

To Whom It May Concern:

The Ohio Treasurer of State (“Treasurer”) may be eligible for an initial allocation of 100,000 student loan accounts to become a Not-For-Profit Direct Loan Servicer, as permitted in the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (“Eligible NFP Servicer”).

Pursuant to Ohio Revised Code § 3366.05 (eff. 9-10-12) Kohne O’Neill requests, on behalf of Treasurer, that your organization (“Prime Contractor”) respond to the attached Request for Information regarding entering into an arrangement with Treasurer for the servicing of federal direct student loan accounts should Treasurer be designated as an Eligible NFP Servicer. If Treasurer does not receive an Eligible NFP Servicer designation by the US Department of Education (“ED”) any agreement entered into with the Prime Contractor terminates without any liability accruing to either party.

Please respond to this request by no later than 5:00 PM EST on Friday, August 10, 2012.

Sincerely,

Donald J. Kohne

## Request for Information

**Purpose:** Pursuant to Ohio Revised Code (“ORC”) § 3366.05 the Ohio Treasurer of State (“Treasurer”) seeks information from Prime Contractors to provide servicing of federal direct student loans for a Not-For-Profit Direct Loan Servicer, as permitted in the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (“Eligible NFP Servicer”).

**Contacts:** Questions regarding this Request for Information (“RFI”) should be directed to Kohne O’Neill:

Donald Kohne  
8160 Corporate Park Drive, Suite 100  
Cincinnati, OH 45242  
Phone: (513) 354-2920  
Cell: (513) 295-6600  
E-mail: dkohne@kohneoneill.com

**Questions:** Please give your responses to the following questions in an electronic format to Donald Kohne by 5:00 PM EST on Friday, August 10, 2012.

1. Provide the form of contract that you would propose between your organization, the Prime Contractor, and the Eligible NFP Servicer (“Agreement”). Discuss the term of the Agreement and whether or not future loan allocations would be governed by the Agreement.
2. Present the proposed financial terms of the Agreement. For example, a description of up front payments in exchange for assigning the initial allocation of accounts to the Prime Contractor and subsequent payments for the continued presence of such accounts on the system of the Prime Contractor.
3. Do you have a contract with the United States Department of Education (“ED”) to serve as a Prime Contractor?
4. Discuss the current status and future plans of the Prime Contractor in attracting other Eligible NFP Servicers to their servicing platform.
5. Discuss the ability of the Prime Contractor to make jobs relating to direct loan servicing available in the State of Ohio. How would the financial terms of the response to Question 2 change if certain jobs were located in Ohio?
6. Please discuss any timing issues with the selection of a Prime Contractor by Treasurer, including obtaining the approval of the ED.

7. Will you assist Treasurer in obtaining reimbursement for expenses associated with qualifying as an Eligible NFP Servicer?
8. Please provide audited financial statements for the past two years.
9. Provide the name, mailing address, e-mail address and telephone number of the Prime Contractor's primary point of contact for the Agreement resulting from this RFI. Provide the same information for two (2) additional contact persons who have the authority to respond to the Treasurer, and make decisions regarding performance of the Agreement.
10. Discuss all substantive operating issues raised by recent audits, particularly regarding those services described in this RFI.
11. Disclose the details of any existing alleged, significant, prior, or ongoing Agreement failures or Agreement breaches of this kind, any civil or criminal litigation or investigation pending which involves the Prime Contractor or in which the Prime Contractor has been judged guilty or liable.
12. Disclose the details of any existing or potential conflict of interest relative to the performance of the Agreement resulting from this RFI. Any such relationship that might be perceived or represented as a conflict should be disclosed.
13. Provide the location(s) of the Prime Contractor's offices that would provide services under this Agreement.
14. Can the Prime Contractor certify it has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of response in connection with this proposal submitted to the Treasurer?
15. Discuss the Prime Contractor's ability to comply with the ED requirements.
16. The Prime Contractor agrees that the cost of developing its responses to the RFI is the Prime Contractor's sole responsibility.
17. Is Prime Contractor willing to agree to standard agreement language in Exhibit A? If not, please list exceptions in Exhibit B.

