

UNITED STATES DISTRICT COURT
DISTRICT OF DISTRICT OF COLUMBIA

STUDENT BORROWER PROTECTION
CENTER

(a fiscally sponsored project of
Shared Ascent Fund),

Plaintiff,

vs.

Civil Action No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

UNITED STATES DEPARTMENT OF
EDUCATION,

Defendant.

INTRODUCTION

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the United States Department of Education (ED) to produce documents relating to its policy of writing off as uncollectible the defaulted federal student loans of borrowers incarcerated for periods of 10 years or more.¹

2. On November 29, 2021, Plaintiff, the Student Borrower Protection Center (SBPC or Plaintiff), submitted a FOIA Request (Request) for “any documents, communications, reports, audits, records, and data related to the number of borrowers who have applied for and secured discharge because of incarceration lasting ten years or more.”

3. The Plaintiff also requested any records relating to the treatment of incarcerated borrowers, generally, including any guidance or instructions that ED gives to contractors regarding how to service loans that are owed by incarcerated borrowers, as well as materials that document the cost of collecting federal student loan debt owed by incarcerated borrowers.

¹ *Loan Servicing and Collection Frequently Asked Questions*, FED. STUDENT AID, at IB-Q5, <https://fsapartners.ed.gov/knowledge-center/faqs/loan-servicing-and-collection-frequently-asked-questions> [<https://perma.cc/4AQP-7CGQ>].

4. The information sought is of critical importance to securing debt relief and improving reentry outcomes for the hundreds of thousands of incarcerated federal student loan borrowers who are overwhelmingly in default.² Incarcerated borrowers are particularly at risk of default due to communication restrictions and limited earning potential inside correctional facilities.³

5. Defaulting on a federal student loan can have serious consequences for incarcerated borrowers who would face barriers to successful reentry to their communities even without the additional hardships imposed by ED's debt collection measures in the form of wage garnishment, seizure of public benefits, and exclusion from Title IV federal student aid programs.⁴

6. ED's failure to produce the requested information about student loan servicing, debt collection, loan write offs, and overall treatment of incarcerated borrowers hinders SBPC's ability to advocate for these borrowers and ensure they have access to every tool that could help alleviate their debt burdens and improve their reentry outcomes.

PARTIES

7. SBPC, a fiscally sponsored project of Shared Ascent Fund, is a non-profit organization dedicated to alleviating student debt for millions of Americans. SBPC engages in advocacy, research, and litigation strategy to rein in industry abuses, protect borrowers' rights, and advance economic opportunity for the next generation of students. SBPC has its principal location located at 1025 Connecticut Ave NW, #717 Washington, DC 20036.

² *Collection At All Costs: Unlocking Cancellation for Incarcerated Borrowers*, Student Borrower Prot. Ctr. 9-13 (2023), <https://protectborrowers.org/wp-content/uploads/2023/06/Incarcerated-Borrowers-Cancellation.pdf>.

³ *Collection At All Costs: Examining the Intersection of Mass Incarceration and the Student Debt Crisis*, Student Borrower Prot. Ctr. 8-12 (2022), https://protectborrowers.org/wp-content/uploads/2022/08/Collection-at-AllCosts_Final.pdf.

⁴ *Unlocking Cancellation*, supra note 2, 7-8; *Mass Incarceration and the Student Debt Crisis*, supra note 3, at 12-14.

8. Defendant, the United States Department of Education, is a federal agency with its principal place of business at 400 Maryland Avenue SW, Washington, D.C. Defendant is responsible for administering federal student loan and grant programs in the United States.

9. Defendant is an “agency” within the meaning of 5 U.S.C. § 552(f)(1).

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

11. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

FACTUAL ALLEGATIONS

ED has failed to respond to Plaintiff’s FOIA Request

12. On November 29, 2021, Plaintiff submitted a FOIA Request via email requesting: “[A]ny documents, communications, reports, audits, records, and data related to the number of borrowers who have applied for and secured discharge because of incarceration lasting ten years or more.” “A true and accurate copy of Plaintiff’s Request is attached hereto as Exhibit 1

13. On December 1, 2021, ED acknowledged receipt of the Request via electronic mail and assigned the tracking number 22-01093-F.

14. On December 1, 2021, ED sent an electronic message requesting clarification of the “date range of record for documents responsive to” Plaintiff’s Request.

15. On December 13, 2021, Plaintiff responded to the request by clarifying that the date range included “everything from the last decade *and* any policy documents still in effect.”

16. On December 29, 2021, ED sent an electronic message requesting more clarification of the information requested in Plaintiff's Request including (highlighting in original):

1. Any documents, communications, reports, audits, records, and data related to the number of borrowers who have secured discharge **because of incarceration lasting ten years or more.**

2. Responsive documents and/or data should include:

(a) the number of applications and/or requests for this discharge **that borrowers have ever submitted.**

3. There is no entitlement to a **"discharge"** for incarceration in excess of 10 years and no application for a write off on this basis. Borrowers may notify their servicer or collection agency of their status, or their servicer may independently initiate the request.

