

RON WYDEN
OREGON

RANKING MEMBER OF COMMITTEE ON
FINANCE

221 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5244

United States Senate
WASHINGTON, DC 20510-3703

COMMITTEES:
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COMMITTEE ON BUDGET
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November 1, 2018

The Honorable Betsy DeVos
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary DeVos:

I am writing you today to raise concerns and request additional information regarding the steps the U.S. Department of Education (“the Department”) is taking to allow private student data to be accessed and monetized by private, for-profit financial institutions through the recently proposed Payment Vehicle Account Program Pilot. The Payment Vehicle Account Program Pilot would enable private financial institutions to partner with the Office of Federal Student Aid (FSA) to serve as the delivery mechanism for students’ financial aid (via an electronic payment vehicle, such as a debit card), and allow the private financial institutions to collect and own students’ transaction data. By granting private financial institutions sole ownership of transaction data, this pilot poses serious questions regarding privacy and security for students and their data.

As part of this pilot, the electronic payment method will generate data each time a student uses his or her financial aid, including to pay bills, purchase goods, or withdraw cash. All of this transaction data will become the property of the private financial institution issuing the student’s financial aid which creates the potential for abuse and misuse of thousands of students’ sensitive data.

While the Federal Register notice addresses privacy and data security, it leaves many questions unaddressed. The notice states, “Pilot Implementer(s) may not use participating Customer data for marketing purposes without explicit permission from the Customer,” and goes on to say “any use of Payment Vehicle Account information for marketing purposes may be authorized only with explicit opt-in.” However, the Department does not define what actions under the term “marketing” are expressly prohibited without students’ consent or how the Department will enforce or monitor these prohibitions. And though the pilot requires students to explicitly opt-in to the use of their personal information for marketing purposes, I am concerned that students will be aggressively encouraged to share their data with companies that put profits above students.

Students should not have to sacrifice their privacy as a condition of accessing their federal financial aid in a timely and efficient manner. Given the significant concerns and questions raised by the Federal Register notice, we request answers to the following questions by November 16, 2018.

911 NE 11TH AVENUE
SUITE 630
PORTLAND, OR 97232
(503) 326-7525

405 EAST 8TH AVE
SUITE 2020
EUGENE, OR 97401
(541) 431-0229

SAC ANNEX BUILDING
105 FIR ST
SUITE 201
LA GRANDE, OR 97850
(541) 962-7691

U.S. COURTHOUSE
310 WEST 6TH ST
ROOM 118
MEDFORD, OR 97501
(541) 858-5122

THE JAMISON BUILDING
131 NW HAWTHORNE AVE
SUITE 107
BEND, OR 97701
(541) 330-9142

707 13TH ST. SE
SUITE 285
SALEM, OR 97301
(503) 589-4555

[HTTP://WYDEN.SENATE.GOV](http://wyden.senate.gov)

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1. Does the Department view it as permissible for private financial institutions to monetize students' transaction data? If so, why is it in the best interest of students and taxpayers for FSA to devolve the authority and responsibility for disbursing student aid to these private entities?
2. Does the Department intend to either require or allow private financial institutions with which FSA enters into "Cooperative Agreements" to place limits on how or where students may spend their federal financial aid?
3. Aside from requiring student consent and the transmission of aggregate data only, what other limits will be placed on the marketing use of data collected under this pilot?
4. What limits will be placed on use of data collected for non-marketing purposes?
5. How does the Department plan to monitor and enforce limitations on marketing based on students' personal and related transaction information or data throughout the pilot period?
6. The Federal Register notice states that pilot implementers must ensure high-level data security protocols including the encryption of data in transit and at rest. While encryption is important, it is by no means a silver bullet. Has the Department considered requiring the private financial institutions to implement the National Institute of Standards and Technology (NIST) Cybersecurity Framework? If not, please explain why.
7. What oversight protocols and practices are in place for the Department to monitor financial services institutions' compliance with data security measures?
8. What method and language will be used to inform students of their ability to "opt-in" to or "opt-out" of particular uses of their data? Does the Department intend to monitor the frequency or language of opt-in notifications?
9. How will the Department ensure that students participating in the pilot understand that their ability to use federal student aid is not contingent upon "opting in" to permit the sharing of their transaction data?

Thank you for your attention to this important matter. I look forward to working with you to ensure students need not sacrifice the privacy or security of their personal data as a condition of accessing federal student aid.

Sincerely,



Ron Wyden