

August 10, 2022

The Honorable Miguel Cardona
Secretary
United States Department of Education
400 Maryland Ave. SW
Washington, DC 20202

Dear Secretary Cardona:

The undersigned advocates for student borrowers, including over 100 law professors and attorneys from non-profit and private practice organizations, urge you to take immediate action to implement the entirety of the Stop Student Debt Relief Scams Act of 2019 (STOP Act),¹ particularly the provisions that provide for authorized third-party access to borrowers' federal student aid data by their advocates.

As background, when Congress passed the STOP Act, it intended to crack down on debt relief scammers and impose criminal penalties on third parties which obtained data held by the Department of Education (ED) about a borrower by using that borrower's log-in and password to access ED websites. Congress intended that before those criminal penalties took effect, ED would create a third-party data-access system so that legal aid and private attorneys could obtain their clients' student loan information without needing to log into each borrower's studentaid.gov account.² The STOP Act stated that it would take effect on June 20, 2021 (180 days after December 22, 2020).³

As of this date, over a year later, ED has failed to create a third-party access system for student loan borrower advocates. Yet the STOP Act's criminal penalties are in force.⁴ This may be a violation of the Administrative Procedure Act, which prohibits agencies from unlawfully withholding or unreasonably delaying agency action.⁵

ED must urgently implement the third-party data access system, particularly in light of the major recent ED actions such as the Public Service Loan Forgiveness waiver, Income-Driven Repayment account adjustment, and the impending restart of loan repayment for millions of

¹ Pub. L. No. 116-251; 134 Stat. 1129.

² 20 USC §§ 1092b(e); § 1092d(7).

³ Public Law 116-251, Sec. 6.

⁴ 20 USC § 1097(e) ("Any person who knowingly uses an access device, as defined in section 1029(e)(1) of title 18, United States Code, issued to another person or obtained by fraud or false statement to access Department information technology systems for purposes of obtaining commercial advantage or private financial gain, or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or of any State, shall be fined not more than \$20,000, imprisoned for not more than 5 years, or both.")

⁵ 5 U.S.C. § 706(1).

Americans. Even before these major changes, in any given year, scores of legal aid and private attorneys have historically counseled thousands of federal student loan borrowers about their rights to an administrative discharge, income driven repayment plans, loan default recovery options, and many other student loan issues. These recent changes will substantially increase the number of borrowers seeking legal advice to understand the changes and legal assistance to ensure that their loans have been properly adjusted so that they can enter repayment in the best possible financial position.

Advocates, particularly legal aid and some private attorneys, rely on borrowers' National Student Loan Database System (NSLDS) data—a data system created by ED—to discern how many loans a borrower has and when each was originated, what school(s) a borrower attended, what types of federal loans he or she borrowed, who their loan servicer is, the repayment status of each loan, and other critical information needed to assist borrowers. Much of this information is only available from the NSLDS.

Downloading a borrower's NSLDS data in a useful and legible format requires several steps. One must have an internet connection, remember one's login information, login to Federal Student Aid, navigate to one's personal "dashboard," find and click on the "download aid data" link, download the file as a "txt" file, and then convert it to a word file so it is shareable. These steps are nearly impossible on a smartphone and thus, practically speaking, they must be done on a computer. This information is necessary for an advocate to provide competent and accurate legal advice to a student loan borrower, particularly about a borrower's eligibility for an administrative discharge, income driven repayment plans, or loan default recovery options. A lawyer may have to decline to help a client if they cannot access the borrower's NSLDS data.

The most vulnerable borrowers, such as those who are elderly, disabled, low-income, or experiencing housing insecurity, job loss, and other traumas, do not have internet access and/or cannot navigate an interactive website like studentaid.gov. Older borrowers in particular may not have the experience necessary to access, download, and share their NSLDS data with attorneys or to check it consistently for necessary updates. Borrowers with certain disabilities may physically be unable to operate a computer. Similarly, borrowers who do not have technology such as a computer or broadband access are not able to download this information on their own and share it with an attorney.

A complete and comprehensive overview of a borrower's federal aid history cannot reasonably be obtained through other means. Servicers often do not have the borrower's complete loan history—especially when there has been a prior default or loan transfer, or when the borrower has loans held by multiple lenders. Moreover, servicers can take weeks, and sometimes months, to respond to requests for information. When working with vulnerable borrowers, time is of the essence. Some borrowers are facing imminent garnishments and offsets; others must take time off of work or arrange childcare to meet with their attorney. Delays in obtaining information can

mean costly delays in service, or in the worst case, may mean that the borrowers are unable to receive assistance at all.

Lawyers have an ethical duty to abide by the law. For almost a year, they have not had a reasonable method to access these vulnerable borrowers' NSLDS data without jeopardizing their ethical duty because ED has languished on its statutory mandate.

ED must do right by borrowers and their advocates and follow the required administrative procedure by immediately implementing the STOP Act's mandatory third-party access provision. We urge you to do so, particularly before the payment moratorium ends in August 2022.

Thank you for your consideration.

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Center for Responsible Lending
Community Service Society of New York, Education Debt Consumer Assistance Program
DC37 Municipal Employees Legal Services
Financial Protection Law Center
Housing and Economic Rights Advocates
National Association of Consumer Advocates
National Association of Consumer Bankruptcy Attorneys
North Carolina Consumer Bankruptcy Rights Coalition
NC Coalition for Responsible Lending
NC Coalition for Responsible Lending (on behalf of its low-income constituents)
National Consumer Law Center (on behalf of its low-income clients)
Public Law Center
Student Borrower Protection Center

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