

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK LEGAL ASSISTANCE GROUP

Plaintiff,

Docket No.: 23 Civ. 1427

-against-

COMPLAINT

UNITED STATES DEPARTMENT OF EDUCATION

Defendants.

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PRELIMINARY STATEMENT

1. Plaintiff New York Legal Assistance Group (NYLAG) brings this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel Defendant United States Department of Education (USED) to provide records responsive to NYLAG’s FOIA request dated May 19, 2022 (Request) (Exhibit 1).

2. After a borrower misses payments on their federal student loans, the loans enter a “default” status. USED can then decide whether and how to proceed collecting on the defaulted student loan debt. USED has a variety of collections mechanisms available: it can garnish a borrower’s wages, offset their federal income tax returns or Social Security and disability benefits, and/or hire a private collection agency to begin collection efforts. Critically, even after the borrower has defaulted, the borrower still has access to many loan cancellation programs and has options to get their federal loans out of default and back into good status, including by enrolling in an affordable repayment plan.

3. In some instances, however, USED refers defaulted federal student loans to the United States Department of Justice (DOJ), and DOJ either sues the borrower to obtain a judgment on the outstanding debt or contracts with a private law firm to sue the borrower for that

relief. Once USED obtains a judgment against the borrower, the borrower no longer has access to options to get their federal loans into good status.

4. USED has not made public how it decides which borrowers to refer to DOJ for collection via litigation.

5. Accordingly, on May 19, 2022, NYLAG submitted the FOIA Request (Exhibit 1) to obtain records relating to this issue. NYLAG's Request also sought records relating to USED's general processes for responding to FOIA requests.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331, as this is the district in which NYLAG has its principal place of business.

7. Venue is proper in the Southern District of New York pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because this is the district in which NYLAG has its principal place of business.

PARTIES

8. Plaintiff New York Legal Assistance Group (NYLAG) is a not-for-profit legal services organization with its principal place of business at 100 Pearl Street, New York, New York.

9. NYLAG is a leading civil legal services organization combatting economic, social, and racial injustice by providing free legal services to New Yorkers experiencing poverty or crisis. NYLAG has expertise in student loan law and also provides financial empowerment services to New Yorkers. NYLAG represents many clients with federal student loans, including clients facing debt collection lawsuits. NYLAG regularly submits FOIA requests to USED.

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

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

STATEMENT OF FACTS

I. Background on Federal Student Loans and Collection Via Litigation

12. Approximately one in five of the 44 million federal student loan borrowers has defaulted student loans.

13. Even after a borrower has defaulted, the borrower still has access to many loan cancellation programs and has options to get their federal loans out of default and back into good status, including by enrolling in an affordable repayment plan.

14. When a defaulted student loan account is referred to DOJ for litigation, DOJ assigns the case to a federal prosecutor’s office or outsources the debt collection litigation to a private law firm. Private law firms that contract with DOJ commence approximately 85% of cases against borrowers with defaulted student loans.

15. The Department has stated that “litigation is a collection tool of last resort” and that collection agencies should refer a student loan debt to litigation only when it is “unable to recover funds through [other] available collections tools,” such as administrative wage garnishment, and offset federal income tax returns, and Social Security and disability benefits.¹

¹ 2016 Private Collection Agency (PCA) Procedures Manual.

16. The federal government often wins debt collection lawsuits against borrowers by obtaining default judgments. Approximately 60% of federal student loan collections lawsuits result in a default judgment against the borrower.

17. A judgment is extremely detrimental to a student loan borrower. The borrower loses access to programs that would enable them to return their loans into good standing or enroll in an affordable payment plan, and generally cannot get their loans out of default without full payment.

18. A 2019 study shows that USED's practice of collecting student loans via litigation is disproportionately concentrated in zip codes that are homes to communities of color.²

19. Even though the decision whether to sue to collect on a defaulted student loan has tremendous consequences for borrowers, USED has not made public any criteria it uses to decide when to refer a defaulted debt to DOJ for litigation.

II. Background on USED's FOIA Practices

20. USED receives numerous FOIA requests, including many requests relating to its management of the \$1.5 trillion federal student loan program.

