



February 23, 2026

Bureau of the Fiscal Service  
U.S. Department of the Treasury

*Via Regulations.gov*

Re: Docket FISCAL-2023-0004

Dear Secretary Bessent:

Protect Borrowers submits this comment in response to the Department of the Treasury's (Treasury) proposed revisions to the Treasury Offset Program (TOP).<sup>1</sup> Protect Borrowers (formerly Student Borrower Protection Center) is a team of experts, lawyers, and advocates fighting to build an economy where debt doesn't limit opportunity. We investigate financial abuses, take predatory companies to court, and push for policies to protect working people from debt traps. We aim to deliver immediate relief to families while building power and driving systemic change.

In finalizing its proposed regulation, Protect Borrowers urges Treasury to modify the definition of "legally enforceable" to make explicit the agency's clear expectation that any creditor agency certifying a debt for collection through TOP be able to verify the debt's accuracy.

**The U.S. Department of Education cannot substantiate all of the student loan debt allegedly owed by borrowers.**

Approximately 45 million Americans owe nearly 1.7 trillion dollars in federal student loan debt.<sup>2</sup> When these borrowers default on their loans, they are subject to a variety of involuntary collection practices, including through TOP. When these borrowers' funds are offset or their wages are garnished, their financial security is jeopardized.<sup>3</sup> For this reason, and as a tenet of consumer protections related to debt collection, it is critical that the details of the debt owed are accurate.

Unfortunately, it has become clear in recent years that the U.S. Department of Education (ED) does not have complete records for all of the loans on which it is actively collecting. In a 2023 memorandum entitled *Broken Records*, Protect Borrowers explained how errors and missing loan data—including borrowers' payment histories—across the federal student loan system are

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<sup>1</sup> U.S. Dep't of Treas., *Debt Collection Authorities Under the Debt Collection Improvement Act of 1996*, 90 Fed. Reg. 60034 (Dec. 23, 2025).

<sup>2</sup> *Federal Student Loan Summary (2025 Q4)*, Fed. Student Aid, U.S. Dep't of Educ., <https://studentaid.gov/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls>.

<sup>3</sup> Protect Borrowers and Debt Collection Lab, *Falling Off the Student Loan Default Cliff* (Nov. 18, 2025), <https://protectborrowers.org/falling-off-the-student-loan-default-cliff/>.

driven by major student loan servicers' data retention policies. The memorandum explains that, as a result, critical data points in borrowers' loan files have been lost, improperly recorded, or overwritten. A copy of the *Broken Records* memorandum is appended here.

Without complete borrower loan payment history and records, ED cannot possibly verify a borrower's exact outstanding balance, or even whether the status of a loan meets the legal definition of default and is subject to involuntary collections. In some instances, as the memorandum explains, the result of these broken records is that ED has continued to collect on loans owed by borrowers who are legally entitled to have their loans discharged through one of the many loan cancellation programs created by Congress. Put differently, ED is collecting on loans, including through TOP, that should not be legally enforceable. This violates the spirit, if not the letter, of consumer protections related to debt collection.

**The definition of “legally enforceable” in Treasury’s proposed regulations should make explicit that creditor agencies must be able to substantiate debts certified for offset.**

Treasury’s current and proposed TOP regulations require federal agencies using TOP to certify to Treasury that the debts they seek to collect are, among other things, legally enforceable.<sup>4</sup> Treasury’s definition of “legally enforceable” in its proposed regulation is:

*Legally enforceable* refers to a characteristic of a debt and means there has been a final agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection by offset.<sup>5</sup>

The existence of the incomplete records described in the appended *Broken Records* memorandum strongly suggest that the Department of Education cannot certify the legal enforceability—as defined by Treasury—of all of its loans for at least two reasons. First, if periods of payment history are missing, ED cannot accurately certify that “the debt, in the amount stated, is due[.]” Second, without complete and accurate records, ED cannot confirm whether a borrower qualifies for one of the many Congressionally mandated discharge programs based on loan payment and history, and so cannot certify that there are “no legal bars to collection[.]”<sup>6</sup>

Simply put, given ED’s *Broken Records*, the agency cannot possibly certify to Treasury that a borrower’s loans are due in the amount stated or that the borrower’s loans should not be statutorily cancelled based on their payment history, and therefore cannot certify that the loans are legally enforceable.

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<sup>4</sup> See 31 C.F.R. 285.2(d)(1); proposed 31 C.F.R. 285.2(d)(3)(i).

<sup>5</sup> Proposed 31 C.F.R. 285.1.

<sup>6</sup> See, e.g., 20 U.S.C. 1087e(m)(1) (For Public Service Loan Forgiveness, “the Secretary [of Education] shall cancel the balance of principal and interest due” for a borrower who “has made 120 monthly payments” and has met other eligibility requirements); 20 U.S.C. 1098e (For Income-Based Repayment, the Secretary of Education is directed to cancel the loans of eligible borrowers who have at least 20 or 25 years worth of qualifying payments).

