



**U.S. Department of Justice**  
**Civil Division, Federal Programs Branch**  
450 Golden Gate Ave.  
San Francisco, CA 94102

---

Stuart J. Robinson  
Senior Counsel

Telephone: (415) 436-6635  
E-Mail: [stuart.j.robinson@usdoj.gov](mailto:stuart.j.robinson@usdoj.gov)

February 16, 2024

Rebecca Ellis  
Project on Predatory Student Lending  
769 Centre St.  
Boston, MA 02130

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

Dear Rebecca:

We write to respond to your letter dated February 2, 2024, providing notice of Plaintiffs' allegations that Defendants are in material breach of the Settlement Agreement. In accordance with the terms of the Agreement, we acknowledged receipt of your notice on February 6, 2024. Additionally, we shared your letter with the Department of Education ("Department"). The Department has reviewed the issues raised in your letter and has provided the information below.

*First*, Plaintiffs allege that the Department has failed to provide full settlement relief by January 28, 2024, to class members who received loans to attend the institutions and locations listed in Exhibit C of the Agreement. Plaintiffs' allegations concern the failure to discharge the relevant loan debt of these borrowers, the failure to issue full refunds to these borrowers, and the failure to delete credit tradelines.

The Department acknowledges that full settlement relief has not been implemented for all borrowers who are entitled to such relief under Paragraph IV.A.1 of the Agreement by January 28, 2024. By way of background, 195,993 borrowers comprise Exhibit C class members. A total of 1,847,267 loans were determined as eligible for relief based on Exhibit C's list of institutions and locations. Once permitted to do so, the Department sent a total of 251,549 discharge requests to the relevant servicers, accounting for all 195,993 Exhibit C borrowers. If a borrower had eligible loans serviced by more than one servicer, the Department sent a separate request to each servicer. If a borrower had a consolidation loan, the Department sent the request to the original servicer of the underlying loan eligible for discharge based on Exhibit C, because that servicer would be able

to initiate a series of transactions that would result in the discharge and payment of any refund and would ultimately be reflected in the balance of the borrower's consolidation loan.<sup>1</sup>

As of January 2024, the Department, relying on the information reported by the servicers, believed that 95% of Exhibit C borrowers had received full settlement relief. The Department conveyed this understanding to you in a call on January 24, 2024. In that call, the Department also referenced processing delays that were detected after discharge requests were fulfilled by the servicer that initially received the requests—delays that appear to largely affect class members with consolidation loans previously serviced by a since-decommissioned servicer. You mentioned reports from borrowers consistent with such issues and raised concerns that the number of Exhibit C borrowers who had not received full settlement relief was greater than 5% of Exhibit C borrowers. Also during that call, the Department described its efforts to work from records in the National Student Loan Data System (“NSLDS”) and class members’ current servicers to examine and verify the status of Exhibit C borrowers’ discharges. Based on that work, the Department has concluded that the numbers provided by the servicers do not account for the processing issues the Department raised and, thus, did not accurately reflect the full state of some borrowers’ relief status. Rather, as of February 15, 2024, the Department’s analysis of NSLDS records indicates that:

- 135,526 borrowers (approximately 69% of Exhibit C borrowers) have received fully processed discharges;
- 31,437 borrowers (approximately 16% of Exhibit C borrowers) have not received fully processed discharges (of these, 3,581 borrowers have received fully processed discharges for some but not all eligible loans); and
- 28,964 borrowers (approximately 15% of Exhibit C borrowers) require further investigation as to whether they have received fully processed discharges.<sup>2</sup>
- For the majority of the borrowers comprising the second and third bullet points, the discharge request has been fulfilled and the discharge is currently processing.

Because the Department’s investigation is ongoing, and in light of the month-long delay in the Department’s ability to issue discharge requests, the Department is not prepared at this time to

---

<sup>1</sup> This process differs for borrowers with FFEL loans. In those cases, relief is initiated by the borrowers’ loans being paid through guaranty agencies.

<sup>2</sup> In addition, there are 66 borrowers who filed borrower defense applications against a school listed on Exhibit C but do not have corresponding records in NSLDS. This is either because the applicant’s Social Security Number (“SSN”) does not match a borrower record in NSLDS or because NSLDS does not show that the borrower had any loans associated with the Exhibit C school on their application. Some possible explanations include that the SSN or OPEID on the borrower’s application was entered incorrectly or that the borrower enrolled using a private loan or grant that is not eligible for borrower defense. The Department would like to work with you to resolve any questions surrounding these borrowers.

issue a determination regarding material breach. The Department intends to supplement this letter by March 1, 2024, regarding its material breach determination.

