

Comment Submitted by Legal Services Organizations and Borrower Advocates

To the U.S. Department of Education

Re: Comments on Agency Information Collection Activities; Comment Request; Third Party Authorization (87 Fed. Reg. 11419)

Docket No.: ED-2021-SCC-0127

March 31, 2022

The following comments are submitted on behalf of the undersigned legal services organizations and borrower advocates. We thank you for the opportunity to comment on the Department of Education's (ED) revised Third Party Authorization form. We offer the following comments to ensure that this new form does not block vulnerable borrowers from getting the legal assistance they require.

In light of the delayed implementation of the Stop Student Debt Relief Scams Act of 2019 (STOP Act) third-party access system, Section D.3 risks blocking vulnerable borrowers from getting necessary legal assistance. This section, pasted below, requires the third-party to affirm that "I have not and will not ask the individual identified in Section A for their FSA ID or username and password, and will not seek to log into any loan servicer or Federal Student Aid system using their credentials." Form at 3. We recommend that this sentence be removed until and unless ED implements the third-party access system.

By checking this box, I, the representative, affirm I have not and will not ask the individual identified in Section A for their FSA ID or username and password, and will not seek to log into any loan servicer or Federal Student Aid system using their credentials. I, the representative, acknowledge and understand the use of an access device (18 U.S.C. §1029(e)(1) U.S.C.) 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 face criminal penalties pursuant to Section 490 of the Higher Education Act of 1965 (20 U.S.C. 1097), as amended.

Advocates, particularly legal aid and 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. 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 usable. These steps are near impossible on a smartphone and, practically speaking, 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 rights to an administrative discharge, income-driven repayment plans, or loan default recovery options.

The most vulnerable borrowers, such as those who are elderly, disabled, low-income, or experiencing housing insecurity, job loss, and other traumas, often do not have access to the internet 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, and may lack access and transit to a local legal aid attorney who can assist in person. Because there is no third-party access system to access a borrower's NSLDS data, advocates who want to help their clients must sometimes log in to these borrowers' accounts on their behalf to gain access to the information necessary to provide the borrower with accurate legal advice.

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 where there has been a prior default, loan transfer, or 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 in order to meet with their attorney. Delays in obtaining information can mean costly delays in service, or in the worst case, may mean that borrowers are unable to receive assistance at all.

When Congress passed the Stop Student Debt Relief Scams Act of 2019 (the STOP Act), it intended to crack down on debt relief scammers and imposed criminal penalties on third parties who obtained ED-held data about a borrower by using that borrower's log-in and password to 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 in to each borrower's studentaid.gov account.

As of this date, ED has failed to create a third-party access system for student loan borrower advocates, though the STOP Act's criminal penalties are in force.

In the absence of this third-party data access system, Section D.3 as drafted blocks vulnerable borrowers from getting critical legal assistance and must be amended. As detailed above, we

recommend that the first sentence of section D.3 be removed until and unless ED implements the third-party access system. Until such a system is up and running, legal services organizations and borrower advocates must have an easy and fast way to access the FSA system, either with a client's FSA ID or with their own login capability with a client's permission.

Please feel free to contact Claire Torchiana at claire@protectborrowers.org with any questions or comments.

Thank you for considering these comments,

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Community Legal Services (Arizona)
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Community Service Society of NY
Henry & DeGraaff, PS
Housing and Economic Rights Advocates
Legal Aid Foundation of Los Angeles
National Consumer Law Center (on behalf of its low-income clients)
North Carolina Justice Center
Oakes Law Offices, PC
Preston Law Offices
Public Law Center
Legal Aid Foundation of Los Angeles
Student Borrower Protection Center
Tzedek DC