



October 11, 2022

VIA ELECTRONIC MAIL

Scott Giles
Chief Executive Officer
Higher Education Loan Authority of the State of Missouri
633 Spirit Drive
Chesterfield, MO 63005

RE: UNLAWFUL MISTREATMENT OF STUDENT LOAN BORROWERS IN VIOLATION OF STATE CONSUMER PROTECTION LAW

Dear Mr. Giles,

We write on behalf of the Student Borrower Protection Center (SBPC) and the American Federation of Teachers, AFL-CIO (AFT) to demand your company, the Higher Education Loan Authority of the State of Missouri (MOHELA), immediately cease interfering with student loan borrowers' right to loan cancellation (Student Debt Relief) announced by the U.S. Department of Education on August 24, 2022.

In the month since the Biden Administration first announced executive action to remedy the legacy of saddling students with devastating levels of student loan debt for pursuing higher education and decades of mismanagement and abuse by student loan companies, your company has sought a preliminary injunction in court seeking to deny student loan borrowers this right. This is particularly alarming given the central role that your company has played in the myriad scandals that have plagued the student loan servicing industry and the allegations made in this lawsuit that MOHELA would be harmed due to increased "compliance costs" and "imminent loss of revenue in its role as a servicer" resulting from this debt relief.¹ **In effect, MOHELA has taken the legal position that it can veto federal student loan policy in order to protect its profits.**

¹ Nebraska et al. v. Joseph R. Biden, no. 4:22-cv-01040 (E.D. Mo. Sep. 29, 2022); https://storage.courtlistener.com/recap/gov.uscourts.moed.198213/gov.uscourts.moed.198213.1.0_1.pdf

This letter serves as a written notice and demand that MOHELA immediately correct and remedy the practices described below as required by state and federal law², including the immediate withdrawal of the baseless lawsuit filed in Missouri federal court.

In addition to all other remedial steps required under federal and state law, should MOHELA continue to prosecute this baseless lawsuit, we expect MOHELA to immediately and independently compensate all California borrowers directly harmed by its illegal, substantial interference with these borrowers' right to debt relief. **We estimate that the cost of this injury to California student loan borrowers totals more than \$55 billion.**

Should MOHELA fail to halt its illegal student loan servicing practices, SBPC is prepared to pursue all available legal remedies to protect all student loan borrowers injured by MOHELA's unlawful conduct, including the pursuit of treble actual damages under California law. **We estimate that the total liability for your company should you fail to cease these illegal practices exceeds \$175 billion.**

BACKGROUND

On August 24, 2022, the White House and Department of Education announced³ a Student Relief Plan to provide up to \$20,000 of debt relief to borrowers making under \$125,000 pursuant to its authority under the Higher Education Act of 1965 (HEA), as modified by the Higher Education Relief Opportunities for Students Act of 2003 (HEROES) Act. The Biden-Harris Administration estimates that "over 40 million borrowers are eligible for its student debt relief plan, and nearly 20 million borrowers could see their entire remaining balance discharged. Nearly 90% of relief dollars will go to those earning less than \$75,000 per year."⁴

In particular, the Department announced that it would offer a one-time option for borrowers to receive \$10,000 in federal student loan debt relief, or \$20,000 for borrowers who received a Pell Grant for their undergraduate education.⁵ Some borrowers, such as those who have filed 2020-2021 tax data with the Department, will be able to receive cancellation automatically. Borrowers can opt-out of this forgiveness if they so choose. All other borrowers will have to apply with the Department to receive cancellation. Borrowers with Perkins loans or Family Federal Education Loans (FFEL) not held by the Department are only eligible if the borrower applied for consolidation before Sept. 29, 2022.

² See e.g., California Civil Code Section 1788.103(d); 209 Mass. Reg. 18.23(9).

³ The White House, *Fact Sheet on Student Debt Cancellation* (2022); <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/>; <https://studentaid.gov/debt-relief-announcement>.

⁴ The White House, *What They Are Reading* (2022); <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/21/what-they-are-reading-in-the-states-president-bidens-student-debt-relief-plan-will-benefit-borrowers-in-every-state/>.

⁵ U.S. Department of Education, *One Time Debt Cancellation* (2022); <https://studentaid.gov/debt-relief-announcement/one-time-cancellation>

The HEA as modified by the HEROES Act provides clear authority for the Department and Biden-Harris Administration to enact Student Debt Relief. This authority allows the Department to waive or modify student loan provisions in response to a national emergency, here, the COVID-19 pandemic.⁶ Specifically, the Secretary “may waive or modify any statutory or regulatory provision applicable to [title IV of the HEA] as the Secretary deems necessary in connection with a war or other military operation or national emergency.” 20 U.S.C. § 1098bb(a)(1). This power is meant to ensure that “recipients of student financial assistance under title IV of the Act who are affected individuals are not placed in a worse position financially . . . because of their status as affected individuals,” and that “administrative requirements placed on affected individuals who are recipients of student financial assistance are minimized” such as “to ease the burden on such students and avoid inadvertent, technical violations or defaults.”⁷ 20 U.S.C. § 1098bb(a)(2)(A),(B). The Trump Administration used these powers during the COVID-19 pandemic national emergency to suspend interest and payments on student loans, and to waive IDR recertification requirements, among other actions.⁸ The payment pause was extended by both the Trump and Biden Administrations numerous times under the same authority. The Public Service Loan Forgiveness Waiver, announced nearly a year ago in October 2021, was similarly enacted pursuant to the Secretary’s waiver authority during a national emergency. The Secretary is within his authority to use the HEA as modified by the HEROES Act to effectuate Student Debt Relief as the COVID-19 national emergency continues to cause health and financial devastation on families.

