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Testimony of Persis SiChing Yu, National Consumer Law Center
Before the U.S. House of Representatives Committee on Financial Services
regarding
“A \$1.5 Trillion Crisis: Protecting Student Borrowers and Holding Student Loan Servicers
Accountable”
September 10, 2019

Introduction

Chairwoman Waters, Ranking Member McHenry, and Members of the Committee on Financial Services, thank you for inviting me to testify today regarding how to protect student borrowers and hold student loan servicers accountable. I offer my testimony here on behalf of the low-income clients of the National Consumer Law Center (NCLC).¹

At NCLC, I direct the Student Loan Borrower Assistance Project. Our Project’s policy and advocacy efforts derive from our direct legal representation of low-income clients in Massachusetts. These clients seek our assistance because they are struggling with student loan debt. Through our client work, we see and hear the human toll of the tattered student loan safety net. In addition to our work in Massachusetts, we consult with advocates across the country

¹ The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. Since 1969, we have worked 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. 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. 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 website at www.studentloanborrowerassistance.org.

representing borrowers—many with complaints against student loan servicers. Student loan borrowers are desperately in need of clear and enforceable consumer protection laws like those before the Committee today.

Draconian Consequences of Student Loan Default

Currently, nearly 45 million people in the United States owe more than \$1.5 trillion on their student loans. Roughly a quarter of federal loan borrowers are delinquent or in default.² Vulnerable students who—like our clients—pursue education to better their lives and better provide for their families face severe consequences if they default on federal student loans.

Loan servicers, which are lenders themselves or are hired by lenders, play a critical role in determining whether student loan borrowers succeed in repayment or experience default. In addition to communicating with borrowers about their loan repayment benefits and options, servicers are responsible for helping borrowers to access those options, processing payments, and assisting with problems. In this role, servicers wield substantial power over borrowers' financial stability.

For example, when borrowers miss out on affordable repayment options or have payments misapplied, it can damage borrowers' credit histories, increasing the cost of access to further credit and potentially erecting barriers to accessing employment and housing. As the Consumer Financial Protection Bureau (CFPB) aptly explained in its 2015 report on student loan servicing, “the consequences of borrowers’ failure to satisfy an obligation can be particularly injurious” for those borrowers who have limited credit history.³ Consequences can extend beyond traditional lending because “consumer credit profiles serve as a precondition to

² See U.S. Dep’t of Educ., Federal Student Aid, Data Center, Federal Student Loan Portfolio; *see also*, Consumer Fin. Prot. Bureau, Student Loan Servicing: Analysis of Public Input and Recommendations for Reform (Sept. 2015).

³ Consumer Fin. Prot. Bureau, Student Loan Servicing: Analysis of Public Input 140-141 (Sept. 2015).

employment, housing, and access to credit, and consequently, servicing errors can have spillover effects on many other aspects of borrowers' lives and livelihoods.”⁴

These devastating consequences of default are intensified for federal student loan borrowers. The federal government has collection powers against defaulted student loan borrowers that far exceed the collection powers of most unsecured creditors. Wielding these coercive tools, the government often siphons thousands of dollars from borrowers already experiencing financial distress. The government can garnish a borrower’s wages without a judgment, seize tax refunds (including the Earned Income Tax Credit),⁵ and seize portions of federal benefits such as Social Security.⁶ The amount the government seizes using these tools often is far greater than what the same borrowers would have been required to pay under an income-driven repayment (IDR) plan. These punitive collection activities often push low-income households to or over the financial brink.

Racial disparities in default rates disproportionately expose borrowers of color to these government offsets and other damaging debt collection practices. The impact of the Department’s default collection tools extends beyond borrowers’ immediate families and into their surrounding communities. Research by the Washington Center for Equitable Growth found that zip codes with higher shares of African Americans or Latinos, including many communities that are already economically disadvantaged, show much higher delinquency rates on their student loans.⁷ The government’s collection practices have the disastrous effect of systematically

⁴ *Id.*

⁵ See Appendix A; Persis Yu, NCLC, Voices of Despair: Student Borrowers Trapped in Poverty When Government Seizes Their Earned Income Tax Credit Report (Mar. 2018).

⁶ NCLC, Student Loan Law Ch. 9 (5th ed. 2015), *updated at* www.nclc.org/library. See also, Persis Yu, NCLC, Pushed into Poverty: How Student Loan Collections Threaten the Financial Security of Older Americans (May 2017).

⁷ Marshall Steinbaum and Kavya Vaghul, Washington Center for Equitable Growth, How the Student Debt Crisis Affects African Americans and Latinos (Feb. 17, 2016).

stripping wealth from communities of color through the above-mentioned seizures of cash, as well as the imposition of huge collection fees.

Even borrowers who avoid default and repay their debts can face additional charges if they fall behind on their payments at any point. This can require further sacrifices to pay the monthly bills, dampening consumption and hindering the economy as a whole.⁸ Research by the Federal Reserve Bank of New York suggests that burdensome student loan debt is causing borrowers to delay homeownership and live with their parents longer.⁹ For borrowers facing financial hardship, competent and accurate servicing can be the difference between missing a payment and staying on track.

Widespread Servicer Misconduct Threatens 45 Million Student Loan Borrowers

The scale of the federal student loan servicing industry and the impacts of its actions are vast. Americans now owe more in student loan debt than they do for auto loans, credit cards, or any other non-mortgage debt.¹⁰ Federal data shows that almost a quarter of the nearly 45 million student loan borrowers are in distress on their loans.¹¹

Unfortunately, the servicing system has become so confusing that an entire industry of for-profit “debt relief” companies has sprung up to supposedly deliver what the free government servicers are failing to provide. Borrowers run the risk not only of paying exorbitant fees to these companies, but also of losing important rights.¹²

Contrary to claims by servicers, U.S. Department of Education regulations on servicer

⁸ U.S. Dep’t of Treasury, Press Center, Remarks of Deputy Secretary Raskin at the University of Maryland-Baltimore County (Apr. 29, 2014), <https://www.treasury.gov/press-center/press-releases/Pages/jl2374.aspx>.

⁹ Zachary Bleemer, Meta Brown, Donghoon Lee, Katherine Strair, & Wilbert van der Klaauw, *Echoes of Rising Tuition in Students’ Borrowing, Educational Attainment, and Homeownership in Post-Recession America*, Federal Reserve Bank of New York Staff Reports, no. 820 (July 2017).

¹⁰ See Fed. Reserve Bank of N.Y., Household Debt and Credit Report: Q1 2018 (May 2018).

¹¹ See U.S. Dep’t of Educ., Federal Student Aid, Data Center, Federal Student Loan Portfolio; *see also*, Consumer Fin. Prot. Bureau, *Student Loan Servicing: Analysis of Public Input and Recommendations for Reform* (Sept. 2015).

¹² See Deanne Loonin and Jillian McLaughlin, NCLC, *Searching for Relief: Desperate Borrowers and the Growing Student Loan ‘Debt Relief’ Industry* (June 2013).

behavior are far from robust, and historically, its enforcement of borrower protections has been woefully insufficient. Upholding and improving federal consumer protection laws has never been more crucial. Record numbers of Americans struggle to afford their student loans, and many needlessly suffer long-term and irreparable harm from servicer misconduct, abuses, and deception. Servicers must be accountable for their actions and to the taxpayers who handsomely compensate them.

With the assistance of a competent and efficient servicer, financially distressed borrowers may avoid default by accessing flexible repayment plans, loan cancellation programs, or deferments or forbearances (which temporarily stop payments) that are appropriate for their circumstances. Unfortunately, as has been extensively documented, the student loan servicing industry has long been rife with misconduct. The four largest servicers of federal student loans have a documented history of “widespread servicing failures” that “create obstacles to repayment, raise costs, cause distress” and “driv[e] borrowers to default.”¹³

In April 2017, the Consumer Financial Protection Bureau (CFPB) released a report detailing complaints filed by student loan borrowers working to repay their student loans. Specifically, borrowers and other stakeholders reported experiencing:

- A wide range of sloppy, patchwork practices by servicers that create obstacles to repayment, raise costs, cause distress, and contribute to driving struggling borrowers to default.
- Difficulty enrolling and staying in income-driven repayment plans including processing delays, inaccurate denials, lost paperwork, and insufficient information or guidance.
- Confusion about their progress toward Public Service Loan Forgiveness programs. After

¹³ Consumer Fin. Prot. Bureau, CFPB Concerned About Widespread Servicing Failures Reported by Student Loan Borrowers (Sept. 29, 2015).

years of making payments, some borrowers learn that their loans are not enrolled in a qualifying repayment plan, even though they have told their servicers that they were pursuing Public Service Loan Forgiveness.¹⁴

As one private student loan borrower's complaint to the CFPB's Complaint Database illustrates, borrowers experience challenges not only with ensuring the proper allocation of payments, but also in attempting to resolve disputes:

Navient regularly and consistently fails to appropriately apply my student loan payments. I have XXXX loans ; XXXX are paid for by my cosigner, XXXX are paid for by me. I can't use their Autopay system (which I 'm assured works better) because they have previously withdrawn large sums of money without authorization. Instead we send payments with notes regarding which chunk of loans are to be paid with each payment. about every 6 months this system fails, and we have to start again explaining to many staff members how the money is to be applied. They typically tell me I have failed to make a payment (even though I can see it on my account website), they threat me with late fees and collections agencies... I have spoken repeatedly to their Consumer Advocate office to no avail....

