

Congress of the United States

Washington, DC 20515

August 7, 2024

David L. Yowan
President & Chief Executive Officer
The Navient Corporation
123 Justison Street, Suite 300
Wilmington, DE 19801

Dear Mr. Yowan:

We write in response to your letter dated May 8, 2024, regarding the fraudulent, predatory student loans in Navient’s portfolio that you are liable for canceling under the Federal Trade Commission’s (FTC) Holder-In-Due-Course Rule (“Holder Rule”) and due to Navient’s misconduct.¹ In the early 2000s, Navient, then known as Sallie Mae, coordinated with fraudulent, for-profit colleges to trick borrowers likely to default into taking on student loan debt²—misconduct that is grounds for canceling those billions of dollars of debt.³ Although Navient has now admitted it is responsible for canceling “all loans that meet the Holder Rule criteria,”⁴ your response to our letter and new reporting from the New York Times heighten our concerns that the process Navient has set up for defrauded borrowers is flawed, convoluted, and opaque, raising questions about Navient’s adherence to regulatory requirements with respect to these fraudulent loans on which it continues to collect.⁵

The FTC’s Holder Rule allows borrowers to raise the same claims and defenses against a loan holder that they could raise against the original seller of the good.⁶ In your recent letter, Navient

¹ Letter from Senators Warren, Markey, Merkley, Smith, Blumenthal, Sanders, Durbin, Wyden to Navient, April 17, 2024, <https://www.warren.senate.gov/imo/media/doc/2024.04.16%20Letter%20to%20Navient%20on%20Cancelling%20Predatory%20Private%20Student%20Loans.pdf>.

² New York Times, “The \$1.7 Billion Student Loan Deal That Was Too Good to Be True,” Stacy Cowley, February 17, 2022, <https://www.nytimes.com/2022/02/17/business/navient-student-loan-settlement.html>.

³ Student Borrower Protection Center, “Delivering Distress: How Student Loan Companies Cheat Borrowers Out of Their Rights,” October 2023, p.53, <https://protectborrowers.org/wp-content/uploads/2023/10/Delivering-Distress-Report.pdf>.

⁴ Letter from Navient to Senators Warren, Markey, Merkley, Smith, Blumenthal, Sanders, Durbin, Wyden, and Welch, May 8, 2024, p. 3., https://www.warren.senate.gov/imo/media/doc/navient_response_letter_on_holder_rule_may_8_2024_signed.pdf.

⁵ New York Times, “There’s a Program to Cancel Private Student Debt. Most Don’t Know About It,” Stacy Cowley, May 30, 2024, <https://www.nytimes.com/2024/05/30/business/navient-private-student-loan-debt.html>; MarketWatch, “Navient distanced itself from a controversial student-loan portfolio. Meanwhile, borrowers can’t escape,” Jillian Berman, February 22, 2024, <https://www.marketwatch.com/story/navient-distanced-itself-from-a-controversial-student-loan-portfolio-meanwhile-borrowers-cant-escape-859a68ce>.

⁶ Federal Trade Commission, “Holder in Due Course Rule,” <https://www.ftc.gov/legal-library/browse/rules/holder-due-course-rule>. . The Holder Rule, a broad rule dating to 1975, and subsequently reaffirmed and updated numerous times by the Commission, allows borrowers to raise the same claims and defenses against a loan provider that they could raise against the original seller of the good or service.

claimed that it is “committed to canceling all loans that meet the Holder Rule criteria,” and is rolling out a new, “enhanced” process for borrowers to seek discharge under the Holder Rule.”⁷ However, Navient refused to provide much of the information we requested regarding these loans, including how many of its loans are governed by the FTC’s Holder Rule, how many borrowers have requested relief through its new application, and how many have been approved or denied.⁸

Navient’s evasive response, paired with recent reporting on Navient’s latest version of the misconduct application, suggests that Navient appears to be narrowly defining the criterion for eligibility. When Navient does reject applications, it provides insufficient information about those rejections, impairing borrowers’ abilities to exercise their rights. In addition, Navient’s response entirely ignores the fact that the company’s misconduct in originating predatory student loans in the first place has been deemed grounds for cancellation.⁹ Navient should cancel all of the fraudulent debts for borrowers who have been harmed by this misconduct, all of whom Navient is able to identify without an application. The remainder of this letter provides additional detail on these concerns.