4. This appears to be reflected in the phrase **"applications and/or requests."**

a. However, the request specifies **"that borrowers have ever submitted."** Should we interpret the question broadly as including all requests, or is the request specifically with regard to those initiated by the borrower? May not be able to segregate the two sources.

17. On January 3, 2021, Plaintiff responded to the request by clarifying that:

FSA's FAQs state:

"In cases of defaulted loans where a borrower's incarceration extends beyond 10 years, however, the Department will write off debts as uncollectable."

"[A]pplications and/or requests" should be interpreted broadly to include any instances in which a borrower and/or their servicer took action to have a debt written off due to an incarceration of ten years or more.

The availability of debt elimination for incarcerated borrowers is in FSA's FAQs.

I am trying to learn how many times it has been attempted and how many times it has successfully happened.

18. On January 14, 2022, ED sent a letter via electronic message to Plaintiff regarding the status of the Request. The letter, labeled "20-DAY NOTIFICATION," states that the Request "was forwarded to the appropriate offices(s) within the Department for any responsive documents they may have" and that "[the Department is] unable to provide an estimated completion date."

19. On June 9, 2022, Plaintiff sent an electronic message to ED requesting an update on the Request after no word from ED since the January 14th correspondence.

20. To date, over one and a half years have passed since receipt of Plaintiff's Request, as well as since ED's last correspondence and ED has not communicated with Plaintiff as to its determination regarding the Request, nor has ED provided Plaintiff with any responsive records.

FIRST CAUSE OF ACTION

(FOIA Violation-Failure to Conduct Search for Records)

21. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), SBPC has exhausted all administrative remedies with respect to this FOIA request.

22. After several back-and-forth emails between ED and the SBPC, ED stopped responding, and no word has been received since January 2021.

23. ED has failed to conduct an adequate search for the records that Plaintiff requested, and has withheld such records without a proper explanation or denial.

24. ED has no legal basis for withholding records that are responsive to Plaintiff's properly submitted FOIA Request.

25. Under 5 U.S.C. § 552(a)(3)(C), SBPC is entitled to an adequate search and to any non-exempt records that were requested.

SECOND CAUSE OF ACTION

(FOIA – Failure to Disclose Responsive Records)

26. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), Plaintiff has exhausted all administrative remedies with respect to this FOIA request.

27. Plaintiff has a statutory right under FOIA, 5 U.S.C. § 552(a)(3)(A), to the records it requested, and there is no legal basis for ED's failure to disclose the unproduced records in full.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this court:

- (1) Declare that ED has violated FOIA, by its failure to timely respond to SBPC's request and its failure to make the records promptly available;
- (2) Order ED to make a determination regarding SBPC's request;
- (3) Order ED to make the requested records available to SBPC at no cost and without delay;
- (4) Order ED to provide a justification for any withholding—in full or in part—of any responsive records withheld under a claim of exemption.
- (5) Retain jurisdiction over this case to monitor ED's compliance with any court orders and to rule on any assertions by ED that any responsive records held by ED are, in whole or in part, exempt from disclosure;
- (6) Award SBPC its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E);
and
- (7) Grant such other and further relief as this Court may deem just and proper.

Dated: June 20, 2023

Respectfully submitted,

By: /s/ Persis Yu

Persis S. Yu*

Student Borrower Protection Center

(a fiscally sponsored project of the Shared Ascent Fund)

1025 Connecticut Ave NW, #717

Washington, D.C. 20036

Telephone: (202) 670-3871

Email: persis@protectborrowers.org

* Not yet admitted to the Bar of the District of Columbia, but admitted to practice law in Massachusetts and New York. Practice limited to federal court matters.

Exhibit 1



Student Borrower Protection Center
1025 Connecticut Avenue NW, Suite 717
Washington, DC 20036

November 29, 2021

U.S. Department of Education
Office of Management
FOIA Service Center
400 Maryland Ave, SW, Room 2W220
Washington, DC 20202-4536

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the implementing regulations promulgated thereunder for the U.S. Department of Education (ED), 34 C.F.R. Part 5, the Student Borrower Protection Center (SBPC) makes the following requests for records.

Background

The federal government will generally write off the federal student loans of borrowers who are to be incarcerated for a period exceeding ten or more years based on the borrower's earliest possible release date.¹ However, eligible borrowers must submit a request to attain this discharge. Advocates have noted that "there is little public information about the government's servicing and collection practices for incarcerated borrowers,"² particularly as it relates to the frequency of borrowers' success in accessing discharge.