21. Federal Student Aid (FSA), an office within USED that operates the federal student loan program, receives and processes hundreds of FOIA requests each year. The time for FSA to respond to FOIA requests ranges from less than one day to two-and-a-half years. There are six FOIA staff assigned to FSA.³

² National Consumer Law Center (NCLC), *Inequitable Judgments: Examining Race and Federal Student Loan Collection Lawsuits*, available at <https://www.nclc.org/wp-content/uploads/2022/10/report-inequitable-judgments-april2019.pdf>.

³ U.S. Dep't of Educ., 2021 Freedom of Information Act Annual Report to the Attorney General of the United States 11, 35, 55, available at <https://www2.ed.gov/about/reports/annual/foia/foia-fy21.pdf>.

22. Records responsive to FOIA requests relating to federal student loans may be held within FSA and its subdivisions, but may also be held in other offices within USED (e.g., the Office of the General Counsel).

III. Impact on Borrowers

23. Judgments on defaulted student loans have a tremendous impact on borrowers, as NYLAG has seen in its work representing them.

24. For example, one NYLAG client borrowed \$12,500 in federal student loans between 1974 and 1985. After experiencing significant personal hardship, she was unable to continue making payments on her federal loans, and her loans went into default. USED referred her account to DOJ, which hired a private law firm to sue her. The law firm obtained a judgment against her, and she agreed to pay the loans on a payment plan. By November 2020, the client had paid more than \$35,000 on the loans (almost triple the original loan amount) but still had a remaining balance of nearly \$17,000. Due to the judgment entered against her, she was not able to seek any relief from her debt: she could not apply for the Public Service Loan Forgiveness (PSLF) program, despite working in public service, and could not enroll in an Income Driven Repayment (IDR) plan that would have entitled her to affordable monthly payments on her federal loans. While NYLAG was ultimately able to assist the borrower in obtaining loan cancellation last year, the judgment entered against the client had harmed her for at least three decades.

25. A second NYLAG client borrowed \$25,000 in federal student loans between 1987 and 1994 and then defaulted. USED referred the case to DOJ, which hired a private law firm to sue her. The client appeared in court *pro se* and signed a stipulation of settlement that set up a payment plan and consented to the entry of judgment. She made payments for approximately six

years following the judgment but due to financial hardship, she was evicted from her apartment and was unable to continue making payments on her loans. By the time the client contacted NYLAG in June 2020, her federal student loan balance was approximately \$62,000. NYLAG contacted the private law firm and requested that DOJ vacate the judgment, so the client could enroll in an IDR plan and manage her monthly payments. DOJ refused, and USED likewise was unwilling to provide any assistance to the borrower.⁴ The client has no other prospect of resolving her student loans. She aspires to be a homeowner; however, the judgment and her student loan debt make that dream unlikely. She continues to live with this debt today.

26. NYLAG's experience with borrowers like these led it to seek records from USED about its process and procedures for commencing litigation against borrowers with defaulted student loans.

27. When appropriate, NYLAG submits FOIA requests to USED on critical issues that affect its low-income student loan borrower clients. USED's process for determining when to sue borrowers is one such issue, but NYLAG has submitted numerous other FOIA Requests over its many years of representing student loan borrowers, including requests for records showing how non-English speakers can access information about federal student loan relief and records relating to cancellation of student loans for borrowers who attended schools who defrauded them.⁵ Accordingly, NYLAG has an interest in understanding USED's FOIA practices, and USED's FOIA practices have a meaningful impact on NYLAG's low-income clients.

⁴ USED's policy is that it "generally does not vacate judgments." See Loan Servicing and Collection - Frequently Asked Questions, available at <https://fsapartners.ed.gov/knowledge-center/faqs/loan-servicing-and-collection-frequently-asked-questions>

⁵ See, e.g., *NYLAG v. U.S. Dep't of Educ.*, 15 Civ. 3818 (S.D.N.Y.) (FOIA action seeking information relating to the borrower defense provision, a little-before-used avenue for student loan relief that has now been used by hundreds of thousands of borrowers defrauded by their schools).

