

An Analysis of the Department
of Education's Review of Student
Loan Servicers Compliance
with the Servicemembers
Civil Relief Act



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Prepared by the Office of Sen. Elizabeth Warren

EXECUTIVE SUMMARY

Dating back to the Civil War, the United States has limited the actions that debt collectors can take against America's servicemembers. With millions of servicemembers borrowing money to attend college or technical schools, questions have arisen about whether some of the companies that service those student loans have systematically ignored the law and rolled over servicemembers' legal rights. Just over a year ago, the Department of Justice and FDIC concluded that student loan servicer Sallie Mae (now known as Navient) had engaged in "intentional [and] willful" violations of federal laws that capped servicemembers student loan interest rates. The investigation resulted in the two agencies reaching a settlement with Navient for nearly \$100 million.

The Department of Education (ED) is responsible for direct oversight of the student loan program, including determining which companies can service student loans and the terms of those servicing agreements. Despite the DOJ and FDIC findings and the significant settlement, ED took no action against Navient, instead announcing it would consider acting after a "thorough" review. But, within a month, ED extended Navient's \$100 million-plus contract. A year later, in May 2015, ED released the results of the agency review. Its conclusion differed sharply from the reviews of the DOJ and the FDIC. ED reported, based on its findings, that "the four servicers ... complied in the vast majority of cases with the [SCRA]."

In order to determine the reason for the discrepancy between the DOJ and FDIC findings and the ED conclusions on Navient's SCRA compliance, Sen. Warren asked her staff to conduct a detailed analysis of the ED SCRA reviews. This analysis finds that:

- The ED reviews were deeply flawed and failed to provide a full assessment of whether the student loan servicers were complying with SCRA. While FDIC and DOJ had already identified numerous areas where Navient was violating the SCRA, and had identified problems with Navient's administration of loans under the Direct student loan program and the federally-guaranteed FFEL program, ED inexplicably narrowed its review—examining only one small subset of these violations, and only the Direct student loan program.
- The ED reviews failed to examine significant problems with servicemembers' access to SCRA rate caps. The ED reviews indicated that less than 10% of potentially eligible borrowers "provided the servicer with a written request for the benefit and a copy of the appropriate military orders" needed to obtain relief. This means that more than 90% of potentially eligible borrowers either did not know they could obtain relief or could not correctly navigate the paperwork barrier needed to obtain relief. But the ED reviews did not examine these problems.
- In total, ED conducted detailed reviews of only 55 cases where potentially eligible borrowers asked for SCRA rate caps, and only 14 cases where borrowers asked for but were denied SCRA rate caps—out of a potential universe of almost 20,000.
- The ED reviews revealed that student loan servicers incorrectly denied SCRA interest rate caps, provided SCRA rate caps when applicants did not qualify, or used incorrect military service dates to calculate SCRA rate caps in 16 out of 55 cases reviewed – or 29% of the time. In 8% of cases in which applicants requested and should have received SCRA rate caps, they were denied.

- ED officials stated that “in less than 1 percent of cases, borrowers were incorrectly denied the 6 percent interest rate cap required by the laws.” But this 1% figure cited by ED was based on a calculation that included cases where borrowers were potentially eligible for a rate cap but had not applied – a category that included 9 out of 10 of the borrowers in the ED review. In fact, the ED review found that error rates of reviewed cases were 8% — almost an order of magnitude higher than the 1% figured cited by ED officials.

These problems indicate that ED has failed to effectively assess, act on, or report potential problems with administration of the SCRA program by student loan servicers.