Navient Appears to Be Improperly Rejecting Applications

First, we are concerned that Navient is narrowly defining and inaccurately determining which borrowers—and which types of loans—are eligible for cancellation under the Holder Rule.

- Navient’s definition of a qualifying for-profit school, as suggested by your response, is alarming. In response to our letter, Navient stated that “Sallie Mae ceased lending to underperforming, for-profit schools in 2008-2009.”¹⁰ Later, however, the company claims that it has “not originated loans to students attending any for-profit schools since 2014.”¹¹ The implication that none of the for-profit schools that borrowers attended between 2008 and 2014 were “underperforming” raises questions around which schools Navient considers applicable under their new misconduct application. This six-year gap in loans originated between 2008 and 2014 could represent thousands of borrowers, with millions of dollars of student loan debt, that are being unjustly denied relief.
- Additionally, in assessing the applicability of the Holder Rule, Navient stated that it takes into consideration “the type of loan involved.”¹² But the type of loan involved—whether

⁷ Letter from Navient to Senators Warren, Markey, Merkley, Smith, Blumenthal, Sanders, Durbin, Wyden, and Welch, May 8, 2024, p. 3,

https://www.warren.senate.gov/imo/media/doc/navient_response_letter_on_holder_rule_may_8_2024_signed.pdf.

⁸ Letter from Senators Warren, Markey, Merkley, Smith, Blumenthal, Sanders, Durbin, Wyden to Navient, April 17, 2024, pp. 6-8, <https://www.warren.senate.gov/imo/media/doc/2024.04.16%20Letter%20to%20Navient%20on%20Cancelling%20Predatory%20Private%20Student%20Loans.pdf>.

⁹ Navient Multi-State Settlement, “39 State Attorneys General Announce \$1.85 Billion Settlement with Student Loan Servicer Navient,” January 13, 2022, <https://www.navientagsettlement.com/Home/portalid/0>.

¹⁰ Letter from Navient to Senators Warren, Markey, Merkley, Smith, Blumenthal, Sanders, Durbin, Wyden, and Welch, May 8, 2024, p. 2,

https://www.warren.senate.gov/imo/media/doc/navient_response_letter_on_holder_rule_may_8_2024_signed.pdf.

¹¹ Letter from Navient to Senators Warren, Markey, Merkley, Smith, Blumenthal, Sanders, Durbin, Wyden, and Welch, May 8, 2024, p. 3,

https://www.warren.senate.gov/imo/media/doc/navient_response_letter_on_holder_rule_may_8_2024_signed.pdf.

¹² *Id.*

a Tuition Answer loan or any other direct-to-consumer loan, or a Navient loan that has been refinanced into another Navient product such as an Earnest loan¹³—should not have any relationship to eligibility under the Holder Rule. Borrowers who attended any for-profit school (or a non-profit school in tax status alone, as discussed below) where the school and Sallie Mae had a lending relationship should get relief, regardless of the specific loan product.¹⁴

- Finally, Navient’s response only discusses for-profit schools, whereas the FTC Act confers jurisdiction on the Commission over any entity “organized to carry on business for its own profit or that of its members.”¹⁵ Judicial decisions and FTC precedent recognize that “not all entities claiming tax-exempt status as nonprofits fall outside the Commission’s jurisdiction,” particularly where there is not “an adequate nexus between an organization’s activities and its alleged public purposes” and its net proceeds are not “devoted to recognized public, rather than private, interests.”¹⁶ Given this discrepancy, it is possible that Navient is denying relief to students who attended certain fraudulent, nominally not-for-profit colleges, when those schools are, indeed, governed by the FTC’s Holder Rule.

Since Navient provided our offices with virtually no information regarding how it is adjudicating school misconduct loan discharge applications, including on what basis it denies applications, or the criteria it uses to evaluate applications, it is impossible to determine whether the company is upholding its responsibilities under the Holder Rule. We are concerned that the company may be excluding certain schools and certain loans that qualify for relief from its discharge process.

