Testimony submitted to the
U.S. HOUSE APPROPRIATIONS SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES, EDUCATION, AND RELATED AGENCIES
regarding

"Protecting Student Borrowers: Loan Servicing Oversight"

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Presented by
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Chairwoman DeLauro, Ranking Member Cole, and Members of the Committee, the National Consumer Law Center (NCLC) thanks you for inviting us to testify today. Before I joined NCLC, I was a legal aid lawyer in Philadelphia. There, I provided free legal help to people who struggled to manage various types of consumer debt, including hundreds of low-income clients dealing with student loans.

At NCLC, I continue to represent individual clients along with the other members of the Student Loan Borrower Assistance Project. In addition to that work, we train and support attorneys who represent student loan borrowers nationwide. We offer this testimony on behalf of NCLC's low-income clients.

Upon default on federal student loans, administrative wage garnishments, tax refund offsets, and federal benefits offsets further hamstring the budgets of low-income people who are already struggling to make ends meet. For instance, my client Ms. H sought legal help when her Social Security retirement benefits were offset. After her husband passed away, she had to adjust to living on a smaller income that left her barely above the poverty level. Fighting to save her home from mortgage foreclosure, she could not withstand the monthly $200 offsets. Therefore, we took quick action to stop the offsets while she made monthly payments of $5 to get out of default; that helped her keep her home. However, no borrower should have to go through what Ms. H experienced. Because default devastates the finances of borrowers, servicers must make every effort to help prevent it.

Though each of our clients shoulders only a tiny fraction of the total $1.5 trillion of outstanding student loans, that tiny fraction often represents an outsized proportion of their household indebtedness.[1] Taxpayers—including these student loan borrowers—handsomely compensate the servicers who are responsible for helping federal loan borrowers navigate repayment. Fortunately, and to a greater extent than for many other types of debt, statutes, regulations, and other guidance give these borrowers an array of tools and options for managing their loans while juggling their other financial and life responsibilities.

None of the 43 million federal loan borrowers should default because they were unaware of or unable to access loan cancellation programs, flexible income-driven repayment plans, or deferments or forbearances—mechanisms that temporarily stop payments—appropriate for their circumstances.[2] Unfortunately, as has been widely documented, including by the February 2019 report of the U.S. Department of Education's Office of the Inspector General, the student loan servicing industry has long been rife with misconduct and oversight has been insufficient.[3] Our work with borrowers and other advocates has taught us that when servicers fail to provide competent and efficient service, borrowers needlessly suffer expensive, punitive consequences.

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[1] *See* Fed. Reserve Bank of N.Y., Household Debt and Credit Report: Q4 2018 (Feb. 2019), *available at* https://www.newyorkfed.org/medialibrary/interactives/householdcredit/data/pdf//HHDC_2018Q4.pdf.

[2] *See* U.S. Dep't of Educ., Federal Student Aid, Data Center, Federal Student Loan Portfolio Summary (2018 Q4), *available at* https://studentaid.ed.gov/sa/about/data-center/student/portfolio; U.S. Dep't of Educ., Federal Student Aid, How to Repay Your Loans, *available at* https://studentaid.ed.gov/sa/repay-loans.

[3] *See* U.S. Dep't of Educ. Office of Inspector General, Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans (Feb. 12, 2019), *available at* https://www2.ed.gov/about/offices/list/oig/auditreports/fy2019/a05q0008.pdf; *see also* Consumer Fin. Prot. Bureau, CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers (Sept. 29, 2015), *available at* https://www.consumerfinance.gov/about-us/newsroom/cfpb-concerned-about-widespread-servicing-failures-reported-by-student-loan-borrowers/.

In a 2018 report entitled "Voices of Despair," we compiled stories from borrowers who were in the throes of default. One wrote,

> I am a struggling single father of twin 7 year olds I work hard for my money and I only make $11.50 an hour I handle all the bills and all of my children's needs the best that I can but I fell behind on my rent and my car broke down which is my only transportation to work. I was desperately waiting for my taxes and my earned income credit so I could pay my rent and fix my car. All of that was offset due to old student loans now I can't pay my rent or fix my car so I can't go to work. Now me and my kids are probably going to have to move into a homeless shelter due to the fact that I can't pay my back rent. And now I can't even go to work because I can't fix my car. All of this could have been avoided and I probably still could have paid some money on my loans if all of my money was not seized. I don't understand how it is ethical or Fair to make a family become homeless all because the Department of Education needs my $7,000 more than my children[.][4]

When we meet with new clients, they are generally seeking assistance to prevent or stop these punishing consequences of student loan delinquency and default. We address the borrowers' current circumstances and seek to learn how they wound up in that position.

