NEW FEDERAL STUDENT LOAN SERVICING CONTRACTS, NEW PROMISES

WILL IT MAKE A DIFFERENCE FOR BORROWERS?

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INTRODUCTION

In October 2023, millions of student loan borrowers started making payments on their loans for the first time in over three years. Their experiences with federal student loan debt are shaped, in part, by their interactions with the Department of Education's federal student loan servicers, the companies the government contracts with to collect federal student loan payments and manage borrowers' accounts. Soon, those companies will operate under new, dramatically overhauled contracts. This report explores the new contract and how it might change borrowers' experiences.

Managing the $1.6 trillion federal student debt portfolio is an enormous undertaking. The Department's Office of Federal Student Aid (FSA) relies on five contracted servicers to manage most borrower services, including:

- Communicating with borrowers about their responsibilities and options to manage their loans and access relief programs;
- Processing borrowers' applications for repayment plans and relief programs, and other paperwork;
- Calculating borrowers' monthly payments and sending out billing statements;
- Collecting and applying payments;
- Tracking and reporting borrowers' payments and loan status, as well as their qualifying time in various programs; and
- Discharging balances and sending refunds for approved borrowers in various relief programs.[1]

Unfortunately, many borrowers have had bad experiences with their loan servicers. The problems borrowers have experienced range from frustratingly long call wait times or disconnected calls to more serious errors, such as being provided misinformation that led borrowers to miss out on debt relief or to overpay.[2] These problems—big and small—are pervasive across the servicing companies. There have been numerous lawsuits and investigations against servicers for engaging in unfair conduct, misleading borrowers, and steering them into forbearances even when an income-driven repayment (IDR) plan or other statutory discharge would have been in the borrower's best interest.[3] Some of these lawsuits have resulted in billion-dollar settlements.

Recently, the Department acknowledged that during the first month of the return to repayment, its servicers committed numerous errors affecting the accounts of millions of student loan borrowers, including:

- Failing to properly convert borrower accounts to the new SAVE repayment plan;
- Sending incorrect monthly bills to borrowers;
- Sending billing statements to borrowers late or failing to send them at all;
- Failing to keep borrowers with pending Borrower Defense (BD) applications in forbearance; and
- Failing to send revised IDR disclosures after converting borrower accounts from the older REPAYE plan to the new SAVE plan.[4]

Currently, the Department is engaged in a massive overhaul of its servicing system. This initiative is called the Unified Servicing and Data Solution (USDS). USDS will go live in the spring of 2024.[5] Under USDS, the Department seeks to create a centralized loan servicing environment that will increase its ability to perform effective oversight and meet the needs of borrowers.[6] The Department has stated that USDS will be a long-term loan servicing solution that will improve the customer service experience for borrowers and better hold servicers accountable.[7] Additionally, over the longer term, the Department aims under USDS to move full account management, branding, and repayment from the servicers' websites to studentaid.gov.[8]

The Department has contracted with five companies to service student loans under USDS: Central Research, Inc. (CRI); EdFinancial Services; Maximus Education, LLC; Missouri Higher Education Loan Authority (MOHELA); and Nelnet.[9] All but one of these servicers are continuing, experienced federal student loan servicers. The outlier is CRI, which does not have experience as a federal student loan servicing contractor but has worked as a private collection agency (PCA) for the Department, collecting on defaulted federal student loans.[10]

This report discusses the ins and outs of the USDS contract and focuses on the contract provisions that are most relevant to student loan borrowers' rights and experiences, including:

1. How the Department will evaluate servicers' performance of key borrower-facing tasks;
2. How the Department will allocate new accounts across servicers;
3. Servicing of specialty accounts under the Public Service Loan Forgiveness (PSLF) program and the Total and Permanent Disability (TPD) discharge program;
4. Collaboration and co-branding between FSA and USDS servicers;
5. Servicers' waiver of sovereign or qualified immunity; and
6. Procedures to protect borrowers' accounts during and after servicing transfers.[11]

Additionally, this report identifies potential challenges to implementing the USDS contract provisions, including the Department's funding challenges and the long history of servicing errors and misconduct by the selected USDS servicers. Finally, we acknowledge that USDS represents an improved servicing environment for borrowers and offer recommendations to ensure a successful transition to the USDS servicing environment.

