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Comments to the U.S. Department of Education on Information Collection on Personal Authentication Service (PAS) for FSA ID

79 Fed. Reg. 69100 (Nov. 20, 2014)

January 20, 2015

Introduction

These comments are submitted on behalf of the National Consumer Law Center's low-income clients.¹ NCLC's Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates and provides direct legal representation to student loan borrowers.²

The Department is replacing the current PIN system with a Personal Authentication Service which will employ a federal student aid ID, a standard user name and password. As with the current PIN, the new password will provide a borrower access to FAFSA on the Web, National Student Loan Data System (NSLDS), StudentLoans.gov and other portals to obtain information about federal aid.

We support the Department's efforts to improve the security of the current Federal Student Aid PIN system. This is especially important given increased abuses by "debt relief" companies pressuring borrowers to provide personal information, including PINs.

¹ The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. NCLC works with thousands of legal services, government and private attorneys and their clients, as well as community groups and organizations that represent low-income and older individuals on consumer issues.

² Most of the clients we represent are low-income borrowers living in Massachusetts. We work with other advocates across the country representing low-income clients. We also seek to increase public understanding of student lending issues and to identify policy solutions to promote access to education, lessen student debt burdens and make loan repayment more manageable. See the Project's web site at www.studentloanborrowerassistance.org. NCLC also publishes and annually supplements practice treatises which describe the law currently applicable to all types of consumer transactions, including *Student Loan Law* (4th ed. 2010 and Supp.). These comments were written by Deanne Loonin.

In brief, our comments are:

- 1) While it is important to improve the security of borrowers' student aid information, it is also critical to ensure that borrowers retain efficient access to information.
- 2) In addition to the proposed changes to the security system, the Department should take action to curb improper third party access to borrower information, focusing on abuses by the growing "debt relief" industry. The Department must provide clear guidance about permissible and prohibited third party access to borrower information, crack down on abuses, and provide relief for borrowers.

Balancing Security and Access

We support the Department's proposal to create a user name and password system to replace the current PIN system. In creating this system, however, we urge the Department to preserve access for borrowers. Security is essential, but so is efficient and consistent access to information. For example, it may be appropriate to require password updates, but this should be done only at a reasonable interval, perhaps annually. Further, servicers should be instructed to assist borrowers when such updates are needed. This helps avoid a situation where a borrower is trying to get back in touch with a servicer but is stymied due to an expired password.

In addition to increasing security, the Department must also ensure that third parties cannot access confidential borrower information in other ways outside of the PIN (or password) process. For example, a 2012 article in the *New York Times* noted that some third parties were directing borrowers to access confidential information through the MyStudentData download feature as an alternative to using the PIN.³ The Department should shut down any alternative resources that allow third parties to obtain borrower information without the use of a password or PIN.

Curbing Improper Third Party Access to Borrower Identification Information

The Department must crack down on improper third party requests for and access to confidential borrower information. Merely adding passwords and user names will not stop unscrupulous companies from asking borrowers to provide this new type of security information just as they currently ask for PINs.

The first step is to provide clear guidance on permissible third party access to NSLDS and other borrower information. A Dear Colleague letter from 2004 is the most recent guidance that we know of regarding third party access to PINs and NSLDS.⁴ There is also a statement on the Department's web site about not sharing a PIN.⁵

³ Ann Carns, "On Safeguarding Your Student Aid PIN", *The New York Times* (Oct. 4, 2012).

⁴ U.S. Dep't of Educ., "Requesting and Using an ED-PIN", Dear Colleague Letter GEN-04-10 (Sept. 2004)

⁵ The statement on the web site: "Your PIN can be used each year to electronically apply for federal student aid and to access your Federal Student Aid records online. If you receive a PIN, you agree not to share it with anyone. Your PIN serves as your electronic signature and provides access to your personal records, so you should never give your PIN to anyone, including commercial services that offer to help you complete your FAFSA. Be sure to keep your PIN in a safe place." See <https://pin.ed.gov/PINWebApp/pinindex.jsp>.

We urge the Department to publicly disclose whether there are any updates to the 2004 Dear Colleague letter. Regardless, the Department should clarify the 2004 letter and any more recent guidance. This is essential given the recent abuses in the student loan debt relief industry.

