



## FACT SHEET on Navient's Practices to Protect Student-Borrower Data

### Background

*In connection with oversight efforts of the Consumer Financial Protection Bureau and state attorneys general, some have questioned why Navient does not immediately give unfettered access to student borrower records. We are providing this fact sheet to clear up confusion about Navient's handling of student-borrowers' data on loans serviced for the U.S. Department of Education.*

At their core, student loan data privacy issues are disputes between federal and state agencies over how to access ED information, with servicers and borrowers caught in the middle and unable to resolve the issue on their own.

Navient is obligated to comply with federal laws governing student data and the terms of our contract with ED. These statutes, regulations, and contract terms do not allow full and immediate disclosure of borrower data. Nevertheless, we have cooperated fully as permitted under ED contract and federal law and regulations, and we have complied with every single court order in connection with the CFPB and various state attorneys general lawsuits.

Here are three requirements that prevent Navient and other servicers from immediately turning over student-borrower data upon request<sup>1</sup>:

- Navient's contract with ED to service student loans specifically states that ED, not Navient, "has exclusive ownership of all information...retrieved...as part of [the contract]" and that Navient "shall not retain, use, sell, or disseminate copies of any deliverable that contains information covered by the Privacy Act of 1974" (the "Privacy Act").<sup>2 3</sup>
- On December 27, 2017, ED issued a directive unequivocally stating that: (1) federal loan servicers, like Navient, must comply with the Privacy Act; (2) ED owns and controls all Privacy Act-protected records to which servicers have access; and (3) servicers may not provide Privacy Act-protected information to any third parties who request it even if those third parties are other government agencies.<sup>4</sup>
- In a January 14, 2019 memorandum to servicers, ED reiterated its instruction that federal loan servicers like Navient comply with the Privacy Act and specified the procedures for submitting Privacy Act requests to ED.

Thus, barring a court order or other exemption, ED's December 2017 directive to servicers, its January 2019 memorandum to servicers, and the terms of servicers' contract make it clear that the authority to release Privacy Act-protected records rests with ED or a court. Accordingly, when

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<sup>1</sup> These considerations do not apply to non-ED owned loans, such as FFELP and private education loans, which are not governed by the Privacy Act.

<sup>2</sup> Our contract with the Department: <https://www2.ed.gov/policy/gen/leg/foia/contract/salliemae-061709.pdf>.

<sup>3</sup> The [Privacy Act of 1974, 5 U.S.C. § 552a](#), establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies.

<sup>4</sup> Memorandum from Patrick A. Bradfield, "Ownership of and Access to U.S. Department of Education Records and Data," Department 27, 2017: <https://static.politico.com/51/1f/0f805fd04c2eb035bcd79f9200be/december-27-2017-servicer-memo.pdf>.

the CFPB and state agencies request student-borrower records, we must refer those requests to ED unless ED grants permission or a court orders otherwise.

We have gone to great lengths to comply with requests from the CFPB and state agencies for student loan data where such disclosure was permitted, including providing extensive information both inside and outside of litigation over the last several years—notwithstanding the occasions when we sought to narrow requests that we felt were overly broad. Furthermore, we have worked directly with state AG's offices to file joint requests seeking a court order giving us permission to provide the data. It is imperative that the federal government, states, schools, and student loan servicers work together to support better outcomes for borrowers, and we will always ensure student-borrower information is fully protected.