A BRIEF HISTORY OF STUDENT LOAN SERVICING

Federal student loan servicing is a complicated and unique business; it requires years to develop the expertise and build the technology to run and service federal student loans. As a result, the Department relies heavily on a very small pool of companies to carry on this gigantic task. Until 2009, the Department contracted with a single servicer, Affiliated Computer Services (ACS), to service all Department-held student loans.[12] Since then, the Department has contracted with several for-profit and non-profit companies to service the growing federal student loan portfolio.[13] These companies operate under the Title IV Additional Servicing (TIVAS) contract, which has been renewed consistently since 2009.[14] With the exception of those companies assigned specialized servicing tasks, the Department's servicers generally operate under the same contractual terms.[15]

While the servicers operate under the same contractual terms, they operate independently of each other, creating and managing their own websites, contact centers, and differing processing systems to manage borrowers' accounts and report data to FSA. As the Department has acknowledged, this has created a disjointed and frustrating repayment experience for borrowers.[16]

Scheduled to go in the spring of 2024, the Department's new USDS servicing contract is part of a major overhaul of the federal student loan system. Beginning in 2016, the Next Gen Initiative, as the Department terms it, spans three administrations and includes reforms that go beyond the loan-servicing contracts. These reforms include major improvements to and coordination of the federal student aid website, including the launching of the PSLF Help Tool and incorporating the requirements for the implementation of the FUTURE Act - which is not part of Next Gen but will allow the IRS to share data with the Department for purposes of administering the federal student loan program.[17]

Next Gen also includes the implementation of the Department's Business Process Operations (BPO). BPO involves the development of a consolidated, centralized call center where contracted vendors provide customer support to borrowers and perform back-office application processing work.[18] In June 2020, the Department contracted with five vendors to perform work as BPOs. The vendors operate under the Department's single FSA brand.[19]

Three of the contracted BPO vendors—Edfinancial, Maximus, and MOHELA—also work as federal loan servicers under a separate contract.[20] When USDS goes live this spring, the BPOs will be responsible for processing applications for statutory discharges under the Total and Permanent Disability (TPD) discharge and Public Service Loan Forgiveness (PSLF) programs.

USDS is the Department's fifth attempt to modernize the federal student loan servicing system after canceling four different solicitations for a new servicing environment since 2016. On paper, the USDS contract presents a better servicing environment for borrowers and offers significant oversight and financial disincentives to minimize servicer misconduct and errors. Additionally, the contract aligns with most of the servicing requirements set forth by Congress in the Consolidated Appropriations Act of 2023, including requirements that the Department utilize established common metrics to evaluate servicers' performance and incentivize servicers to provide more support to borrowers at risk of delinquency and default.[21] Payments under the contract are structured under 12 separate Contract Line Items (CLINs), with most of the money for borrower-focused services going towards the third line item (CLIN 3), which includes payments for standard loan servicing work. This work includes helping borrowers at risk of default and providing quality customer service to borrowers.

On paper, the USDS contract presents a better servicing environment for borrowers and offers significant oversight and financial disincentives to minimize servicer misconduct and errors.

On April 24, 2023, the Department awarded the new servicing contracts to five companies to service federal student loans under the USDS solicitation: Central Research, Inc. (CRI); EdFinancial Services; Maximus Education, LLC; MOHELA; and Nelnet.[22]

OVERVIEW OF THE USDS CONTRACT

Under USDS, the Department aims to move towards a new loan servicing environment centered around enhancing services to borrowers and holding servicers accountable. The contract also contains enhanced cybersecurity and IT requirements, which are not discussed in this report. Instead, this report focuses on the contract provisions that are most relevant to borrowers and advocates, including new co-branding requirements, specialty servicing, servicer performance metrics, new account allocations, contractor immunity, and account transfers.

A. Co-branding with FSA – USDS requires greater collaboration and co-branding between FSA and the contracted loan servicers.

