



STUDENT BORROWER
PROTECTION CENTER



STUDENT VETERANS
of AMERICA

July 18, 2019

Hon. Betsy DeVos Secretary
U.S. Department of Education
400 Maryland Ave SW,
Washington, DC 20202

Dear Secretary DeVos:

We are writing to urge the Department of Education to abandon its current interpretation of federal law that leaves servicemembers open to abuse by the student loan industry.

Our organizations are alarmed by what appears to be a new Department of Education policy intended to obstruct oversight by the agencies charged with enforcing laws that protect military borrowers, including the Servicemembers Civil Relief Act (SCRA). The Department's position is in direct conflict with well-established federal law and empowers bad actors in the student loan servicing industry to deny servicemembers their rights.

The Servicemember Civil Relief Act & Abuses by Department of Education Contractors

As the Department of Education is aware, federal law authorizes the Department of Justice to administer and enforce the SCRA.¹ Yet, when asked directly by Senator Patty Murray, the Ranking Member of the Senate Health, Education, Labor, and Pensions Committee, about the role of the Department of Justice with respect to federal student loans, the Department of Education stated that it "does not generally opine on the jurisdiction or oversight authority of other federal agencies."²

This position is contradicted by the Department of Education's own regulations and contracts that require it to comply with the protections for military borrowers that are administered by the Department of Justice.³

¹ 50 U.S.C. § 4041; see generally U.S. Dep't of Just., *The Servicemembers Civil Relief Act (SCRA)* (accessed June 3, 2019), <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-skra>.

² U.S. Dep't of Educ., *Questions Submitted by Senator Patty Murray* at 25, Securities and Exchange Commission Jurisdiction Over Federal Student Loans, <https://www.help.senate.gov/imo/media/doc/SenMurrayQFRresponses32819LHHShearing.pdf>.

³ See, e.g., 34 C.F.R. § 682.202 ("Applicability of the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. 527, App. sec. 207); U.S. Dep't of Educ., *Dear Colleague Gen-16-08: Approval of Servicemember Civil Relief Act (SCRA) Interest Rate Limitation Request for the Direct Loan and FFEL Programs* (May 2016), <https://ifap.ed.gov/dpccletters/GEN1608.html> ("This letter announces the approval of a new SCRA Interest Rate Limitation Request for the Direct Loan and FFEL programs. The form fulfills the regulatory requirement at 34 C.F.R. § 682.208(j)(3)(ii), which becomes effective on July 1, 2016.").

On June 5, 2019, in response to revelations that the Department of Education had derailed efforts by the Consumer Financial Protection Bureau to oversee large private-sector student loan contractors, Department spokesperson Liz Hill told the Washington Post that the Department “is solely responsible for monitoring federal student-loan servicers...”⁴

This position—that the Department of Education is “solely responsible” for policing the \$1.5 trillion federal student loan market—directly contradicts multiple federal laws⁵ and regulations and rejects the historical position of the Department of Education.⁶

Past Abuses by Navient Illustrate the Risk to Military Borrowers

The SCRA entitles active-duty members of the military to reduce the interest charged on certain financial products to six percent—a statutory cap that applies to both private and federal student loans.⁷ In 2014, one of the Department of Education’s largest student loan servicing contractors, Navient, was the target of an enforcement action by the Department of Justice and the Federal Deposit Insurance Corporation for violations of the SCRA, including illegal practices that harmed borrowers whose loans were owned by the Department of Education.⁸ As the Department of Justice explained at the time:

The proposed settlement covers the entire portfolio of student loans serviced by, or on behalf of, [Navient]. This includes private student loans, direct Department of Education loans and student loans that originated under the Federal Family Education Loan Program. The proposed settlement is far-reaching, with certain servicemembers [sic] to be compensated for violations of the SCRA that occurred almost a decade ago.

This enforcement action, which returned \$60 million to nearly 78,000 current and former active-duty members of the military, illustrates the critical importance of independent oversight over the student loan companies hired by the Department of Education to administer student loan accounts for servicemembers and their families. The recent position articulated by the Department of Education—

⁴ Danielle Douglas-Gabriel, *Civil rights groups urge consumer bureau to root out discrimination in the student-loan servicing industry*, Wash. Post (June 5, 2019), https://www.washingtonpost.com/education/2019/06/05/civil-rights-groups-urge-consumer-bureau-root-out-discrimination-student-loan-servicing-industry/?utm_term=.afe9c99381e8.

⁵ See 50 U.S.C. § 4041 (explicitly granting the Department of Justice enforcement authority under the Servicemembers Civil Relief Act); 12 U.S.C. §§ 5511, 5562-65 (providing the Consumer Financial Protection Bureau statutory authority to investigate and enforce federal consumer financial laws).

⁶ See, e.g., U.S. Dept. of Education, Office of the General Counsel, Letter to Jedd Bellman, Assistant Commissioner, State of Maryland Department of Labor, Licensing, and Regulation (Jan. 21, 2016), https://na-production.s3.amazonaws.com/documents/Dept._of_Ed_Response.1.21.2016_dORyoLm.pdf; (“If the State [of Maryland] determines that loan servicers or [debt collectors] are “collection agencies” under [Maryland law] the Department does not believe that the State’s regulation of those entities would be preempted by Federal law. Further, such regulation would not conflict with the Department’s contracts with those entities, which provide generally that loan servicers and [debt collectors] must comply with State and Federal law.”).

⁷ See 50 U.S.C. § 4041; see also *The Servicemembers Civil Relief Act (SCRA)*, *supra* note 1.

⁸ See U.S. Dep’t of Just., *Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans* (May 13, 2014), <https://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging>.

that it has “sole responsibility” for performing oversight—would have denied justice to these military borrowers and prevented these abuses from coming to light.

As the preceding example illustrates, independent enforcement by federal agencies is critical to protect the rights of servicemembers and their families.

Unfortunately, according to its recent comments, the Department of Education appears to believe that a private sector company can unlawfully deny military consumer protections to servicemembers and, when this occurs, the Department of Justice has no enforcement role and affected servicemembers have no recourse under the SCRA.

This dangerous interpretation of federal law flies in the face of the SCRA’s clear grant of enforcement authority to the Department of Justice.⁹

We urge you to answer an important question for our servicemembers:

Do you recognize that the Department of Justice has jurisdiction over the conduct of private sector student loan servicers as it relates to protecting military members, a population that has historically been preyed on in this marketplace?

More importantly, we urge the Department of Education to take the steps necessary to ensure that the Department of Justice and any other agencies authorized to enforce the SCRA can independently protect military borrowers from abuses by the student loan industry.

Sincerely,



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PROTECTION CENTER

Student Borrower Protection Center



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of AMERICA

Student Veterans of America

CC: Eric S. Dreiband, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice
Mark T. Esper, Acting Secretary of Defense
Vice Admiral John G. Hannink, Judge Advocate General, U.S. Navy
Lieutenant General Charles N. Pede, Judge Advocate General, U.S. Army
Lieutenant General Jeffrey A. Rockwell, Judge Advocate General, U.S. Air Force
Rear Admiral Steven J. Andersen, Judge Advocate General, U.S. Coast Guard
Major General Daniel J. Lecce, Staff Judge Advocate to the Commandant of the Marine Corps
Sandra Bruce, Deputy Inspector General, U.S. Department of Education
Michael E. Horowitz, Inspector General, U.S. Department of Justice

⁹ See 50 U.S.C. § 4041.