regarding whether the Department of Education could allow Progressive Financial, Inc., Collection Technology, Inc., Performant Recovery, Inc. and Van Ru Credit Corporation to continue servicing prior accounts until the Department of Education *completes* the proposed corrective action

In addition, on May 26, 2017, the *New York Times* published an 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 C. If so, the bid protests before the court will become moot. For these reasons, the preliminary injunction will remain in place 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.").

IT IS SO ORDERED.

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

Court Exhibit A

POLITICO

James Runcie resigned on Tuesday night after defying Betsy DeVos' directive to testify before the oversight panel. | AP Photo

GOP threatens to subpoena Education Dept. official who quit

By **MICHAEL STRATFORD** | 05/25/2017 04:29 PM EDT

Republicans on the House Oversight Committee on Thursday threatened to subpoena the head of the Education Department's student financial aid office who resigned this week after a clash with Education Secretary Betsy DeVos.

James Runcie resigned on Tuesday night after defying DeVos' directive to testify before the oversight panel about erroneous payments in the student loan and Pell grant programs. In an internal memo about his resignation as chief operating officer of the Office of Federal Student Aid, Runcie alluded to a range of simmering management issues at the department.

“The issuing of a subpoena is still an open item,” Rep. Mark Meadows (R-N.C.), the chairman of the House oversight subcommittee holding Thursday’s hearing told reporters. “It’s important that we hear from Mr. Runcie and at least get some of his perspective on some of these issues.”

Meadows opened the hearing by saying that Runcie’s refusal to testify was a “slap in the face” to taxpayers, who he said paid Runcie more than $430,000 in bonuses since 2010.

House Oversight Chairman Jason Chaffetz (R-Utah) “still has questions that Mr. Runcie needs to answer,” said his spokeswoman, MJ Henshaw. “Hopefully that’s done voluntarily. If not, we will explore the option of a subpoena.”

Jay Hurt, the chief financial officer of the department’s Office of Federal Student Aid, testified in place of Runcie on Thursday. GOP lawmakers pressed Hurt about the increase in the agency’s erroneous student loan and Pell grant payments, which both rose last year.

The Education Department estimated that improper payments for student loans in fiscal year 2016 were $3.86 billion, up from $1.28 billion the previous year. Improper payments in the Pell grant program increased from $562 million to $2.21 billion over the same time period, according to the department. None of those met the department’s target benchmark for such figures.

Hurt said that the increase was due in part to a change in how the department calculated improper payments. He also warned that next year’s improper payment rate will again increase because of a months-long suspension of an online tool that helps borrowers avoid mistakes by automatically inputting their tax information.

The agency’s Inspector General, Kathleen Tighe, testified that while the revised calculations were “more realistic,” the department still needs to “intensify its efforts to identify and address internal controls and oversight to address the root causes” of improper payments.

GOP lawmakers on the panel said they were concerned that Runcie and Hurt continued to receive bonuses even as the improper payment rates for student aid programs increased in recent years.

Runcie's resignation memo suggests that political appointees at the department had been micromanaging his office, which he said had been stretched too thin. He said in an email to POLITICO that he resigned because of differences at the department between "operational leaders" like himself and political appointees.

Top Education Dept. official resigns after clash with DeVos
By **MICHAEL STRATFORD** and **KIMBERLY HEFLING**

But Meadows blasted that assertion on Thursday. He said that Runcie "may be upset that the secretary is micromanaging" but "anybody looking over your shoulder when you're losing $3.6 billion might be considered micromanaging. I call it proper oversight."

Republicans on the committee also said that Runcie's resignation on Tuesday night came after they had already threatened to subpoena him and gave him 20 days to respond to a request to appear at the hearing.

Meadows said he had previously been frustrated with attempts to get Runcie to testify before the committee.

"He has shown a willingness to not testify before Congress in the past. I'm not saying that that's where it is today," Meadows said. "I want to take him at his word that perhaps he had a personal conflict, but we were willing to accommodate. And what we found was is that he chose to resign instead of coming before Congress."

Democrats on the panel, meanwhile, steered clear of the Runcie resignation. They instead criticized DeVos' proposal to overhaul student loan servicing and slammed the department for not doing enough to guard against student debt relief scams.

Sens. Elizabeth Warren (D-Mass.) and Patty Murray (D-Wash.) said earlier this week that they're concerned that Runcie's resignation appeared to come after political interference from DeVos. Warren called on Congress "to get to the bottom of what's going on here."

Court Exhibit B

Department of Education must end the billion-dollar student loan collection boondoggle

By Persis Yu, opinion contributor - 05/22/17 10:20 AM EDT

In the last month, the contracting process for companies vying to be one of the U.S. Department of Education's debt collectors has spiraled into chaos.

Companies that didn't make the final cut or were fired for misleading student loan borrowers are suing the Department, and the judge overseeing the litigation has issued an order preventing the Department from assigning new accounts to debt collectors, leading to claims that collection on defaulted student loans has ground to a halt.