Currently, federal student loan servicers often highlight their own company name and brand in communications with borrowers. This has pros and cons: Borrowers are able to associate their repayment directly with a specific loan servicer and point fingers at that servicer in the event of misconduct or servicer litigation. Additionally, servicers have more autonomy regarding how they interact with borrowers. However, as the Department has noted, this has resulted in inaccuracies and inconsistent messaging across servicers, which has created confusion and increased the risk of harm to borrowers.[23]

USDS servicers will be required to use the Department's FSA branding and trademarks on all borrower-facing communications and websites. The Department believes that co-branding with servicers will help transition borrowers from associating repayment only with their servicer and instead direct them to FSA's studentaid.gov for student loan information and resources.[24] The Department ultimately aims to fully transition borrower account management, branding, and repayment away from USDS servicers' individual websites to studentaid.gov. However, studentaid.gov will not be able to perform these functions until at least 2026.[25]

Until studentaid.gov becomes fully functional, the USDS contract requires all servicers to maintain seamless co-branded websites and mobile applications that will allow borrowers to log in with their FSA ID to access information about their student loan account from both their servicer's website and studentaid.gov. The servicer's website will direct the borrower to studentaid.gov for all informational materials regarding repayment options and discharges. The servicer's website will continue to accept payments from borrowers and display loan-level information, and maintain IDR and PSLF payment counters. Additionally, the servicer's website will allow borrowers to electronically complete many self-service tasks, including applying for loan discharge and forgiveness, and viewing available repayment options, and requesting and canceling forbearances.

Some servicing functions, including the IDR application, loan consolidation requests, and loan simulator, will remain hosted on studentaid.gov. The servicers' websites will include links connecting borrowers directly to studentaid.gov to complete these tasks.

The image on the following page illustrates the Department's vision for gradually transitioning all repayment and account management from servicers' websites to studentaid.gov.[26]

Current Environment	Single Sign On (SSO) (Year 1 of USDS Go-Live)	StudentAid.gov Repayment Portal (Target State)
Borrowers must use their servicer's website to manage repayment, including making payments and changing repayment plans. Certain tools and forms are available on StudentAid.gov.	Borrowers still use their servicer's website to manage repayment. **More tools and forms are available on StudentAid.gov**.	Servicer websites are decommissioned; **all repayment functionality is in one place, StudentAid.gov**.
Borrowers use **different login credentials** for their servicer website and StudentAid.gov.	Borrowers **use the FSA ID** to log into both their servicer website and StudentAid.gov.	Borrowers **use the FSA ID** to log into StudentAid.gov; servicers no longer have separate websites.
Servicers use their own branding on websites and communications.	**Servicers co-brand with** FSA on their websites and communications.	**Borrowers only see the FSA brand.**
Servicers' websites each have **different formatting and tools**.	Servicers must have some **common website formatting and tools**.	Borrowers all **access tools on one website**, StudentAid.gov.
Borrowers **must set up new login credentials and payment information** when their account is transferred to another servicer.	Borrowers **use the FSA ID but must set up new payment information** when their account is transferred to another servicer.	Borrowers experience **no changes to login or payment information** when their account is transferred to another servicer.

Source: U.S. Dep't of Educ., Next Gen FSA, Fact Sheet

B. Key Borrower-Focused Provisions of the USDS Contract – USDS alters specialty servicing, customer service evaluation, and new account allocation.

1. Specialty Servicing – When USDS is fully implemented, all servicers will maintain borrower accounts participating in Public Service Loan Forgiveness (PSLF) and the Total and Permanent Disability (TPD) discharge programs.

Under the legacy TIVAS servicing contract, specialty programs like PSLF, Total and Permanent Disability (TPD) discharge, and TEACH grants are assigned to specialty servicers, and all borrowers who apply for those programs are transferred to the specialty servicers.[27] For example, Nelnet is the sole specialty servicer for processing TPD discharge applications, and MOHELA is the sole specialty servicer for PSLF borrowers. The specialty servicers do not have to compete for the borrowers assigned to them who are in these programs. As a result, poor-performing servicers continue to receive new accounts and are not adequately held accountable for their performance.[28]

Under USDS, all new borrower accounts will be assigned across servicers at FSA's discretion based on FSA's performance metrics, including those accounts that historically would have been assigned to specialty servicers.[29] However, specialty accounts that have already been assigned to the current specialty servicers (MOHELA & NELNET) before the transition to USDS will remain with those servicers without transfer.[30]

Though all servicers will serve borrowers enrolled in specialty programs, the Department's Business Process Operation (BPO) vendors will handle the aspects of servicing specific to the specialty program for enrolled borrowers.[31] Using tools provided by the Department on a separate system, the BPOs—acting on behalf of the Department under its FSA brand—will perform PSLF employment adjudication and forgiveness determination. They will also process TPD applications and make discharge determinations. The Department will monitor the BPO performance, including by providing a team of on-site FSA monitors at the BPOs' workstations.