In the federal loan context, servicing issues prevent borrowers from being able to access many of the benefits offered by the Higher Education Act (HEA), which governs the federal student loan program. IDR is the umbrella term for the various affordable loan repayment options. IDR plans require borrowers to pay only a set percentage of their income toward their student loan bills, and can require a small or even zero dollar monthly payment from the borrower.¹⁵ Remaining on an IDR plan provides the borrower with sustainable loan repayment and a path to forgiveness of any remaining balance after twenty or twenty-five years of IDR payments.¹⁶

¹⁴ Consumer Fin. Prot. Bureau, CFPB Monthly Snapshot Spotlights Student Loan Complaints (Apr. 2017).

¹⁵ 20 U.S.C. §§ 1087e(d)(1)(E) (applicable to Direct Loans), 1098e (FFEL). See 34 C.F.R. §§ 682.215 (FFEL), 685.221 (Direct Loan).

¹⁶ *Id.*

This year marked the 25th anniversary of the first IDR plan: the Income-Contingent Repayment Plan (ICR). This means that student loan borrowers who entered ICR in 1994 should begin receiving loan forgiveness for completing 25 years of qualifying payments. Because of changes in IDR repayment options, borrowers originally enrolled in ICR who have not yet completed 25 years of payments can achieve forgiveness sooner or immediately by switching to the Revised Pay As You Earn (REPAYE) plan, which has a shorter repayment period for some borrowers. Despite the fact that forgiveness has been a potential option for some borrowers since REPAYE was implemented in late 2015, initial numbers indicate that fewer than 20 borrowers have utilized this option. This raises questions about whether borrowers are truly going to be able to access forgiveness under IDR. NCLC has submitted a Freedom of Information Act request to the Department of Education seeking data to determine the barriers keeping federal student loan borrowers from receiving the forgiveness to which they should otherwise be entitled.¹⁷

Despite the abundant benefits to the financial health of borrowers and their families, IDR programs remain consistently inaccessible for many borrowers, with documented low levels of participation by eligible borrowers.¹⁸ Problems with enrolling and renewing borrowers in IDR plans are particularly prevalent. Entering a borrower into an IDR plan is time-intensive and expensive for servicers, so servicers fail to invest resources in ensuring that borrowers understand and successfully access the most affordable and sustainable repayment plan. Instead, servicers steer many borrowers into forbearances and deferments, which are profitable for the servicer and costly to the borrower. Some servicers have misrepresented that borrowers have no other repayment options.

¹⁷ See Appendix B.

¹⁸ U.S. Gov't Accountability Office, Federal Student Loans: Education Could Do More to Help Ensure Borrowers are Aware of Repayment and Forgiveness Options, Report No. GAO-15-66 (Aug. 2015).

An NCLC client had this experience as she struggled to afford her student loan payments after completing a medical assistant program at a local for-profit school. Every year, she dutifully contacted her servicer and submitted documentation of her financial hardship. Despite clear eligibility for a zero dollar payment, she was never enrolled in an IDR plan. When this borrower came to NCLC, she had never even heard of IDR options. Instead, each year when she called her servicer to discuss her financial situation and options, she was directed into a number of forbearances. She remained in good standing on her loan, due to her extreme diligence. However, by steering her towards forbearance, the servicer's actions wasted years she could have spent in an affordable repayment plan, working toward the eventual resolution of her loan.

Our client's experience is far from unique, and state enforcement actions targeted at this type of misbehavior tell similar stories. Several state attorneys general (including those from California, Illinois, Massachusetts, Pennsylvania, and Washington) and the CFPB have sued servicers for similar failures related to enrolling borrowers in IDR.¹⁹

In 2016, the U.S. Government Accountability Office (GAO) estimated that a borrower owing \$30,000 in federal loans who spent three years in a forbearance would pay \$6,742 more than a borrower on a 10-year standard repayment plan who did not spend any time in forbearance.²⁰ The GAO further stated that encouraging “forbearance over other options that may be more beneficial, such as [IDR] plans,” will continue to place some borrowers “at risk of

¹⁹ See *Consumer Fin. Prot. Bureau v. Navient Corp.*, 2017 WL 3380530 (M.D. Pa. Aug. 4, 2017); Press Release, Att'y Gen. of Cal., Attorney General Becerra Charges Navient Corporation, Largest Student Loan Servicer, with Deceitful Practices and Debt-Collection Misconduct in Lawsuit (June 28, 2018); Press Release, Att'y Gen. of Penn., Attorney General Shapiro Sues Nation's Largest Student Loan Company for Widespread Abuses (Oct. 5, 2017); Press Release, Att'y Gen. of Ill., Attorney General Madigan Sues Navient And Sallie Mae For Rampant Student Loan Abuses (Jan. 18, 2017); David Gutman, State AG Sues Student Loan Company, Alleging Unfair And Deceptive Practices, *Seattle Times* (Jan. 18, 2017); Press Release, Att'y Gen. of Mass., AG Healey Secures \$2.4 Million, Significant Policy Reforms in Major Settlement with Student Loan Servicer (Nov. 22, 2016).

²⁰ U.S. Gov't Accountability Office, Federal Student Loans: Education Could Improve Direct Loan Program Customer Service and Oversight: Highlights, Report No. GAO-16-523, 19 (May 16, 2016).

incurring additional costs without any long-term benefits.”²¹ Borrowers also experience problems staying in IDR plans. Research from the Department of Education revealed that more than half of borrowers in IDR plans did not complete their annual recertification on time, which can lead to a dramatic increase in payment amount, and ultimately default.²²

Importantly, servicer misconduct is not limited to issues regarding borrowers’ access to income-driven repayment. Statutory discharges (or cancellations) provide the most powerful remedies for federal student loan borrowers. They offer complete relief as opposed to simply reducing the monthly payment or delaying the repayment obligation.²³ However, many borrowers struggle to access these beneficial loan cancellation programs.

For example, one of my former clients borrowed federal loans to attend the American Career Training Travel School (ACCTS). The school’s owners were accused of fraudulently obtaining \$153 million in federal student loans.²⁴ According to U.S. Senate testimony, from 1986 through 1989, 90 percent of students enrolled in the travel school received federal aid, but only 16 percent completed their courses.²⁵ Based upon the “complex issues surrounding” this particular school’s closure, the Department of Education published a Dear Colleague letter in 1997, alerting servicers and lenders that it had expanded the eligibility criteria for closed school discharges for student who attended this school.²⁶ Yet, despite reaching out to his loan servicer several times, my client never learned about the possibility of a closed school discharge. Instead, he defaulted on his loans and his wages and tax refunds were repeatedly seized. When he reached out to my office, more than two decades after attending ACTTS, he was living in a

²¹ *Id.* at 20

²² U.S. Dep’t of Educ., Negotiated Rulemaking for Higher Education 2015 - PAYE Session 2, Sample Data on IDR Recertification Rates for ED-Held Loans (2015),

<https://www2.ed.gov/policy/highered/reg/hearulemaking/2015/paye2-recertification.pdf>.

²³ NCLC, Student Loan Law Ch. 10 (5th ed. 2015), updated at www.nclc.org/library.

²⁴ Ken Cummins, “Senate Panel: Pompano School Misused Loans,” South Florida Sun-Sentinel, Feb. 27, 1990.

²⁵ *Id.*

²⁶ U.S. Dep’t. Of Educ., Dear Colleague Letter 97-G-300 (July 1997).

homeless shelter. With one simple form, we were able to stop the coercive debt collection, relieve him of the obligation to repay, and recover thousands of dollars that this client had paid on the loans. Competent, more student-oriented servicing would have prevented this tragedy.

A civil legal aid organization in California assisted a borrower who attended a long-defunct for-profit college nearly three decades ago. This borrower met the eligibility criteria for a false certification discharge, and the legal aid program helped her apply. However, the servicer denied the discharge because the Spanish-speaking borrower submitted an expired Spanish-language discharge application. She submitted that version of the application because the Department of Education had not produced a new Spanish-language version. In fact, the Department of Education directs all federal loan servicers to continue accepting expired forms until new versions of the forms become available.²⁷ Ultimately, with the assistance of the legal services office, this client prevailed after an informal appeal to the Department of Education.

Servicing errors have also caused thousands of teachers to have their TEACH Grants (federal grants given to encourage teachers to work in high need areas) converted into Federal Direct Loans. Data obtained by Public Citizen, Inc., through a Freedom of Information Act request demonstrates that one servicer hired by the Department of Education to oversee the TEACH Grant program appeared to have erroneously converted more than 15,000 TEACH Grants to loans, amounting to an error rate of 38 percent among all conversions.²⁸ Significant problems with respect to erroneous conversions have continued under a successive servicer as well.²⁹

The student loan system is complex and borrowers need competent servicers to help them

²⁷ See e.g., U.S. Dep’t of Educ., Fed. Student Aid, Electronic Announcement: Revision of the Federal Student Loan Discharge Applications (Jan. 29, 2019).

²⁸ Danielle Douglas-Gabriel, “*This situation . . . made my first four years of teaching so much harder*”: How a grant became a loan, Wash. Post, Mar. 30, 2018.

²⁹ See Cory Turner and Chris Arnold, *Dept. of Education Fail: Teachers Lose Grants, Forced To Repay Thousands In Loans*, Nat’l Public Radio, Mar. 28, 2018.

navigate their options. Unfortunately, the servicers, who are paid hundreds of millions of dollars by taxpayers, are failing to consistently provide that service, and borrowers are the ones to suffer the consequences.