This chaos is not serving taxpayers or student loan borrowers. The Department of Education should end its sweetheart deal with collection agencies and find a better way to work with defaulted student loan borrowers.

According to collection industry insiders, the Department of Education contract is "[t]he most sought-after contract within this industry" because of the ever-increasing volume of student loan debt that is extremely difficult to discharge in bankruptcy. In 2014, the federal government paid over $1 billion to private collection agencies. But are student loan borrowers and taxpayers getting what they pay for?

New data from the Consumer Financial Protection Bureau (CFPB) shows that they are not.

The Higher Education Act provides student loan borrowers in default with two ways to get their loans back into good standing: consolidation and rehabilitation.

Just released CFPB data shows that the rehabilitation program, where borrowers make a series of payments in order to cure their defaulted loans, is not creating a sustainable path to student loan repayment. Over a third of borrowers who rehabilitate their loans will re-default within the first two years.

This is likely because, after completing their nine monthly rehabilitation payments, a substantial number of borrowers never successfully transition into one of the affordable income-driven repayment (IDR) plans.

In contrast, the vast majority (95 percent) of the reported student loan borrowers who chose to consolidate to get out of default (taking out a new loan to pay off of the old

one), are still in good standing a year out. When borrowers consolidate out of default, they are immediately placed into a repayment plan, usually an IDR plan.

Moreover, a Treasury Department pilot project found that when properly counseled, more borrowers choose consolidation over rehabilitation. Yet 70 percent of borrowers whose student loans are collected by private collection agencies choose rehabilitation.

Why? One word: commissions.

The Department of Education typically pays collection agencies $1,710 if they can get a borrower to complete a rehabilitation plan but only $150 if they work with a borrower to consolidate the defaulted loans.

What's more, borrowers do not even need to work with a collection agency to consolidate their loans; they can go straight to studentloans.gov and do it.

Most of the work that is done by collection agencies can be automated or easily brought in-house. Just as borrowers can use studentloans.gov to consolidate their loans, that same tool could be used to establish rehabilitation plans.

The only functions that would be lost without collection agencies are calling and counseling borrowers. The value of making calls is questionable: Treasury found that of the 21,000 calls it initiated in its pilot project, less than 3 percent were ever even answered.

And collection agencies are doing a terrible job at counseling borrowers, as is evidenced by the wide disparity between the program collectors push borrowers into (rehabilitation) and the success of that program. And, in some cases, such as when borrowers dispute the amount owed, debt collectors simply transfer those loans back to the Department of Education.

Additionally, collection agencies routinely violate consumer protection laws. Debt collection calls generate more complaints to the CFPB than *any* other type of financial product or service. Recently, the Federal Trade Commission fined one of the Department of Education's debt collectors — GC Services — $700,000 for making harassing phone calls to student loan borrowers and threatening illegal actions.

The value added by the private collection agencies working for the Department of Education is highly questionable but unquestionably expensive. Student loan borrowers deserve to understand their options and be set up for success. Taxpayers deserve to get their money's worth.

The Department of Education should end this billion dollar boondoggle to enrich private collection agencies and instead set up a system where borrowers can get unbiased and accurate information to resolve their student loan defaults.

Persis Yu is the director of National Consumer Law Center's Student Loan Borrower Assistance Project.

Court Exhibit C

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

DealB%k 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.

In the United States Court of Federal Claims

No. 17-493
Filed: May 31, 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., and TEXAS GURANTEED STUDENT LOAN CORP.	*
Intervenor-Defendants.	*

CONTINUATION OF PRELIMINARY INJUNCTION

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Neither of these relevant developments were brought to the attention of the court by the Department of Justice attorneys representing the Department of Education in the above captioned bid protest cases. Of course, none of the counsel of record for the private debt collection companies did so either, because these reports belie numerous representations to the court about the "so-called" harm to the student debtors and the public fisc from the preliminary injunction pending in this case. Nor has the Department of Justice or Department of Education responded to the court's May 22, 2017 inquiry of Dr. Patrick Bradfield, Head of Contracting at the Office of Federal Student Aid, regarding whether the Department of Education could allow Progressive Financial, Inc., Collection Technology, Inc., Performant Recovery, Inc. and Van Ru Credit Corporation to continue servicing prior accounts until the Department of Education *completes* the proposed corrective action

In addition, on May 26, 2017, the *New York Times* published an 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 C. If so, the bid protests before the court will become moot. For these reasons, the preliminary injunction will remain in place 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.").

IT IS SO ORDERED.

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Chief Judge

Court Exhibit A

POLITICO

James Runcie resigned on Tuesday night after defying Betsy DeVos' directive to testify before the oversight panel. | AP Photo

GOP threatens to subpoena Education Dept. official who quit

By **MICHAEL STRATFORD** | 05/25/2017 04:29 PM EDT

Republicans on the House Oversight Committee on Thursday threatened to subpoena the head of the Education Department's student financial aid office who resigned this week after a clash with Education Secretary Betsy DeVos.