Navient’s Rationales for Denials Are Opaque and Its Appeals Process is Insufficient

Second, Navient is providing insufficient information to borrowers in its denials. For example, according to the New York Times, one student who attended American InterContinental University—a school cited by the Federal Trade Commission for “deceptive recruiting tactics”¹⁷—had his federal loans canceled through the borrower defense program. But when he sought relief on the private loans he took out from Navient to attend American InterContinental through Navient’s school misconduct discharge application form this past spring, “he received a denial notice [that] said Navient ‘carefully considers a variety of factors in determining whether a private loan should be discharged’ but did not specify why his claim was rejected.”¹⁸

¹³ Earnest, “Refinance Student Loans,” <https://www.earnest.com/refinance-student-loans>.

¹⁴ Navient Multi-State Settlement, “Navient AG Multi-State Settlement,” January 13, 2022, <https://navientagsettlement.com/Home/portalid/0>.

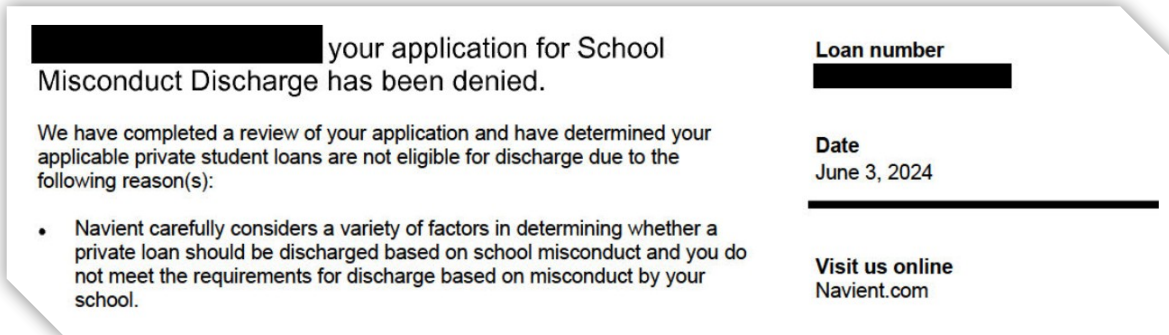
¹⁵ 15 U.S.C. § 44, *see*: definition of “corporation”.

¹⁶ Federal Register, “Federal Trade Commission, 16 CFR Parts 910 and 912,” May 7, 2024, p. 38357, <https://www.govinfo.gov/content/pkg/FR-2024-05-07/pdf/2024-09171.pdf>.

¹⁷ New York Times, “There’s a Program to Cancel Private Student Debt. Most Don’t Know About It,” Stacy Cowley, May 30, 2024, <https://www.nytimes.com/2024/05/30/business/navient-private-student-loan-debt.html>; Federal Trade Commission, “FTC Sends Nearly \$30 Million in Refunds to People Tricked into Enrolling by School Operator’s Lead Generators,” June 9, 2021, <https://www.ftc.gov/news-events/news/press-releases/2021/06/ftc-sends-nearly-30-million-refunds-people-tricked-enrolling-school-operators-lead-generators>.