Although pursuant to both Treasury’s existing and proposed regulations ED should not certify loans for TOP if the agency does not have complete and accurate payment history, Protect Borrowers urges Treasury to make this a clear requirement. The proposed definition already provides illustrative reasons why a debt that would not be legally enforceable: the debt is “1) Subject to the automatic stay in bankruptcy proceedings; 2) The subject of a pending administrative review required by a statute or regulation that prohibits collection action during the review process; or 3) Governed by a statute that precludes collection through offset.”<sup>7</sup> Treasury should add a fourth example: that the debt is 4) Not supported by a complete and accurate account statement and payment history by the debtor. This addition would ensure that any debt certified for offset is legally enforceable.

## **Conclusion**

By adopting this amendment to its proposed regulation, Treasury can protect borrowers from improper collection through TOP. To the extent ED believes that it currently only certifies debts for which it has complete and accurate records, then compliance with this adjustment to the proposed regulation should pose no burden. To the extent ED is not already conducting a thorough review before certifying debts for TOP, Treasury would be ending a long-term and unlawful practice by incorporating this proposal.

There is no time to wait. Although the Secretary of Education has currently suspended its participation in TOP for student loan debts, federal student loan borrowers are facing a default cliff. According to an analysis published this month by Protect Borrowers and The Century Foundation, one-in-four federal student loan borrowers are currently behind on their payments, and one-in-nine are already in default.<sup>8</sup> If this rate continues, approximately 17 million federal student loan borrowers—more than one third of all borrowers—could be subjected to collection through TOP in the near future. Treasury must protect these borrowers from improper collection.

*Please contact Winston Berkman-Breen, Legal Director at Protect Borrowers, at [winston@protectborrowers.org](mailto:winston@protectborrowers.org) to discuss this comment further.*

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<sup>7</sup> *Id.*

<sup>8</sup> Press Release, Protect Borrowers, *NEW STUDY: Student Loan Delinquency Spikes to Record 25% Under Trump, Destroying Credit Scores and Locking Millions Out of Economy* (Feb. 20, 2026), <https://protectborrowers.org/release-student-loan-delinquency-spikes-to-record-25-percent-under-trump-destroying-credit-scores-and-locking-millions-out-of-economy/>.

**EXHIBIT A**

Memorandum to Interested Parties  
from Protect Borrowers (f/k/a Student Borrower Protection Center)

November 3, 2023

*Broken Records Have Compromised Return to Repayment and  
Are Jeopardizing President Biden's Pursuit of Student Debt Relief*



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## MEMORANDUM

November 3, 2023

**TO:** Interested Parties  
**FROM:** Student Borrower Protection Center  
**RE:** **Broken Records Have Compromised Return to Repayment and Are Jeopardizing President Biden’s Pursuit of Student Debt Relief**

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## OVERVIEW

Across the consumer finance marketplace, accurate recordkeeping is a distinguishing feature of a valid and enforceable debt. In the student loan market, records substantiate that a debt is valid, that the amount owed is accurate, and whether a borrower’s payment history qualifies her for any of the myriad debt relief programs established under federal law. Without adequate recordkeeping, student loan companies may be pursuing borrowers to collect debts with what are functionally “Broken Records.” The following memorandum defines Broken Records as debts compromised by a missing loan history, but which nonetheless follow borrowers for years or decades, limiting or extinguishing borrowers’ rights to student debt relief.

These Broken Records create unique challenges for borrowers, the U.S. Department of Education (ED), the student loan industry, and regulators—particularly at a moment when 40 million people will be expected to repay a bill that purports to be an accurate statement of each borrower’s loan balance, backed by an accurate record of a borrower’s payment history.

This memorandum argues that the widespread student loan servicing failures that have occurred during the first weeks of the return of federal student loan repayment share one common element: **hundreds of thousands of errors occurred as part of an attempt by student loan servicers to collect payment on loans with Broken Records.**

Further, this memorandum proposes that Broken Records across the student loan system are driven by major servicers’ data retention policies and supports the growing understanding that critical data points in borrowers’ loan files have been lost, misentered, or overwritten. It provides a brief summary of major events that precipitated this moment, outlines ongoing errors and borrower harms, and identifies a potential root cause: errors that occurred during the transfer of millions of borrower accounts between student loan servicers. It concludes by outlining the



authorities that federal and state consumer protection agencies have to intervene, and urges these offices to do so.

## DISCUSSION AND ANALYSIS

### I. There Are Widespread Reports of Federal Student Loan Files With Missing, Incomplete, Or Inaccurate Information About Repayment History

Several concerning fact patterns have emerged during the weeks since student loan payments resumed and interest charges began accruing. They appear to be systemic, affecting at least hundreds of thousands of borrowers, and are not limited to one single student loan servicer. Although a root cause has not been confirmed, many of the most concerning return to repayment problems appear to reflect missing or incomplete data about borrowers' accounts—Broken Records.

For example, in recent weeks SBPC has observed:

- **Critical information about borrowers' loan history appears to be missing from ED's own files.** The National Student Loan Data System (NSLDS) is the primary record system for federal student loans. It contains the full record of each borrower's federal financial aid, including Pell grants and loans, both those that are commercially held and held by ED. For each loan, it contains important data points, such as original disbursement date and balance, current principal and interest balance, and a chronological accounting with a start and end date for each loan status since the loan originated, e.g., repayment, forbearance, deferment. These loan statuses are also listed on borrowers' StudentAid.gov dashboard for each loan.