We often identify an upstream servicing failure (or failures) as the precursor to a preventable default. This single father of twins worked hard and his family, like my client Ms. H, was nonetheless living just a hair above the poverty line. Federal loans come with features designed for their benefit. Like so many of our low-income clients, if enrolled in an income-driven repayment plan, these borrowers would owe monthly payments of zero dollars. Why do they nonetheless experience default? Servicers are responsible for helping borrowers repay their loans. Servicers are paid enough to do the job better.

Borrowers also deserve better—and if they are already wondering how they can afford to repay their loans, we should not encumber them with the additional risk that their servicer or the

[4] Persis Yu, National Consumer Law Center, Voices of Despair: Student Borrowers Trapped in Poverty When the Government Seizes Their Earned Income Tax Credit (March 2018), *available at* http://www.nclc.org/images/pdf/student_loans/voices-of-despair.pdf.

Department of Education will impair their ability to do so. Borrowers cannot afford and should not bear the additional expenses and consequences that follow servicing failures. Our clients and other borrowers have reported a host of consequences including negative credit reporting; bank account overdrafts because of paperwork processing delays and errors; grants that convert to loans; additional years of repayment due to borrowers spending time in forbearances or the wrong repayment plan; default because of misinformation about available options; and barriers to re-enrolling in school to complete a degree.

Quality servicing is especially critical for addressing racial disparities in student loan outcomes. The clear majority of my student loan clients have been people of color. This is not surprising since students of color rely on financial aid more than their white counterparts do. This, in turn, is not surprising because of a long legacy of discrimination and exclusion from income- and wealth-building opportunities that persists in the form of disparities in income and a widening racial wealth gap.[5] These are the reasons it is troubling, but again not surprising, that borrowers of color are also more likely to default on their student loans.[6] Holding servicers accountable is a key way to reduce the risk of default and the ensuing, wealth-stripping seizures of wages, tax refunds, Social Security, and other federal benefits that exacerbate inequities faced by communities of color.

Default prevention begins with providing robust grant aid instead of loans to students who need help paying for college. Nevertheless, once students and their families have taken on

[5] *See* Mark Huelsman, Demos, The Debt Divide: The Racial and Class Bias Behind the "New Normal" of Student Borrowing (2015), *available at* https://www.demos.org/publication/debt-divide-racial-and-class-bias-behind-new-normal-student-borrowing. *See e.g.*, Amy Traub et al., Demos, The Asset Value of Whiteness: Understanding the Racial Wealth Gap (2017), *available at* https://www.demos.org/publication/asset-value-whiteness-understanding-racial-wealth-gap.

[6] Judith Scott-Clayton & Jing Li, The Brookings Institute, Black-White Disparity in Student Loan Debt More Than Triples after Graduation (Oct. 2016), *available at* https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/.

federal student loans, they should be able to rely on the U.S. Department of Education and their servicers to guide them to successful repayment. Too many borrowers rely to their detriment on servicers who misinform them or fail to help them access the most favorable loan options. Too often, the Department of Education has failed to hold servicers accountable while the harmed borrowers suffer draconian, involuntary collection activity.

When servicer error, abuse, or deception hurts borrowers, those borrowers deserve to be made whole and those servicers deserve to be held accountable. The Department of Education should ensure that those two things happen. Instead, when servicers derail borrowers who are en route to repayment, the Department of Education too often sides with servicers to the detriment of borrowers. Congress can and must protect federal student loan borrowers—and especially low-income people and borrowers of color—so that they have clear pathways to the loan relief to which they are entitled. This will free them to pay the loans they owe while still paying for the necessities of life.

Since the Department has shown its inability or unwillingness to provide adequate oversight to servicers, it is imperative that states can look out for their residents and borrowers can seek appropriate remedies through the courts. Yet state bills to provide clear rights to borrowers and mechanisms to redress harms, as well as public and private enforcement actions against loan servicers, are met with resistance by the Department of Education. It spends taxpayer dollars to assert that consumer protections and other important laws are preempted by its powers to oversee servicers. Rather than shielding loan servicers from the legal claims of injured borrowers, the Department should directly address the clear harms to borrowers and correct the actions of its servicers—if those servicers are going to continue in their roles.

Thank you for the opportunity to testify. I look forward to your questions.