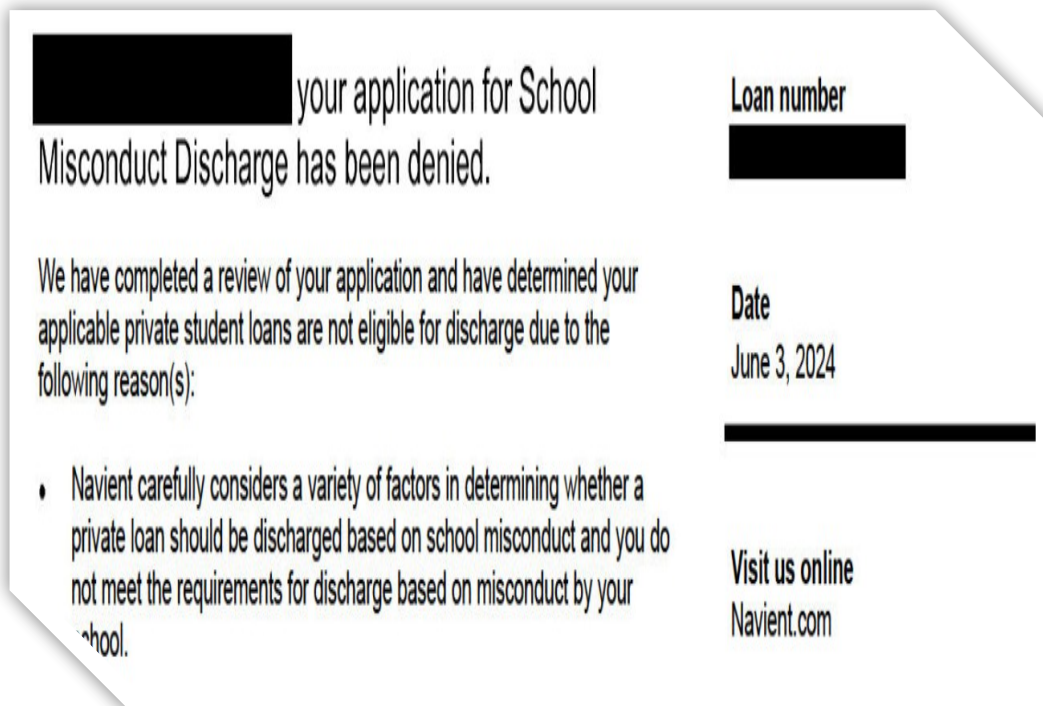
¹⁸ New York Times, “There’s a Program to Cancel Private Student Debt. Most Don’t Know About It,” Stacy Cowley, May 30, 2024, <https://www.nytimes.com/2024/05/30/business/navient-private-student-loan-debt.html>.

Image 1. Navient School Misconduct Denial Notice (to view the full notice, see Appendix A).



When borrowers dispute or appeal the rejection, Navient’s response, per screen shots obtained by Senator Warren’s office, merely states: “Because we review each application holistically, it is not possible to identify specific criteria that caused your application to be denied.”¹⁹

Image 2. Navient School Misconduct Discharge Denial Appeal Response (to view the full notice, see Appendix B).



The notice includes no options for further recourse.²⁰ Thus, it appears that Navient is denying borrowers who may be eligible for cancellation under the Holder Rule with insufficient explanation and options for recourse, making it difficult for borrowers to exercise their rights.

¹⁹ See Appendix B

²⁰ *Id.*

Navient's Misconduct Provides a Basis for Loan Cancellation

Finally, Navient's response to our letter entirely ignores the fact that, beyond the FTC's Holder Rule, the company's misconduct itself is a basis for cancellation of these loans. Navient "originated predatory subprime private loans to students attending for-profit schools and colleges with low graduation rates, even though it knew that a very high percentage of such borrowers would be unable to repay the loans. Navient allegedly made these risky subprime loans as 'an inducement to get schools to use Navient as a preferred lender' for highly-profitable federal and 'prime' private loans, without regard for borrowers and their families, many of whom were unknowingly ensnared in debts they could never repay."²¹

In 2022, 39 attorneys general (AG) reached a settlement with Navient, in which it agreed to cancel \$1.7 billion in private student loan debt for students defrauded by colleges like the defunct ITT Technical Institute and Corinthian Colleges and other major for-profit colleges.²² Notably, Navient's misconduct was a key basis for the lawsuit, with the attorneys general finding "widespread, unfair, deceptive and abusive student loan servicing practices and abuses in originating predatory student loans."²³ But following the AG suit, Navient provided relief to only 66,000 of the hundreds of thousands of borrowers who had obtained predatory loans.²⁴ Navient's refusal to cancel these additional loans on the basis of its own misconduct is consistent with the company's past behavior skirting its responsibility to cancel loans.