Recently, however, borrowers report that significant periods of timing are missing from their NSLDS loan status records. There does not appear to be any consistency with respect to which periods are missing, although it has only been observed with borrowers whose accounts have been transferred at some point. Some accounts lack records that pre-date the transfer, whereas others omit seemingly random periods. These claims are substantiated by the Consumer Financial Protection Bureau's (CFPB) 2023 Education Loan Ombudsman Report, which includes a borrower account of missing payment



history after their loan was transferred,<sup>1</sup> as well as by consumer complaints made to the CFPB.<sup>2</sup>

The SBPC has only directly reviewed a small sample of accounts with missing records, but one common factor is that at some point the accounts were serviced by Nelnet, either as the transferor or transferee servicer. This may not prove to be true as more accounts with missing records are identified, however, the fact that Nelnet more than doubled its account volume between October 2021 and January 2023 creates enormous room for error, as discussed in the CFPB's Ombudsman Report.<sup>3</sup>

These Broken Records are coming to light in the context of the return to repayment, but may be the result of unaddressed servicing transfers, either that occurred beginning in 2021, discussed in greater detail below, and that have already been identified by the CFPB,<sup>4</sup> or during prior transfers, and that resulted in NSLDS data being deleted or overwritten. Importantly, these NSLDS records, specifically the payment status fields, are the basis for the administration's Income-Driven Repayment (IDR) Account Adjustment; accounts with missing information may not receive the full credit they otherwise would under the adjustment.

- **Student loan servicers have miscalculated borrowers' monthly IDR payments.** As payments resume, borrowers are receiving inaccurate statements.<sup>5</sup> Borrowers who were previously in an IDR plan should have been kept on that plan when payments resumed, and borrowers enrolled in REPAYE, one IDR plan, should have been converted to SAVE, the newest IDR plan.<sup>6</sup> According to an audit required by ED, however, student loan servicers' files contained errors related to family size, income, or marital status, all of which resulted in inaccurate payment calculations.<sup>7</sup> These data points are all needed to

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<sup>1</sup> Consumer Fin. Prot. Bureau, *Report of the CFPB Education Loan Ombudsman 12* (Oct. 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_annual-education-loan-ombudsman-report\\_2023.pdf](https://files.consumerfinance.gov/f/documents/cfpb_annual-education-loan-ombudsman-report_2023.pdf).

<sup>2</sup> See, e.g., Consumer Fin. Prot. Bureau, *Consumer Complaint No. 7334032* (Aug. 2, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7334032>; Consumer Fin. Prot. Bureau, *Consumer Complaint No. 7417199* (Aug. 18, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7417199>.

<sup>3</sup> See CFPB Education Loan Ombudsman Report, *supra* note 1 at 12.

<sup>4</sup> *Id.*; Consumer Fin. Prot. Bureau, *Supervisory Highlights: Student Loan Servicing Special Edition 11-12* (Sept. 2022), [https://files.consumerfinance.gov/f/documents/cfpb\\_student-loan-servicing-supervisory-highlights-special-edition\\_report\\_2022-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_student-loan-servicing-supervisory-highlights-special-edition_report_2022-09.pdf).

<sup>5</sup> Danielle Douglas-Gabriel, *Rollout of Biden's new student loan repayment plan hits early snags*, Wash. Post (Oct. 7, 2023), <https://www.washingtonpost.com/education/2023/10/07/save-student-loan-payment-errors/>.

<sup>6</sup> *SAVE Repayment Plan Offers Lower Monthly Payments*, U.S. Dep't of Educ., <https://studentaid.gov/announcements-events/save-plan> (last viewed Oct. 26, 2023).

<sup>7</sup> Tara Siegal Bernard, *More Than 400,000 Student Loan Borrowers Had Wrong Monthly Payments* (Oct. 16, 2023), <https://www.nytimes.com/2023/10/16/your-money/student-loans-save-mistakes.html>.



calculate IDR payments and should have been included in the files that transferee servicers received from borrowers' prior servicers. The inaccurate calculations and the ED audit suggest that these data points were either inaccurately transferred or were not transferred at all, resulting in Broken Records. Reporting by the *Washington Post* indicates this issue occurs, at least in part, when the initial underlying IDR application was processed by a previous servicer and the current servicer has "incorrect or missing information" from those files, causing the recalculated SAVE amount to be incorrect.<sup>8</sup>

Relatedly, borrowers report being asked to recertify their IDR plans early, which requires the submission of family size, income, and marital status information.<sup>9</sup> This may be an attempt by the servicers to address their incomplete data, however, ED has provided that borrowers would not have to recertify before March 2024.<sup>10</sup> Requiring early recertification may increase borrowers' monthly payments sooner than should be required under federal law, if their income has increased since their prior certification. These issues were also documented in the CFPB's Ombudsman Report.

- **Borrowers report being dropped from the IDR plans in which they were already enrolled and being placed on the standard or "level" plan.** As borrowers enter repayment, many report that they are no longer on the IDR plan in which they were enrolled when the payment pause began.<sup>11</sup> In one instance, a borrower reports that only three of their eight loans were successfully converted from REPAYE to SAVE, with the remaining five being put on the standard 10-year plan, resulting in monthly payments that jumped from \$800 before the pause to nearly \$2,400.<sup>12</sup> Being moved to the standard plan could be because the transferee student loan servicer did not receive sufficient information from the transferor servicer to know the borrower's IDR payment, or even to

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<sup>8</sup> Danielle Douglas-Gabriel, *supra* note 5.