I. INTRODUCTION

On May 26, 2015, the Department of Education (ED) released the results of its “thorough reviews” of the four major federal student loan servicers’ compliance with the Servicemembers Civil Relief Act (SCRA).¹ This ED review was started just over one year ago, in May 2014, after the Department of Justice and FDIC reached a nearly \$100 million settlement with student loan servicer Navient (formerly known as Sallie Mae) for “intentional, willful” and systematic violations of servicemembers’ rights under the SCRA.² About a quarter of the restitution funds that the Department of Justice received will be distributed to federal student loan borrowers, and the rest will go to borrowers with private student loans.³

The ED review was conducted in order to determine if Navient and the other servicers included in the review “complied with the Higher Education Act and [ED] regulations and contracts,”⁴ and if not, what action the Department would take. When he announced the review, Education Secretary Duncan declared that it would be “thorough,” and that “every option [wa]s on the table” with regard to the contract status of Navient and other student loan servicers.⁵ Before the results of the review were complete, however – and just one month after the DOJ and FDIC settlements – the Department extended Navient’s student loan servicing contract.⁶

At the conclusion of the ED reviews, the Department stated:

“[T]he four servicers - Navient, Great Lakes, PHEAA and Nelnet – complied in the vast majority of cases with the Servicemembers Civil Relief Act (SCRA) as required by the Higher Education Act (HEA). The reviews, which looked at active-duty servicemembers’ SCRA eligibility between 2009 and 2014, show that in less than 1 percent of cases, borrowers were incorrectly denied the 6 percent interest rate cap required by the laws.”⁷

When the Department released the results of its investigation, it took no action on any of the servicers’ contracts.

II. PURPOSE

The discrepancies between the Department of Justice and FDIC findings and the recent ED findings raise questions about the methodology of the ED reviews, whether these reviews were adequate to assess compliance with the law, and whether ED’s own public reporting of its limited findings was complete.

Sen. Warren asked her staff to conduct this analysis in order to understand the strengths and weaknesses of the ED reviews and to determine the reason for the different findings of the ED reviews, which concluded that Navient and other servicers “complied in the vast majority of cases with the [SCRA],” and the DOJ/FDIC findings, which found that Navient’s precursor company “engaged in a nationwide pattern or practice ... of violating the SCRA by failing to provide members of the military the six percent interest rate cap to which they were entitled.”⁸



III. FINDINGS

1. The ED Reviews Did Not Investigate All of the Problems Identified by DOJ and FDIC

When the Department of Justice and the FDIC reached their settlement with Navient, they identified a number of practices showing that Navient “engaged in a nationwide pattern or practice, dating as far back as 2005, of violating the SCRA by failing to provide members of the military the six percent interest rate cap to which they were entitled.”⁹ These included charges that Navient unfairly conditioned relief upon conditions not found in the SCRA; that Navient failed to provide relief after having been put on notice of servicemembers’ active duty status; that Navient improperly advised servicemembers that they had to be deployed to obtain SCRA benefits; that Navient allocated payments across multiple loans in a way that maximized late fees; and that Navient misrepresented and inadequately disclosed in billing statements how borrowers could avoid late fees. DOJ identified Navient violations in both the Direct Loan program and the federally-guaranteed FFEL program.

Several of these actions are likely to result in eligible servicemembers never pursuing or fully completing the process of requesting an interest rate cap. As such, DOJ and FDIC had to examine the practices that Navient employed to advise borrowers before they requested an interest rate cap in order to discover violations. The “thorough” ED reviews, however, only looked at whether the four examined servicers were providing relief in cases where servicemembers completed an application for the SCRA relief under the Direct Loan program and submitted all applicable paperwork.

A comparison of ED’s findings and DOJ/FDIC’s findings on the prevalence of improper rate cap denials at Navient reveals the extent of the flaws with the ED reviews. DOJ identified approximately 19,000 Navient borrowers with ED-owned loans who were denied relief that they were due under the SCRA – approximately 35% of borrowers with loans serviced by Navient; but the ED findings identified borrowers who were incorrectly denied relief in only 0.33% of Navient cases – a prevalence rate 100 times lower than the DOJ findings.¹⁰

2. The ED Reviews Suggest, But Did Not Directly Examine, Significant Problems with Servicemember Access to Loan Relief under the SCRA for the Vast Majority of Borrowers

The ED reviews included analysis of 597 loans of borrowers who were potentially eligible for relief under the SCRA – 300 loans from Navient, and 99 each from Great Lakes, Nelnet, and PHEAA.¹¹ Only 55 of these borrowers, however, “provided the servicer with a written request for the benefit and a copy of the appropriate military orders” needed to obtain relief.¹²