As noted, the numbers reported above are based on the Department's review of NSLDS files, which record numerous attributes about a borrower's loan(s), including loan status (i.e., open/closed), loan balance, and whether an original servicer has reported the fulfillment of a request for borrower defense relief.<sup>3</sup> NSLDS data thus indicate that borrowers fall into one of four groups: (1) fully processed discharges for all eligible loans; (2) fully processed discharges for some but not all eligible loans; (3) no discharges have been fully processed for eligible loans; and (4) loans require further investigation. For specific types of loans, there may be additional indicia that full settlement relief has been provided.

Based on its investigation, the Department has identified three reasons that certain Exhibit C borrowers have not yet received full settlement relief. These reasons accord with those that the Department discussed with you on January 24. First, the Department has determined that certain borrowers have highly complex consolidation loan histories that must be manually researched and reconstructed to determine the appropriate discharge and/or refund amounts. Second, according to the Department, the payment histories of certain borrowers are not readily available, such that the servicers must reconstruct the borrower's billing history from records that are often dated and contained only in imaged PDFs. Third, the Department found that servicers have initiated the relief process for certain borrowers, but that process has not been completed, likely because a series of transactions must be executed across multiple servicers. In a small minority of cases, this may also be due to coding errors or random processing glitches.

The Department has been able to gather additional data about the types of loans for which discharges have not been fully processed or that require further verification. The former includes both consolidation loans and non-consolidation loans. Many of these loans have been consolidated more than once. The discharge process for the majority of the affected consolidation loans appears to have been initiated but not completed. For example, discharging a consolidation loan may require a servicer to review records from the original loans' lender or servicer and then coordinate with other servicers for the discharge to be properly reflected in each of the subsequent consolidations. This can be particularly time- and resource-consuming when the relevant loan has been consolidated with loans that are not subject to a discharge pursuant to the Agreement.<sup>4</sup> In

---

<sup>3</sup> For borrowers with FFEL loans, information related to the fulfillment of a borrower defense request is sent to the Department rather than being directly updated to NSLDS.

<sup>4</sup> In some cases, the underlying loans in the consolidation include both loans eligible for discharge based on Exhibit C, as well as loans that are not eligible for discharge based on Exhibit C. To adhere to the Agreement, the Department has instructed servicers to discharge only that portion of the loan associated with Exhibit C. The servicers have reported that this presents a logistical challenge, as they must obtain consolidation funding histories (which can be a time-consuming process, assuming the histories can be located) and accurately calculate the amount of the current consolidation loan eligible for discharge pursuant to the Agreement.

other cases, Exhibit C borrowers have a consolidation loan that was previously serviced by an entity that is no longer in business. In that situation, the successor servicer has to implement the discharge by using information that is maintained on the servicing system inherited from the original servicer and that is not integrated with the successor servicer’s system. See Table 1, below. The non-consolidation loans that have not been fully processed include both loans held by the Department and FFEL loans held by private FFEL lenders. See Table 2, below.

**Table 1.** Borrowers Without NSLDS Indicators of Complete Relief (Consolidation Loans)

<b>Category</b>	<b>Borrowers</b>	<b>Details</b>
<b>Open (Consolidation Loan)</b>	<b>26,005</b>	
All Eligible/No BD Indicator	6,436	Borrowers with consolidation loans for which all underlying loans are discharge-eligible under Exhibit C but the consolidation loan lacks a BD indicator and is still open. This category likely includes borrowers with complex loans for which servicers have not fulfilled discharge requests and whose discharges are not yet in process.
All Eligible/BD Indicator	15,091	Borrowers with consolidation loans that bear a BD indicator and for which all underlying loans are discharge-eligible under Exhibit C but the consolidation loan is still open. This category likely includes borrowers with loans whose discharges have been initiated but are still in process.
Mixed/No BD Indicator	4,478	Borrowers with consolidation loans that lack a BD indicator and for which some but not all underlying loans are discharge-eligible under Exhibit C. This category likely includes borrowers with complex loans for which servicers have not fulfilled discharge requests and whose discharges are not yet in process.
<b>Open (Underlying Loan)</b>	<b>983</b>	Borrowers with consolidation loans for which one or more underlying loan is open despite the underlying loan being discharge-eligible under Exhibit C. The borrowers in this category may or may not have loans whose discharges are in process, but it is very unlikely the discharges have been fully processed.