<sup>9</sup> See, e.g., adentsinit, Comment to *Common Issues and FAQ's for Repayment Restart Megathread*, Reddit (Sept. 19, 2023),

[https://www.reddit.com/r/StudentLoans/comments/16ps7dz/common\\_issues\\_and\\_faqs\\_for\\_repayment\\_restart/k3wp4jk/?utm\\_source=share&utm\\_medium=web3x&utm\\_name=web3xcss&utm\\_term=1&utm\\_content=share\\_button](https://www.reddit.com/r/StudentLoans/comments/16ps7dz/common_issues_and_faqs_for_repayment_restart/k3wp4jk/?utm_source=share&utm_medium=web3x&utm_name=web3xcss&utm_term=1&utm_content=share_button)

<sup>10</sup> *Prepare for Student Loan Payments to Restart*, U.S. Dep't of Educ.,

<https://studentaid.gov/manage-loans/repayment/prepare-payments-restart> (last viewed Oct. 26, 2023).

<sup>11</sup> See, e.g., Last-injury1924, Comment to *Common Issues and FAQ's for Repayment Restart Megathread*, Reddit (Sept. 19, 2023),

[https://www.reddit.com/r/StudentLoans/comments/16ps7dz/common\\_issues\\_and\\_faqs\\_for\\_repayment\\_restart/k526giff/?utm\\_source=share&utm\\_medium=web3x&utm\\_name=web3xcss&utm\\_term=1&utm\\_content=share\\_button](https://www.reddit.com/r/StudentLoans/comments/16ps7dz/common_issues_and_faqs_for_repayment_restart/k526giff/?utm_source=share&utm_medium=web3x&utm_name=web3xcss&utm_term=1&utm_content=share_button);

Q-Cumbers, Comment to *Common Issues and FAQ's for Repayment Restart Megathread*, Reddit (Sept. 19, 2023),

[https://www.reddit.com/r/StudentLoans/comments/16ps7dz/common\\_issues\\_and\\_faqs\\_for\\_repayment\\_restart/k2qm0zs/?utm\\_source=share&utm\\_medium=web3x&utm\\_name=web3xcss&utm\\_term=1&utm\\_content=share\\_button](https://www.reddit.com/r/StudentLoans/comments/16ps7dz/common_issues_and_faqs_for_repayment_restart/k2qm0zs/?utm_source=share&utm_medium=web3x&utm_name=web3xcss&utm_term=1&utm_content=share_button).

<sup>12</sup> shadmere, Comment to *Common Issues and FAQ's for Repayment Restart Megathread*, Reddit (Sept. 19, 2023),

[https://www.reddit.com/r/StudentLoans/comments/16ps7dz/common\\_issues\\_and\\_faqs\\_for\\_repayment\\_restart/k3a9c8u/?utm\\_source=share&utm\\_medium=web3x&utm\\_name=web3xcss&utm\\_term=1&utm\\_content=share\\_button](https://www.reddit.com/r/StudentLoans/comments/16ps7dz/common_issues_and_faqs_for_repayment_restart/k3a9c8u/?utm_source=share&utm_medium=web3x&utm_name=web3xcss&utm_term=1&utm_content=share_button)



confirm the plan in which they were enrolled, which the servicer addressed by moving them to the standard plan as a default.

In a memorandum to the Under Secretary at ED, the Federal Student Aid (FSA) staff in charge of overseeing student loan servicers acknowledged in detail several instances of problems caused by these Broken Records,<sup>13</sup> but did not attribute Broken Records as the root cause. Until any underlying errors or misconduct are identified, these data integrity problems will continue to impose borrower harm and serve as impediments to fixing the student loan system.<sup>14</sup>

## II. Broken Records Cause Long-Lasting Harm to Borrowers

Broken Records—student loan servicers’ data integrity problems, whether they are misusing data or missing it altogether—pose serious long-term harm to student loan borrowers.

- **Missing loan status history may deny or limit debt cancellation owed to borrowers.** Borrowers whose accounts are missing key loan status history may miss out on some or all of the credit they are due under the IDR Account Adjustment, which is set to run by the Spring of 2024. For some borrowers, being undercredited could deprive them of complete debt cancellation. The same is true for borrowers who pursue SAVE by consolidating older Federal Family Education Loan (FFEL) program loans into new Direct Consolidation Loans to pursue a faster timeline for student debt relief.<sup>15</sup> New regulations issued in June guarantee borrowers credit toward debt cancellation for qualifying payments made prior to consolidation—relief that may be impossible for loans with Broken Records.
- **Missing loan data results in inaccurate billing and the risk that borrowers overpay.** When a borrower receives their bill for the first time since March 2020, and potentially under a new IDR plan, they may not be able to identify from the face of the bill whether there was a miscalculation and they are being overcharged. For borrowers whose

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<sup>13</sup> Memorandum to Under Secretary James Kvall, U.S. Dep’t of Educ., *Request Approval: Use of Secretary’s Compromise Authority for Remediating Potential Harm to Borrowers Caused by Return to Repayment Servicing Errors* (Oct. 29, 2023), <https://www2.ed.gov/policy/gen/leg/foia/decision-memorandum-return-to-repayment-servicing-errors-10-29-23-sign-ed-redacted.pdf>.