Throughout this process, the USDS servicer will continue to maintain the borrower's account on their servicing system and perform all other servicing functions for borrowers enrolled in the specialty programs. For example, even while a borrower is receiving specialty PSLF servicing from a BPO vendor, their assigned servicer will do things such as sending bills and receiving payments, applying forbearances to borrowers' accounts, reporting loan information to NSLDS, and updating borrowers' accounts based on the information received from the BPO vendors, including updated PSLF eligible payment determination. USDS will utilize automation to streamline PSLF qualifying payment determination instead of relying on manual processing by the BPOs.

2. Evaluating Servicer Performance – Under USDS, the Department will reduce payments to servicers if they fail to meet minimum customer service standards for quality loan servicing.

The USDS contract incorporates and amends the performance, transparency, and accountability tools from earlier servicing contracts. In October 2021, the Department amended the now-expiring legacy contracts to add Service Level Agreement (SLA) metrics.[32] The SLA metrics measure servicers' performance on key borrower-facing tasks and set minimum standards for those tasks. By introducing the SLA metrics, the Department quantified the minimum standards for providing quality loan servicing to borrowers. If the servicer fails to meet the standards, there are financial consequences.

Within the USDS contract, SLA metrics measure servicers' performance of the following borrower-facing tasks:

- **Customer Satisfaction** – measures borrowers' satisfaction with the servicer through a survey; servicers must maintain a customer satisfaction rating of 70% or better. Historically, most servicers are in the 63-73% range.[33]
- **Abandon Rate** – measures the percentage of borrowers' calls that are dropped before the servicer answers the call. This deals with cases where a borrower is put on hold but drops the call due to the wait time before being transferred to a live person. Servicers are required to have a call abandon rate no higher than 4%.[34] Before the payment pause, abandon rates averaged 7% and were much higher for some servicers.[35]
- **Interaction Quality Monitoring** – measures how well the servicer answers borrowers' questions and how the servicer helps borrowers navigate their payment options.[36] Servicers must score 95% or better. FSA will measure this by sampling recorded calls.[37]
- **Borrower Request Processing Accuracy** – measures the servicers' ability to process borrowers' requests accurately the first time they call. Servicers must score 95% or better.[38]
- **Timeliness** – measures how timely servicers are completing key servicing tasks, including but not limited to loan transfers, processing borrowers' applications for income-driven repayment plans and statutory discharges, and loan consolidation. Servicers must score 95% or better.[39]

USDS servicers will be monitored monthly by FSA or its vendors to ensure that servicers meet the minimum SLA standards. FSA or its vendors will listen to recorded calls between borrowers and servicers representatives. Those calls will then be evaluated to determine servicers' performance. However, the USDS contract does not provide the assessment methodology the Department will use to measure servicers' performance–which will be important in how effective the assessment is and how high the standards are. The contract does provide a more quantifiable method for measuring timeliness, including the maximum processing time for various servicing tasks, as indicated below.

SLA Metric	Metric Threshold
Timeliness	95% or higher
IDR Applications (Process)	15 business days
Discharge (Predetermination)	30 business days
Discharge (Process)	30 business days
Auto Closed School (Discharge)	30 business days
Borrower Defense (Discharge)	15 business days
TPD - VA (Discharge)	15 business days
IDR (Discharge)	15 business days
PSLF (Discharge)	15 business days
Deferment (Process)	10 business days
Forbearance (Process)	10 business days
Loan Consolidations (LVC)	10 business days
Loan Transfers (Loading)	10 business days
Control Mail (Draft Responses)	4 business days
FSA Feedback (Resolve)	60 business days

Failing to meet minimum SLA standards will result in a financial penalty to the servicer. Servicers could face a penalty of up to a 20% reduction in monthly invoices for contact centers and back-office processing work if they fail to meet multiple SLA metrics.[40] Invoices for contact centers and back-office processing work account for about 60% of a servicer's total revenue under USDS.[41] The contract permits servicers to file a dispute claim with the contracting officer if they disagree with the reduction in their monthly invoices for failure to meet the SLA minimum standards.[42]

This approach of reducing servicers' monthly payments for failing to meet minimum SLA standards differs from the approach under the current publicly available version of the legacy servicing contract. The current version does not reduce monthly payments but instead reduces the servicer's future borrower account allocation if the servicer fails to meet the SLA minimum standards for quality loan servicing.[43]

In contrast, under the USDS contract, servicers will not lose new accounts as a result of failing to meet the SLA minimum standards but will instead lose pay. But, under USDS, the Department nonetheless has discretion to unilaterally shift assigned accounts among USDS servicers when doing so would be in the best interest of FSA or borrowers.[44] Additionally, though the contract does not explicitly mention this, the Department can reallocate accounts from servicers for recurring non-compliance with FSA guidelines, contractual requirements, and applicable laws, including failure to sufficiently inform borrowers of available repayment options.[45] And as discussed in section 3 below, USDS continues to use performance-related standards for new account allocations, but a different type of standard.

