The Project on Predatory Student Lending
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VIA E-MAIL

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Re: *Sweet v. Cardona*, No. 19-cv-03674 (N.D. Cal.)

Dear Stuart and Ben,

We appreciated speaking with you and representatives of the Department of Education in our meet & confer session on February 26, 2024. We are writing to follow up on issues we discussed at that meeting.

1. Parties' positions regarding the existence of material breaches

First, as to Plaintiffs' first allegation of material breach (failure to provide Full Settlement Relief to all members of the automatic relief group by the January 28, 2024 deadline), our understanding is that the Department agrees that a material breach has occurred with respect to undelivered discharges and refunds.[1] As such, in our upcoming meet & confer sessions, we will seek to come to an agreement on what actions the Department will take to rectify this breach, pursuant to Paragraph V.D.3.i of the Settlement Agreement.

[1] The Department took the position that the existence of a material breach should be assessed as of March 1, 2024, because implementation of the Settlement was delayed for four weeks after the Effective Date due to the Intervenors' then-pending motion for a stay. There is no language in the Settlement Agreement to support this position. Nonetheless, the Department has acknowledged that it will not deliver Full Settlement Relief to all automatic relief group members by March 1, 2024, so this disagreement is essentially academic. The Department is and will be in material breach regardless.

The Department took the position that it has not materially breached the Settlement with respect to the failure to deliver the third component of Full Settlement Relief, the deletion of credit tradelines from Class Members' credit reports. While we are cognizant that the Department does not directly provide information to credit reporting agencies ("CRAs"), the Department does have a responsibility under the Settlement to ensure that its servicers provide timely and accurate information to the CRAs. As detailed below, we are interested in receiving additional information that could clarify this situation.

As to Plaintiffs' second allegation of material breach (failure to provide "timely and complete" quarterly reports), the Department admits that it did not provide an accurate accounting of how many automatic relief group members have received Full Settlement Relief, but denies that this failure was material. As we explained in our meeting, Plaintiffs do not agree. It is true that, due to the Department's history with the Form Denial Notices, the parties negotiated for the quarterly reports to contain more detailed data regarding the decision group—but that does not mean that information about the automatic relief group is immaterial. If Plaintiffs had known earlier that the Department was on track to provide less than 70% of the required relief by the January 28 deadline, it certainly would have affected our interactions with both the Department and Class Members in the months leading up to the deadline.

That being said, we appreciate the Department's offer to provide more frequent and more detailed reporting going forward. Subject to our receiving the further information detailed below, we are open to negotiating an updated reporting process that could rectify this alleged breach.

Finally, as to Plaintiffs' third allegation of material breach (failure to maintain Class Members in forbearance or stopped collection status), the Department took the position that no material breach has occurred, apparently on the basis of its belief that any servicing errors are "rare." As we detailed in our meeting, and as we have explained to the Department in various calls and letters since October 2023, this is not what we are hearing from our clients. We have, to date, provided the Department with hundreds of names of Class Members whose servicers have tried to put them back into repayment or have taken other adverse actions on their loans since the COVID payment pause ended. There appears to be a major disconnect between what servicers are telling the Department and what they are telling borrowers. As we agreed during our meeting, the parties here have a mutual interest in ensuring that servicers are not giving out incorrect information about the Settlement.

You also stated during our meeting that the Department's position is that it is not liable for servicers acting inconsistently with its instructions. Respectfully, we disagree. The Department cannot escape its responsibilities under the Settlement simply by outsourcing these responsibilities to student loan servicers and then disclaiming any liability for these servicers' failures. Direct Loan servicers work for the Department on loans that, ultimately, are held by the Department. When the Department gives its contractors instructions—particularly instructions that relate to the correct implementation of a court-approved settlement—it is squarely the Department's responsibility to make sure those instructions are

followed. The Department's failure to oversee its contractors is not exculpatory. We continue to maintain our third allegation of material breach.

In sum, partial compliance with the Settlement is not compliance. Even the Department's estimated 70% compliance—a likely overestimate, given the absence of data about refunds—does not help the Class Members who live paycheck to paycheck, who are desperate to receive the relief they were promised, and who are facing a multitude of harms from ongoing collection and reporting on debt that they no longer owe.

By our calculation, if the parties are unable to reach consensus regarding the alleged breaches and the steps that the Department will take to rectify them, Plaintiffs would be authorized to file a motion for enforcement on or after March 19, 2024 (as to an acknowledged material breach) or March 27, 2024 (as to a disputed material breach).