Need for Clear and Enforceable Federal Consumer Protections

There are few laws specifically governing student loan servicer conduct for either federal or private loans. The absence of clear borrower protections contrasts with other consumer credit areas such as credit cards and mortgages. In its October 2013 report, the CFPB pointed to protections in the Real Estate Settlement Procedures Act (RESPA) for mortgages and the Credit CARD Act and the need to examine whether these types of reforms could apply to the student loan servicing market.³⁰

The CFPB pointed out that some of the provisions in mortgage servicing rules that could apply to student loan servicers include notice of transfer of loan servicing, timely transfer of documents to new servicers, payoff statements, error resolution and dispute review procedures, continuity of contact, records retention, and early intervention for borrowers nearing default.³¹

In April 2019, *The New York Times* highlighted one of the problems keeping borrowers from accessing public service loan forgiveness: errors in the count of their qualifying payments.³² In order to verify the number of qualifying payments and to ensure that servicers are counting payments properly, borrowers need to have access to a full and complete payment history. Unfortunately, borrowers do not currently have easy access to this information.

Borrowers are able to get basic information about their federal loans from the National Student Loan Data System, but it does not provide payment level data.

³⁰ Consumer Fin. Prot. Bureau, “Annual Report of the CFPB Student Loan Ombudsman” (Oct. 16, 2013).

³¹ *Id.*

³² Ron Lieber, “*Your Student Loan Servicer Will Call You Back in a Year. Sorry.*,” N.Y. Times, Apr. 12, 2019.

The student loan servicers should have payment records, but the extent to which they make this information available to borrowers varies widely.³³ Mortgage servicers are required to provide borrowers with information within 30 days of a qualified written request, but there is no federal statute requiring a student loan servicer to give the borrower information like that contained in a payment history.

NCLC has been attempting to obtain a complete payment history for one of our clients since February. Like so many other borrowers working in public service, she believes that her servicer miscounted the number of payments she has made which could qualify for public service loan forgiveness. According to *The New York Times*, some borrowers in this situation are told that it could take up to a year to resolve these counting errors.³⁴

On the federal loan side, there are some explicit due diligence regulations, but only for Federal Family Education Loan (FFEL) Program loans and Perkins loans. These regulations require lenders and servicers to engage in certain activities, depending on how long the borrower has been delinquent. There are no such regulations for Direct Loans and the regulations that do exist do not do enough to protect borrowers. The Department of Education states that at least some of the FFEL provisions were incorporated into its contracts with Direct Loan servicers. However, borrowers rarely know about those rights.

In general, the Department of Education states in the contracts that it does not intend to provide additional service-level requirements, but it does expect “best of business practices” to be deployed.³⁵ Servicers are also required to meet “all statutory and legislative requirements.”³⁶ The problem is that contractually provided incentives alone fail to set standard and transparent

³³ See Persis Yu, NCLC, Student Loan Forgiveness Cannot Work Without a Right to a Payment History (May 22, 2019), available at <https://protectborrowers.org/qualifying-payments/>.

³⁴ Lieber, *supra* note 31.

³⁵ U.S. Dep’t of Educ., Fed. Student Aid, Solicitation Number: FSA-TitleIV-09-D-0014, Attachment A-1(June 17, 2009).

³⁶ *Id.*

borrower protections. Further, the lack of enforcement by the Department of Education combined with limited borrower rights to enforce protections means that servicers are largely unaccountable when they fail to provide quality service or violate applicable law.

Few student loan borrowers have the ability to seek redress when servicers violate their rights. Those who are able to find a lawyer to assist them still face an uphill battle because the HEA provides no explicit private right of action to student loan borrowers who seek to enforce disclosure requirements or challenge a servicer's failure to comply with other obligations set out in federal law. Borrowers can raise state law claims, including those based on fraud and misrepresentation, but servicers assert that these claims are preempted by the HEA.

Even though student loans are the second largest credit market in the country, there is a dearth of clear and enforceable consumer protections for student loan borrowers. Fairness and justice require that borrowers have the ability to enforce their rights when breached by servicers.

Private Student Loans and Distressed Borrowers

Private student loan borrowers are generally at the mercy of their creditors. In our experience representing borrowers in financial distress, most lenders, including non-profit lenders, have not been willing to cancel or modify loans or offer reasonable settlements. Unlike the federal student loan programs, there is no comprehensive federal law requiring private student lenders to offer particular types of relief or flexible repayment. As will be discussed in greater detail in this section, private loan borrowers often experience a lack of flexible repayment options, limited refinance options, and few cancellation options for the most vulnerable borrowers.

Lack of Flexible Payment Options

Private student loan borrowers need flexibility to prevent and address delinquency and default. Loan modifications that enable a borrower to make payments on a loan rather than defaulting are in both the borrowers' and the lenders' best interests. But the CFPB found in its July 2012 report that the lenders in its sample did not currently offer loan modification programs.³⁷

Modifications may lead to lost revenues for lenders, but in many cases the losses will be much greater if the servicer refuses assistance. Many borrowers we hear from are living in extreme poverty with little or no future earnings prospects. Yet servicers remain largely unaccountable for their dismal performance in making modifications.

In one example, an NCLC client owed approximately \$90,000 in student loans. Half of this balance was due to private loans from three different private lenders. This client has developmental disabilities and, since leaving school, works full time as a waitress. She is currently in an IDR plan for her federal loans, and has worked out a payment arrangement for two of her three private lenders. Unfortunately, her third lender refused to accept any amount less than the full monthly payment of \$200 – which she cannot afford. Because the lender refused to work out a payment arrangement, she is now three years past due on this account.

Though her credit history is not perfect, the past due private student loan is the biggest drag on her credit score. Unfortunately, because she cannot get up to date on this one private loan, it will continue to report a past due balance until it is obsolete. Furthermore, although this lender only sends one bill with one monthly payment, because she took out the loan in three separate disbursements, it is reported on her credit reports as three separate past due accounts.

Few Refinance Options Available

³⁷ Consumer Fin. Prot. Bureau, “Private Student Loans” at 66 (July 20, 2012).

Private lenders' failure to offer relief options is compounded by the lack of reasonable refinancing or consolidation products. To the extent refinance options exist, the products mainly target prime or superprime borrowers and are not available for those who are struggling the most.³⁸ Some of these products even use borrowers' education backgrounds for determining creditworthiness. Use of education data is quite troubling as there are obvious racial differences and disparities in educational attainment.³⁹

When private lenders do make student loan modification products available, many aggressively seek to push borrowers to include federal student loans in private consolidation loans. If borrowers choose this product, they will lose the rights from their federal loans, such as affordable repayment and disability discharges. Some other products allow borrowers to refinance by converting their student loans into a mortgage. While this may allow some borrowers to lower their interest rates or payments, it replaces an unsecured debt with a debt tied to their home, increasing the chances that borrowers will lose their home should they run into financial trouble.

Cancellation Options for the Most Vulnerable Borrowers

Private lenders, including non-profit lenders, rarely cancel student loans or offer reasonable settlements. A few lenders have said they will cancel loans in limited circumstances. For example, at a May 2019 investment conference, Sallie Mae represented that all of its private student loans included a "Student Death & Disability Release."⁴⁰ Navient also offers a Total and Permanent Disability Discharge, but only for Smart Option Student Loans and College Ave refinance loans. Wells Fargo announced a similar program in December 2010, stating that it

³⁸ Deirdre Fernandes, "*The Difficult Task of Qualifying for Student Loan Refinancing*," Boston Globe, Aug. 14, 2016.

³⁹ Aryn Bussey, Educational Redlining? The use of education data in underwriting could leave HBCU and MSI graduates in the dark (July 24, 2019) available at <https://protectborrowers.org/educational-redlining>.

⁴⁰ Steve McGarry, Sallie Mae, Presentation at 2019 Barclays Americas Select Franchise Conference (May 14, 2019).

would require verbal or written notification of a student's permanent and total disability followed by receipt of acceptable documentation.

It is unclear whether lenders administer these policies consistently. Critically, there is also no standard system for disability cancellations for private loans.

A client I worked with prior to joining NCLC was in medical school when she was diagnosed with breast cancer. Though her cancer was in remission, the side effects from treatment left her totally and permanently disabled. Her only income was from Social Security Disability, and barely covered her basic necessities. She had both federal and private loans with Sallie Mae (now Navient) which she attempted to cancel through a disability discharge. Together, we were able to get her federal loans discharged. However, when she applied to have her private loans discharged, Sallie Mae only agreed to forgive the interest portion of her private loans. Though she had established her disability, Sallie Mae continued to collect on her still unaffordable private loans. She received several collection calls a day, causing her stress and anxiety. She died from cancer-related complications about 6 months later.

Forced Arbitration Clauses Deny Private Loan Borrowers Access to Justice

Importantly, even where private student loan borrowers do have rights under state law, they are often prevented from raising those claims in open court because of forced arbitration clauses. For example, a New York borrower brought a case alleging that Citibank, N.A. engaged in a scheme to collect additional interest at the expense of private student loan borrowers. The borrower claimed that Citibank deceived them into believing that their monthly payments had been reduced because of an interest rate reduction, when in fact, the majority of the payment

reduction was due to a reduction in the amount of principal being repaid each month. The court granted Citibank's motion to compel arbitration and, therefore, dismissed the case.⁴¹

Arbitration clauses deprive people of their day in court when a company violates the law, forcing victims into a system that is often biased, secretive and lawless. Interestingly, a 2014 article in American Banker reports that consumers saw no increase in credit card prices after Bank of America, JPMorgan Chase, Capital One, and HSBC dropped their forced arbitration clauses as a result of litigation.⁴² Similarly, mortgage rates did not increase after Congress banned forced arbitration in mortgages.⁴³

There is significant data showing that forced arbitration hides misconduct and blocks accountability for wrongdoers. A 2015 CFPB study found that arbitration clauses are extraordinarily prevalent, almost always include class action waivers, and effectively squelch consumer claims.⁴⁴ Forced arbitration clauses have prevented hundreds of valid class actions from getting off the ground and have deprived consumers of a number of important remedies that are often available in class adjudication, including injunctive relief to halt corporate wrongdoing.⁴⁵

Responsible companies obey the law, and own up to their mistakes if things go wrong. Forced arbitration clauses prevent private student loan borrowers who have been harmed by abusive servicing from getting the relief they deserve and shield companies that harm consumers from being held accountable.