Conclusion and Questions

It is disappointing that Navient has refused to divulge basic information regarding the loans in its portfolio that are eligible for cancellation under the Holder Rule and due to Navient's misconduct—and disgraceful that you appear to be evading your responsibility to cancel them. As previously requested, Navient should conduct a group discharge for all debts involving fraudulent schools. Group discharge would be consistent with Navient's claim that its new, "'enhanced' process for borrowers to seek discharge under the Holder Rule," is "modeled... on the federal government's Defense to Repayment application,"²⁵ since the U.S. Department of Education has used both an individualized and a group discharge process to "wipe out more than \$18 billion of fraudulent and predatory debt from for-profit schools"²⁶ since June 2021.

²¹ Navient Multi-State Settlement, "39 State Attorneys General Announce \$1.85 Billion Settlement with Student Loan Servicer Navient," January 13, 2022, <https://navientagsettlement.com/Home/portalid/0>.

²² Pennsylvania Attorney General, "ATTORNEY GENERAL JOSH SHAPIRO ANNOUNCES \$1.85 BILLION LANDMARK SETTLEMENT WITH STUDENT LOAN SERVICER NAVIENT," January 13, 2022, <https://www.attorneygeneral.gov/taking-action/attorney-general-josh-shapiro-announces-1-85-billion-landmark-settlement-with-student-loan-servicer-navient>.

²³ *Id.*

²⁴ New York Times, "The \$1.7 Billion Student Loan Deal That Was Too Good to Be True," Stacy Cowley, February 17, 2022, <https://www.nytimes.com/2022/02/17/business/navient-student-loan-settlement.html>.

²⁵ Letter from Navient to Senators Warren, Markey, Merkley, Smith, Blumenthal, Sanders, Durbin, Wyden, and Welch, May 8, 2024, p. 3, https://www.warren.senate.gov/imo/media/doc/navient_response_letter_on_holder_rule_may_8_2024_signed.pdf.

²⁶ Student Borrower Protection Center, "Delivering Distress: How Student Loan Companies Cheat Borrowers Out of Their Rights," October 2023, p.53, <https://protectborrowers.org/wp-content/uploads/2023/10/Delivering-Distress-Report.pdf>.

It has been decades since Navient originated many of these loans, and defrauded borrowers are now repaying triple their original loan amount due to subprime interest rates²⁷ on loans that should have never been originated in the first place. Congress and regulators need accurate information on how many borrowers are eligible for relief to ensure that Navient is following the law with respect to these predatory loans.

Given your failure to provide answers to our questions, we again ask you to provide the following information by August 22, 2024:

1. Of the 2.7 million loans Navient is transferring to MOHELA, how many were granted to attend for-profit colleges? Specifically, how many fit into one of the following three categories, established in the AG settlement:²⁸
 - a. Any private education loan with an outstanding balance originated under an Opportunity or Recourse program, and disbursed after 2002;
 - b. Any private education loan with an outstanding balance disbursed by SLM Corporation lenders, subsidiaries, predecessors, successors, and/or its affiliates after 2002 to a borrower attending a for-profit school, including one owned or operated by, or under one of the trade names:
 - i. ACT, ABC Training Center of Maryland, TCI
 - ii. Alta College
 - iii. Apollo Group
 - iv. ATI Enterprises
 - v. Bridgepoint Education
 - vi. Career Education Corporation
 - vii. Center for Excellence in Higher Education
 - viii. Corinthian Colleges
 - ix. DeVry University
 - x. Education Corporation of America (Willis Stein & Partners III, L.P.)
 - xi. Education Management Corporation
 - xii. Globe University/MN School of Business
 - xiii. Graham Holdings
 - xiv. InfiLaw Holdings
 - xv. ITT Technical Institute
 - xvi. Lincoln Tech
 - xvii. Marinello School of Beauty
 - xviii. Premier Education Group;
 - c. Any non-traditional private education loan with an outstanding balance disbursed by SLM Corporation lenders, subsidiaries, predecessors, successors, and/or affiliates after 2002.²⁹

²⁷ New York Times, “There’s a Program to Cancel Private Student Debt. Most Don’t Know About It,” Stacy Cowley, May 30, 2024, <https://www.nytimes.com/2024/05/30/business/navient-private-student-loan-debt.html>.