<sup>14</sup> Readers should also note that, in 2022, FSA’s independent auditor cited as a “material weakness in internal control over financial reporting” concerns with the “reliance and reliability of underlying data used in” its modeling of the financial performance of the student loan portfolio. The auditor was not specific about the source of the data in the information system used for this modeling, nor was it specific as to whether the material weakness cited had an impact on the performance of the portfolio itself. However, this does raise significant questions about whether the issues discussed in this memorandum reveal broader systemic problems. See U.S. Dep’t of Educ., Fed. Student Aid, *FY 2022 Annual Report* (Jan. 23, 2023), <https://www2.ed.gov/about/reports/annual/2022report/fsa-report.pdf>.

<sup>15</sup> See 34 C.F.R. 685.209(k)(4)(vi)(A) (effective July 1, 2024).



payments are miscalculated or whose payment plans are improperly changed, they may end up paying more on their loans than they otherwise would have to under federal law. For borrowers who enrolled in autopayments, the payments withdrawn from their bank accounts may be too great. For all borrowers, given the reported wait times at servicer call centers, confirming their payment amount or correcting miscalculations becomes a herculean task.

- **The safety net currently used by servicers to address complaints causes additional borrower harm.** Although student loan servicers may place borrowers into administrative forbearances when a payment calculation or other account error is identified, this merely replaces one form of harm with another. Because administrative forbearances will not count as credit toward IDR until new rules take effect on July 1, 2024,<sup>16</sup> borrowers lose time toward cancellation when their servicers place them in forbearances to correct their own errors. Additionally, while in forbearance, borrowers' accounts will continue to accrue interest—much of which would have been waived under the SAVE plan if eligible borrowers were properly processed under that plan, increasing their overall balance.

ED is taking steps to address some of these harms to borrowers by placing certain borrowers into a special category of administrative forbearances, waiving interest, and granting credit toward cancellation under IDR and PSLF.<sup>17</sup> It does not appear based on public reports that servicers have discretion to use this category of forbearances prophylactically— borrowers must experience specific harms identified by ED before they become eligible for this protection. Further, these actions, although appropriate, do not address all of the ways in which Broken Records cause borrower harm, and treat their symptoms rather than their causes.

### **III. Broken Records Jeopardize Major Administration Priorities Related to Fixing the Student Loan Servicing System**

In addition to the concrete and severe harms to borrowers discussed above, Broken Records pose substantial reputational risk for the Biden Administration, calling into question the Administration's ability to execute across three top priorities and to keep its promise to fix the broken student loan system:

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<sup>16</sup> 88 Fed. Reg. 43820.

<sup>17</sup> See Memorandum to Under Secretary James Kvaal, *supra note 13*; Press Release, U.S. Dep't of Educ., *U.S. Department of Education Announces Withholding of Payment to Student Loan Servicer as Part of Accountability Measures for Harmed Borrowers* (Oct. 30, 2023), <https://content.govdelivery.com/accounts/USED/bulletins/3784d7a>.



- **IDR Account Adjustment will fail to deliver for borrowers with missing loan status history.** The IDR Account Adjustment is a marquee policy by ED for student loan borrowers.<sup>18</sup> The Account Adjustment provides credit toward cancellation to borrowers based on their loan status history. Borrowers whose NSLDS records are missing periods of time, however, may not receive all of the credit that they are due under this program. The very same servicers whose prior misconduct required this policy intervention now may be robbing borrowers of its remedial benefits.
- **Broken Records undermines borrowers' trust in the student loan system and increases the cost of student aid administration, jeopardizing return to repayment.** In deciding to resume payments on student loans, the administration is responsible for ensuring this process is smooth and that borrowers are held harmless; these servicer errors and half-measure responses undermine those efforts and reasonably reduce borrowers' faith in the student loan system.
- **Broken Records is driving servicers to miscalculate amounts due under SAVE, undermining the President's promise of affordable loan payments.** President Biden has heralded the SAVE plan as a lifeline for borrowers who have historically struggled with their student loan debt.<sup>19</sup> By miscalculating SAVE payments and moving borrowers from SAVE to the standard plan without their consent, however, student loan servicers significantly dilute its efficacy for borrowers.

#### **IV. Broken Records Build on Existing Weaknesses in the Student Loan Servicing System**

These borrower harms and systemic risks caused by Broken Records are all the more concerning because they are taking place in a system that has yet to fully recover from an earlier data integrity crisis. Until 2009, there was only one student loan servicer for all the student loans made directly by the federal government: Affiliated Computer Services (ACS). Due to borrower abuses and widespread poor internal controls, which are discussed in great detail in an investigation conducted by the SBPC and American Federation of Teachers, in 2012 its contract

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<sup>18</sup> Press Release, U.S. Dep't of Educ., *Department of Education Announces Actions to Fix Longstanding Failures in the Student Loan Programs* (Apr. 19, 2022), [https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www.ed.gov/news/press-releases/department-education-announces-actions-fix-longstanding-failures-student-loan-programs?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=).