Conclusion

⁴¹ *Kuehn v. Citibank, N.A.*, 2012 WL 6057941 (S.D.N.Y. Dec. 6, 2012).

⁴² Adam J. Levitin, "BankThink: Mandatory Arbitration Offers Bargain-Basement Justice," American Banker, May 13, 2014.

⁴³ *Id.*

⁴⁴ Consumer Fin. Prot. Bureau, CFPB Finds Few Consumers File Arbitration Cases (Dec. 12, 2013).

⁴⁵ NCLC, Consumer Arbitration Agreements § 1.4 (7th ed. 2015), updated at www.nclc.org/library.

The problems facing individual borrowers are often symptoms of systemic problems to which systemic responses are required.

High-quality, borrower-centric servicing is essential to improving student loan outcomes, but is often overlooked in policy debates. If the servicer is competent and efficient, many financially distressed borrowers will be able to avoid default by accessing affordable repayment plans, statutory discharges, or deferments or forbearances appropriate for their circumstances.

The reality of the current servicing system, unfortunately, is far from this ideal. Unfortunately, as many of the problems detailed demonstrate, too many borrowers never access the options that could relieve their debt burdens and help them make fresh starts in life.

Borrowers experience a range of problems in the student loan servicing industry, including a range of issues with payment processing, communications, and accessing affordable repayment options or loan cancellation programs. These problems threaten the financial security of some of the most vulnerable student loan borrowers and keep borrowers from fully participating in the economy.

Accountability is critical to ensuring that borrowers receive quality servicing. Borrowers need real rights and consumer protections and they need legal tools to enforce those protections.

Thank you for the close attention you are paying to the student loan servicing market, for the bills you are considering today, and for the opportunity to provide this testimony. I look forward to your questions.

Appendix A



VOICES OF DESPAIR

Student Borrowers Trapped in Poverty When the Government Seizes Their Earned Income Tax Credit

March 2018

By

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National Consumer Law Center®

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ABOUT THE AUTHOR

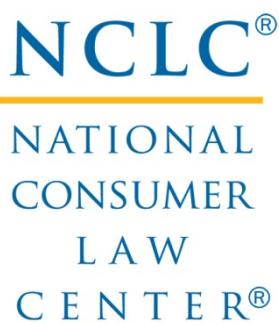
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She is a contributor to NCLC's *[Student Loan Law](#)* and *[Fair Credit Reporting](#)*.

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ABOUT THE NATIONAL CONSUMER LAW CENTER



Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, to help financially stressed families build and retain wealth, and advance economic fairness.

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VOICES OF DESPAIR: STUDENT BORROWERS TRAPPED IN POVERTY WHEN THE GOVERNMENT SEIZES THEIR EARNED INCOME TAX CREDIT

The U.S. Treasury is seizing Earned Income Tax Credit (EITC) refund checks from the working poor to repay student loans that are in default, and the consequences on working families are devastating.

The government's policy of seizing federal student loan borrowers' EITC runs counter to almost every [goal Congress set for the EITC](#)¹ and its student loan programs. These programs were designed to support economic mobility and achievement of financial stability for low-income Americans working towards a better future, and to help lift future generations out of poverty.

When the federal government seizes EITC refund checks from student loan borrowers in distress, it does the opposite—too often trapping low-income families in poverty by making it harder to access work, stable and safe housing, and to pay for basic necessities and medical care. Worse, the main victims of EITC seizures are children, since by far the largest EITC payments go to families with children, and the confiscation of these vital funds can have a dramatic impact on children's well-being.

This policy also compounds the harms borne by low-income borrowers, who in many cases were denied the promised benefits of education: they were lured in to attend a fraudulent school or a school that closed in mid-course, or life circumstances forced them to leave the

What is the EITC?

The Earned Income Tax Credit (EITC) is an anti-poverty government program that provides crucial support to low-income working families. A taxpayer's EITC is calculated as a fixed percentage of earnings until the credit reaches a maximum amount. The credit is fully refundable, meaning that if a family's EITC is greater than its income tax liability, the excess is paid as a tax refund. The amount of the EITC varies based on a recipient's income, marital status, and number of children. By design, the EITC provides substantially more support for families with children.

school before completing the course of study. Systemic obstacles, a lack of effective support, and abusive practices often precede a borrower's default.

In January 2018, the National Consumer Law Center asked student loan borrowers² who had their EITC seized to share their stories and to tell us what they planned to do with their tax credit. This report highlights some of the common themes from borrowers and shows the devastating impact of confiscating these funds from low-income working families.³

We have shared borrowers' stories, unedited and in full, in the final section, "In Their Own Words: Borrower Stories."

Researchers have found the Earned Income Tax Credit, which enjoys bipartisan support, has boosted employment among single mothers and reduced reliance on welfare.

THE EITC MAKES WORKING POSSIBLE

The EITC has been lauded by Republicans and Democrats alike as one of the federal government's most successful job-creation and anti-poverty programs.⁴ In particular, the EITC has had a positive effect on the workforce participation of single mothers.⁵ One study found that EITC expansions were responsible for 34 percent of the increase in employment among single mothers between 1993 and 1999.⁶ In addition to encouraging employment, the EITC has led to a decline in welfare use.⁷

One borrower, a struggling single father of twin seven-year olds, described how the seizure of his EITC refund meant that he could not repair his car and so could not get to work:

"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

"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."

- Single father of twins

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"

[Another borrower wrote:](#)

"I was planning on paying my rent up for a few months as well as get a car so I can continue to get back in forth to work. As well as get my son who is 4 with autism to the doctors office due to he a juvenile arthritis. Now I am unable to do anything because I have no money.i was counting on that money so we can get back on track with bills and rent .. please someone help us before it's to late.."

[Other borrowers](#) reported needing the refund in order to secure childcare or to acquire a vehicle in order to avoid a 2 and 1/2 hour daily commute to work.

LOSS OF EITC CAUSES OR EXACERBATES HOUSING AND OTHER FINANCIAL INSTABILITY

One of the most common complaints from borrowers is that losing their tax refund will impact their ability to stay in their home or to move their family into a safe home. Many borrowers reported being behind on rent or utilities and had been relying on their expected refund to get caught up, and to ensure that they could stay in their homes. Some reported feeling unsafe in their current situation and had hopes that their refund would give them the means to move to a safer location. Others reported being homeless or living with relatives and hoping to use the money to obtain stable housing. For many borrowers seeking access to safe housing, having to pay the first and last month's rent, in addition to a deposit, is a key barrier. The EITC, which for tax year 2017 can be as much as \$6,318, can help families overcome that barrier.

One student loan borrower, a U.S. Army veteran and father of four, described how the seizure of the EITC refund affected his family's housing and financial stability:

ED took our EITC refund

"I am a 2 time US Army veteran and a father to 4 children and a husband to my stay at home wife *****. We are in a section 8 house and on food stamps and Wic. I am applying for my service connection and out of work, our refund for 8,880 Was going to keep us in our home and keep our only car from reposesotion. We transport our kids to and from school. We might loose everything now. ... God help us."

"Our refund for 8,880 Was going to keep us in our home and keep our only car from reposesotion. ... We might loose everything now."

- U.S. Army veteran, father of four

A homeless parent with two children had counted on the EITC refund as a way to find stable housing:

"I am homeless, living from hotel to park bench with two children and my tax money was all I had to look forward to, to get my family out of this horrible situation. I am a single parent and both of my parents are deceased thus leaving me with no additional financial help. Now that my refund is gone, I don't know what to do."

A mother who feared for her and her childrens' safety wrote:

"Tax offset is taking the EITC that was to be used for relocatiin of children for safety reasons. I absolutely feel violated and helpless."

Almost every borrower who wrote us described similar desperation.

THE EITC IS CRITICAL FOR FAMILIES CARING FOR CHILDREN OR OTHER FAMILY MEMBERS

The EITC has had tremendous success in improving outcomes for children, pulling about 3.3 million children out of poverty in 2015 alone and reducing the severity of poverty for another 7.7 million children that year. But seizures of EITC refunds hit low-income children the hardest, and this impact on children was painfully apparent in the stories borrowers shared with us. By design, the EITC provides substantially more support for families with children. The amount of the EITC varies based on a recipient's income, marital status, and number of children.⁸ In 2017, families with one child could receive a credit of up to \$3,400 and families with three or more children could receive up to \$6,318. In contrast workers without children could only receive up to \$510.⁹ Because the EITC is designed to provide significantly more support to families with children, seizing it from student loan borrowers disproportionately takes money away from those with children.

The EITC has had tremendous success in improving outcomes for children, pulling about 3.3 million children out of poverty in 2015 alone and reducing the severity of poverty for another 7.7 million children that year.

- Center on Budget and Policy Priorities,
Policy Basics: [The Earned Income Tax Credit](#)

In nearly every single one of the stories, the borrowers echoed how they needed the EITC to provide for their children. One single mother stated:

"I am a single mother struggling to make ends meet. For the past 2 years I've had my taxes taken due to an offset with the Department of Education. ... I have a 5-year-old and it is heartbreaking I look forward to getting things he needs and extra things only to learn I am not getting anything back. ... Taking my taxes defeats the purpose. I am a single mother barely surviving. I wanted to speak up for my son. This money is for him to provide for him and get him things for his education that he's getting today.. ... Please someone help."