James Runcie resigned on Tuesday night after defying DeVos' directive to testify before the oversight panel about erroneous payments in the student loan and Pell grant programs. In an internal memo about his resignation as chief operating officer of the Office of Federal Student Aid, Runcie alluded to a range of simmering management issues at the department.

“The issuing of a subpoena is still an open item,” Rep. Mark Meadows (R-N.C.), the chairman of the House oversight subcommittee holding Thursday’s hearing told reporters. “It’s important that we hear from Mr. Runcie and at least get some of his perspective on some of these issues.”

Meadows opened the hearing by saying that Runcie’s refusal to testify was a “slap in the face” to taxpayers, who he said paid Runcie more than $430,000 in bonuses since 2010.

House Oversight Chairman Jason Chaffetz (R-Utah) “still has questions that Mr. Runcie needs to answer,” said his spokeswoman, MJ Henshaw. “Hopefully that’s done voluntarily. If not, we will explore the option of a subpoena.”

Jay Hurt, the chief financial officer of the department’s Office of Federal Student Aid, testified in place of Runcie on Thursday. GOP lawmakers pressed Hurt about the increase in the agency’s erroneous student loan and Pell grant payments, which both rose last year.

The Education Department estimated that improper payments for student loans in fiscal year 2016 were $3.86 billion, up from $1.28 billion the previous year. Improper payments in the Pell grant program increased from $562 million to $2.21 billion over the same time period, according to the department. None of those met the department’s target benchmark for such figures.

Hurt said that the increase was due in part to a change in how the department calculated improper payments. He also warned that next year’s improper payment rate will again increase because of a months-long suspension of an online tool that helps borrowers avoid mistakes by automatically inputting their tax information.

The agency’s Inspector General, Kathleen Tighe, testified that while the revised calculations were “more realistic,” the department still needs to “intensify its efforts to identify and address internal controls and oversight to address the root causes” of improper payments.

GOP lawmakers on the panel said they were concerned that Runcie and Hurt continued to receive bonuses even as the improper payment rates for student aid programs increased in recent years.

Runcie's resignation memo suggests that political appointees at the department had been micromanaging his office, which he said had been stretched too thin. He said in an email to POLITICO that he resigned because of differences at the department between "operational leaders" like himself and political appointees.

Top Education Dept. official resigns after clash with DeVos
By **MICHAEL STRATFORD** and **KIMBERLY HEFLING**

But Meadows blasted that assertion on Thursday. He said that Runcie "may be upset that the secretary is micromanaging" but "anybody looking over your shoulder when you're losing $3.6 billion might be considered micromanaging. I call it proper oversight."

Republicans on the committee also said that Runcie's resignation on Tuesday night came after they had already threatened to subpoena him and gave him 20 days to respond to a request to appear at the hearing.

Meadows said he had previously been frustrated with attempts to get Runcie to testify before the committee.

"He has shown a willingness to not testify before Congress in the past. I'm not saying that that's where it is today," Meadows said. "I want to take him at his word that perhaps he had a personal conflict, but we were willing to accommodate. And what we found was is that he chose to resign instead of coming before Congress."

Democrats on the panel, meanwhile, steered clear of the Runcie resignation. They instead criticized DeVos' proposal to overhaul student loan servicing and slammed the department for not doing enough to guard against student debt relief scams.

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Court Exhibit B

Department of Education must end the billion-dollar student loan collection boondoggle

By Persis Yu, opinion contributor - 05/22/17 10:20 AM EDT

In the last month, the contracting process for companies vying to be one of the U.S. Department of Education's debt collectors has spiraled into chaos.

Companies that didn't make the final cut or were fired for misleading student loan borrowers are suing the Department, and the judge overseeing the litigation has issued an order preventing the Department from assigning new accounts to debt collectors, leading to claims that collection on defaulted student loans has ground to a halt.

This chaos is not serving taxpayers or student loan borrowers. The Department of Education should end its sweetheart deal with collection agencies and find a better way to work with defaulted student loan borrowers.

According to collection industry insiders, the Department of Education contract is "[t]he most sought-after contract within this industry" because of the ever-increasing volume of student loan debt that is extremely difficult to discharge in bankruptcy. In 2014, the federal government paid over $1 billion to private collection agencies. But are student loan borrowers and taxpayers getting what they pay for?

New data from the Consumer Financial Protection Bureau (CFPB) shows that they are not.

The Higher Education Act provides student loan borrowers in default with two ways to get their loans back into good standing: consolidation and rehabilitation.

Just released CFPB data shows that the rehabilitation program, where borrowers make a series of payments in order to cure their defaulted loans, is not creating a sustainable path to student loan repayment. Over a third of borrowers who rehabilitate their loans will re-default within the first two years.

This is likely because, after completing their nine monthly rehabilitation payments, a substantial number of borrowers never successfully transition into one of the affordable income-driven repayment (IDR) plans.