**EXHIBIT A – OHIO TREASURER OF STATE (“TREASURER”) STANDARD AGREEMENT LANGUAGE**

**The following language is representative of terms required in Treasurer contracts.**

**APPLICABLE LAW; VENUE:** This Agreement and the rights and obligations of the Treasurer and Prime Contractor shall be governed by the laws of Ohio. Venue for all actions shall occur in the appropriate court in Franklin County, Ohio.

**ASSIGNMENT:** Neither this Agreement nor any portion thereof shall be assigned or transferred to a successor without prior written approval from the Treasurer. In addition, during the term of this Agreement, all successors and assigns shall be bound by the terms of this Agreement.

**AUDITOR OF STATE FINDINGS:** The Prime Contractor affirmatively represents and warrants to Treasurer that it is not subject to a finding for recovery under Ohio Revised Code (“ORC”) § 9.24 or that it has taken the appropriate remedial steps required under ORC § 9.24 or otherwise qualifies under that section. The Prime Contractor agrees that if this representation and warranty is deemed to be false, the Prime Contractor shall be void ab initio as between the parties to this Agreement, and any funds paid by the State hereunder shall be immediately repaid to the State, or any action for recovery of the funds may be immediately commenced by the State for recovery of said funds.

**BUSINESS EXPENSES:** Unless expressed otherwise in this Agreement, the Prime Contractor shall be responsible for and assume all office and business expenses that are incurred as a result of the performance of this Agreement.

**PRIME CONTRACTOR’S REPRESENTATIONS AND WARRANTIES – COMPLIANCE WITH LAWS:**

**Prime Contractor, in the execution of its duties and obligations under this Agreement, agrees to comply with all applicable federal, state and local laws, rules and regulations.**

1. **DRUG FREE WORKPLACE:** Prime Contractor agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

2. **NONDISCRIMINATION OF EMPLOYMENT:** Pursuant to ORC § 125.111, Prime Contractor agrees that Prime Contractor, any subcontractor, and any person acting on behalf of Prime Contractor or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the services. Prime Contractor further agrees that Prime Contractor, any subcontractor, and any person acting on behalf of Prime Contractor or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of

the services on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry.

3. **AFFIRMATIVE ACTION PROGRAM:** Prime Contractor represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons pursuant to ORC § 125.111(B) and has filed an Affirmative Action Program Verification form with the Equal Employment Opportunity and Affirmative Action Unit of the Department of Administrative Services.

4. **CONFLICTS OF INTEREST:** During the term of the Agreement, no personnel of Prime Contractor who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any of the services shall voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of the Agreement. Any such person who acquires an incompatible or conflicting personal interest on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the Treasurer in writing. Thereafter, he or she shall not perform any services under this Agreement, unless the Treasurer shall determine in his sole discretion that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

5. **ETHICS COMPLIANCE:** Prime Contractor represents, warrants and certifies that it and its employees engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws. Prime Contractor further represents, warrants, and certifies that neither Prime Contractor nor any of its employees will do any act that is inconsistent with such laws.

6. **QUALIFICATIONS TO DO BUSINESS:** Prime Contractor affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and that all are current. If at any time during the term of this Agreement, Prime Contractor, for any reason, becomes disqualified from conducting business in the State of Ohio, Prime Contractor will immediately notify the Treasurer in writing and will immediately cease performance of the services under the Agreement.

7. **CAMPAIGN CONTRIBUTIONS:** Prime Contractor hereby certifies that neither Prime Contractor nor any of Prime Contractor's partners, officers, directors or shareholders, nor the spouse of any such person, has made contributions in excess of the limitations specified in ORC § 3517.13.

8. **DEBARMENT:** Prime Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC §§ 153.02 or 125.25.

9. **DECLARATION REGARDING MATERIAL ASSISTANCE/ NON-ASSISTANCE TO A TERRORIST ORGANIZATION:** Prime Contractor affirmatively represents and warrants to Treasurer that it is currently in compliance with ORC §§ 2909.33 and 2909.34, which

prohibit governmental entities from doing business with or providing funding to entities with terrorist ties. By signature on the Agreement, Prime Contractor affirms that it qualifies under ORC § 2909.33 as an entity that must submit a Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization, Prime Contractor has submitted such declaration certifying that it has not and does not provide assistance to an organization on the terrorist exclusion list maintained on the Ohio Homeland Security Website.