Another parent shared:

"My children and I are now broke struggling , in a shelter, no money"

MANY BORROWERS NEED THE EITC TO PAY FOR BASIC NECESSITIES

As one borrower pointedly stated: “I have needed my EITC every single year, not for new things or vacations but for necessities.” According to the Center for Budget and Policy Priorities, families use the EITC mostly to pay for necessities, repair homes, and maintain vehicles that are needed to commute to work.¹⁰

Many borrowers shared that they were counting on the money to buy clothes and shoes for their growing children. Many people mentioned using the refund to get caught up or ahead on utilities. Some rely on their refund in order to get medical treatment.

One borrower stated, “I had to cancel surgery because we aren’t able to pay \$1500.”

A mother of two wrote of her desperation when her EITC was seized:

“My taxes were seized, my company that I work for let us go due to down sizing and not enough work. ... I have been finding low paying jobs that barely pays \$200 every two weeks. I am a divorce mother of two and was expecting to pay rent, utilities, feed my children. ... I have been trying to make it, I have no government assistance, I need help asap.”

Another single mother of two wrote: “I can barely afford food for us.”

My taxes were seized, my company that I work for let us go due to down sizing and not enough work. ... I have been finding low paying jobs that barely pays \$200 every two weeks. I am a divorce mother of two and was expecting to pay rent, utilities, feed my children. ... I have been trying to make it, I have no government assistance, I need help asap
- Single mother of two

BORROWERS DID NOT RECEIVE NOTICE THAT THEIR REFUND WOULD BE TAKEN

Many borrowers do not know that their tax refund will be taken until it is too late. Although the Department of Education is required to mail the borrower a written notice that it intends to seek the tax offset,¹¹ the addresses it uses are not always current, especially for low-income borrowers who must move frequently, are homeless, or otherwise have unstable housing situations.

Because low-income workers rely on the EITC to make work possible and to meet their financial obligations, when the government seizes borrowers' Earned Income Tax Credits, it makes it harder for those borrowers to pay back their loans.

As one borrower wrote:

"I understand I have student loans but I was not aware of the offset. They sent it to a address that I haven't lived at for over 2 years."

Additionally, if the Department previously sent notice of its intent to offset the borrower's tax refund, the offset may occur again without a new notice.¹² As a result, many borrowers do not get notice and opportunity to remedy their student loans and prevent the offset before it is too late.

Moreover, as reflected in some of the stories we received, even when the borrowers do try to remedy their loans, the offset may still occur. For example, the government has a counterproductive policy of continuing to seize the EITC of borrowers who are actively in the process of restoring their student loans to current repayment status through loan rehabilitation. Through "rehabilitation," a borrower may get a loan out of default by making nine consecutive on-time payments over a period of ten months. The payment amount is determined based on the borrower's income.

One borrower with a young child explained how shortly after she was able to get a full-time job and begin a repayment plan with the Department, she found out that her tax refund was being seized anyway:

"My fiancé, our 2 year old son and I have been struggling to get on our feet for about 2 years now. ... we both were finally able to get full time jobs [T]he beginning of January I called the department of education and set up payment

arrangements to assure that they weren't going to take my refund to which I was told they were not going to take it because I had set them up. Never missed a payment and they took 2 payments from my 1 check to jump start the payments. Called that number today and was told they took it. All 5000 if it."

Because low-income workers rely on the EITC to make work possible and to meet their financial obligations, the government's practice of seizing borrowers' EITC payments while borrowers are in the process of trying to rehabilitate their loans diminishes the likelihood that these borrowers, who are making a good-faith effort to repay their loans, will have the resources to be able to do so.

IT IS TIME TO END EITC SEIZURES FROM DISTRESSED BORROWERS

The National Consumer Law Center has long [advocated for an end to the policy of seizing EITC](#) refunds from distressed borrowers, and the borrowers who have shared their stories here cannot afford to wait. The time for action is now.

To address the harms caused by the government's current EITC seizure policies, Congress should pursue a statutory solution for exempting student borrowers' EITC¹³ payments from seizure. In the interim, the U.S. Department of Education should work with the U.S. Treasury to reimburse the seized EITC payments of low-income borrowers.

We have shared a sampling of the dozens of borrowers' stories that NCLC received, in full, in the next section, "In Their Own Words: Borrower Stories."

IN THEIR OWN WORDS: BORROWER STORIES

1. Subject: ED took our EITC refund

I am a 2 time US Army veteran and a father to 4 children and a husband to my stay at home wife *****. We are in a section 8 house and on food stamps and Wic. I am applying for my service connection and out of work, our refund for 8,880 Was going to keep us in our home and keep our only car from reposesotion. We transport our kids to and from school. We might loose everything now. We even signed up for loan repayment (rehab) program 09Feb18. We even have a letter from American student assistance saying they suspended their offset attempt on 22Feb18, but our entire refund was offset Anyway on the same day we got the letter stating they wouldn't do that, 22Feb18. There is no justice in this situation so far... God help us.

We even have a letter from American student assistance saying they suspended their offset attempt on 22Feb18, but our entire refund was offset.

- US Army veteran

2. Subject: They took my income tax with no warning

They took my income tax return without any notice that it was going to happen. I had no idea it was going to happen and as a single mother of three it cost us our place to live. We are now staying in my car for the next few weeks until I figure something out and they didn't care that I was. I was unable to pay 300 a month on my loans for a college the govt shut down and my credits don't transfer or count towards any degree because they shut it down for fraud. I do however still owe my loans regardless. I can't afford to pay them because the college credits didn't count towards any degree to get a job to pay them back. So here I am no degree no credits and working for nothing and unable to pay the loans and now they took my income tax.

So here I am no degree no credits and working for nothing and unable to pay the loans and now they took my income tax.

- A borrower

3. Subject: How the offset affects me

I have a student loan on default and my wages were getting garnished so i was already expecting to not get any tax return which me being a single parent of 5 kids and one on it's way depend on to catch up on past due bills and buy my kids what i can't buy during the year. Aside from that i lost my job and being 8 months pregnant i can't seem

to get another so i have nothing to depend on..my landlord is being patient but he won't wait forever..i need my taxes they should not be allowed to take 100% of them it's unfair to struggling families like myself.

4. Subject: Tax offset with no notice

My taxes were seized, my company that I work for let us go due to down sizing and not enough work. I made really good money. I have been finding low paying jobs that barely pays \$200 every two weeks. I am a divorce mother of two and was expecting to pay rent, utilities, feed my children. Trying to get a head, so this offset is causing a great loss. I had contacted student loan department and they allowed me to apply for hardship and was approved so, it shows on my credit as well. So I was unaware my money would have been taken. I have been trying to make it, I have no government assistance, I need help asap.

I am a divorce mother of two and was expecting to pay rent, utilities, feed my children. Trying to get a head, so this offset is causing a great loss.

- A borrower

5. Subject: Tax Offset

My fiancé, our 2 year old son and I have been struggling to get on our feet for about 2 years now. This year was the biggest return I've had yet and we were going to use it to finally get a jump start and get our own place. This year has been rough already. Currently staying with my parents, our car slid off the road last month so we were without a car for about 3 weeks. Had to get a another beater with a heater and hope it lasts longer than the last one. But we both were finally able to get full time jobs of course as soon as we are without a car and relying on other ppl to take us to and from work. So the beginning of January I called the department of education and set up payment arrangements to assure that they weren't going to take my refund to which I was told they were not going to take it because I had set them up. Never missed a payment and they took 2 payments from my 1 check to jump start the payments. Called that number today and was told they took it. All 5000 if it.

6. Subject: EITC seized due to Student Loan Debt

I currently owe approximately \$100,000 in federal student loans. I am a divorced mother of 5 children who quit school when my marriage failed in 2011. Since, I have been struggling to support my family. I work every day and file my taxes for them to take my

return every year. I receive no child support and receive no financial assistance from the government because I supposedly make too much. But I make so little and support so many that I can't afford a repayment option even if they gave it to me. I have needed my EITC every single year, not for new things or vacations but for necessities. I have no credit card debt, I have a 2003 vehicle that is currently in the shop with a \$500 bill waiting for me next week, propane to heat my extremely modest home in the country. Every single year my money is stolen from me, for debts dating back 13 years, and evidently will be until I can't claim my children as dependents anymore. It's a sad and disgusting way to force someone into poverty.

It's a sad and disgusting way to force someone into poverty.

- A borrower

7. Subject: **Refund intercepted**

Mother of 3. Was planning on using my refund to repair my vehicle and move into home with enough bedrooms. In December I arranged and began payment plan to get out of default and now I won't see any of my refund.

8. Subject: **Tax garnished for defualt on student loans**

2015 I had went through a divorce stated using drugs lost my job and owe alot of driving with suspended lisence tickets. I have a child and I wanted to pay my fines and get my lisence possibly a cheap car. I needed my tax return to get me on my feet.

9. Subject: **offset dept of education**

I am a single mother struggling to make ends meet. For the past 2 years I've had my taxes taken due to an offset with the Department of Education. I never received a notice stating that my taxes would be offset, or that I could make payment arrangements before the offset years ago. I have a 5-year-old and it is heartbreaking I look forward to getting things he needs and extra things only to learn I am not getting anything back. My oldest son died in a fire when he was 6-years-old, I thought I could continue my classes and it would be best to continue my schooling, rather than take time off. I failed two classes which made me get behind. I then applied for forbearance and thought I was staying on top of the time I had before it expired. I

Taking my taxes defeats the purpose. I am a single mother barely surviving. I wanted to speak up for my son. This money is for him to provide for him and get him things for his education that he's getting today.