In contrast, the vast majority (95 percent) of the reported student loan borrowers who chose to consolidate to get out of default (taking out a new loan to pay off of the old

one), are still in good standing a year out. When borrowers consolidate out of default, they are immediately placed into a repayment plan, usually an IDR plan.

Moreover, a Treasury Department pilot project found that when properly counseled, more borrowers choose consolidation over rehabilitation. Yet 70 percent of borrowers whose student loans are collected by private collection agencies choose rehabilitation.

Why? One word: commissions.

The Department of Education typically pays collection agencies $1,710 if they can get a borrower to complete a rehabilitation plan but only $150 if they work with a borrower to consolidate the defaulted loans.

What's more, borrowers do not even need to work with a collection agency to consolidate their loans; they can go straight to studentloans.gov and do it.

Most of the work that is done by collection agencies can be automated or easily brought in-house. Just as borrowers can use studentloans.gov to consolidate their loans, that same tool could be used to establish rehabilitation plans.

The only functions that would be lost without collection agencies are calling and counseling borrowers. The value of making calls is questionable: Treasury found that of the 21,000 calls it initiated in its pilot project, less than 3 percent were ever even answered.

And collection agencies are doing a terrible job at counseling borrowers, as is evidenced by the wide disparity between the program collectors push borrowers into (rehabilitation) and the success of that program. And, in some cases, such as when borrowers dispute the amount owed, debt collectors simply transfer those loans back to the Department of Education.

Additionally, collection agencies routinely violate consumer protection laws. Debt collection calls generate more complaints to the CFPB than *any* other type of financial product or service. Recently, the Federal Trade Commission fined one of the Department of Education's debt collectors — GC Services — $700,000 for making harassing phone calls to student loan borrowers and threatening illegal actions.

The value added by the private collection agencies working for the Department of Education is highly questionable but unquestionably expensive. Student loan borrowers deserve to understand their options and be set up for success. Taxpayers deserve to get their money's worth.

The Department of Education should end this billion dollar boondoggle to enrich private collection agencies and instead set up a system where borrowers can get unbiased and accurate information to resolve their student loan defaults.

Persis Yu is the director of National Consumer Law Center's Student Loan Borrower Assistance Project.

Court Exhibit C

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

DealB%k 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.

In the United States Court of Federal Claims

No. 17-517
Filed: May 31, 2017

ALLTRAN EDUCATIONS, INC., Plaintiff, v. THE UNITED STATES, Defendant, and CBE GROUP, INC., PREMIERE CREDIT OF NORTH AMERICA, LLC, GC SERVICES LIMITED PARTNERSHIP, FINANCIAL MANAGEMENT SYSTEMS, INC., VALUE RECOVERY HOLDINGS, LLC, and WINDHAM PROFESSIONALS, INC., Intervenor-Defendants.	Preliminary Injunction, Rule of the United States Court of Federal Claims 65(d).

CONTINUATION OF PRELIMINARY INJUNCTION

On May 25, 2017, the court became aware of press reports indicating that James Runcie, Chief Operating Officer of the Office of Federal Student Aid, Department of Education, resigned rather than testify before the House Oversight Committee about approximately $3.86 billion in fiscal year 2016 that was erroneously paid under the Department of Education's student loan program and approximately $2.21 billion in Pell grants. Court Exhibit A.

In addition, the court became aware of another recent press report, based on a Consumer Financial Protection Bureau Report, concluding that, "[t]he value added by the private collection agencies working for the Department of Education is highly questionable[,] but unquestionably expensive. Student loan borrowers deserve to understand their options and be set up for success. Taxpayers deserve to get their money's worth." Court Exhibit B.

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companies did so either, because these reports belie numerous representations to the court about the "so-called" harm to the student debtors and the public fisc from the preliminary injunction pending in this case. Nor has the Department of Justice or Department of Education responded to the court's May 22, 2017 inquiry of Dr. Patrick Bradfield, Head of Contracting at the Office of Federal Student Aid, regarding whether the Department of Education could allow Progressive Financial, Inc., Collection Technology, Inc., Performant Recovery, Inc. and Van Ru Credit Corporation to continue servicing prior accounts until the Department of Education *completes* the proposed corrective action

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POLITICO

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Court Exhibit C

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

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No. 17-558
Filed: May 31, 2017

PROGRESSIVE FINANCIAL SERVICES, INC., Plaintiff, and COLLECTION TECHNOLOGY, INC., PERFORMANT RECOVERY, INC., and VAN RU CREDIT CORPORATION, Intervenor-Plaintiffs, v. THE UNITED STATES, Defendant, and PREMIERE CREDIT OF NORTH AMERICA, LLC, and GC SERVICES LIMITED PARTNERSHIP, Intervenor-Defendants.	Preliminary Injunction, Rule of the United States Court of Federal Claims 65(d).