IV. NYLAG's FOIA Request and USED's Response

28. On May 19, 2022, NYLAG submitted a FOIA Request (Exhibit 1) seeking records related to litigation on defaulted federal student loans and USED's FOIA practices. This request was assigned FOIA Request No. 22-02800-F.

29. In its FOIA request, NYLAG sought a waiver of fees because disclosure of the requested information would be in the public interest and not for commercial use. The disclosure of this information would help NYLAG fulfill its mission to assist student loan borrowers, including by improving its capacity to assist such borrowers, educating them and the public about the Department's processes for collection via litigation and responding to FOIA requests like NYLAG's, and zealously advocating on behalf of student loan borrowers.

30. On May 20, 2022, the Department sent NYLAG a letter acknowledging receipt of the Request.

31. NYLAG did not receive any response by June 17, 2022, the statutory deadline.

32. On June 20, 2022, the Department granted NYLAG's fee waiver request.

33. On July 26, 2022, NYLAG appealed the FOIA Request on the basis that, as of that date, USED had not responded to the Request. The appeal was designated Appeal No. 22-00041-A.

34. On October 17, 2022, USED responded to NYLAG's Request (Exhibit 2).

35. In response to NYLAG's detailed request, USED produced only a single document, which is five pages long (Exhibit 3). This document relates to the FOIA procedures of one office within USED, the Ombudsman Group.

36. USED did not produce *any* documents at all relating to its procedures for collection on defaulted student loans via litigation.

37. USED did not produce any documents relating to its FOIA procedures for any offices other than the single five-page document relating to the Ombudsman Group.

38. On October 20, 2022, USED denied NYLAG's appeal (No. 22-00041-A) as moot because the Department had responded to NYLAG's FOIA request and the basis of the appeal was the Department's failure to respond to NYLAG's request within the statutory deadline.

39. On January 12, 2023, NYLAG filed a second appeal, challenging USED's failure to provide an adequate response to NYLAG's request.

40. The statutory deadline for USED to respond to NYLAG's second appeal was February 10, 2023. To date, Defendant has not responded to NYLAG's appeal.

41. The Department's response to NYLAG's FOIA request was plainly inadequate, in that it relied on a patently inadequate search and improperly withheld responsive records. In response to the portion of NYLAG's Request seeking records relating to the Department's litigation on defaulted student loans, the Department did not produce a single document. In response to the portion of NYLAG's Request seeking records relating to the Department's FOIA procedures, the Department produced a single five-page document. Nor did the Department identify any documents as being withheld pursuant to any FOIA exemptions.

42. Accordingly, NYLAG brings this action to request that this Court issue an injunction ordering USED to promptly produce to NYLAG the requested records in their entirety.

CAUSE OF ACTION

Count 1: Violation of FOIA, 5 USC § 552

43. On May 19, 2022, NYLAG submitted a FOIA Request to USED.

44. USED did not adequately respond to NYLAG's Request. USED failed to conduct an adequate search in response to NYLAG's FOIA Request and withheld records responsive to NYLAG's FOIA request.

45. USED has no legal basis for withholding records responsive to NYLAG's request.

46. NYLAG is entitled to injunctive and declaratory relief, as well as costs, expenses, and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, NYLAG respectfully requests that this Court:

- (A) Declare that Defendant's withholding of records requested by NYLAG is unlawful;
- (B) Issue an injunction directing Defendant to immediately conduct a thorough search for all records responsive to NYLAG's FOIA Request using search methods reasonably likely to lead to discovery of all responsive records, and directing Defendant to promptly to produce to NYLAG the requested records in their entirety pursuant to 5 U.S.C. § 552(a)(4)(B);
- (C) Award NYLAG its costs, expenses, and reasonable attorneys' fees pursuant to U.S.C. § 552(a)(4)(E); and
- (D) Grant such other and further relief as this Court may deem just and proper.

Dated: February 21, 2023

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By:

A handwritten signature in black ink, appearing to be 'JR', written over a horizontal line.

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