2. The Department's commitments to provide additional information

In your letter of February 16, 2024, and during our meeting, the Department committed to providing Plaintiffs with certain information. This information is relevant to the Department's meet & confer assertion that it is attempting in good faith to comply with the Settlement terms notwithstanding its failure to deliver required relief to a significant number of class members. This information includes:

- Copies of change requests and other instructions provided to servicers with respect to implementing the Settlement. This category will specifically include, but not be limited to:
    - Instructions to "original" loan servicers relating to how to handle consolidation loans (*i.e.*, what these servicers were told to do in order to "initiate [the] series of transactions that would result in the discharge and payment of any refund" on the consolidation loan).
    - Instructions to servicers regarding credit tradeline deletion, and/or any other information they should or should not provide to CRAs, with respect to *Sweet*-eligible loans.
- Summaries of what the Department has instructed servicers to do and how that corresponds to back-end inquiries that the Department is undertaking in NSLDS. (We understand this offer to be responsive to our request in our February 2, 2024 letter for documents showing the "verification processes that FSA uses to confirm that servicers are accurately reporting whether relief has been 'effectuated' for a particular Class Member.")
- A summary of data, similar to the bullet-point list on page 2 of your letter of February 16, showing how many and what percentage of the automatic relief group have (i) received the full refund amount to which the Department believes they are entitled; (ii) received some, but not all, of the refund amount to which the Department believes they are entitled; (iii)

have been determined by the Department to be owed no refund; and (iv) require further investigation as to their refund status.[2]

- Copies of all *Sweet*-specific reports transmitted to the Department by servicers.

- Bi-weekly reports detailing the number of borrowers who have received Full Settlement Relief, including details regarding the steps taken to verify that information, as well as information regarding the status of progress for borrowers who have not yet received Full Settlement Relief.

We request that the Department deliver this information by Friday, March 8, 2024.

The Department also asked which other indicators would be helpful for it to share in reports going forward, in addition to the data categories included in the tables in your February 16 letter. We would request the following:

- Additional information regarding FFEL loans for the automatic relief group—specifically, (i) how many Class Members in the automatic relief group had or have FFEL loans eligible for settlement discharge; (ii) how many of those Class Members have received a full discharge of all eligible FFEL loans; (iii) how many have received a partial discharge of some, but not all, eligible FFEL loans; (iv) how many have not received their FFEL discharge yet; and (v) how the Department is verifying the successful discharge of FFEL loans.

- All information provided by servicers to the Department regarding their progress in updating credit tradelines for automatic relief group members.

- The number of complaints the Department has received from Class Members regarding servicers demanding payment or taking other adverse actions (including, for example, inaccurate reporting to CRAs) on their *Sweet*-eligible loans.

3. Timeline

In order to come to any consensus on how the Department might rectify its material breaches of the Settlement Agreement, we will require the Department to commit to a strict and near-term deadline by which all Class Members in the automatic relief group will receive their Full Settlement Relief—with no exceptions. If meeting this deadline means that the Department will have to take certain steps that favor borrowers—for instance, discharging the full balance of consolidation loans where servicers are unable to calculate the portion of the balance attributable to Exhibit C loans, or refunding all prior

[2] In our meeting, you stated that the Department does not have information about when refund checks are actually mailed to borrowers from the Treasury Department, but does have "indicators" of "where people are in the [refund] process." We understand that the data provided will be subject to this limitation.

payments where servicers are unable to apportion payments among *Sweet* and non-*Sweet* loans—then so be it.

It is simply unacceptable for the Department to state, as it did in its letter of February 16, that it is "unable to provide an estimate about when full settlement relief will be provided to all Exhibit C borrowers." This case is, at its core, about the Department's interminable delay in resolving borrower defense applications; the Class will not tolerate yet another open-ended period of delay. Here are just a few examples of Class Members we have heard from since the Department violated the January 28 deadline, who are currently suffering hardships because the Department has once again failed to meet its legal commitments:

- "So far, I have only received a discharge for the largest of my three loans for The Art Institute. . . . MOHELA has been wholly uncooperative every time I've called them. . . . I am currently being treated for cancer and have received a cancer treatment deferral, but had I not filled out that form and had my doctor sign it, they would be requiring me to make payments on my loans which should have been discharged. This is causing huge amounts of stress for me and is not helping my current health conditions." - Regina, KS, Art Institute