CONTINUATION OF PRELIMINARY INJUNCTION

On May 25, 2017, the court became aware of press reports indicating that James Runcie, Chief Operating Officer of the Office of Federal Student Aid, Department of Education, resigned rather than testify before the House Oversight Committee about approximately $3.86 billion in fiscal year 2016 that was erroneously paid under the Department of Education's student loan program and approximately $2.21 billion in Pell grants. Court Exhibit A.

In addition, the court became aware of another recent press report, based on a Consumer Financial Protection Bureau Report, concluding that, "[t]he value added by the private collection agencies working for the Department of Education is highly questionable[,] but unquestionably

expensive. Student loan borrowers deserve to understand their options and be set up for success. Taxpayers deserve to get their money's worth." Court Exhibit B.

Neither of these relevant developments were brought to the attention of the court by the Department of Justice attorneys representing the Department of Education in the above captioned bid protest cases. Of course, none of the counsel of record for the private debt collection companies did so either, because these reports belie numerous representations to the court about the "so-called" harm to the student debtors and the public fisc from the preliminary injunction pending in this case. Nor has the Department of Justice or Department of Education responded to the court's May 22, 2017 inquiry of Dr. Patrick Bradfield, Head of Contracting at the Office of Federal Student Aid, regarding whether the Department of Education could allow Progressive Financial, Inc., Collection Technology, Inc., Performant Recovery, Inc. and Van Ru Credit Corporation to continue servicing prior accounts until the Department of Education *completes* the proposed corrective action

In addition, on May 26, 2017, the *New York Times* published an 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 C. If so, the bid protests before the court will become moot. For these reasons, the preliminary injunction will remain in place 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.").

IT IS SO ORDERED.

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

Court Exhibit A

POLITICO

James Runcie resigned on Tuesday night after defying Betsy DeVos' directive to testify before the oversight panel. | AP Photo

GOP threatens to subpoena Education Dept. official who quit

By **MICHAEL STRATFORD** | 05/25/2017 04:29 PM EDT

Republicans on the House Oversight Committee on Thursday threatened to subpoena the head of the Education Department's student financial aid office who resigned this week after a clash with Education Secretary Betsy DeVos.

James Runcie resigned on Tuesday night after defying DeVos' directive to testify before the oversight panel about erroneous payments in the student loan and Pell grant programs. In an internal memo about his resignation as chief operating officer of the Office of Federal Student Aid, Runcie alluded to a range of simmering management issues at the department.

“The issuing of a subpoena is still an open item,” Rep. Mark Meadows (R-N.C.), the chairman of the House oversight subcommittee holding Thursday’s hearing told reporters. “It’s important that we hear from Mr. Runcie and at least get some of his perspective on some of these issues.”

Meadows opened the hearing by saying that Runcie’s refusal to testify was a “slap in the face” to taxpayers, who he said paid Runcie more than $430,000 in bonuses since 2010.

House Oversight Chairman Jason Chaffetz (R-Utah) “still has questions that Mr. Runcie needs to answer,” said his spokeswoman, MJ Henshaw. “Hopefully that’s done voluntarily. If not, we will explore the option of a subpoena.”

Jay Hurt, the chief financial officer of the department’s Office of Federal Student Aid, testified in place of Runcie on Thursday. GOP lawmakers pressed Hurt about the increase in the agency’s erroneous student loan and Pell grant payments, which both rose last year.

The Education Department estimated that improper payments for student loans in fiscal year 2016 were $3.86 billion, up from $1.28 billion the previous year. Improper payments in the Pell grant program increased from $562 million to $2.21 billion over the same time period, according to the department. None of those met the department’s target benchmark for such figures.

Hurt said that the increase was due in part to a change in how the department calculated improper payments. He also warned that next year’s improper payment rate will again increase because of a months-long suspension of an online tool that helps borrowers avoid mistakes by automatically inputting their tax information.

The agency’s Inspector General, Kathleen Tighe, testified that while the revised calculations were “more realistic,” the department still needs to “intensify its efforts to identify and address internal controls and oversight to address the root causes” of improper payments.

GOP lawmakers on the panel said they were concerned that Runcie and Hurt continued to receive bonuses even as the improper payment rates for student aid programs increased in recent years.

Runcie's resignation memo suggests that political appointees at the department had been micromanaging his office, which he said had been stretched too thin. He said in an email to POLITICO that he resigned because of differences at the department between "operational leaders" like himself and political appointees.

Top Education Dept. official resigns after clash with DeVos
By **MICHAEL STRATFORD** and **KIMBERLY HEFLING**

But Meadows blasted that assertion on Thursday. He said that Runcie "may be upset that the secretary is micromanaging" but "anybody looking over your shoulder when you're losing $3.6 billion might be considered micromanaging. I call it proper oversight."

Republicans on the committee also said that Runcie's resignation on Tuesday night came after they had already threatened to subpoena him and gave him 20 days to respond to a request to appear at the hearing.

Meadows said he had previously been frustrated with attempts to get Runcie to testify before the committee.

"He has shown a willingness to not testify before Congress in the past. I'm not saying that that's where it is today," Meadows said. "I want to take him at his word that perhaps he had a personal conflict, but we were willing to accommodate. And what we found was is that he chose to resign instead of coming before Congress."