<sup>19</sup> See, e.g., Press Release, White House, *FACT SHEET: The Biden-Harris Administration Launches the SAVE Plan, the Most Affordable Student Loan Repayment Plan Ever to Lower Monthly Payments for Millions of Borrowers* (Aug. 22, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/08/22/fact-sheet-the-biden-harris-administration-launches-the-save-plan-the-most-affordable-student-loan-repayment-plan-ever-to-lower-monthly-payments-for-millions-of-borrowers/>.



ended, and by 2013 its 35 million borrowers were transferred to other servicers.<sup>20</sup> One of ACS's greatest and longest lasting failures was with its recordkeeping. Borrowers' records were missing or inaccurate, and those errors have not all been rectified. We see this reflected in ED's decision to award IDR credit through the Account Adjustment for any deferments prior to 2013, as it is difficult for the agency to conduct more granular account reviews before that date, when ACS was a major servicer.<sup>21</sup> To the extent that student loan servicers have generated new Broken Records, those build on an already shaky foundation created by ACS, and could result in a scenario in which neither ED nor its servicers can produce complete records for every federal student loan borrower.

#### **V. There Have Been an Unprecedented Number of Account Transfers in the Past Three Years, Which Likely Exacerbate the Harm Caused by Broken Records**

Although no root cause has been identified for Broken Records, these data integrity issues seem to be closely associated with account transfers between student loan servicers. These errors may be coming to light now because, in addition to the friction caused by return to repayment, the student loan system recently experienced historic levels of account transfers.

Beginning in March 2020 and in response to the COVID-19 pandemic, payments on most federal student loans were paused for over three and a half years, resuming in October 2023. Several major changes to the federal student loan system took place during that time, driving tens of millions of borrowers to transfer between student loan servicers. In the past, when there have been account transfers of this scale, there were well-documented instances of mass errors.<sup>22</sup>

Since March 2020, three events had a particular effect on account transfers between servicers:

- **The student loan servicing market experienced major consolidation during the payment pause.** In 2021, several of the largest companies that service student loans for ED exited the market, including Navient and the Pennsylvania Higher Education Assistance Agency (PHEAA), which under the brand name "FedLoan" was the exclusive servicer for the Public Service Loan Forgiveness (PSLF) debt cancellation program. As a result, approximately 16 million borrowers' accounts were transferred from these departing servicers to remaining companies, as well as to one new entrant, Maximus,

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<sup>20</sup> Press Release, Student Borrower Protection Center, *New Report Explores More Than Five Million Student Loan Servicing Errors Hindering Public Service Loan Forgiveness* (Oct. 13, 2020), [https://protectborrowers.org/acs\\_investigation/](https://protectborrowers.org/acs_investigation/).

<sup>21</sup> *Payment Count Adjustments Toward Income-Driven Repayment and Public Service Loan Forgiveness Programs*, U.S. Dep't of Educ., <https://studentaid.gov/announcements-events/idr-account-adjustment> (last viewed Oct. 26, 2023).

<sup>22</sup> Student Borrower Protection Center, *supra* note 20.



doing business in Aidvantage.<sup>23</sup> Millions more borrowers' accounts have also been transferred when their servicer migrates files from old to new data systems, as at least one of ED's student loan servicers has recently done.<sup>24</sup> Although not a transfer between servicers, these intra-servicer transfers present the same concerns.

- **Policy interventions to fix PSLF triggered account transfers for public service workers.** The PSLF Waiver, which took place from October 2021 through October 2022, created an opportunity for borrowers working in public service to recoup missed credits toward loan cancellation through the PSLF program, including ED-held and commercial Federal Family Education Loan (FFEL) program borrowers who were not previously PSLF eligible.<sup>25</sup> As a result, many borrowers consolidated their loans and filed PSLF paperwork for the first time, both actions which can trigger a transfer from their current servicer to the dedicated PSLF servicer. Depending on when they took these steps, the dedicated PSLF servicer was either FedLoan or, after it exited the market, MOHELA. Some public service workers could therefore have had their account transferred as many as three times in an effort to take advantage of this Waiver opportunity: once if they consolidated a FFEL loan and did not indicate an interest in PSLF on their consolidation form, and were therefore placed with a non-PSLF servicer; then again when they file PSLF paperwork and were transferred to FedLoan; and finally during the mandatory transfer from FedLoan to MOHELA.
- **Policy interventions to fix Income-Driven Repayment triggered additional account transfers.** In April 2022, the Biden Administration announced the IDR Account Adjustment.<sup>26</sup> As with the PSLF Waiver, this program gives borrowers credit toward cancellation under the IDR plans for time that previously did not count. The announcement made clear that this initiative was in response to unlawful steering practices and poor quality customer service by student loan servicers that resulted in borrowers languishing in prolonged forbearance rather than affordable IDR plans. To take advantage of this Account Adjustment, many borrowers were instructed to consolidate their loans by December 31, 2023. These consolidations can also result in account transfers.

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<sup>23</sup> Calculations on file with the SBPC.

<sup>24</sup> *Edfinancial to Transition Loan Servicing Platform*, U.S. Dep't of Educ., <https://studentaid.gov/announcements-events/edfinancial-system-transfers> (last viewed Oct. 26, 2023).