In addition to the financial disincentive for failing to meet the SLA minimum standards, the contract bars certain payments to servicers if they fail to service borrowers' accounts in accordance with applicable statutory requirements, regulatory requirements, or in accordance with the contract terms.[46] The contract notes, for example, that the Department will not pay servicers for inaccurate payment counting, incorrect interest calculations and determination, incorrect balances, improper notices to borrowers, and failure to abide by due diligence requirements.[47] Where payments have been issued prior to the discovery of the non-compliance servicing conduct, the Department can request reimbursement.[48] As with the SLA metrics, the contract does not explain the process or assessment methodology the Department will use to identify accounts that have been improperly serviced.

3. Allocation of New Borrower Accounts –USDS provides performance incentives for servicers to help borrowers avoid delinquency and default.

The USDS contract aims to reduce the number of borrowers that fall into delinquency and default. Generally speaking, borrowers in default bear the heaviest weight of the student debt crisis. Among other consequences of default, they face damaged credit, wage garnishment, tax refund offset, and offset of federal benefits, including Social Security payments.[49] Thankfully, due to the Department's Fresh Start initiative, defaulted borrowers are temporarily protected from these collection actions.[50]

The USDS contract evaluates servicers' performance and allocates new borrowers' accounts across servicers based on how successful they are at keeping borrowers out of delinquency and default.[51] Servicers are scored quarterly in comparison to one another and ranked based on the loan status of borrowers in their portfolio, with servicers that have larger portions of their accounts delinquent or severely delinquent falling to the bottom.[52] The scoring methodology breaks down as follows:

- **Percentage of borrowers "current" or 1-30 calendar days delinquent** – 60% of the total score
- **Percentage of borrowers 31-90 calendar days delinquent** – 25% of the total score
- **Percentage of borrowers 91-360 calendar days delinquent** – 15% of the total score.

Additionally, recognizing that borrowers have different risk profiles that make some more likely to default, 50% of the weighted score in each of the three borrower segments will be based on the percentage of "at-risk" borrowers in that segment. The contract does not define "at-risk" borrowers but notes that the Department will develop a model to identify borrowers it considers "at risk" of delinquency or default.[53] The Department will provide additional financial incentives to servicers who successfully keep at-risk borrowers current.[54]

The amount paid will be scaled to the servicer's success rate in keeping at-risk borrowers current. The highest-ranked servicer will receive the greatest share of the new borrower allocation for the next quarter.

C. Contractors' Immunity – USDS contractually bars servicers from asserting sovereign immunity or qualified immunity to avoid litigation challenging servicing misconduct.

Even though the USDS servicing contract will result in unprecedented collaboration and co-branding between the Department and the contracted loan servicers, the contract makes it clear that the servicers are not an extension of the government. In particular, the USDS contract explicitly prohibits servicers from asserting sovereign immunity or qualified immunity to avoid litigation or liability that arises from work performed under the contract. Sovereign immunity protects the federal government and states from lawsuits unless they waive or consent to it.[55] Qualified immunity protects a government official from lawsuits, except in cases where the individual violated a clearly established right.[56]

This waiver of immunity is a welcome and timely clarification because the Department's state-affiliated servicers have raised sovereign immunity based on their state relationship to avoid liability in past litigation challenging servicing misconduct.[57] More recently, the U.S. Supreme Court concluded that MOHELA, one of the contracted USDS servicers, is an instrumentality of the state of Missouri for purposes of standing;[58] although the standing analysis is distinct, the decision could nonetheless have influenced sovereign immunity claims and analysis. Servicers have also argued in the past that they are entitled to immunity based on their relationship with the federal government as federal loan servicers.[59]

However, the servicer's waiver of immunity under USDS does not include waiver of derivative sovereign immunity, which protects a government contractor from suits where the contractor follows both the government's explicit instructions and federal law.[60] Under the USDS contract, servicers may continue to raise derivative sovereign immunity as a defense.