**Table 2.** Borrowers Without NSLDS Indicators of Complete Relief (Non-Consolidation Loans)

Category	Borrowers	Details
<b>Department-Held</b>	<b>4,235*</b>	
Open/No BD Indicator	2,185	Borrowers with loans that are discharge-eligible under Exhibit C but lack a BD indicator and are still open. A likely possibility is that this category includes borrowers with loans that have transferred between servicers and whose discharges have been initiated but are still in process.
Open/BD Indicator	213	Borrowers with loans that bear a BD indicator but are still open. The borrowers in this category may or may not have loans whose discharges are in process, but it is very unlikely the discharges have been fully processed.
Closed/No BD Indicator	1,896	Borrowers with loans that are closed but lack a BD indicator. This category likely includes borrowers that do not have any outstanding loans but may be entitled to additional relief.
<b>FFEL</b>	<b>214</b>	Borrowers with eligible FFEL loans that are still open. This category likely includes borrowers with complex loans whose discharges are not yet in process.

\* Note that individual borrowers may have loans in more than one of the listed sub-categories of Department-held loans. Thus, this total is less than the sum of the three listed sub-categories.

As to those loans where the Department’s analysis of NSLDS records suggests that additional investigation is needed, these consist of open consolidation loans whose underlying loans include eligible and non-eligible loans, and as such are susceptible to processing delays. At this point, the Department’s analysis suggests it is probable that some of these borrowers have in fact received full settlement relief. For example, 13,400 of these borrowers’ records show a balance that has decreased by an amount that exceeds or is within \$1,000 of the requested discharge amount. Likewise, 15,613 of these borrowers’ records show a balance that has decreased by an amount that exceeds or is within \$1,000 of the total amount disbursed for Exhibit C loans. The Department will continue to confirm the relief status of these borrowers, but these results indicate that most of the borrowers in this subset probably have fully processed discharges.

The Department acknowledges that there may be some Exhibit C borrowers who have not yet received refunds to which they are entitled under the terms of the Agreement.<sup>5</sup> The Department believes that a substantial number of these borrowers are prior defaulted borrowers, or borrowers whose loans have been transferred from decommissioned servicers that failed to provide complete and readily accessible records (e.g., payment histories) related to the loans. For instance, the servicer Aidvantage has reported to the Department that it has been unable to access servicing records from the now-decommissioned Affiliated Computer Services Education Services (“ACS”). The servicers have asserted that these issues require them to search data repositories to

<sup>5</sup> It is possible that the research will show, for some of these borrowers, that no refund or no further refund is due.

attempt to locate additional payment information, which can take up to two hours per borrower. The servicers have also asserted that many of the payment histories needed are over 20 years old and the data may no longer be available.

As to the deletion of tradelines, it is important to note at the outset that the Department does not have a direct relationship with credit bureaus, nor does the Department furnish any information to them. In addition, paragraph IV.F.1 of the Settlement Agreement provides that, in regard to credit reporting, full settlement relief is provided when the Department or the servicers have requested deletion of the tradeline for the relevant loan. The Department is not responsible for any delays by the credit reporting agencies in implementing the deletion. The Department timely directed servicers to request that the credit bureaus delete the relevant tradeline. Nonetheless, the Department acknowledges that the relevant loan debt for some Exhibit C borrowers has not yet been removed from their credit reports. Given the periodic nature of servicers' credit reporting, it is possible that the correct balances and tradeline deletion will be reflected in the servicer's next update to the credit bureaus. In addition, if a borrower's consolidation loan includes both eligible and non-eligible underlying loans, any tradelines reflecting the underlying loans would be deleted but the tradeline corresponding to the consolidation loan would only be updated to reflect a lower balance and would not itself be deleted.

The Department is not aware of any instances of a servicer processing an Exhibit C class member's discharge in the servicer's own accounts or records but failing to report that discharge and corresponding updates to the credit bureaus. Regardless, the Department has requested that servicers confirm they have requested credit updates for all discharges they have processed for borrowers whose loans they currently service. Additionally, the Department's efforts to resolve the processing issues discussed in this letter should address the remaining updates needed for those class members' credit reports.

*Second*, Plaintiffs allege that the Department has failed to provide complete quarterly reports regarding the number of borrowers who have received full settlement relief. The Department has provided three quarterly reports. Most of the data in the reports concern the status of the "decision groups"—those class members receiving approvals and revise-and-resubmit notices. That data is based on the Department's own records (i.e., is not dependent on information from servicers) and the Department is confident that the data regarding the decision groups are accurate. Accordingly, the Department disputes that it is in material breach of its reporting obligations. The Department does acknowledge, however, based on its recent investigation, that Item No. 4 in each of the reports (data regarding class members who have received full relief under Paragraph IV.A of the Settlement Agreement) has not been accurate. The data in Item No. 4 in each of the three quarterly reports were based on the borrowers' accounts having a borrower defense discharge reported in FSA's systems by the servicers. The Department believed the Item No. 4 data were accurate not only as of the date the reports were transmitted to Plaintiffs, but until late January 2024. The Department—having now confirmed that the information provided by the

servicers for Item No. 4 did not accurately reflect the full state of some borrowers' relief status— agrees that Item 4 of each of the quarterly reports has not been accurate. Going forward, the Department proposes that it send to you bi-weekly reports regarding 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 under Paragraph IV.A of the Settlement Agreement. For example, such supplemental reports could include details such as those in Tables 1 and 2, above, and additional agreed-upon details and indicators beyond those in the quarterly reports provided in the Agreement.