These 55 borrowers represent less than 10% of all potentially eligible borrowers included in the review – meaning that over 90% of potentially eligible borrowers did not know they could obtain relief, were discouraged from pursuing relief, or could not correctly navigate the barriers to obtain relief. This suggests significant problems with the design or the administration of the program, and depending whether the servicer’s conduct contributed to borrowers’ failure to apply, this in itself could have indicated that there were violations of SCRA. There is no indication, however, that ED examined these cases to determine whether any of them were implicated in the “nationwide pattern or practice ... of violating the SCRA” identified by DOJ in the case of Navient.¹³

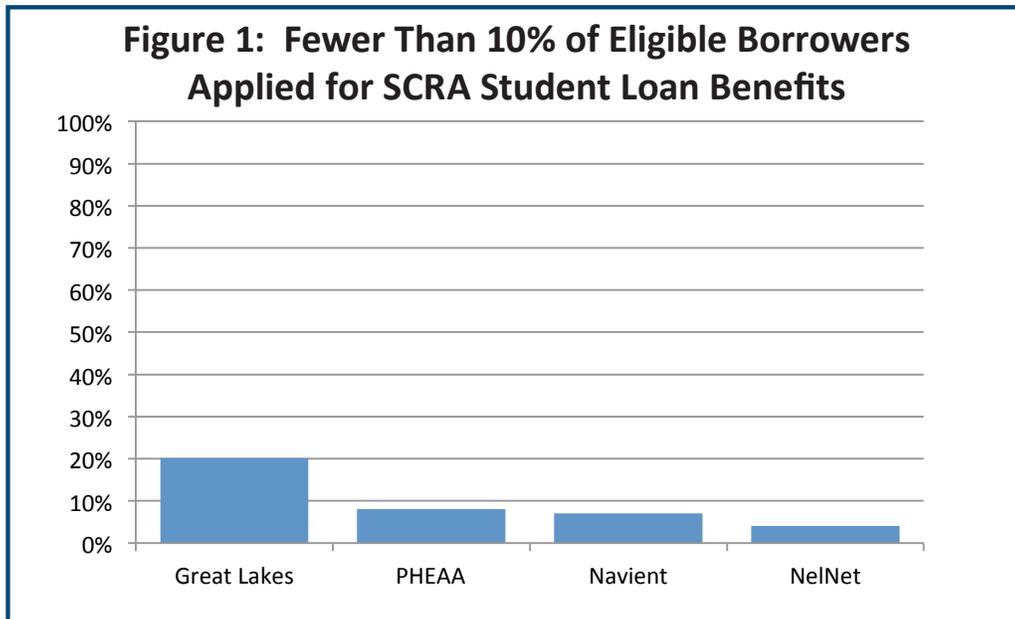
Furthermore, the results of the ED reviews show that 20% of Great Lakes’ potentially eligible borrowers, 8% of PHEAA’s potentially eligible borrowers, 8% of Navient’s potentially eligible borrowers, and 4% of Nelnet’s potentially eligible borrowers were able to apply for SCRA interest rate caps. (See Figure 1) The ED reviews do not appear to have made any effort to determine why there was such wide variation in SCRA application rates among the four student loan servicers.

One reason for this failure to review cases where servicemembers may have qualified for but did not specifically ask for relief is that prior to 2014, ED guidance did not require student loan servicers to provide relief unless borrowers made a formal request to their student loan servicers.¹⁴ But this rationale does not account for all of the ED review limitations, such as the failure to review findings by the DOJ and FDIC that in many cases Navient was taking actions

that actively discouraged borrowers from obtaining relief. These actions would have been illegal under the pre-2014 ED guidance, but even so, they were still not included in the ED review.