D. Account Transfers – USDS requires enhanced monitoring and oversight of servicing transfers.

Over the history of the federal student loan system, millions of borrowers have been harmed as a result of errors that occurred when their accounts were transferred from one servicer to another. In recognition of this, the USDS contract establishes new requirements intended to reduce account transfer errors.

Transfers between servicers can happen for various reasons, but the biggest volumes of account transfers have occurred when servicers have exited the federal student loan system. The first massive transfer of borrowers' accounts occurred between 2012 and 2013 when the Department terminated the ACS servicing contract. The transfer resulted in massive account errors, with over 5 million servicing errors affecting the accounts of more than 1.3 million borrowers.[61] Between 2021 and 2022, at least four of the Department's servicers have exited the federal student loan system, requiring the Department to transfer more than 9 million borrowers' accounts.[62] In 2022, the CFPB reviewed the transfer of these accounts, finding thousands of account errors, including but not limited to inaccurate monthly payment information, inaccurate IDR payment counting, and inaccurate interest capitalization or paid ahead status.[63] Additionally, since the CFPB report, more accounts have been transferred from servicers exiting the system.[64]

The USDS contract aims to reduce account transfer errors by mandating what the servicer sending the account and the servicer receiving the account must do.

First, it requires the sending servicer to provide a complete payment history to the receiving servicer, including:

- a complete financial transaction history for all payments, adjustments, status, and repayment plan changes that were made to the loan while it was being serviced at the sending servicer, including transaction amount, effective date, allocations to principal/interest, and posting dates;
- the number of qualifying months for each IDR plan individually, including the number of qualifying months on Economic Hardship Deferment;
- a complete borrower correspondence history for all of the phone conversations and email/letter correspondence between the sending servicer and the borrower; and
- a Borrower History and Activity Report (BHAR) for every borrower transferred to another servicer. The BHAR includes all historical servicing information about the borrower's loan for the period the loan was serviced by the transferring servicer.[65]

Second, the USDS contract requires the receiving servicer to validate that every incoming account borrower/loan has a complete servicing history at the time of transfer. Additionally, for the first year after a loan is transferred, the receiving servicer is required to provide the Department with a monthly report with specific information related to each transferred account that will help assess if the servicer has successfully onboarded the borrower. For example, the report will include the number of borrowers within each transfer who have logged onto their account and the number that have made payments since being transferred.

IMPLEMENTATION CHALLENGES

While some provisions of USDS will be straightforward to implement and assess, there are a number of provisions that are murkier, and how FSA implements and oversees them will significantly impact their effectiveness in ensuring quality loan servicing. For example, though the SLA metrics have the potential to improve the quality of loan servicing for borrowers, the contract does not explain or provide a methodology on how FSA will evaluate, measure, and score servicers' performance. Likewise, the contract does not define the categories of at-risk borrowers who will benefit from the new at-risk borrower incentive.

Additionally, there are several existing challenges discussed below that have the potential to prevent the full and effective implementation of the USDS contract and weaken the quality of loan servicing for borrowers. How the Department resolves these implementation challenges and enforces the performance and accountability features of USDS will determine what servicing will look like for federal student loan borrowers.

A. The Department's current funding crisis may hinder USDS implementation.

Federal student loan servicing is costly, and borrowers only get—at best—the services the government has paid for or is willing to pay for. Currently, FSA has an exceptionally demanding agenda to implement, including managing the difficult return to repayment, implementing the new SAVE plan and multiple other significant regulatory changes, implementing the FUTURE Act, implementing the income-driven repayment account adjustment, in addition to implementing the USDS contract. However, the Department has not received its requested increase in funding from Congress to support these major undertakings and to pay servicers to implement all of its priorities for Fiscal Year 2024.[66]

To keep the system running and return borrowers to repayment during a budget crisis, the Department has made cuts to servicing that have negatively impacted the quality of loan servicing borrowers are receiving. For example, the Department has already modified the current legacy contract to reduce call center hours and increase the acceptable call abandonment rate from 4% to 8%.[67] These cuts come at a critical time when millions of borrowers are attempting to contact their servicers for the first time in three years–or ever–as they return to repayment or begin payment for the first time. As a result, borrowers returning to repayment have experienced extremely long call wait times when contacting their loan servicers.[68]

If FSA remains flat-funded into 2024, it is likely that the Department will make similar modifications to the USDS contract before it is implemented. As it has already done under the current contract, the Department could reduce the service levels to borrowers and loosen the strong accountability features that USDS promises. These modifications could be temporary, pending adequate funding to FSA, but the longer the modifications that reduce service levels to borrowers are in place, the worse borrowers will fare.