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Court Exhibit B

Department of Education must end the billion-dollar student loan collection boondoggle

By Persis Yu, opinion contributor - 05/22/17 10:20 AM EDT

In the last month, the contracting process for companies vying to be one of the U.S. Department of Education's debt collectors has spiraled into chaos.

Companies that didn't make the final cut or were fired for misleading student loan borrowers are suing the Department, and the judge overseeing the litigation has issued an order preventing the Department from assigning new accounts to debt collectors, leading to claims that collection on defaulted student loans has ground to a halt.

This chaos is not serving taxpayers or student loan borrowers. The Department of Education should end its sweetheart deal with collection agencies and find a better way to work with defaulted student loan borrowers.

According to collection industry insiders, the Department of Education contract is "[t]he most sought-after contract within this industry" because of the ever-increasing volume of student loan debt that is extremely difficult to discharge in bankruptcy. In 2014, the federal government paid over $1 billion to private collection agencies. But are student loan borrowers and taxpayers getting what they pay for?

New data from the Consumer Financial Protection Bureau (CFPB) shows that they are not.

The Higher Education Act provides student loan borrowers in default with two ways to get their loans back into good standing: consolidation and rehabilitation.

Just released CFPB data shows that the rehabilitation program, where borrowers make a series of payments in order to cure their defaulted loans, is not creating a sustainable path to student loan repayment. Over a third of borrowers who rehabilitate their loans will re-default within the first two years.

This is likely because, after completing their nine monthly rehabilitation payments, a substantial number of borrowers never successfully transition into one of the affordable income-driven repayment (IDR) plans.

In contrast, the vast majority (95 percent) of the reported student loan borrowers who chose to consolidate to get out of default (taking out a new loan to pay off of the old

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Moreover, a Treasury Department pilot project found that when properly counseled, more borrowers choose consolidation over rehabilitation. Yet 70 percent of borrowers whose student loans are collected by private collection agencies choose rehabilitation.

Why? One word: commissions.

The Department of Education typically pays collection agencies $1,710 if they can get a borrower to complete a rehabilitation plan but only $150 if they work with a borrower to consolidate the defaulted loans.

What's more, borrowers do not even need to work with a collection agency to consolidate their loans; they can go straight to studentloans.gov and do it.

Most of the work that is done by collection agencies can be automated or easily brought in-house. Just as borrowers can use studentloans.gov to consolidate their loans, that same tool could be used to establish rehabilitation plans.

The only functions that would be lost without collection agencies are calling and counseling borrowers. The value of making calls is questionable: Treasury found that of the 21,000 calls it initiated in its pilot project, less than 3 percent were ever even answered.

And collection agencies are doing a terrible job at counseling borrowers, as is evidenced by the wide disparity between the program collectors push borrowers into (rehabilitation) and the success of that program. And, in some cases, such as when borrowers dispute the amount owed, debt collectors simply transfer those loans back to the Department of Education.

Additionally, collection agencies routinely violate consumer protection laws. Debt collection calls generate more complaints to the CFPB than *any* other type of financial product or service. Recently, the Federal Trade Commission fined one of the Department of Education's debt collectors — GC Services — $700,000 for making harassing phone calls to student loan borrowers and threatening illegal actions.

The value added by the private collection agencies working for the Department of Education is highly questionable but unquestionably expensive. Student loan borrowers deserve to understand their options and be set up for success. Taxpayers deserve to get their money's worth.

The Department of Education should end this billion dollar boondoggle to enrich private collection agencies and instead set up a system where borrowers can get unbiased and accurate information to resolve their student loan defaults.

Persis Yu is the director of National Consumer Law Center's Student Loan Borrower Assistance Project.

Court Exhibit C

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

DealB%k 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.

In the United States Court of Federal Claims

No. 17-578
Filed: May 31, 2017

COLLECTION TECHNOLOGY, INC.,	*	Preliminary Injunction, Rule of the United States Court of Federal Claims 65(d).
Plaintiff,	*	
v.	*	
THE UNITED STATES,	*	
Defendant,	*	
and	*	
PREMIERE CREDIT OF NORTH AMERICA, LLC, and CBE GROUP, INC.,	*	
Intervenor-Defendants.	*	

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

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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.

In the United States Court of Federal Claims

No. 17-633
Filed: May 31, 2017

VAN RU CREDIT CORPORATION,	*	Preliminary Injunction, Rule of the United States Court of Federal Claims 65(d).
Plaintiff,	*	
v.	*	
THE UNITED STATES,	*	
Defendant,	*	

CONTINUATION OF PRELIMINARY INJUNCTION

On May 25, 2017, the court became aware of press reports indicating that James Runcie, Chief Operating Officer of the Office of Federal Student Aid, Department of Education, resigned rather than testify before the House Oversight Committee about approximately $3.86 billion in fiscal year 2016 that was erroneously paid under the Department of Education's student loan program and approximately $2.21 billion in Pell grants. Court Exhibit A.

