



December 4, 2024

The Honorable Elizabeth Warren  
United States Senate  
309 Hart Senate Office Building  
Washington, DC 20510

The Honorable Richard Blumenthal  
United States Senate  
706 Hart Senate Office Building  
Washington, DC 20510

The Honorable Tammy Duckworth  
United States Senate  
524 Hart Senate Office Building  
Washington, DC 20510

The Honorable Chris Van Hollen  
United States Senate  
730 Hart Senate Office Building  
Washington, DC 20510

Dear Senators Warren, Blumenthal, Duckworth and Van Hollen,

This is a response to your November 1, 2024, letter regarding MOHELA's Website Terms and Conditions of Use (the "Letter"). While the Letter contains other allegations against MOHELA, which MOHELA strongly disputes, it focuses its response on your concerns surrounding MOHELA's Website Terms and Conditions of Use (the "Website Terms").

If not all, nearly all, websites contain terms and conditions, like those found on MOHELA's website. Such terms and conditions are intended to govern how one uses the website by setting out certain rules and guidelines. In doing so, the terms and conditions are intended to protect not just the interest of the entity hosting the website but, at least in the case of MOHELA, those who use the website properly.

### **Background on MOHELA's Website Terms**

We want to start by saying that MOHELA strongly disputes the notion that its Website Terms are unlawful or abusive. MOHELA's Website Terms set forth rules, guidelines, and legal boundaries for users that access and interact with our website. Also, the Website Terms are applicable to more than the borrower who is using the website to access their student loan information, but to a number of different kinds of users visiting the website for different purposes. Whether it's the type of



information displayed, or legal elements related to that information, there are several considerations at play.

### *Content and Liability Provisions*

The Letter comments on a disclaimer used on the website, but this requires some context. It's important to point out that MOHELA's website is not limited to loan account information, but it includes other information such as employment opportunities and employee benefit information. MOHELA must keep the various types of content in mind when reviewing and modifying the Website Terms. Further, when information on the website becomes outdated, it requires revisions.<sup>1</sup> While MOHELA seeks to make updates promptly, given the volume of information and time necessary to make revisions, that is not always possible. Thus, a disclaimer is appropriate to make clear that all information may not always be current.

The Letter also raises concerns about certain limitation of liability provisions contained in the Website Terms, but it does not accurately describe those provisions. Notably, and despite what is outlined in the Letter, MOHELA's Website Terms do not absolve MOHELA of all liability, just certain types of damages, and only to the extent permitted by law.

### *Use of the Website*

The Letter incorrectly states that the Website Terms prohibit borrower activity, like the taking and sharing of screenshots. However, in making this allegation you specifically refer to Section 6.2 of the Website Terms, which pertains primarily to copyright matters. The restrictions in Section 6.2, such as those regarding publicly displaying and distributing content, relate to a copyright owner's exclusive rights in their copyrighted works.<sup>2</sup> These restrictions serve to notify others (e.g., competitors) that MOHELA's website content may not be copied, and the restrictions therein are consistent with laws that protect copyright ownership.

When it comes to the use of the website, the Website Terms clearly authorize users to use the website for personal, non-commercial purposes. This includes, as stated therein: (i) obtaining information about MOHELA, its products and services, and use certain services made available on the website; (ii) help borrowers manage their loan accounts; and, (iii) for other purposes expressly permitted by MOHELA in writing on the website.<sup>3</sup> Notably, the Website Terms make clear that users may "view and/or print pages from the website for their personal use."<sup>4</sup> Thus, it is not accurate to say that the Website Terms restrict a borrower from taking or sharing a screenshot of the website.

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<sup>1</sup> This is a common occurrence in the rapidly changing world of federal student loan servicing.

<sup>2</sup> A, "Website Terms and Conditions of Use,"

<https://mohela.studentaid.gov/DL/common/privacy/internetPrivacy.aspx> (as of November 2024).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*



### *Delivery Methods*

In addition, the Letter remarks on how the Website Terms are presented to users of the website, which is done in a couple of ways. It is common practice for website providers to provide terms and conditions that govern use of a website, like MOHELA's Website Terms, in the registration process, and MOHELA follows this practice. It is also common to include the terms and conditions elsewhere, including along the bottom of a website along with other links. This is so that the terms and conditions are available to view without forcing or prompting a user to first agree to them before proceeding.

### **Other Key Considerations**

As it relates to MOHELA's Website Terms, there are other key considerations that are worth pointing out.

#### *Ability to Enforce & Third-Party Actors*

MOHELA has never enforced its Website Terms against a borrower, nor has it threatened or implied to take any action against a borrower to enforce the Website Terms. In actuality, MOHELA keeps borrower protection front of mind when reviewing its Website Terms. This is so, as MOHELA is particularly aware of third-party bad actors operating in the student loan space. In fact, there continues to be a number of such operators in this space, who seek to obtain and misuse borrower credentials, and gain access to borrower financial information. With this in mind, certain provisions of the Website Terms were carefully crafted to proscribe certain behavior, enabling MOHELA to take action against an entity violating such provisions.

In the past, MOHELA has taken legal action against numerous third-party debt relief companies. It has also aided federal, state, and local regulators and law enforcement agencies to do the same. Federal regulators, such as the Federal Trade Commission, have taken legal action against numerous entities operating in this space.<sup>5</sup> Furthermore, MOHELA has had discussions with the U.S. Department of Education's Office of Inspector General regarding potential enhancements to its Website Terms, to allow for greater enforcement capabilities against those misusing its website.

#### *Website Comparison*

MOHELA has reviewed numerous other websites, and MOHELA believes that its Website Terms are in accordance with industry standards, as well as of the standards of entities operating in the financial sector as a whole. MOHELA has also reviewed the terms and conditions of your own websites, and our comparison shows that the provisions in the MOHELA Website Terms, about which you have concerns, are consistent with the terms and conditions presented to users of your

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<sup>5</sup>Federal Trade Commission, "Debt Relief and Credit Repair Scams", <https://www.ftc.gov/news-events/topics/consumer-finance/debt-relief-credit-repair-scams>. (As of December 1, 2024)



websites. This includes provisions like placing a cap on a potential damages award and broader limitations on liability.<sup>6,7</sup>

### **Closing**

Thank you for the opportunity to respond and provide your offices with the facts about MOHELA's Website Terms, and we hope you find this information is helpful. If you or your office staff need any additional information, please do not hesitate to contact MOHELA.

Sincerely,

MOHELA

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<sup>6</sup> Senator Chris Van Hollen, U.S. Senate, "Terms of Use", <https://vanhollen.org/terms-of-use/>. (As of December 1, 2024)

<sup>7</sup> Warren for Senate, "Terms of Use", <https://elizabethwarren.com/terms-of-service>. (As of December 2, 2024)