B. Pre-existing issues with the servicers – The history of servicing misconduct by the selected USDS servicers may pose a challenge to realizing USDS's promises.

USDS presents a promising servicing environment that could provide quality loan servicing to borrowers. However, the quality of servicing will ultimately depend on the performance of the servicers themselves, and, unfortunately, four of the five servicers that have been awarded USDS contracts are legacy servicers with a history of borrower complaints, lawsuits, and findings of servicing problems.[69] As noted earlier, there have been multiple significant legal settlements related to servicing practices that harm borrowers.[70] In September 2022, the CFPB found that the Department's servicers, including the four awarded USDS contractors, made significant errors in handling borrowers' accounts, including inaccurate counting of borrowers' payments towards IDR forgiveness, sending incorrect account statements to more than 500,000 borrowers, and incorrectly placing borrowers into transfer related forbearances during the payment pause.[71] Last October, the CFPB's Education Loan Ombudsman released a report documenting similar problems and errors during the return to repayment, including long call wait times, giving borrowers incorrect information about repayment plans, loan cancellation, and discharge programs, maintaining incomplete and inaccurate payment histories, and incorrectly calculating monthly payments.[72]

Likewise, the Department has also found that its servicers committed numerous widespread servicing errors during the return to repayment, potentially harming borrowers, including incorrect monthly bill calculations, failure to send billing statements to borrowers either on time or at all, failure to keep eligible borrowers in forbearance, failure to send IDR repayment plan disclosure statements, and failure to properly convert borrower accounts from REPAYE into the new SAVE repayment plan.[73]

Given this history, there is reason to be concerned that the selected servicers may not be able to properly implement the changes that USDS requires. Similarly, the existing servicers' past poor track record of averting delinquencies and defaults creates concern that despite the use of loan status performance rankings to allocate new accounts, the competition among servicers might not be at a high performance level. Nevertheless, the financial disincentive under USDS— particularly the risk of losing revenue for failing to meet the SLA metrics, if effectively monitored and not watered down—offers some meaningful protection against systemic servicing problems.

CONCLUSION: RECOMMENDATIONS FOR ENSURING A SUCCESSFUL USDS SERVICING ENVIRONMENT

The USDS contract is a significant step forward in obtaining uniformity among loan servicers, providing quality loan servicing to borrowers, and laying the groundwork to bring federal student loan servicing in-house under the Department's FSA umbrella in the near future. The contract incorporates many of the recommendations borrower advocates have been calling for to make servicing work for borrowers, including:

- enhanced performance standards that evaluate servicers based on the quality of service they provide to borrowers;
- structuring servicers' compensation and new account allocation around how effective they are at helping borrowers avoid delinquency and default;
- reforming specialty loan servicing;
- creating a single entry point through studentaid.gov where borrowers can associate repayment with the Department rather than their loan servicers;
- incorporating strong accountability features that penalize servicers for failing to perform in accordance with the contract;
- clarifying that servicers are not entitled to sovereign or qualified immunity; and
- reforming servicing transfers to reduce the risk of harm to borrowers.[74]

Overall, USDS represents a significant improvement from the expiring legacy TIVAS contract. However, as noted earlier, FSA's funding crisis poses a significant threat to the full implementation of USDS. Without adequate funding for FSA, the Department cannot fully implement USDS as envisioned in the contract and will likely face challenges holding servicers accountable to the enhanced customer service requirements and accountability features of the contract. Congress must approve the Department's request for additional funding to FSA to ensure a realistic shot of effective implementation of USDS.

> **Congress must approve the Department's request for additional funding to FSA to ensure a realistic shot of effective implementation of USDS.**

The impact of USDS on student loan borrowers will depend on how the Department conducts servicing oversight, enforces the accountability features of the contract, and embraces transparency regarding servicers' performance and future changes to the contract. To ensure that USDS becomes a success for both the Department and borrowers, we make the following key recommendations.

A. The Department must conduct rigorous oversight and penalize servicers who do not perform in accordance with the new contract.