ED modified this guidance in 2014, and it is therefore possible that ED has now resolved some of these access issues. In August 2014, ED issued guidance to servicers directing them to implement the

SCRA rate cap without a request from the borrower by determining eligibility through the Department of Defense’s Defense Manpower Data Center database. This change was designed to resolve the issue of borrowers not applying for a rate cap. The results provided in the ED reviews, however, are inadequate to determine if servicers are actually complying with this guidance.¹⁵



3. The ED Reviews Are Marred by Small Sample Sizes

When Education Secretary Duncan announced the ED investigation, he said the Department would “do a thorough review and ... go over the facts that follow.”¹⁶ When the reviews were published, ED officials used identical language to describe the reviews.¹⁷ As discussed in the previous section, ED limited its inquiry to whether rate caps were appropriately granted to borrowers who requested them, and this staff analysis of the methodology underlying the ED reviews reveals that ED examined only 55 detailed case studies relevant to that question. In addition, although the purpose of the ED reviews

was to determine if borrowers were improperly being denied relief, ED included detailed reviews of only 14 cases where borrowers applied for and were denied relief.

The ED reviews included detailed analysis of only 23 Navient borrower requests, only 20 Great Lakes borrower requests, only eight PHEAA borrower requests, and only four NelNet borrower requests. They included reviews of only seven cases where Navient borrowers applied for and were denied relief, only five cases where Great Lakes borrowers applied for and were denied relief, only two cases where PHEAA borrowers applied for and were denied relief, and not a single review of a case where Nelnet borrowers applied for and were denied relief.

The Department’s ability to identify and review only a few dozen samples of borrowers who requested rate caps is particularly notable considering that two days after the release of the ED reviews, the Department of Justice announced that as a result of its own settlement with Navient a year earlier, 77,795 servicemembers would “begin receiving \$60 million in compensation for having been charged excess interest on their student loans by Navient Corp.”¹⁸ The Department of Justice recently provided further information on its investigation showing that 19,000 servicemembers with ED-owned loans were denied rate caps by Navient.¹⁹

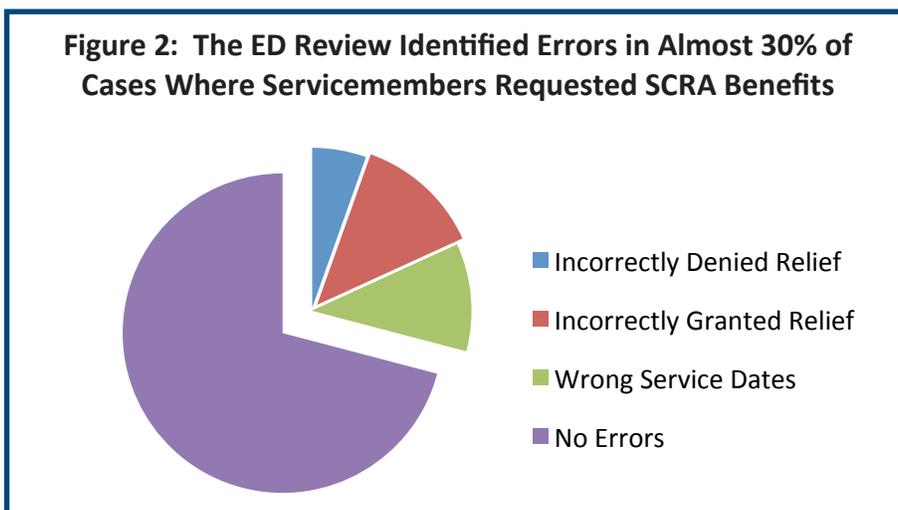
4. The ED Reviews Identified High Error Rates in SCRA Student Loan Reviews

The purpose of the ED reviews was “to determine whether borrowers of eligible FFEL loans and Direct Loans received the benefit of the 6 percent interest rate cap provided by the SCRA.”²⁰

It is difficult to draw any conclusions based upon the small sample sizes examined in the ED reviews. Nonetheless, the available data suggest that servicers made a substantial number of errors in applying SCRA rate caps. The ED reviews examined a total of 55 cases where borrowers actually asked for SCRA interest rate reductions. In 37 of those cases, the reviews concluded that these borrowers were eligible for rate reductions. In three out of the 37, the lenders incorrectly denied the rate reductions – an 8% incorrect denial rate.