- Single mother

wanted to write a letter to the Department of Education asking for grievance or forgiveness and a chance to continue my education. The purpose of me working towards my Bachelor's in health care admin was so I could make a decent income and be self-sufficient. Taking my taxes defeats the purpose. I am a single mother barely surviving. I wanted to speak up for my son. This money is for him to provide for him and get him things for his education that he's getting today. I will try to call the collection agency in the morning to see what can be done. I have a limited time before I have to find a place to stay. Please someone help.

10. Subject: **REFUND OFFSET**

I got a student loan for Itt and it was closed. I thought that it would be fixed because i never could finish my degree nor would anyone else accept my credits. I filed my income tax this year with 2 kids im out of work. Im 49 and hard to find work and now my money is gone

11. Subject: **Taxes taken and getting evicted**

I had set up payment plans with the state of Ky for my student loan payments. They quit pulling the payments out of my checking account in July 2017. They are taking my federal taxes with the offset. I have 3 days to be out of my apartment. I called them and they told me that I have to appeal the decision to see if I can get my refund back. I have once again set up payment plans to pay my student loans. I do not make enough money for the federal government to require me to make a monthly payment but the state of Ky says I will never go below a \$5 monthly payment.

12. Subject: **Offset**

I was gonna use my eitc to but my kids clothes and shoes because I haven't been working but the department of education took it

13. Subject: **Refund was taken due to offset of student loans**

My name is ***** and I am a single mother of 6 kids and 4mos pregnant with number 7. I was expecting my tax refund when I found out at the last minute that the full amount was taken. Due to a student loan dept. I never got notice or a warning. I am facing eviction and me and my kids will be homeless due to this offset. I have contact numerous agency's and also the department of education. I was told that I have to fill a hardship and wait 7-10 days for my paper work to come in the

I never got notice or a warning.

- Single mother of six

mail. I don't have 7-10 days I have an eviction notice 5days and we have to move out. I was planning on paying my rent up for a few months as well as get a car so I can continue to get back in forth to work. As well as get my son who is 4 with autism to the doctors office due to he a juvenile arthritis. Now I am unable to do anything because I have no money.i was counting on that money so we can get back on track with bills and rent .. please someone help us before it's to late..

14. Subject: **Student Loan Tax Offset**

I just found out that my taxes (with EITC) were offset. I didn't know that it was going to happen. I filed my taxes on 02/08. I received a letter from collection agency (dated 02/09) advising that they "may evaluate whether I qualify for involuntary collection". I called them & opted for loan consolidation. I received a 2nd letter from the agency (dated 02/14) with the standard "unless you notify us within 30 days". I sent my consolidation forms back via FedEx on 02/21. On 02/22, my IRS status updated with a link to article "Tax Topic 203, Refund Offsets ". That is when I found they had taken \$6695.27 of my \$7037 refund. I made \$10,000 last year. I'm a single mother of 3 children, 1 of them in college. My refund was going to help us get a vehicle, catch up on rent & utilities, & literally put shoes on my kid's feet. I have no expendable income. I am devastated. It just doesn't seem fair that someone living paycheck to paycheck can have their single line of hope jerked away like that.

My refund was going to help us get a vehicle, catch up on rent & utilities, & literally put shoes on my kid's feet. It just doesn't seem fair that someone living paycheck to paycheck can have their single line of hope jerked away like that.

- A borrower

15. Subject: **Refund offset**

My taxes were taken due to delinquent student loans. My husband is unemployed and we are a family of 5, living with his mother. We receive government assistance to help us. We live off of unemployment, which you know is not very much money and we have 3 children. We rely on our income tax money to buy our children the things that they need, i.e. clothes, shoes, etc. I have tried to find a job but am unsuccessful. This has hurt us a great deal because we only have one vehicle and were going to use our tax money to purchase a used car so we could both have a vehicle. I don't believe that we should have to suffer, they could have

We rely on our income tax money to buy our children the things that they need, i.e. clothes, shoes, etc

- A borrower

at least taken half of the refund as to the whole amount.

16. Subject: This is happening to me now!! I had no notice whatsoever, this money was to help a struggling single mom keep a roof over her daughter's head and the heat on...

I can't believe that the way this is happening is legal!!!! My loans have been passed around from agency to agency and I have received no notice getting different answers from everyone I finally set up a payment plan with the right collections agency for my loans to find out the dept. Of education is offsetting my taxes, they are taking the entire thing!!! When I call to get answers on why the dept of education and the collection agency are both trying to collect on the same loan I get hung up on by the dept of education!!!

17. Subject: EIC Taken to Pay Student Debt

I became a single mom last year after getting out of a domestically violent relationship. I receive no support from my daughter's father, finical or other. I cannot afford childcare, as it is so expensive it does not make sense to work my \$11 an hour job to pay someone to watch my daughter. I'm unable to work full time because my availability is limited to when i can have a family member babysit for free. My daughter and I share a bedroom in a town home with two other roommates. I have defaulted on my student loans, and have about \$900 in other debts. I have not been able to contribute to my portion of utilities in couple months, and have to borrow from my mother to help with my part of rent and diapers.

I have not been able to contribute to my portion of utilities in couple months, and have to borrow from my mother to help with *my part of rent and diapers*.

- Single mother

My tax return was \$4978 which was offset to pay student loans. I was hoping I'd be able to buy my daughter new shoes and clothes for the upcoming summer season.

Hopefully things will get better.

18. Subject: Why did they take all my money?

The student loan place took all my money!! It's all I had. My car broke down. I'm a single mom. I live from pay check to pay check. I have tons of bills that I was going to get caught up on. And buy a car. I don't know what I'm going to do now. I have talked to the student loan place like 15 times before now and told them I live paycheck to

paycheck. And they put my loan on hold. And now they do this.

19. Subject: The edu took all of my return today

I didnt even know my load was in default. I never recieived any letter that said my taxes will be garnished either. I just recently moved to a new place with my disabled 15 yr old daughter and my soon to be 4 month old son. Due to our old landlord selling the place we were living at & lead in the water due to pipes. I am back out of work due to no babysitter because of my daughters condition. I was planning on using my tax return to help with the transition to the new place to keep us from being homeless until i can find a job that can work with my daughters school hours. I called to see what i can do i enrolled in a rehabilitaion program with the creditor and made my first \$5 payment. This is all part of the process to apply for the tax hardship that they make almost impossible to do and now potentially risking my children being homeless because they didnt want to do anything the right way. I filed my taxed on the 29th of january 2018 & used my new address they had time to contact me

20. Subject: EITC All gone

It's been a struggle as a single mom to get ahead with a new baby and no help from his father I was really counting on my EITC to get ahead on some bills like rent and utilities, get all of my car maintenance because it's a vital source in our family and my car was given to me by my mom who passed away last Christmas. I wanted to get out of some debt with a credit card, and then use it to buy a crib, some toys and new bed set for my 7 month old son and a new bed for my 8 yr daughter who they are sharing a room. Clothes for our family for the summer and new school year come August. Now with it all gone it's a very stressful and disappointing g time for me.

I was really counting on my EITC to get ahead on some bills like rent and utilities, get all of my car maintenance because it's a vital source in our family

- Single mother

21. Subject: Tax offset

They took my while offset from me and I'm a very low income person and struggling to take care of my son. I hope they go to hell for this

22. Subject: EITC/Refund Snatched

I was expecting a refund of \$542 in Federal and \$46 in State Taxes, but they both were garnished. Employment comes and go, I do not make any money, and really have not because the jobs requires a bachelors or masters and it is difficult to get that because I cannot pay for college, I only have an associates degree and it is still not enough. I was planning on paying rent with my income taxes and stocking up on food, cleaning supplies, and hygiene products, but now I have to find another way because I am hungry, I am OCD, I have mental health issues I'm getting help with and other medical issues. I guess there is nothing I can do about it, the government always want money and do not care about people at all, so while I thought a few hundred dollars would make my economic struggles a little easier for a second, well, that thought is definitely dead. There is no way of winning or getting ahead. It's sad because there is no help, no assistance, nothing. I tried all payment plans.

There is no way of winning or getting ahead.

- A borrower

23. Subject: Tax offset hardship

I am 3 mnths be hind on my rent i have 3 kids and a BWL to pay for my light and heat my rent is 680mnthly. I have been in a domestic relatinship and had to leave my home town in chicago and moved to Lansing michigan in 2017 i had not recieved an offset letter can someone pls help me and my kids....

24. Subject: Offset

I am a struggling hard working adult who make less than 25000 per year and take of two adult siblings. I qualified for earn income credit and due to student loans my taxes were taking and now I'm unable to catch up on past due bills and has put me in a real financial bind and I understand I owe for student loans but when you're barely surviving it's hard to think of repaying student loans.

25. Subject: Student loan offset

I'm a single father of 3 children and am a full time student in college I'm currently on leave from work to insure my study's come first! Me and my kids will be effected by this tax refund offset tremendously and we will be in Financial hardship because of it. I've not received any help from the IRS, Department of Education, nor the immediate credit

recovery debt collector! I don't know what else to do.

26. Subject: school loan offset

I was unaware that my refund of over 10,000 was going to be taken for repayment of student loans. I am homeless, living from hotel to park bench with two children and my tax money was all I had to look forward to, to get my family out of this horrible situation. I am a single parent and both of my parents are deceased thus leaving me with no additional financial help. Now that my refund is gone, I don't know what to do. They took every penny I worked for last year.

27. Subject: My taxes got siezed along with E.I.C

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.

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.

- Single father of two

28. Subject: Yes, my refund was taken away, all 8,,000 worth. I was planning on using that to purchase my daughters graduation gown, pay off bills and to move into a home of our own. We are living with family at the moment.