NCLC documented the range of problems in the student loan “debt relief” industry in a 2013 report.⁶ We will be updating the report this year. Since 2013, we have unfortunately seen the student loan debt relief business grow and engage in even more abusive practices. Too many of these companies charge high fees for services that borrowers can get for free. The NCLC report documented how borrowers, including some of the most vulnerable borrowers, stand to lose a lot of money and important rights if they sign up with these companies.

We are alarmed at the proliferation of these companies, particularly the use of new and more aggressive marketing tactics. The allegations in the December 2014 CFPB and Florida Attorney General actions, as well as claims in the recent complaints filed by the office of Illinois Attorney General Lisa Madigan, demonstrate the broad reach of these companies and the harm they cause to consumers.

Among other problems, we commonly see provisions in debt relief contracts and representations from debt relief staff stating that borrowers MUST give out their PINs in order to get assistance with student loan debts. For example a recent contract from SLC Processing.com contained this clause:

“As part of the federal student loan consolidation application process, it will be necessary for Action Administrative Services, LLC to access your student loan information within the National Student Loan Data System, located online at www.nslds.ed.gov... By enrolling in the Action Administrative Services, LLC consolidation assistance program, you are agreeing to allow Action Administrative Services, LLC and its authorized agents to access your NSLDS profile and all the data contained within that profile...In order to allow this access, you will need to provide Action Administrative Services, LLC with your NSLDS Personal Identification Number (PIN). If you have forgotten your PIN, Action Administrative Services, LLC uses proprietary software that electronically contacts pin.ed.gov and acts as a proxy for you to retrieve and/or reset your forgotten pin. You are agreeing to allow Action Administrative Services, LLC to retrieve and/or reset your PIN through this process.”

This provision appears to violate the guidance in the 2004 letter in a number of ways including:

- 1) The person or entity initiating the request for a PIN is not the owner of the PIN. In this case, the company initiates the request for the borrower’s PIN using “proprietary software” and as a “proxy” for the borrower/owner of the PIN.
- 2) The person to whom the PIN is sent is not the ED-PIN owner. In this case, the company asks to have the PIN sent directly to the company.

⁶ See National Consumer Law Center, “Searching for Relief: Desperate Borrowers and the Growing Student Loan “Debt Relief” Industry” (June 2013), available at: <http://www.nclc.org/issues/searching-for-relief.html>.

Further, the 2004 letter focuses on problems with third parties routinely asking borrowers to provide them with PINs. The guidance clearly states that even if well intended, "...it is inappropriate for anyone to solicit an ED-PIN from another person. And, it is contrary to the requirements of the ED-PIN process for anyone to use another person's ED-PIN, even in an attempt to provide assistance to the PIN owner. This is true regardless of whether the ED-PIN owner has been informed of the activity, or even if he or she voluntarily agrees to provide the PIN to the other party."

This is a clear "strict liability" standard that third party debt relief companies are routinely violating. Yet as far as we know, the Department has not specifically taken action to enforce the existing guidance or other rules.

The letter goes on to describe other prohibited actions such as submitting a request for a PIN on behalf of a borrower or using the PIN to conduct student aid transactions. Student loan debt relief companies routinely engage in these prohibited activities.

According to the 2004 letter, the Department will not issue a PIN if the owner did not submit the request and will de-activate PINs if the Department believes that a PIN previously issued has been compromised. The Department may also decide to invalidate applications, notes and other documents signed with compromised PINs.

The Department must use its authority to provide relief for borrowers whose PINs have been compromised through improper third party access or other means. For example, in cases of compromised PINs, the Department upon a borrower's request should invalidate a consolidation application where there are errors or where a properly counseled borrower would have preferred a different program. This allows borrowers to work with servicers to choose optimal programs at no cost.

The Department should also take steps to prevent companies from accessing borrowers' information. For example, it should investigate companies that publically acknowledge using borrowers' PINs. The Department should also track the location used to access borrowers' account information and then investigate locations that utilize an unusual number of borrower credentials.

It is critical that the Department provide public information about whether it is taking any actions other than public awareness warnings to crack down on the rampant abuses in the debt relief industry. We have heard Department staff claim that overseeing these companies is outside of the agency's jurisdiction. Yet the 2004 letter sets out enforcement actions that could strike at the heart of this abusive industry. Failure to take action threatens to undermine the integrity of the entire federal student loan servicing system.

Thank you for your consideration of these comments. Please feel free to contact Deanne Loonin if you have any questions or comments. (Ph: 617-542-8010; E-mail: dloonin@nclc.org).