According to the ED reviews, in one of these cases, Great Lakes described the problems as “a processing oversight related to human error.”²¹ In another case, “Navient denied the SCRA request because the typed letter was not formally signed.”²² And in a third case, PHEAA “failed to process a valid SCRA interest rate cap request for one eligible borrower where the borrower had requested the benefit from the prior servicer. Although the request was documented in the file and known to [PHEAA], [PHEAA] failed to properly respond to the borrower’s request.”²³

These incorrect denials were not the only SCRA errors identified by the ED review. The review identified 41 cases where borrowers were granted rate caps. In seven of these cases, the reviews found that borrowers were incorrectly granted rate caps because they failed to provide appropriate paperwork or because the requester was not on active duty. Navient was responsible for six of these errors, and Great Lakes for one. In an additional six cases, loan servicers did not correctly use active duty military service dates to determine the time period for which servicemembers were eligible for rate relief. Navient was responsible for four of these errors, and Great Lakes for two. Overall, the ED review identified problems with either incorrect denial of benefits, incorrect granting of benefits, or incorrect use of active duty service dates in 16 of the 55 cases reviewed where borrowers applied for relief – an error rate of 29%. (Figure 2).



In the cases where borrowers applied for relief, Navient had an overall error rate of 48% (relief granted incorrectly 6 times, denied incorrectly once, and using incorrect active military service in four cases out of 23 reviewed); Great Lakes a 20% error rate (relief granted incorrectly once, denied incorrectly once, and using incorrect active military service in two cases out of 20 reviewed); PHEAA a 17% error rate (relief denied incorrectly once out of seven cases); and Nelnet no errors out of four reviewed cases. (Table 1)

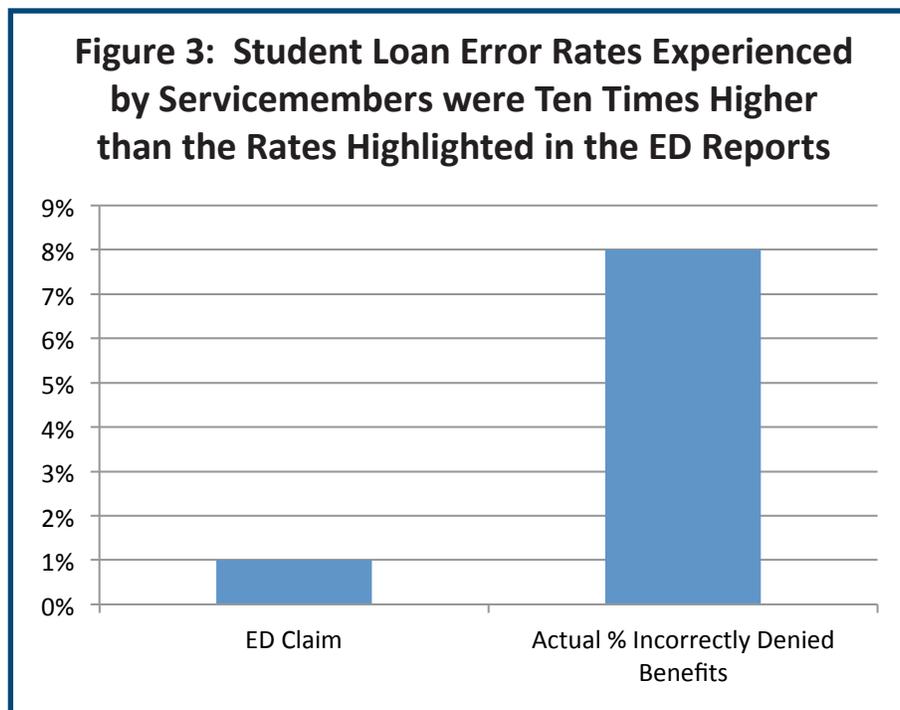
5. The Department’s Public Descriptions of the Review Findings Failed to Fully Describe The Results

When the reviews were released, ED publicly stated that “in less than 1 percent of cases, borrowers were incorrectly denied the 6 percent interest rate cap.”²⁴ This claim is deeply flawed and may have misled the public and the media. ED officials included in this calculation the over 90% of SCRA-eligible borrowers who did not ask for – and therefore, under ED’s standard of review, could not have been incorrectly denied – rate reductions.