- "Technically my loans have been discharged due to my participation in the PSLF program. But I am still a class member and am due a refund. My loans were discharged the week FedLoan stopped servicing loans. I was told I would be transferred to MOHELA, but they had no record of me. I was/am in no man's land. . . . [I] called the BD hotline and was given one answer, then called a loan servicer provider and they gave me a totally different answer. I nearly completed suicide over these loans over a decade ago. Now the absolute utter onslaught of stress that has ensued is damaging my health. It is failing, rapidly. I'm told if I perish before the elusive and mystical check arrives, it cannot be transferred to my heir. This whole situation has taken DECADES off of my life and should be listed as a contributing factor in my cause of death." - Summer, FL, Florida Coastal School of Law

- "I am a single parent of a disabled adult child. My education was to make it possible to support my child on my own, but the school misled me, and my education didn't lead to the career I was told it would. I am now 56 years old. My son is 23. I live with my ex's mother, who is 95. If she passes away, I have no place to live. I have been working hard to save money to buy a home for my son and I and we actually CAN afford a place in a lower-income area - but only after my loans are gone, as my student loan balances impact the amount I can borrow toward a home loan. I have told my ex's mother that she is not allowed to die till my loans are gone, so I can afford to buy a home for my son and me without the impact of the loans affecting the amount I can borrow. She said she'll do her best, but at 95 I can only expect so much. I was so hopeful that this would be taken care of by 01/28/2024, but that is obviously not the case. I am very anxious." - Mary, CA, Brooks Institute

- “I am going to PERMANENTLY lose the opportunity to become a federal law enforcement officer because of MOHELA’s settlement violations. . . . I had 7 months to complete the background. MOHELA's failure to discharge my loans will permanently deny me an opportunity I have worked 10+ years for. I don’t get a do-over. I don't get an extension. I have one shot and MOHELA stole it. . . . I want my settlement relief. Nothing more nothing less. . . . They are causing me to appear as a financial liability and MOHELA refuses to remove erroneous information which reports my loans are delinquent. This could permanently disqualify me from ever working for an agency in any capacity. This is not fair. This is my life. . . . I’ve opened no less than 5 cases. I’ve sent 50 messages warning MOHELA of the dire consequences of violation. This is not fair, and it is unjust. Please make them enforce the settlement. Timely. I don't have time to wait.” - Mallory, TN, Arizona Summit Law School

- “"This is something that has been dragging on for five years as of today. I have literally spent hours on hold and dealing with Nelnet trying to get this taken care of. Now my account is showing I am in repayment even though I was assured I was in forbearance until February. I just want this resolved. It weighs on me, not knowing what to do. Should I pay on the loan to mitigate interest and protect my credit score? Should I just sit and wait for the powers-that-be to do what they have promised? Should I yell to the mountaintops? It feels like I have a huge debt hanging over me that could drop back down on me. The last payment I made on the account was in 2022, but I have had about $1000 in ‘payment’ show up on the account. I am not sure if this was money that was supposed to be sent in refund or what the story is regarding that money. I have not been able to get any clear answers from Nelnet.” - Cynthia, GA, University of Phoenix

- “I was taken off of admin forbearance and it has been a struggle just to get put back on it and frustration due to the fact that every person I seem to talk to at MOHELA acts like they do not know about this lawsuit. They act like they don’t have the information in their system sent from the Borrowers Defense department. Even speaking with people at the Borrowers Defense department on the phone and FSA department. No one has been really helpful and more than anything I have been lied to more than I can count.” - Tuwanna, WA, University of Phoenix

- “I am unable to buy a home due to this large amount on my credit. I have since had to move back to Massachusetts and sell my home in Florida due to medical reasons. I could not purchase again in MA due to these loans. Due to this, my rent is now over twice what my old mortgage was. I am a single mom working four jobs. Argosy promised a successful career in my field and I do not have one in that field. I had to pave my own way in another.” - Pamela, MA, Argosy

We look forward to receiving a proposal for a more specific timeline, as you promised in your letter of February 16.

Thank you for your attention to this matter.

Sincerely,

Rebecca Ellis
Eileen Connor
Rebecca Eisenbrey
Noah Zinner
PROJECT ON PREDATORY STUDENT LENDING

cc: Joe Jaramillo