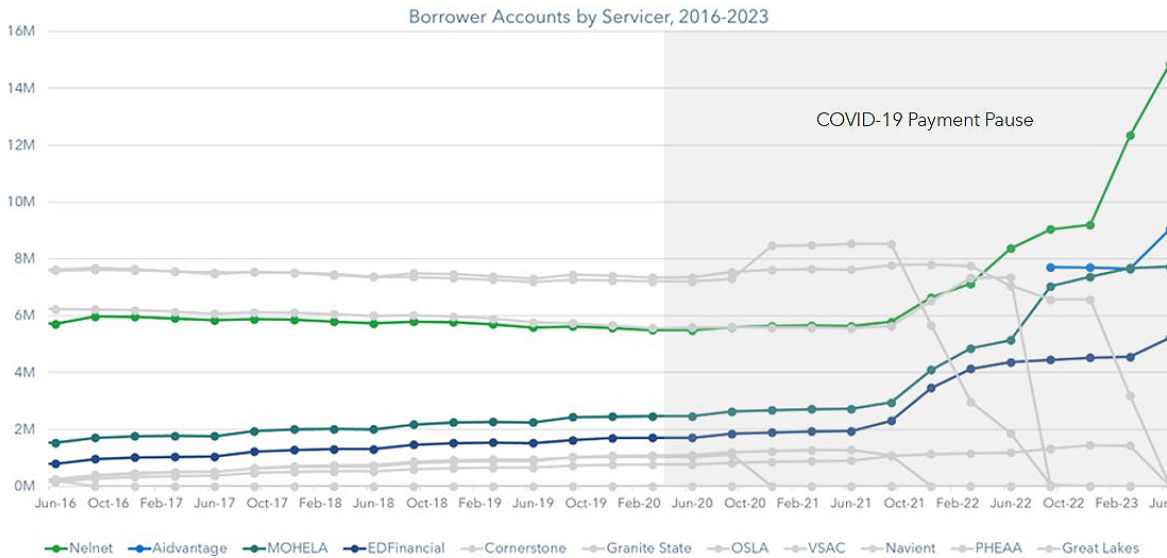
<sup>25</sup> *The Limited PSLF Waiver Opportunity Ends on October 31, 2022*, U.S. Dep't of Educ., <https://studentaid.gov/announcements-events/pslf-limited-waiver> (last viewed Oct. 26, 2023).

<sup>26</sup> U.S. Dep't of Educ., *supra* note 18.



Taken together, these three sets of events result in an unprecedented number of account transfers between federal student loan services, which the CFPB estimates exceeds 20 million loan transfers.<sup>27</sup>

**Figure 1. Historical Changes in Servicer Volume Compiled by the CFPB**



Federal and state regulators monitored the transfers that took place beginning in 2021 and found that errors occurred. In its 2022 Supervisory Highlights, the CFPB published several transfer-related findings from recent servicer examinations. These findings included reports that:

- initial sets of transferred information was insufficient to accurately service loans, including inaccurate or missing payment amounts, dates, and plans;
- transferee and transferor servicers calculated different total payment counts towards debt cancellation plans; and
- some accounts had inaccurate capitalization and paid ahead statuses, resulting in inaccurate payment amounts and due dates.<sup>28</sup>

These errors were allegedly addressed by the student loan servicers subsequent to the examinations. However, the CFPB’s Ombudsman Report highlights ongoing transfer issues.<sup>29</sup> Notably, too, in its recent memorandum to the Under Secretary, FSA staff highlight that several

<sup>27</sup> See CFPB Education Loan Ombudsman Report, *supra* note 1 at 12.

<sup>28</sup> Supervisory Highlights: Student Loan Servicing Special Edition, *supra* note 4 at 11-12.

<sup>29</sup> See generally CFPB Education Loan Ombudsman Report, *supra* note 1.



of the borrower harms discussed above, such as inaccurate payment calculations, are associated with transferring accounts between student loan servicers.<sup>30</sup>

## VI. Student Loan Servicers' Misconduct is Likely Unlawful

There are several federal and state laws that apply to student loan servicing and to Broken Records. The Dodd-Frank Wall Street Reform and Consumer Protection Act's prohibition against unfair, deceptive, or abusive acts or practices (UDAAPs) and similar state laws against unfair or deceptive acts or practices (UDAPs) both apply to federal student loan servicers. The following misconduct, described in more detail above, would likely constitute a UDAAP/UDAP:

- misrepresenting a borrower's payment amount;
- moving a borrower from an IDR plan into a standard plan without their consent;
- making a borrower to recertify their IDR plan earlier than required;
- failing to maintain loan records in a way to results in or is likely to result in borrowers missing out on credit toward cancellation through the IDR plan; and
- placing borrowers in administrative forbearances that accrue interest and that do not count toward IDR cancellation in order to correct for servicer errors.

Each of these practices is aggravated by the fact that borrowers who attempt to contact their student loan servicer to resolve account issues continue to report long wait times and dropped calls.

In addition to general UDAAP/UDAP prohibitions, at least nineteen states have passed student loan servicing specific laws, often referred to as Borrower Bill of Rights laws, which include both industry requirements and consumer protections.<sup>31</sup> These laws generally include provisions related to account transfers and require both the transferor and transferee servicer to ensure that complete account records and loan histories are transferred. Based on the fact patterns discussed above, it appears that Broken Records violate these state law requirements.

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<sup>30</sup> See, e.g., Memorandum to Under Secretary James Kvaal, *supra* note 13 at 2 ("For over 5 million borrowers, their new loan servicers did not have the necessary information to complete the SAVE conversions because it was never transferred by the borrower's previous servicer.").