In addition, the court became aware of another recent press report, based on a Consumer Financial Protection Bureau Report, concluding that, "[t]he value added by the private collection agencies working for the Department of Education is highly questionable[,] but unquestionably expensive. Student loan borrowers deserve to understand their options and be set up for success. Taxpayers deserve to get their money's worth." Court Exhibit B.

Neither of these relevant developments were brought to the attention of the court by the Department of Justice attorneys representing the Department of Education in the above captioned bid protest cases. Of course, none of the counsel of record for the private debt collection companies did so either, because these reports belie numerous representations to the court about the "so-called" harm to the student debtors and the public fisc from the preliminary injunction pending in this case. Nor has the Department of Justice or Department of Education responded to the court's May 22, 2017 inquiry of Dr. Patrick Bradfield, Head of Contracting at the Office of Federal Student Aid, regarding whether the Department of Education could allow Progressive Financial, Inc., Collection Technology, Inc., Performant Recovery, Inc. and Van Ru Credit Corporation to continue servicing prior accounts until the Department of Education *completes* the proposed corrective action

In addition, on May 26, 2017, the *New York Times* published an 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 C. If so, the bid protests before the court will become moot. For these reasons, the preliminary injunction will remain in place 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.").

IT IS SO ORDERED.

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

Court Exhibit A

POLITICO

James Runcie resigned on Tuesday night after defying Betsy DeVos' directive to testify before the oversight panel. | AP Photo

GOP threatens to subpoena Education Dept. official who quit

By **MICHAEL STRATFORD** | 05/25/2017 04:29 PM EDT

Republicans on the House Oversight Committee on Thursday threatened to subpoena the head of the Education Department's student financial aid office who resigned this week after a clash with Education Secretary Betsy DeVos.

James Runcie resigned on Tuesday night after defying DeVos' directive to testify before the oversight panel about erroneous payments in the student loan and Pell grant programs. In an internal memo about his resignation as chief operating officer of the Office of Federal Student Aid, Runcie alluded to a range of simmering management issues at the department.

“The issuing of a subpoena is still an open item,” Rep. Mark Meadows (R-N.C.), the chairman of the House oversight subcommittee holding Thursday’s hearing told reporters. “It’s important that we hear from Mr. Runcie and at least get some of his perspective on some of these issues.”

Meadows opened the hearing by saying that Runcie’s refusal to testify was a “slap in the face” to taxpayers, who he said paid Runcie more than $430,000 in bonuses since 2010.

House Oversight Chairman Jason Chaffetz (R-Utah) “still has questions that Mr. Runcie needs to answer,” said his spokeswoman, MJ Henshaw. “Hopefully that’s done voluntarily. If not, we will explore the option of a subpoena.”

Jay Hurt, the chief financial officer of the department’s Office of Federal Student Aid, testified in place of Runcie on Thursday. GOP lawmakers pressed Hurt about the increase in the agency’s erroneous student loan and Pell grant payments, which both rose last year.

The Education Department estimated that improper payments for student loans in fiscal year 2016 were $3.86 billion, up from $1.28 billion the previous year. Improper payments in the Pell grant program increased from $562 million to $2.21 billion over the same time period, according to the department. None of those met the department’s target benchmark for such figures.

Hurt said that the increase was due in part to a change in how the department calculated improper payments. He also warned that next year’s improper payment rate will again increase because of a months-long suspension of an online tool that helps borrowers avoid mistakes by automatically inputting their tax information.

The agency’s Inspector General, Kathleen Tighe, testified that while the revised calculations were “more realistic,” the department still needs to “intensify its efforts to identify and address internal controls and oversight to address the root causes” of improper payments.

GOP lawmakers on the panel said they were concerned that Runcie and Hurt continued to receive bonuses even as the improper payment rates for student aid programs increased in recent years.

Runcie's resignation memo suggests that political appointees at the department had been micromanaging his office, which he said had been stretched too thin. He said in an email to POLITICO that he resigned because of differences at the department between "operational leaders" like himself and political appointees.

Top Education Dept. official resigns after clash with DeVos
By **MICHAEL STRATFORD** and **KIMBERLY HEFLING**

But Meadows blasted that assertion on Thursday. He said that Runcie "may be upset that the secretary is micromanaging" but "anybody looking over your shoulder when you're losing $3.6 billion might be considered micromanaging. I call it proper oversight."

Republicans on the committee also said that Runcie's resignation on Tuesday night came after they had already threatened to subpoena him and gave him 20 days to respond to a request to appear at the hearing.

Meadows said he had previously been frustrated with attempts to get Runcie to testify before the committee.

"He has shown a willingness to not testify before Congress in the past. I'm not saying that that's where it is today," Meadows said. "I want to take him at his word that perhaps he had a personal conflict, but we were willing to accommodate. And what we found was is that he chose to resign instead of coming before Congress."