This means that the ED public description of the review findings did not fully describe the experiences of servicemembers who applied for SCRA rate caps. In fact, the results of the 37 cases included in the ED review indicated that deserving servicemembers who applied for the caps were incorrectly denied them 8% of the time. (Figure 3)

Servicer	Cases Reviewed	Cases with Errors	Overall Error Rate
Navient	23	11	48%
Great Lakes	20	4	20%
PHEAA	6	1	17%
Nelnet	4	0	0%
Total	55	16	29%

The inadequate sample sizes in the ED review make it impossible to draw robust conclusions from the error rates identified here. But the staff review of the data suggests that, contrary to the ED conclusions, student loan servicers made a substantial number of errors in processing SCRA claims.



IV. CONCLUSION

This detailed analysis of the “thorough” ED reviews of student loan servicers’ compliance with the SCRA and with their contracts for servicing loans under the SCRA reveals flaws in the Department’s approach and its analysis and description of the results. Despite DOJ’s and FDIC’s broader findings, ED confined its inquiry to whether borrowers who filled out the appropriate paperwork were correctly granted interest rate caps. It then reviewed in detail only 14 cases where borrowers were denied SCRA rate caps.

Moreover, the ED reviews identified high error rates in the small number of cases included in the reviews, finding at least one student loan servicer error in almost 30% of the cases where borrowers requested rate caps, and finding that deserving borrowers were denied SCRA rate caps in 8% of reviewed cases.

These problems are exacerbated by the technically accurate but deeply flawed way in which ED presented the results of its review. ED officials stated that “our findings identified that less than one percent of borrowers were incorrectly denied the six percent interest rate cap,” but they included in this calculation the 90% of cases where borrowers did not ask for and therefore - according to ED standards - could not have received their rate caps.²⁵ The actual error rates in cases where borrowers asked for relief were nearly an order of magnitude higher than these ED public estimates.

These problems indicate that ED has failed to effectively assess, act on, or report on potential problems with administration of the SCRA program by student loan servicers.

(Endnotes)