Request

SBPC requests any documents, communications, reports, audits, records, and data related to the number of borrowers who have secured discharge because of incarceration lasting ten years or more. Responsive documents and/or data should include the number of applications and/or requests for this discharge that borrowers have ever submitted, the number of these applications and requests that have been accepted, the number of these applications and requests that have been rejected, the reasons for these rejections, and the number of loans attributable to each cause for rejection. SBPC requests any information on the number of instances in which borrowers who were to be incarcerated for ten years or more overall had applications for discharge due to their incarceration rejected because their application was submitted after such time as that fewer than ten years of incarceration remained. SBPC also requests any data and/or documentation related to the number of currently incarcerated or likely incarcerated people who owe on federal student loan debt and the amount they owe, the varieties of schools they attended (for-profit, non-profit, and/or public), broken out by the length of these borrowers' expected and/or ongoing length of incarceration. SBPC also requests any documentation of guidance or instructions that ED and/or the Office of Federal Student Aid has provided to contractors regarding the

¹ <https://www.studentloanborrowerassistance.org/loan-cancellation/federal-cancellation/incarceration/>

² Id.



discharge or other management of incarcerated borrowers' federal student loans. SBPC requests any documentation, reports, audits, records, communications or other materials documenting the cost to collect on and/or service federal student loan debt owed by incarcerated or likely incarcerated borrowers. Finally, SBPC requests any complaints that borrowers have submitted to ED or analysis of complaints that borrowers have submitted to ED regarding discharge for incarcerated borrowers.

Responsive documents should also include but be not limited to any communications with any official, representative, associate, employee, or other actor working or communicating on behalf or in the interest of Maximus/the Default Resolution Group (with all of the preceding terms defined as broadly as possible) and any official, representative, or employee of ED (as defined as broadly as possible) regarding or in a modality related to the discharge of incarcerated borrowers' federal student loans.

SBPC does not object to the redaction from such records of any names or personally identifiable information of any individual.

Beyond the records requested above, SBPC also requests records describing the processing of this request, including records sufficient to identify search terms used (if any), and locations and custodians searched and any tracking sheets used to track the processing of this request. This includes any questionnaires, tracking sheets, emails, or certifications completed by, or sent to, ED personnel with respect to the processing of this request. This specifically includes communications or tracking mechanisms sent to, or kept by, individuals who are contacted in order to process this request.

SBPC seeks all responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms "record," "document," and "information" in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages, transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request includes any attachment to these records. In addition, the Department has a duty to construe a FOIA request liberally.

FOIA presumes disclosure. Indeed, "[a]gencies bear the burden of justifying withholding of any records, as FOIA favors a 'strong presumption in favor of disclosure.'" AP v. FBI, 256 F. Supp. 3d 82, 2017 U.S. Dist. LEXIS 161516 at *10 (D.D.C. Sept. 30, 2017) (quoting Dep't of State v. Ray, 502 U.S. 164, 173 (1991)). Under the FOIA Improvement Act of 2016, an agency is permitted to withhold materials only in one of two limited circumstances, i.e., if disclosure would "harm an interest protected by an exemption" or is otherwise "prohibited by law." 5 U.S.C. § 552(a)(8)(A)(i). If the Department takes the position that any portion of any requested record is exempt from disclosure, SBPC requests that you "demonstrate the validity of [each] exemption that [the Department] asserts." People for the American Way v. U.S. Department of Education, 516 F. Supp. 2d 28, 34 (D.D.C. 2007). To satisfy this burden, you may provide SBPC with a Vaughn Index "which must adequately describe each withheld document, state which exemption the agency claims for each withheld document, and explain the exemption's relevance." Id. (citing Johnson v. Exec. Office for U.S. Att'ys, 310 F.3d 771, 774 (D.C. Cir. 2002)). See also Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973). That index must provide, for each document withheld and each justification asserted, a relatively detailed justification – specifically identifying the reasons why the exemption is relevant. See generally King v. U.S. Dep't of Justice, 830 F.2d 210, 223-24 (D.C. Cir. 1987).



To ensure that this request is properly construed and does not create any unnecessary burden on the Department, SBPC welcomes the opportunity to discuss this request at your earliest convenience, consistent with and without waiving the legal requirements for the timeframe for your response.

Please provide responsive material in electronic format, if possible. Please send any responsive material either via email at ben@protectborrowers.org or by mail to Student Borrower Protection Center c/o Ben Kaufman; 1025 Connecticut Ave. NW, Suite 717 Washington, D.C. 20036. We welcome any materials that can be provided on a rolling basis.

Request for Waiver of Fees

Please note that the SBPC is a public interest group and that this request is not for commercial use. The maximum dollar amount I am willing to pay for this request is \$25.

Please notify me if the fees will exceed \$25.

I request a waiver of all fees for this request. Disclosure to me of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and student loan servicing, because it and is not primarily in my commercial interest.

The Student Borrower Protection Center is a nonprofit advocacy and research organization founded in 2018. SBPC engages in advocacy, policymaking, and litigation strategy to rein in industry abuses, protect borrowers' rights, and advance economic opportunity for the next generation of students. SBPC uses the information it gathers, and its analysis of it, to educate the public through reports, social media, press releases, and other mediums. SBPC makes its reports available to the public, without cost, on its website (protectborrowers.org).

Accordingly, SBPC qualifies for a fee waiver.

* * *

SBPC looks forward to working with you on this request within the statutorily provided timeframe. If you have any questions or concerns about the scope of the request, or foresee any problems whatsoever, please contact me at ben@protectborrowers.org or (201) 264-1770. If the request for a fee waiver is not granted, or if any fees will be in excess of \$25, please contact me immediately.

Sincerely,

Ben Kaufman
Head of Investigations
Student Borrower Protection Center