<sup>31</sup> See Cal. Civ. Code § 1788.100 et seq.; Colo. Rev. Stat. § 5-20-100 et seq.; Conn. Gen. Stat. § 36a-846 et seq.; D.C. Official Code §31-101 et seq.; 110 Ill. Comp. Stat. Ann. 992 et seq.; Ky. Rev. Stat. § 286.12-005 et seq.; La. Rev. Stat. § 6:1401 et seq.; Me. Rev. Stat. Title 9-A, Art. 14; Md. Educ. D. IV, Title 26, Subt. 6; Ma. G.B.L. c. 93L; Minn. Stat. Ch. 58B; 2023 Bill Text NV A.B. 332; N.J. Stat. § 17:16ZZ; N.Y. Banking Law Art. 14-A; Okla. Stat. tit. 24, § 170 et seq.; Or. Laws 2021, ch. 651, secs 1-11; R.I. Gen. Laws § 19-33; Va. Code Ann. Title 6.2, Subt. IV, Ch. 26; Wash. Rev. Code Ann. § 31.04.400 et seq.



## POLICY RECOMMENDATIONS

State and federal law enforcement and financial regulators must act swiftly to identify Broken Records' root cause and to ensure that borrowers are held harmless for servicers' errors. They can use their broad investigatory authorities to require servicers to explain in detail their account transfer protocols and any quality controls used to ensure that transfers were done correctly and that borrowers' files are accurate and complete. As these agencies learn more, they must rigorously follow each lead and demand real-time answers and information. This can be best achieved by cooperation and coordination between the CFPB, state attorneys general and financial regulators, and ED's Office of Federal Student Aid.

ED also has an independent role to play. As proposed recently by a coalition of state attorneys general,<sup>32</sup> where misconduct is identified, or even where potential misconduct is identified, ED must place borrowers' loans into non-interest bearing administrative forbearances and must credit those forbearances towards cancellation under IDR. ED announced it would extend this relief to borrowers to whom one servicer, MOHELA, failed to send timely billing statements to over 2.5 million of its customers.<sup>33</sup> It must extend this same relief to borrowers whose accounts include Broken Records. To the extent any identified Broken Records are irreparable, ED must adopt a presumption in favor of the borrower and credit accounts with time toward loan cancellation, as necessary.

Further, ED is actively engaged in writing new rules to govern the circumstances under which the Secretary uses his "modification, waiver, or compromise" authority to provide student debt relief to specific cohorts of student loan borrowers.<sup>34</sup> Consistent with the principles that guide the federal government's actions to cancel any debt owed to it, ED may determine that the cost to the federal government associated with fixing loans with Broken Records exceeds the amount of money that may be collected from a borrower—particularly those borrowers with very old loans. Similarly, ED may determine that there remains "significant doubt" as to the enforceability of the debts themselves, especially where Broken Records cast doubt as to the accuracy of the loan balance claimed by ED.<sup>35</sup>

It would be prudent for ED to contemplate future remedial efforts to address Broken Records when issuing new regulations that govern the provision of student debt relief.

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<sup>32</sup> Press Release, Wash. State Office of the Att'y Gen., *Consumer Alert: AG Ferguson urges Biden administration to protect student loan borrowers as repayments begin* (Sept. 29, 2023), <https://www.atg.wa.gov/news/news-releases/consumer-alert-ag-ferguson-urges-biden-administration-protect-student-loan>.

<sup>33</sup> Press Release, U.S. Dep't of Educ., *supra* note 17.

<sup>34</sup> See U.S. Dep't of Educ., *Intent to Establish A Negotiated Rulemaking*, Docket ID ED-2023-OPE-0123, Docket No. 2023-14329, 88 FR 43069 (July 6, 2023).

<sup>35</sup> See 31 C.F.R. 902 (enumerating "significant doubt concerning the Government's ability to prove its case in court" as a basis to compromise a debt under the Federal Claims Collection Standards).



Once the dust settles from the resumption of payments, ED must also rethink its approach to student loan servicer accountability. This was an opportunity for servicers to demonstrate their ability to meet the moment, and they failed. The question is whether ED will meet its moment.

Finally, although protecting borrowers from harm and making them whole should be the first priority, student loan servicers must also be held accountable for their unlawful conduct. To the extent that Broken Records were caused by transfer errors, the fact that at least some of these errors were identified during examinations in 2021 and 2022, as evidenced by the CFPB's Supervisory Highlights in 2022, and even earlier with respect to ACS's practices, suggests that servicers failed to adequately address the problems that were identified and generally have inadequate compliance and quality controls. They are therefore considered repeat offenders. CFPB Director Rohit Chopra has suggested a framework for dealing with repeat offenders that would result in more meaningful consumer protection and behavior change than monetary penalties.<sup>36</sup> Broken Records and student loan servicers' conduct merit the application of those repeat offender principles.

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<sup>36</sup> Remarks by CFPB Director Rohit Chopra, "*Reining in Repeat Offenders: 2022 Distinguished lecture on Regulation*", University of Pennsylvania Law School (Mar. 28, 2022), <https://www.consumerfinance.gov/about-us/newsroom/reining-in-repeat-offenders-2022-distinguished-lecture-on-regulation-university-of-pennsylvania-law-school/>.