The Department must conduct rigorous oversight to identify non-compliance by the loan servicers and hold them accountable during and after the transition to the USDS servicing environment. The Department has taken a positive step in recently introducing its framework for servicer accountability, which includes stringent monitoring of loan servicers through direct monitoring by FSA staff, partnering with state and federal regulators, leveraging borrower complaints, and protecting borrowers harmed by servicing misconduct.[75] The framework, along with the USDS contract performance and accountability features, provides the Department with much greater latitude to hold servicers accountable, including by withholding payments or reallocating accounts away from non-performing servicers.

As the Department transitions to USDS, it should hold firm to its commitment to borrowers under the framework, while also making full use of its authority to enforce servicer accountability terms under the USDS contract. Importantly, the Department must keep its promise to make whole any borrowers harmed by servicing misconduct.

B. The Department must ensure that the common borrower-facing information and applications that borrowers will be driven to under USDS are accurate, functional, accessible, and consumer-tested.

Historically, servicer's websites, and sometimes the Department's website, do not have accurate, functional, or accessible information for borrowers struggling to understand their repayment options or apply for available debt relief or loan discharge programs. Moving into

USDS, the Department must ensure that studentaid.gov and servicers' co-branded servicing websites have the most accurate and functionally accessible information on loan repayment and discharge options. The Department must ensure that studentaid.gov and servicers' co-branded websites are consumer-tested and accessible to all borrowers in plain language.

C. The Department should commit to transparency by finally making change requests and contract modifications available to the public, and by resuming publication of data on servicer performance and new account allocations.

Particularly in light of the long record of servicer misconduct, it is critical that the Department commit to transparency and make public information regarding the changing terms of the USDS contract, servicers’ performance under the contract, and the Department's actions in response. This is not a situation in which the public can or should simply trust the Department that the USDS contract is being satisfied and that servicers are performing well.

First, the Department should be transparent when it makes changes to the servicing contract. Though the original contracts are public, subsequent modifications and change requests that alter the contract or instruct servicers on how to implement key provisions of the contract are not. Even after the modifications are made and change requests implemented, the Department seldom makes those documents public. Advocates, borrowers, and other members of the public must navigate the burdensome FOIA process to obtain change requests and modifications to the servicing contracts. To promote transparency and accountability, the Department should automatically make change requests and contract modifications public unless when doing so is prohibited by law or contract or would harm the interest of borrowers.

Second, the Department should resume its earlier practice of publishing servicer performance data and account allocations on studentaid.gov. Since the introduction of the new SLA metrics in October 2021, the Department has yet to publish any servicer performance or new allocation data. As a result, there is no publicly available record documenting servicers' performance or allocation of accounts across servicers since 2021. Without publicly available data, the public cannot evaluate the selected USDS servicers' readiness for the enhanced borrower-focused servicing environment that USDS promises. And once USDS is implemented, performance and allocation data will be critical to evaluating whether USDS is being properly implemented and if it is having its desired effect of improving performance. Therefore, the Department should provide timely public information about servicer performance, including both detailed information about the current performance metrics and other investigations and evaluations of servicer performance and new data under the USDS contract going forward.

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32. U.S. Dep't of Educ., U.S. Department of Education Increases Servicer Performance, Transparency, and Accountability Before Loan Payments Restart (Oct. 2021).

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34. Contract for USDS Servicers, Attachment J, Service Level Methodology Performance Metrics (Attachment 8), *available at* https://sam.gov/opp/d7115b89a4e14a92a5eecbaebd664fa5/view.

35. *Id.*

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56. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

57. *Pele v. Pennsylvania Higher Educ. Assistance Agency*, 628 F. App'x 870, 871 (4th Cir. 2015)(rejecting PHEAA's assertion that it is an arm of the Commonwealth of Pennsylvania entitled to sovereign immunity under the Eleventh Amendment); *U.S. ex rel. Oberg v. Pennsylvania Higher Educ. Assistance Agency*, 804 F.3d 646, 650 (4th Cir. 2015) (rejecting PHEAA's sovereign immunity argument).

58. *Biden v. Nebraska*, 143 S. Ct. 2355, 2358 (2023), "(MOHELA is, by law and function, an instrumentality of Missouri: Labeled an 'instrumentality' by the State, it was

created by the State, is supervised by the State, and serves a public function.)" Additionally, the State of Missouri has recognized that MOHELA qualifies as a "public entity" entitled to sovereign immunity from tort claims under state law. *See* Brief of Respondents., 2023 WL 1481073.

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