- 1 Department of Education, U.S. Department of Education Completes Review of Major Loan Servicers (May 26, 2015) (www.ed.gov/news/press-releases/us-department-education-completes-review-major-student-loan-servicers)
- 2 Department of Justice, Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans (May 13, 2014) (www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging); FDIC, FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act (May 13, 2014) (www.fdic.gov/news/news/press/2014/pr14033.html)
- 3 Department of Justice, Nearly 78,000 Service Members to Begin Receiving \$60 Million Under Department of Justice Settlement with Navient for Overcharging on Student Loans (June 17, 2015) (<http://www.justice.gov/opa/pr/nearly-78000-service-members-begin-receiving-60-million-under-department-justice-settlement>)
- 4 Denise Horn, ED Spokesperson, quoted in Boston Globe, *Elizabeth Warren Calls for More Oversight of For-Profit Colleges* (June 10, 2015) (<https://www.bostonglobe.com/news/politics/2015/06/10/elizabeth-warren-chastising-department-education-over-for-profit-college-rules/Pfn1X3iW9RXDZ9DVbLj5O/story.html>)
- 5 Politico, *Sallie Mae Agrees to \$97M Settlement Over Servicemembers' Student Loan Interest Rates* (June 4, 2014) (www.politico.com/story/2014/05/sallie-mae-military-student-loan-interest-rates-106638.html)
- 6 Wall Street Journal, *U.S. Extends Navient Student Loan Contract* (June 17, 2014) (<http://www.wsj.com/articles/u-s-extends-navient-corp-student-loan-contract-1403043388>)
- 7 Department of Education, U.S. Department of Education Completes Review of Major Loan Servicers (May 26, 2015) (www.ed.gov/news/press-releases/us-department-education-completes-review-major-student-loan-servicers)
- 8 Department of Justice, Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans (May 13, 2014) (www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging); FDIC, FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act (May 13, 2014) (www.fdic.gov/news/news/press/2014/pr14033.html)
- 9 Department of Justice, Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans (May 13, 2014) (www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging)
- 10 Huffington Post, *Education Department Vastly Undercounted Troops Overcharged by Student Loan Giant, New Data Show* (June 24, 2015) (http://www.huffingtonpost.com/2015/06/24/navient-service-members-education_n_7648132.html)
- 11 These were borrowers that had received military deferments or grace periods during the time period included in the review (meaning they were on active military duty at some point during the time period of the study) and had at least one student loan with an interest rate above the SCRA cap of 6%.
- 12 Department of Education, Federal Student Aid Financial Institution Oversight Office, Internal Review Report: Navient (May 26, 2015) (https://studentaid.ed.gov/sa/sites/default/files/NavientTIVASSCRAFY152015_May_26%20Final.pdf)
- 13 Department of Justice, Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans (May 13, 2014) (www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging)
- 14 According to ED, this guidance required that in order to receive SCRA rate caps, “a borrower (or the borrower’s representative) must provide the lender or servicer with a copy of the borrower’s military orders that reflect the borrower’s active-duty status and ... must make a written request to the lender to provide the benefit of the lower interest rate.” Federal Student Aid, Dear Colleague Letter, Improved Administration of the Servicemembers Civil Relief Act for Borrowers Under the William D. Ford Direct Loan and Federal Family Education Loan Programs (August 25, 2014) (<http://ifap.ed.gov/dpclatters/GEN1416.html>)
- 15 Federal Student Aid, Dear Colleague Letter, Improved Administration of the Servicemembers Civil Relief Act for Borrowers Under the William D. Ford Direct Loan and Federal Family Education Loan Programs (August 25, 2014) (<http://ifap.ed.gov/dpclatters/GEN1416.html>)
- 16 Huffington Post, *Sallie Mae, Navient, to Pay \$139 Million Settling Proves Into Cheating Troops on Student Loans* (May 13, 2014) (http://www.huffingtonpost.com/2014/05/13/sallie-mae-student-loans-troops_n_5319323.html)
- 17 Department of Education, U.S. Department of Education Completes Review of Major Loan Servicers (May 26, 2015) (www.ed.gov/news/press-releases/us-department-education-completes-review-major-student-loan-servicers)
- 18 Department of Justice, *Nearly 78,000 Service Members to Begin Receiving \$60 Million Under Department of Justice Settlement with Navient for Overcharging on Student Loans* (May 28, 2015) (<http://www.justice.gov/opa/pr/nearly-78000-service-members-begin-receiving-60-million-under-department-justice-settlement>)
- 19 Huffington Post, *Education Department Vastly Undercounted Troops Overcharged by Student Loan Giant, New Data Show* (June 24, 2015) (http://www.huffingtonpost.com/2015/06/24/navient-service-members-education_n_7648132.html)
- 20 Department of Education, U.S. Department of Education Completes Review of Major Loan Servicers (May 26, 2015) (www.ed.gov/news/press-releases/us-department-education-completes-review-major-student-loan-servicers)
- 21 Department of Education, Federal Student Aid Financial Institution Oversight Office, Internal Review Report: Pennsylvania Higher Education Assistance Authority (May 26, 2015) (https://studentaid.ed.gov/sa/sites/default/files/GreatLakesTIVASSCRA2015_May_26%20Final.pdf)

- 22 Department of Education, Federal Student Aid Financial Institution Oversight Office, Internal Review Report: Navient (May 26, 2015) (https://studentaid.ed.gov/sa/sites/default/files/NavientTIVASSCRAFTY152015_May_26%20Final.pdf)
- 23 Department of Education, Federal Student Aid Financial Institution Oversight Office, Internal Review Report: Pennsylvania Higher Education Assistance Authority (May 26, 2015) (https://studentaid.ed.gov/sa/sites/default/files/PHEAATIVASSCRA2015_May_26%20Final.pdf)
- 24 Department of Education, U.S. Department of Education Completes Review of Major Loan Servicers (May 26, 2015) (www.ed.gov/news/press-releases/us-department-education-completes-review-major-student-loan-servicers)
- 25 Federal Student Aid, Dear Colleague Letter, Improved Administration of the Servicemembers Civil Relief Act for Borrowers Under the William D. Ford Direct Loan and Federal Family Education Loan Programs (August 25, 2014) (<http://ifap.ed.gov/dpclletters/GEN1416.html>)