*Third*, Plaintiffs allege that the Department has materially breached the Agreement by allowing servicers to bill and collect payments from members of the class whose debt is covered by the Agreement. The Department believes that the overwhelming majority of class members whose loans have not yet been discharged are in the appropriate forbearance or stopped collection status and does not, therefore, agree that a material breach has occurred. As you note, the Department has provided all loan servicers with a “Do Not Bill” list that identifies all class members who should be in forbearance or in stopped collection status on their relevant loan debt. The Department has instructed servicers that no one on the Do Not Bill list should be billed, and that no one should be removed from the Do Not Bill list unless instructed by the Department, so borrowers should not be inadvertently returned to repayment status. There may be situations in which an individual employee of a loan servicer provides incorrect information to a borrower. The Department believes that such situations are rare but is nonetheless committed to ensuring that class members are in the appropriate status on their relevant loan. The Department will continue to remind servicers that borrowers must be provided accurate information. If any borrowers made payments because servicers incorrectly sent billing notices, the Department has either already refunded such payments or will do so. To facilitate that effort, please provide us the names and loan information for the 268 borrowers referenced in your letter. Furthermore, the Department is willing to provide you regular updates on the status of these efforts.

*Fourth*, Plaintiffs have requested certain categories of documents from the Department. The Department is transmitting with this letter an updated version of the *Sweet* class list that indicates, for each class member, whether the Department has classified them as a member of the Exhibit C group or the decision group. As noted above, the Department is also willing to provide bi-weekly reports to you regarding the number of borrowers who have received full settlement relief, including details regarding the steps taken to verify that information. As noted below, the Department is also willing to share updates based on weekly *Sweet*-specific reports provided by the servicers. The Department would like to use the meet-and-confer process to better understand how the other requested information will aid Plaintiffs' efforts and explain the burden associated with some of these requests.

\* \* \*

The Department acknowledges the importance of providing full settlement relief to borrowers as promptly as possible. The Department shares your goal of discharging eligible loans for Exhibit C borrowers and ensuring that they receive the refund to which they are entitled. The Department wants to assure Plaintiffs that these issues have been brought to the attention of senior agency officials, and those officials are regularly briefed on the status of the *Sweet* settlement implementation. The Department's leadership has conveyed the urgency of resolving these issues. To that end, Department personnel are in contact with servicers on a daily basis and are requiring servicers to provide multiple *Sweet*-specific reports each week (which the Department is willing to share with Plaintiffs on a bi-weekly basis). The Department has also issued updated emergency work orders to address the problem posed by processing delays and has requested an additional \$200,000 as an initial allocation to meet these efforts' funding needs. Further, servicers have been instructed to prioritize resolving *Sweet* relief and, specifically, relief for Exhibit C borrowers. The Department is also evaluating its legal options with respect to the servicers, including ways to enforce the servicers' obligations to accurately report class members' loan statuses to credit bureaus.

Additionally, more than a dozen Department personnel have been tasked with spending most or all of their working hours on *Sweet* settlement implementation, with ten other staff members devoting substantial time to that effort. A working group, consisting of personnel across numerous offices and divisions, meets each day to evaluate the status of Exhibit C borrowers. The team within FSA that interfaces with servicers to troubleshoot these issues has begun to standardize the troubleshooting process and has taken initial steps to redirect other personnel within FSA to be trained so they can assist going forward.

As stated during the January 24 call, when the Department believed that full settlement relief had been provided to 95% of Exhibit C borrowers, it anticipated completing full settlement relief for the large majority of Exhibit C borrowers approximately by the end of February 2024, and for a small remaining portion by approximately April 2024. Based on the current information, the Department is unable to provide an estimate about when full settlement relief will be provided to all Exhibit C borrowers. The Department intends to supplement this letter with an estimated timeline by March 1, 2024.

The Department deeply regrets that not all Exhibit C borrowers have received full settlement relief. The agency looks forward to working with you over the ensuing meet-and-confer process to address these issues. As you know, under the Agreement, the parties are to meet and confer within 5 business days of this letter. We are available on the afternoons of February 23 and February 26. Given that the Department expects to receive additional information throughout next week, a meeting on February 26 may allow the Department to provide the most updated information.



Sincerely,

*/s/Stuart Robinson*

Stuart Robinson

cc: Eileen Connor  
Rebecca Eisenbrey  
Joe Jaramillo  
Noah Zinner