This badly needed student debt relief comes after a lengthy and well-documented history of failures of the student loan system, all of which have been made worse by the pandemic. As of this date, there are approximately \$1.7 trillion outstanding in student loans in America; data from the Department suggests that approximately 20 percent of student loan borrowers are in default. At every turn, student loan servicers such as MOHELA have sought to profit off of the financialization of higher education, often by engaging in unlawful conduct, including by blocking borrowers from receiving relief from crippling levels of debt.⁹ For instance, MOHELA has been identified in hundreds of complaints submitted to federal regulators about improper handling of student loans.¹⁰ Further, MOHELA has been accused of failing to effectuate loan discharges for borrowers legally entitled to them, and engaging in inaccurate

⁶ Opp. Brief, Nebraska et al. v. Joseph R. Biden, no. 4:22-cv-01040 (E.D. Mo. Sep. 29, 2022); <https://storage.courtlistener.com/recap/gov.uscourts.moed.198213/gov.uscourts.moed.198213.27.0.pdf>

⁷ Where an “affected individual” means an individual who “suffered direct economic hardship as a direct result of a war or other military operation or national emergency,” where national emergency is one “declared by the President of the United States.” 20 USCS § 1098ee(2),(4).

⁸ U.S. Dep’t of Education, Office of Postsecondary Education, Updated waivers and modifications of statutory and regulatory provisions, 85 Fed. Reg. 79,856 (Dec. 11, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-12-11/pdf/2020-27042.pdf>.

⁹ See, e.g., Consumer Financial Protection Bureau, Student Loan Servicing (2015); https://files.consumerfinance.gov/f/201509_cfpb_student-loan-servicing-report.pdf

¹⁰ https://www.consumerfinance.gov/data-research/consumer-complaints/search/?company=MOHELA&date_received_max=2022-10-07&date_received_min=2021-10-07&has_narrative=true&page=1&searchField=all&size=25&sort=created_date_desc&tab=List

reporting to credit bureaus in violation of the Fair Credit Reporting Act.¹¹ The company unsuccessfully attempted to use the shield of sovereign immunity to avoid liability for its misconduct—a practice which is now prohibited in its servicing contract with the Department.¹²

MOHELA HAS SOUGHT TO INTERFERE WITH BORROWERS' RIGHT TO STUDENT LOAN DEBT RELIEF

A. MOHELA files suit to block relief

Approximately a month after the U.S. Department of Education announced its student debt relief plan, Missouri Attorney General Eric Schmitt, acting on behalf of MOHELA, has sought to interfere with borrowers' right to cancellation by filing for a preliminary injunction in federal court.¹³ The lawsuit was filed by multiple state Attorneys General, on behalf of MOHELA and other private-public entities with a financial interest in keeping student loan borrowers buried in unmanageable levels of debt. The lawsuit seeks, among other things, to block the Student Debt Relief plan.

B. MOHELA fails to provide timely, competent assistance to borrowers

MOHELA has also failed to provide customer assistance to borrowers seeking advice and guidance on student debt relief. Our investigation revealed that MOHELA has understaffed its call centers: borrowers report wait times of many hours with no reply and receiving busy signals from the phone line or a message that the number does not exist. Borrowers with critical questions about student debt relief, such as how to apply, whether to consolidate their loans, or otherwise, cannot receive the information they are legally entitled to receive from their servicer. MOHELA is the primary servicer for borrowers pursuing the Public Service Loan Forgiveness program and responsible for administering the temporary PSLF Waiver. The temporary PSLF Waiver ends on October 31, 2022. According to the lawsuit filed on behalf of MOHELA, "MOHELA's revenue as a servicer of DLP loans is a function of the number of accounts it services. So when student loan balances go to zero...MOHELA will lose the revenue from servicing those loans."¹⁴ It appears that MOHELA has made a deliberate decision to decrease client calls, given that when the company stands to profit, it is able to issue an alarming number of calls to its customers.¹⁵

¹¹ See e.g., *Perkins v. MOHELA*, 5:19-cv-01281-FB-HJB (W.D. Tx. 2020).

¹² <https://www.ed.gov/news/press-releases/us-department-education-increases-servicer-performance-transparency-and-accountability-loan-payments-restart>

¹³ *Nebraska et al. v. Joseph R. Biden*, no. 4:22-cv-01040 (E.D. Mo. Sep. 29, 2022).