Democrats on the panel, meanwhile, steered clear of the Runcie resignation. They instead criticized DeVos' proposal to overhaul student loan servicing and slammed the department for not doing enough to guard against student debt relief scams.

Sens. Elizabeth Warren (D-Mass.) and Patty Murray (D-Wash.) said earlier this week that they're concerned that Runcie's resignation appeared to come after political interference from DeVos. Warren called on Congress "to get to the bottom of what's going on here."

Court Exhibit B

Department of Education must end the billion-dollar student loan collection boondoggle

By Persis Yu, opinion contributor - 05/22/17 10:20 AM EDT

In the last month, the contracting process for companies vying to be one of the U.S. Department of Education's debt collectors has spiraled into chaos.

Companies that didn't make the final cut or were fired for misleading student loan borrowers are suing the Department, and the judge overseeing the litigation has issued an order preventing the Department from assigning new accounts to debt collectors, leading to claims that collection on defaulted student loans has ground to a halt.

This chaos is not serving taxpayers or student loan borrowers. The Department of Education should end its sweetheart deal with collection agencies and find a better way to work with defaulted student loan borrowers.

According to collection industry insiders, the Department of Education contract is "[t]he most sought-after contract within this industry" because of the ever-increasing volume of student loan debt that is extremely difficult to discharge in bankruptcy. In 2014, the federal government paid over $1 billion to private collection agencies. But are student loan borrowers and taxpayers getting what they pay for?

New data from the Consumer Financial Protection Bureau (CFPB) shows that they are not.

The Higher Education Act provides student loan borrowers in default with two ways to get their loans back into good standing: consolidation and rehabilitation.

Just released CFPB data shows that the rehabilitation program, where borrowers make a series of payments in order to cure their defaulted loans, is not creating a sustainable path to student loan repayment. Over a third of borrowers who rehabilitate their loans will re-default within the first two years.

This is likely because, after completing their nine monthly rehabilitation payments, a substantial number of borrowers never successfully transition into one of the affordable income-driven repayment (IDR) plans.

In contrast, the vast majority (95 percent) of the reported student loan borrowers who chose to consolidate to get out of default (taking out a new loan to pay off of the old

one), are still in good standing a year out. When borrowers consolidate out of default, they are immediately placed into a repayment plan, usually an IDR plan.

Moreover, a Treasury Department pilot project found that when properly counseled, more borrowers choose consolidation over rehabilitation. Yet 70 percent of borrowers whose student loans are collected by private collection agencies choose rehabilitation.

Why? One word: commissions.

The Department of Education typically pays collection agencies $1,710 if they can get a borrower to complete a rehabilitation plan but only $150 if they work with a borrower to consolidate the defaulted loans.

What's more, borrowers do not even need to work with a collection agency to consolidate their loans; they can go straight to studentloans.gov and do it.

Most of the work that is done by collection agencies can be automated or easily brought in-house. Just as borrowers can use studentloans.gov to consolidate their loans, that same tool could be used to establish rehabilitation plans.

The only functions that would be lost without collection agencies are calling and counseling borrowers. The value of making calls is questionable: Treasury found that of the 21,000 calls it initiated in its pilot project, less than 3 percent were ever even answered.

And collection agencies are doing a terrible job at counseling borrowers, as is evidenced by the wide disparity between the program collectors push borrowers into (rehabilitation) and the success of that program. And, in some cases, such as when borrowers dispute the amount owed, debt collectors simply transfer those loans back to the Department of Education.

Additionally, collection agencies routinely violate consumer protection laws. Debt collection calls generate more complaints to the CFPB than *any* other type of financial product or service. Recently, the Federal Trade Commission fined one of the Department of Education's debt collectors — GC Services — $700,000 for making harassing phone calls to student loan borrowers and threatening illegal actions.

The value added by the private collection agencies working for the Department of Education is highly questionable but unquestionably expensive. Student loan borrowers deserve to understand their options and be set up for success. Taxpayers deserve to get their money's worth.

The Department of Education should end this billion dollar boondoggle to enrich private collection agencies and instead set up a system where borrowers can get unbiased and accurate information to resolve their student loan defaults.

Persis Yu is the director of National Consumer Law Center's Student Loan Borrower Assistance Project.

Court Exhibit C

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

DealB%k 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.

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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.

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CERTIFICATE OF SERVICE

I certify that I served a copy of this filing on counsel of record on August 14, 2017 by Electronic Means.

/s/ Daniel R. Forman

CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of Federal Rule of Appellate Procedure ("FRAP") 32(a)(7)(B) and Federal Circuit Rule 32(a): it contains 6,212 words, excluding the portions exempted by FRAP 32(f) and Federal Circuit Rule 32(b).

This Brief complies with the typeface requirement of FRAP 32(a)(5) and the type style requirement of FRAP 32(a)(6): it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman type style and 14 point size.

In preparing this certificate of compliance, I have relied upon the word count function of the word processing system that was used to prepare the motion.

/s/ Daniel R. Forman