²⁸ *Pennsylvania. v. Navient Corp.*, No. 3:17-cv-1814-RDM (M.D. Pa. June 19, 2019), consent judgment, <https://www.attorneygeneral.gov/wp-content/uploads/2022/01/2022-01-13-Navient-PA-Consent-Judgment.pdf>.

²⁹ “Non-traditional” means a private education loan disbursed (1) to a borrower with a FICO score below 670 at origination to attend a private for-profit educational institution; or (2) to a borrower with a FICO score below 640 at origination to attend a public or not-for-profit educational institution. *See*: Get Out of Debt Guy, “My Deep Dive Into What Navient’s Student Loan Settlement Agreement Actually Says,” Steve Rhode, January 24, 2022,

2. What is the total value of the private loans granted to attend for-profit colleges as described in question (1) in Navient’s portfolio?
3. How many borrowers has Navient alerted to its School Misconduct Discharge Application? On what basis did it select these borrowers?
4. How many borrowers have applied for relief using Navient’s School Misconduct Discharge Application? How many borrowers have been successful and received full cancellation of their loans from Navient? How many borrower applications have been denied?
5. How many borrowers have requested an application? How many borrowers have been denied receiving an application?
6. During a Navient Corporation Q4 2023 Earnings Call on January 31, 2024, Navient’s Executive Vice President and Chief Financial Officer stated, “in our private credit provision this quarter, we reserved \$35 million due to internal policy changes we’ve made to meet new regulatory expectations related to school misconduct discharges on certain legacy private loans. This increase reflects our assessment of the impact to the legacy portfolios, life of loan discharges from potential borrower claims.”³⁰ How did Navient arrive at this \$35 million figure?
7. What, if any, policies or procedures has Navient taken or does it plan to take before collecting on a subprime loan to determine that loan’s eligibility for cancellation under the FTC Holder Rule or other bases related to school misconduct and/or Navient’s lending practices per question (1)?

In addition to the aforementioned questions that you previously ignored, please provide the following information regarding your most recent correspondence with our offices by August 22, 2024:

1. In your response to our April 2024 letter, you said that Navient has “started to communicate to borrowers who may qualify.”³¹
 - a. How many borrowers have you notified?
 - b. How did you determine which borrowers to reach out to?
 - c. How are you “communicat[ing] with” borrowers?
 - d. Please provide a copy of these notifications.

<https://getoutofdebt.org/167246/my-deep-dive-into-what-navients-student-loan-settlement-agreement-actually-says>.

³⁰ Seeking Alpha, “Navient Corporation (NAVI) Q4 2023 Earnings Call Transcript,” January 31, 2024, <https://seekingalpha.com/article/4666471-navient-corporation-navi-q4-2023-earnings-call-transcript>.

³¹ Letter from Navient to Senators Warren, Markey, Merkley, Smith, Blumenthal, Sanders, Durbin, Wyden, and Welch, May 8, 2024, p. 3,

https://www.warren.senate.gov/imo/media/doc/navient_response_letter_on_holder_rule_may_8_2024_signed.pdf.

2. In your response to our April 2024 letter, you stated that in assessing the applicability of the Holder Rule, Navient takes into consideration “the type of loan involved.”³² Which “types” of loans does Navient not consider applicable under the Holder Rule and therefore grounds for denying a school misconduct claim?
 - a. Do you exclude any of the following loans and if so, what is your rationale for excluding them?
 - i. Tuition Answer and other direct-to-consumer loans
 - ii. Refinanced loans, such as “NaviRefi” loans, which are refinanced by Earnest, a Navient subsidiary.³³
 - iii. Loans originated for borrowers to attend not-for-profit colleges
3. As part of Navient’s new process for borrowers to seek discharge under the Holder Rule, Navient has begun providing some refunds to some defrauded borrowers who seek relief.³⁴ What does the refund amount that Navient issues in each case correlate to, and how is it calculated?
4. You indicated that “We are committed to addressing valid school misconduct claims.”³⁵
 - a. Will you also commit to address claims where Navient’s misconduct itself is a basis for cancellation of loans?
 - b. How many loans does Navient hold that meet this criterion?
 - i. How many of the borrowers holding these loans have applied for relief?
 - ii. How many have received relief?