I went to an Everest College from 2009/2010 to 2014 when this school was being sued for giving false information to students. I never knew any of this and was never given any information of this and am now STUCK with STUDENT LOANS that I can not pay.

29. Subject: Tax offset

I was going to use my tax refund to move into a home big enough for me and my children. Pay my car off so that's one less thing that I had to pay every month. I was going to buy my children new clothes and shoes that actually fit them. I have about 2,000 dollars worth of bills behind. I just needed my money to get ahead now they took the money I earned and just took it from me. I understand I have student loans but I was not aware of the offset. They sent it to a address that I haven't lived at for over 2 years. I have changed my address multiple times. I had no idea I had to call them and tell them my new address. I just feel like that's wrong.

30. Subject: They took my refund

I owe student loan, never received a letter about an offset and next thing I know my kids and I are almost homeless with all the plans and hopes being flushed down the drain by the IRS doing this. I understand this is my debt, but I was only getting 7,300 and they kept the majority I received 1,800 and no one can help me try to get this reduced. My kids and I were counting the days to get a home with my taxes I work so hard for..I only made 23,00 last year single parent working alone...providing for her family by herself. If it's possible to have this offset reduced I would give anything for some info from anyone to help.

31. Subject: EITC/refund taken 2 years in a row

I am a 39 yo single mother of 2. I went back to college later in life (graduated '14) for a business degree in hopes of a better future for my children.

I've been employed w/the same medical group for 12 years, not making much money & unfortunately, have not been able to find better employment due to the area and the economy. We are living paycheck to paycheck. We lost our apartment last year, August 2017, due to the tax refund being taken, something I usually rely on for the year. (I "make too much" money to get assistance, except my children do get a medical card; my insurance premium at work has went up also). My children & I were fortunately able to move in with my mother, which we need to leave. I want to be able to get a place, but am unable to save any money for a down payment. As of Jan. 2017, now my wages are also being garnished and I am going to be unable to put my children in their sports (track/softball). I can barely afford food for us.

We lost our apartment last year, August 2017, due to the tax refund being taken, something I usually rely on for the year.

- Single mother of two

32. Subject: Tax offset on earned income credit

I am a single mother of 2 children and struggling to not be homeless. I fell behind on student loans after the death of my husband due to the fact that now my household had become a single income. I was counting on my return this year to get back on track and save some money to help with those unforeseen bumps in life. Now I'm left in the middle of an ocean with no life support, the U.S department of education has taken all of my federal and state income tax. My loans are in a rehabilitation program, but not knowing about this program before filling taxes this year, it was too late to stop the offset. I don't believe it is right for them to take everything, a percentage should be implemented and that is all they should take. Had I known this was going to happen I would have waited until I knew how to keep it from happening. Shame on the U.S department of education and the government.

I was counting on my return this year to get back on track and save some money to help with those unforeseen bumps in life.

- Single mother of two

33. Subject: Tax offset and Eic, while in poverty

I just had a baby in October 2017, the whole year of 2017 I've been fighting in court with ACS about my oldest daughter of 7 yrs old. I haven't not for one day got a chance to set up a payment plan under the stress being pregnant , fighting in family court to keep my daughter and being homeless residing in shelter. In 2018 I beat the case ,I was able to keep my daughter now have two children in shelter still in poverty, but I'm happy to have my children . I file my taxes hoping to have money to provide for my children and just getting over stress all year 2016-2017 student loans take my refund . My children and I are now broke struggling , in a shelter, no money Just unhappy . I still have no way of paying loans and things were just looking good for us barely . Please help us .

34. Subject: Offset

This is happening to me as we speak. They will take my eic March 2, 2018. I do not believe it is fair for them to take money that was given by the government which deemed that i do not make enough to survive. Eic was to help get to a place where I would be able to get out of poverty so that I could re tabling my self, and pay creditors to help ultimately get me out of poverty and therefore boosting my credit as well as fostering economic growth.this money was not made by my physical work, but was given to help people in situations like this. They also took the money that was given by

the government to help my children. on top of it they preaded the payments to multiple debts ultimately increasing my debt instead of paying off one entirely. I was going to use the eic to pay off other debts and pay a portion to student loans. also I was going to use it for rent as im behind, and by the necessities for my children which their basic of survival granted by the government is now taken away

35. Subject: **Tax offset is taking the EITC that was to be used for relocatiin of children for safety reasons**

I Absolutely feel violated amd helpless.

Tax offset is taking the EITC that was to be used for relocatiin of children for safety reasons.

-A borrower

36. Subject: **Refund offet by student loan while they garnish wages**

They garnish around \$46 a week from my wages to repay my loan and they still took every single bit of my refund. that refund would have paid my bills that I got behind on because of the wage deduction.

37. Subject: **Surprise!!!! Took State and Federal!!**

We can relate! I found out that ALL of our returns went to pay Student Loans for my husband It would have been \$7500😊😊😊 Both of our teenagers can't be claimed after this year leaving only 1 of 3 we can receive the child tax credit for next year.

My husband has a 2.5 hour train/bus ride to work and back daily. That's 13 hours 5 times a week!! 65 hours!

The returns were supposed to get a vehicle, first one in over a decade. Then we planned to pay off the electric, phones, internet, cable, outstanding debts, etc. We thought that all the stress over lack of money would be lessened. I had to cancel surgery because we aren't able to pay \$1500 . That was totally reliant on the refunds as well.

I had to cancel surgery because we aren't able to pay \$1500.

- A borrower

Topping it off is the money we now owe to H&R Block for the filing fees and the refund advance of \$500, both to be taken out of the returns! Another \$1000 owed!

How can we pay the Student Loans or anything else when they took our monetary way up and out away from us?!?!

Thanks, *****

38. Subject: **Single mother of 3**

I been homeless pass year off so and was depending on refund to move in own house so me and kids have own space to call home I'm a part time worker struggle everyday to make a leaving off check to check...never got no notice or garnished so never expected offset taking money..now I don't know what gone do or what to tell kids..

I been homeless pass year off so and was depending on refund to move in own house so me and kids have own space to call home I'm a part time worker struggle everyday to make a leaving off check to check..

- A homeless borrower

ENDNOTES

¹ Thomas L. Hungerford and Rebecca Thiess, Economic Policy Institute, The Earned Income Tax Credit and the Child Tax Credit History, Purpose, Goals, and Effectiveness (September 25, 2013) available at <http://www.epi.org/publication/ib370-earned-income-tax-credit-and-the-child-tax-credit-history-purpose-goals-and-effectiveness/>.

² Persis Yu, National Consumer Law Center, Blog Post: Earned Income Tax Credits Seized from Struggling Student Loan Borrowers (reposted Jan. 22, 2018) available at <http://www.studentloanborrowerassistance.org/earned-income-tax-credits-seized-struggling-student-loan-borrowers-2/>.

³ The stories are anonymous and unverified.

⁴ Laura Kliewer, Counsel of State Governments, The Tax Credit Enjoys Bipartisan Support, and May Soon Get a Boost in Some Midwest States (April, 2017) available at <http://www.csgmidwest.org/policyresearch/0417-EITC.aspx>.

⁵ Center on Budget and Policy Priorities, Policy Basics: The Earned Income Tax Credit at 2 (updated Oct. 21, 2016), available at <http://www.cbpp.org/research/federal-tax/policy-basics-the-earned-income-tax-credit>.

⁶ Jeffrey Grogger, "The Effects of Time Limits, the EITC, and Other Policy Changes on Welfare Use, Work and Income among Female-Head Families," Review of Economics and Statistics 405, May 2003.

⁷ *Id.* at 400.

⁸ Tax Policy Center, Taxation and the Family: What is the Earned Income Tax Credit?, available at <http://www.taxpolicycenter.org/briefing-book/key-elements/family/eitc.cfm>.

⁹ *Id.*

¹⁰ Center on Budget and Policy Priorities, Policy Basics: The Earned Income Tax Credit at 1 (updated Oct. 21, 2016), available at <http://www.cbpp.org/research/federal-tax/policy-basics-the-earned-income-tax-credit>.

¹¹ See National Consumer Law Center, Student Loan Law, § 9.2.2 (5th ed. 2015) available at <http://library.nclc.org/sl>.

¹² *Id.*

¹³ NCLC, Stop Taking the Earned Income Tax Credit from Struggling Student Loan Borrowers October 2016 2 (Oct. 2016) available at <http://bit.ly/1R61mjq>.

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Appendix B



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July 1, 2019

SENT VIA EMAIL

U.S. Department of Education
Office of Management
Regulatory Information Management Services
400 Maryland Avenue, SW, LBJ 2W220
Washington, DC 20202-4536
EDFOIManager@ed.gov

Re: Freedom of Information Act Request

Dear Chief Information Officer:

On behalf of the National Consumer Law Center (NCLC), pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, I hereby make the following request.

On July 1, 1994, 25 years ago to this date, borrowers in the Direct Loan program became eligible to enroll in the Income Contingent Repayment (ICR) plan. The ICR plan provides forgiveness to borrowers who have an outstanding balance after 25 years of repayment. Therefore, the first cohort of borrowers who entered ICR in 1994 and remained in an income-driven repayment (IDR) plan should be eligible for forgiveness starting this month. We are aware that a small number of borrowers who entered ICR early on have already become eligible for forgiveness because they switched to the Revised Pay As You Earn (REPAYE) plan, which provides forgiveness after 20 years of repayment to borrowers who are paying only undergraduate loans.

We seek information to determine how many people will be eligible for forgiveness based upon their early and continuous enrollment in the ICR plan or enrollment in ICR followed by a switch to another IDR plan like Income Base Repayment (IBR) or REPAYE. We also seek information about how many borrowers would potentially be eligible for forgiveness but for common

challenges borrowers face in repayment, including missed, delayed, or nonqualifying payments due to recertification delays, forbearances, certain deferments, and missed payments.