**FORCE MAJEURE:** The Prime Contractor shall not be responsible or liable for any failure or delay in the performance of its obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; epidemics; riots; interruptions; loss or malfunctions of utilities; transportation; computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority; governmental actions; or inability to obtain labor, material, equipment or transportation.

Nothing in the preceding paragraph shall relieve the Prime Contractor of its duty to maintain a business continuity plan which ensures that the flow of services shall continue without interruption, or in Prime Contractor's obligation to perform any duty upon resuming business.

**INCORPORATION:** This Agreement incorporates the Request for Information ("RFI"), the Response to the RFI, and all attachments and exhibits. However, if a conflict should arise between the Agreement and the RFI, the Response to the RFI and any attachment or exhibit, the Agreement shall govern. This Agreement is the only Agreement that is valid between the parties. No oral representations shall be honored. All amendments to this Agreement shall be in writing.

**INSPECTION AND AUDIT:** The Prime Contractor agrees that the Treasurer, its officers, agents, employees, and auditors may visit the Prime Contractor at any time to observe and inspect the operations and internal controls of the Prime Contractor in providing service under this Agreement. The Prime Contractor agrees to make space available for and cooperate with the Treasurer, its officers, agents, employees, and auditors.

**LIABILITY:**

1. Prime Contractor agrees to indemnify and to hold the State of Ohio harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to Prime Contractor's own actions or omissions or those of its trustees, officers, employees, subcontractors, suppliers, third party agents or joint venturers while acting under this Agreement. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime or employment matters and any claims involving patents, copyrights and trademarks.

2. Prime Contractor shall bear all costs associated with defending the Treasurer and the State of Ohio against any claims.

3. In no event shall either party be liable to the other party for indirect, consequential, incidental, special or punitive damages, or lost profits.

**MISCELLANEOUS:**

1. **WAIVER:** A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

2. **NOTICES:** Except to the extent expressly provided otherwise herein, all notices, consents and communications required hereunder (each, a "Notice") shall be in writing and shall be deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email. Notices shall be deemed given upon receipt thereof, and shall be sent to the addresses first set forth above. Notwithstanding the foregoing, notices sent by fax or email shall be effectively given only upon acknowledgement of receipt by the receiving party. Any party may change its address for receipt of Notices upon notice to the other party. If delivery cannot be made at any address designated for Notices, a Notice shall be deemed given on the date on which delivery at such address is attempted.

3. **CONFLICT:** In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.

4. **HEADINGS:** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

5. **SEVERABILITY:** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

6. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.

7. **EXECUTION:** This Agreement is not binding upon the Treasurer unless executed in full, and is effective as of the last date of signature by the Treasurer.

8. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

9. **FACSIMILE SIGNATURES:** Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be

entitled to rely upon a facsimile signature of any other party delivered in such a manner as if such signature were an original.

**NO THIRD-PARTY BENEFICIARIES:** In performing hereunder, the Prime Contractor is acting solely on behalf of the Treasurer and no contractual or service relationship shall be deemed to be established hereby between the Treasurer and any other person.

**PUBLICITY:** Any use or reference to this Agreement by the Prime Contractor to promote, solicit, or disseminate information regarding the scope of this Agreement is prohibited, unless otherwise permitted in writing by the Treasurer.

**RECORD KEEPING:** During the performance of this Agreement and for a period of three years after its completion, Prime Contractor shall maintain auditable records pertaining to this Agreement and shall make such records available to Treasurer as Treasurer may reasonably require.

**TERMINATION:** This Agreement may be terminated without cause and without penalty by the Treasurer by giving written notice to the Prime Contractor. Such termination shall not affect any outstanding transactions or any obligation under this Agreement which is then outstanding and the provisions of this Agreement shall continue to apply to each transaction and each obligation until all the obligations of each party to the other under this Agreement have been fully performed.

**EXHIBIT B – EXCEPTIONS TO STANDARD AGREEMENT LANGUAGE**