Sincerely,



Elizabeth Warren
United States Senator



Madeleine Dean
Member of Congress

³² *Id.*

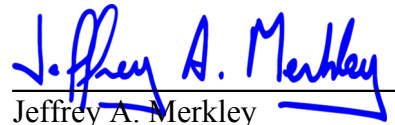
³³ Earnest, “What is the NaviRefi and Earnest Relationship? | General Questions,” <https://help.earnest.com/hc/en-us/articles/18531535926039-What-is-the-NaviRefi-and-Earnest-Relationship-General-Questions>.

³⁴ New York Times, “There’s a Program to Cancel Private Student Debt. Most Don’t Know About It,” Stacy Cowley, May 30, 2024, <https://www.nytimes.com/2024/05/30/business/navient-private-student-loan-debt.html>.

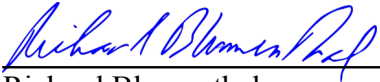
³⁵ Letter from Navient to Senators Warren, Markey, Merkley, Smith, Blumenthal, Sanders, Durbin, Wyden, and Welch, May 8, 2024, p. 3., https://www.warren.senate.gov/imo/media/doc/navient_response_letter_on_holder_rule_may_8_2024_signed.pdf.



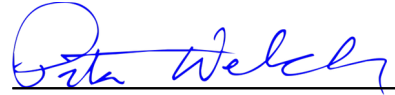
Richard J. Durbin
United States Senator



Jeffrey A. Merkley
United States Senator



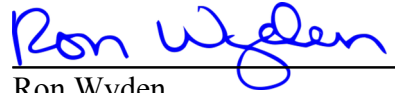
Richard Blumenthal
United States Senator



Peter Welch
United States Senator



Tina Smith
United States Senator



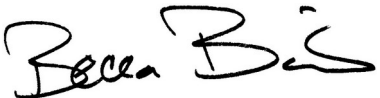
Ron Wyden
United States Senator



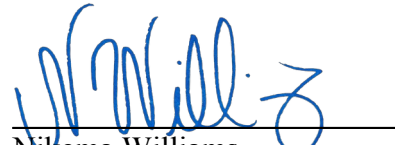
Bernard Sanders
United States Senator



Barbara Lee
Member of Congress



Becca Balint
Member of Congress



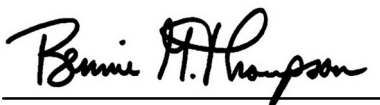
Nikema Williams
Member of Congress



Danny K. Davis
Member of Congress



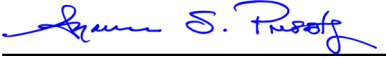
Delia C. Ramirez
Member of Congress



Bennie G. Thompson
Member of Congress



Dwight Evans
Member of Congress



Ayanna Pressley
Member of Congress



Ilhan Omar
Member of Congress



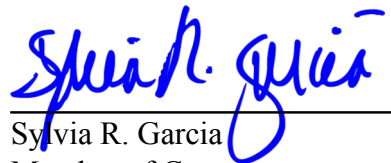
Val Hoyle
Member of Congress



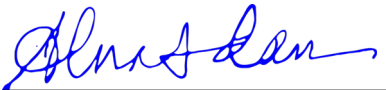
Greg Casar
Member of Congress



Jamie Raskin
Member of Congress



Sylvia R. Garcia
Member of Congress



Alma S. Adams, Ph.D.
Member of Congress



Summer L. Lee
Member of Congress



Katie Porter
Member of Congress



Pramila Jayapal
Member of Congress



Frederica S. Wilson
Member of Congress



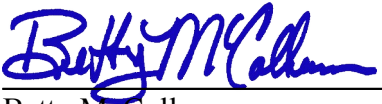
Andre Carson
Member of Congress



Rashida Tlaib
Member of Congress



Raúl M. Grijalva
Member of Congress



Betty McCollum
Member of Congress



Shri Thanedar
Member of Congress



James P. McGovern
Member of Congress



Tony Cárdenas
Member of Congress



Seth Moulton
Member of Congress