Specifically, we request all records, including reports, memoranda, forms, and other documents dating back to July 1, 1994, that discuss, analyze, itemize, address, or pertain to:

Part A: Borrowers Expected to Receive IDR Forgiveness

- 1) Number of borrowers paying in the ICR plan who have made 300 “qualifying” payments as defined in 34 CFR §§ 685.209 and 685.221 as of July 1, 2019, broken down by servicer, state, race, and gender.
- 2) Data on loans where borrowers have made 300 “qualifying” payments in ICR as of July 1, 2019, including the number of loans, total balance (with principal and interest itemized), total original balance, and the total amount collected, broken down by servicer, state, race, and gender.
- 3) Number of borrowers paying in any IDR plan who have made 300 “qualifying” payments as of July 1, 2019, broken down by servicer, IDR plan, state, race, and gender.
- 4) Data on loans where borrowers have made 300 “qualifying” payments in any IDR as of July 1, 2019, including the number of loans, total balance (with principal and interest itemized), total original balance, and the total amount collected, broken down by servicer, IDR plan, state, race, and gender.
- 5) The number of borrowers as of the date that this request is fulfilled who have received forgiveness under any IDR plan, broken down by month and year of forgiveness, servicer, IDR plan, whether the borrower had any graduate loans forgiven, state, race, and gender.
- 6) Data on loans where borrowers as of the date that this request is fulfilled who have received forgiveness under any IDR plan, including the number of loans, total balance (with principal and interest itemized), total original balance, and the total amount collected, broken down by month and year of forgiveness, servicer, IDR plan, whether the borrower had any graduate loans forgiven, state, race, and gender.
- 7) Number of borrowers paying in any IDR plan who are expected to have their loans forgiven in 2019, broken down by month, servicer, IDR plan, whether the borrower has graduate loans, state, race, and gender.
- 8) Data on loans where borrowers paying in any IDR plan who are expected to have their loans forgiven in 2019, including the number of loans, total balance (with principal and interest itemized), total original balance, and the total amount collected, broken down by servicer, IDR plan, whether the borrower has graduate loans, state, race, and gender.
- 9) Number of “qualifying” payments made by any borrower who was ever enrolled in an IDR plan broken down by IDR plan, whether the borrower has graduate loans, servicer, state, race, and gender.
- 10) As of the date that this request is fulfilled, the number of borrowers sent notices by the U.S. Department of Education or its servicers explaining “that the borrower is approaching the date that he or she is expected to meet the requirements to receive

loan forgiveness" as required by 34 CFR §§ 685.209 and 685.221, broken down by month and year sent, IDR plan, servicer, state, race, and gender.

- 11) Written notices sent by the U.S. Department of Education or its servicers indicating either "that the borrower is approaching the date that he or she is expected to meet the requirements to receive loan forgiveness" or "that the borrower's obligation on the loans is satisfied" as required by 34 CFR §§ 685.209 and 685.221.
- 12) Processes in place, including but not limited to instructions to servicers, to ensure that the Secretary is able to determine when a borrower has met the loan forgiveness requirements as required by 34 CFR §§ 685.209 and 685.221.
- 13) Any projections (including but not limited to those done by the U.S. Department of Education, any of its servicers or other contractors, or other agencies) of the number of borrowers expected to receive forgiveness through IDR, in total and broken down by year in which forgiveness is projected to occur, servicer, IDR plan, state, race, and gender.
- 14) Any projections (including but not limited to those done by the U.S. Department of Education, any of its servicers or other contractors, or other agencies) of the total dollar amount (with principal and interest itemized) of loans expected to receive forgiveness through IDR, in total and broken down by year in which forgiveness is projected to occur, servicer, IDR plan, state, race, and gender.

Part B: IDR Enrollment Data

- 1) Number of borrowers enrolling for the first time in any IDR plan broken down by servicer, IDR plan, month and year of enrollment, state, race, and gender.
- 2) Number of borrowers who enrolled in any IDR plan and remained in any IDR plan continuously until the loan was repaid, forgiven, or to the present, broken down by servicer, IDR plan, present status, month and year of initial enrollment, state, race, and gender.
- 3) Number of borrowers who switched from one IDR plan to another IDR plan, broken down by servicer, original IDR plan, new IDR plan, month and year of IDR switch, state, race, and gender.
- 4) Number of borrowers who exited an IDR plan and switched into a non-IDR plan, broken down by servicer, IDR plan, month and year of plan switch, state, race, and gender.

Part C: On-Time Recertification

- 1) Number of borrowers who recertify their IDR plan on-time, broken down by servicer, IDR plan, year, state, race, and gender.
- 2) Number of borrowers who recertify their IDR plan after the hard deadline, broken down by length of delay in recertifying, servicer, IDR plan, year, state, race, and gender.
- 3) Number of borrowers who have recertified their IDR plan late multiple times, broken down by the number of times the borrower has recertified late, servicer, IDR plan, year, state, race, and gender.

- 4) Number of borrowers who fail to recertified their IDR plan, broken down by servicer, IDR plan, year, state, race, and gender.

Part D: Delinquency and Default

- 1) Number of borrowers who were enrolled in an IDR plan when they defaulted, broken down by servicer, plan, month and year of default, state, race, and gender.
- 2) Number of borrowers who failed to recertify their IDR plan and defaulted within 12 months after failing to recertify, broken down by servicer, plan, year of default, state, race, and gender.
- 3) Delinquency status of borrowers currently enrolled in an IDR plan, broken down by plan, servicer, state, race, and gender.

Part E: Forbearances and Deferments

- 1) Number of borrowers enrolled in an IDR plan who were placed in a forbearance or deferment, broken down by IDR plan, year, servicer, type of forbearance or deferment, duration of forbearance or deferment, state, race, and gender.

Part F: Paid Loans

- 1) Number of borrowers who were enrolled in an IDR plan and paid their loans in full, broken down by IDR plan, whether the borrower has graduate loans, year, servicer, state, race, and gender.
- 2) Data on loans where borrowers were enrolled in an IDR plan and paid their loans in full, including the number of loans, total balance (with principal and interest itemized), total original balance, and the total amount collected, broken down by IDR plan, whether the borrower has graduate loans, servicer, state, race, and gender.
- 3) Number of borrowers who were enrolled in an IDR plan and had their loans forgiven through a cancellation program (including but not limited to Total and Permanent Disability, Death, closed school, borrower defense, false certification, Public Service Loan Forgiveness), broken down by IDR plan, whether the borrower has graduate loans, year, servicer, forgiveness program, state, race, and gender.
- 4) Data on loans where borrowers who were enrolled in an IDR plan and had their loans forgiven through a cancellation program, including the number of loans, total balance (with principal and interest itemized), total original balance, and the total amount collected, broken down by IDR plan, whether the borrower has graduate loans, servicer, forgiveness program, state, race, and gender.
- 5) Number of borrowers who were enrolled in an IDR plan when they consolidated the loan that was in IDR, broken down by IDR plan, whether the borrower has graduate loans, year, and servicer, state, race, and gender.

If producing all of the requested records simultaneously delays release of the information, we respectfully request that the records be released as they become available. In your response to

this request, please specify whether: (1) you are providing all records responsive to the request; (2) no records exist that are responsive to the request; or (3) records exist that are responsive to the request, but you are claiming that some or all of those documents are exempt from disclosure.

If it is your position that some of the requested documents or some portion of any of the requested documents are exempt from disclosure, please provide the nonexempt portions of those records. In addition, if it is your position that records exist that are responsive to this request, but that those records (or portions of those records) are exempt from disclosure, please identify the records that are being withheld and state the basis for the denial for each document being withheld. Also, please identify the person making the decision to deny the request.

The National Consumer Law Center requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii), because it does not seek the records for a commercial purpose and disclosure of the contract is in the public interest as it is likely to contribute significantly to public understanding of the operations and activities of the government.

The records sought by NCLC are not publicly available. NCLC intends to make any records released in response to this request available to the public free of charge. Public availability of the requested records is of critical importance to the public's ability to understand and participate in an ongoing debate about simplifying income-driven repayment, servicing, and servicer accountability.

A waiver of search and review fees is also warranted because NCLC qualifies as "representative[s] of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii). NCLC is a representative of the news media in that it is an organization actively gathering news for an entity that is organized and operated to publish or broadcast news to the public, where "news" is defined as "information that is about current events or that would be of current interest to the public." 5 U.S.C. § 552(a)(4)(A)(ii)(III).

NCLC operates a regular blog with original editorial content reporting on and analyzing student loan issues. See <http://www.studentloanborrowerassistance.org/resources/blog/>. NCLC also regularly publishes reports, books, and newsletters on consumer issues. At the core of its mission, NCLC uses its materials and trainings to inform advocates, organizations, and policy makers about pressing issues affecting consumers. This includes informing borrowers, advocates, organizations, and policy makers of their rights under federal and state law.

NCLC is a nonprofit corporation founded in 1969 that assists consumers, advocates, and public policy makers nationwide who use the powerful and complex tools of consumer law to ensure justice and fair treatment for all, particularly those whose poverty renders them powerless to demand accountability. We have limited funds and every expense that we pay limits our ability to fulfill our mission of protecting low-income consumers. Accordingly, we request that you waive all fees related to this request. If, however, a waiver is not granted, then please notify us of the amount of any proposed charges before those activities are carried out.

We will expect a response within 20 working days as provided by law. If you have any questions or would need more information, please feel free to contact me at (617) 542-8010.

Thank you for your consideration of this request.

Sincerely,

/s/ Persis Yu

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