¹⁴ *Id.*

¹⁵ See e.g., *Marie Coughlin v. Higher Education Loan Authority of the State of Missouri (MOHELA)*, Case No. 2083CV00381A (Ma. Sup. Ct. 2022) (settling claims that MOHELA made harassing debt collector calls in violation of state consumer protection law).

POTENTIAL LIABILITY UNDER THE CALIFORNIA STUDENT BORROWER BILL OF RIGHTS (CA. CIV. CODE SEC. 1788.101 ET. SEQ.) AND THE CONSUMER FINANCIAL PROTECTION ACT (12 U.S.C. 5531)

The California Student Borrower Bill of Rights prohibits a student loan servicer from engaging in a specified set of prohibited acts and practices, establishes a set of prescribed standards for the servicing of student loans, and creates a set of generally applicable prohibitions related to “abusive” acts and practices, as well as acts and practices that “substantially interfere” with borrowers’ rights to affordable payments and loan forgiveness as established elsewhere in law or contract.¹⁶ These prohibitions and requirements were established in response to a long track record of abuse by the largest companies in the student loan servicing industry. California lawmakers enacted this legislation with the specified intent of ensuring “California borrowers can rely on information about student loans and loan repayment options provided by student loan servicers.”¹⁷

The Consumer Financial Protection Act, enacted as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, prohibits unfair, deceptive, and abusive acts or practices by providers of consumer financial products and services, including student loan servicers like MOHELA.¹⁸ An act or practice is unfair if it causes or is likely to cause consumers substantial injury, which is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition. 12 USC § 5531(c)(1)(A)-(B).

By seeking to block Student Debt Relief and understaffing its call centers, MOHELA has “substantially interfered” with student loan borrowers’ “right to...loan forgiveness...as established under...the Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.)” in violation of Ca. Civ. Code Sec. 1788.103(c).¹⁹ By seeking a frivolous preliminary injunction and failing to provide basic, competent assistance to borrowers, MOHELA creates confusion for borrowers as to whether they are eligible for relief, and creates hurdles to borrowers obtaining the relief they are entitled to.

Additionally, MOHELA’s failure to provide customers with assistance is potentially an unfair practice under federal law, by causing borrowers to potentially lose out on loan cancellation, this practice is not outweighed by any benefit to competition.²⁰ By failing to provide customers with basic advice regarding

¹⁶ Ca. Civ. Code Sec. 1788.100-1788.105,
https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?lawCode=CIV&division=3.&title=1.6C.10.&part=4.&chapter=1.&article=&goUp=Y

¹⁷ See California Assembly Bill 376 (2020),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB376. (“(b) Therefore, it is the intent of the Legislature to do all of the following... (2) Ensure California borrowers can rely on information about student loans and loan repayment options provided by student loan servicers.”)

¹⁸ 12 U.S.C. 5531

¹⁹ Ca. Civ. Code Sec. 1788.103,
https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?lawCode=CIV&division=3.&title=1.6C.10.&part=4.&chapter=1.&article=&goUp=Y

²⁰ 12 U.S.C. 5531

their rights to debt forgiveness, borrowers may not know what to do to be eligible for forgiveness. For instance, borrowers may mistakenly assume they do not need to submit an application for loan relief because they submitted their 2020-2021 tax information to their servicer, and lose out on up to \$20,000 of relief.

In addition to these violations of California and federal law, MOHELA's acts and omissions are likely violations of the growing number of other state-level student loan servicing laws and regulations, state contractual law²¹, as well as of dozens of states' prohibitions against unfair and deceptive acts and practices, as well as against unlawful conduct.²²

The generational opportunity presented by the Biden Administration's Student Debt Relief plan suffers from one serious flaw—its continued reliance on your company to follow the law. As described in detail above, your lawsuit strongly suggests that MOHELA seeks to undermine an effort by the Biden Administration to remedy the lasting damage caused in part by your company's past abuses over the past decade. This conduct is unlawful in that it violates both state servicer standards and consumer protections, and must immediately cease.

Sincerely,



Randi Weingarten

President
American Federation of Teachers, AFL-CIO
555 New Jersey Ave NW
Washington, DC 20001



Mike Pierce

Executive Director
Student Borrower Protection Center
1025 Connecticut Ave NW, #717
Washington, DC 20036

²¹ MOHELA's failure to provide timely customer assistance to borrowers seeking relief is a basic violation of standard contract law principles, including the duty of good faith and fair dealing. For further discussion, *see* Student Borrower Protection Center, *Memorandum: Student Loan Servicing in the Time of Coronavirus* (2020); <https://protectborrowers.org/wp-content/uploads/2020/04/Servicing-in-the-Time-of-Coronavirus-FINAL.pdf> at 8.

²² *See e.g.*, N.Y. Bank Law § 719; 209 Mass. Reg. 18.23(9).