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SENT VIA EMAIL

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& Assistant Director for the Office for Students and Young Consumers
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Dear Mr. Frotman and Mr. Runcie:

I am writing on behalf of our low-income clients in response to the Department of Education's ("ED") announcement on March 30, 2017, indicating that it expects the Data Retrieval Tool ("DRT") for borrowers to be unavailable until October 1, 2017. NCLC's Student Loan Borrower Assistance Project provides information about student rights and responsibilities for borrowers and advocates and provides direct legal representation to low-income student loan borrowers. We work with student loan borrowers and with advocates across the country representing low-income clients. Based upon our experience, we have serious concerns about borrowers' inability to use the DRT for renewal of their Income-Driven Repayment ("IDR") plans. I am writing to ask what assurances borrowers can expect to mitigate the harm of this outage.

The availability of the DRT has been critical for streamlining the process for student loan borrowers to access and maintain good standing in income-driven repayment. We are very concerned about the impact that the DRT outage will have on borrowers' ability to timely recertify their IDR plans. The DRT is more than "an important convenience for applicants," as described in ED's announcement. Many of our clients have significant difficulty accessing items

often needed to complete the application without the DRT, including a printer and their tax return. And borrowers who have used the DRT in the past to apply or recertify online for IDR may not build in sufficient time to go through the steps necessary to recertify using a paper form, especially the process of obtaining and submitting paper documentation of income.

Additionally, as discussed below, we have witnessed numerous problems with servicers' processing of IDR applications, including delays and mistakes that can result in increased costs to borrowers. In our experience, such problems are more frequent when borrowers submit paper applications or alternative documentation of income. These problems seem likely to be exacerbated if the volume of paper applications spikes while the DRT is down.

Thus, our two biggest concerns are:

- (1) Borrowers missing their deadline to recertify due to the DRT outage; and
- (2) Errors and delays caused by servicers receiving potentially hundreds of thousands more paper applications while the DRT is down.

In light of these concerns, we would appreciate your responses to the following questions:

1) Question 1: What obligation do servicers have to communicate to borrowers about the outage?

Distressingly, some servicers have failed to provide borrowers with any information about the outage or to warn them that recertification may therefore take longer than it has in the past. Moreover, these same servicers are still directing borrowers to studentloans.gov to recertify their IDR plan without providing any information about the outage or how to provide the necessary income documentation. While there are instructions for how to proceed without the DRT on studentloans.gov, borrowers may still reasonably believe that they can complete their recertification online using the DRT, as they may have in previous years, up until the time that they actually begin the online application process. At that point, it may be too late for them to obtain and submit paper documentation prior to their recertification deadline.

How is ED instructing its servicers to communicate to borrowers about the DRT outage? What obligations do servicers have, either by law or by contract, to ensure that borrowers are given accurate and timely information necessary to completing their IDR renewal?

2) Question 2: What are servicers doing to prepare to handle the influx of paper applications?

According to the FSA data, about 60 percent (roughly 3.35 million) of all IDR applications are submitted electronically. While a small number of borrowers with no taxable income will still be able to submit their applications electronically, millions of applications will have to be processed on paper.

Over the past several years, NCLC has documented and submitted numerous examples to both ED and the CFPB of errors and delays that borrowers experience with their IDR applications. As the Consumer Financial Protection Bureau's August 18, 2016, report highlighted, the CFPB has also received a large number of complaints related to borrowers attempting to utilize income-driven repayment plans. Many of these complaints are about prolonged processing delays and wrongful rejections of IDR applications and recertifications by their student loan servicers. These delays and wrongful rejections can result in increased interest charges, capitalization of interest, and lost eligibility for certain federal benefits and protections.

In our experience, the borrowers who are able to utilize the DTR experience fewer problems than those who use paper applications or alternative documentation of income. Therefore, if all borrowers are suddenly required to use a paper application, we can only imagine that these problems will be exacerbated.

What is being done to ensure that servicers are prepared to handle the influx of paper applications?

3) Question 3: How will the government mitigate problems stemming from errors and delays?

Where errors and delays occur, borrowers can suffer an array of costly consequences. For example, when borrowers' IDR applications are not processed before the end of the repayment period, borrowers may experience sudden jumps in their payment amounts and capitalization of interest. Additionally, any payments they make may not be qualifying payments for forgiveness, thus extending the life of the loan.

When there are errors and delays in processing timely submitted recertification applications, what obligations, by law or by contract, do servicers have to mitigate the harm caused by these errors?

4) Question 4: How will the government ensure borrowers are not systematically overbilled as a result of the DRT outage?

In the recent announcement, ED states:

While the Data Retrieval Tool is unavailable, a borrower may submit a paper copy of his or her tax return, copies of pay stubs or other acceptable forms of documentation explained online during the application process.

By law, a borrower's monthly payment in income-driven repayment plans should be calculated using the borrower's Adjusted Gross Income (AGI). However, if a borrower provides alternative documentation of income such as pay stubs, those documents will not include information about specific deductions, and thus only show the borrower's gross income. This means that borrowers who provide pay stubs will likely pay more than they would if using the DRT.

What steps will your agencies take to ensure that borrowers' payment amounts are not systematically increased by the DRT outage?

5) Question 5: What impact will the DRT outage have on particularly vulnerable populations, like older consumers, servicemembers, veterans, and previously defaulted borrowers?

Income-driven repayment is especially important to keeping vulnerable populations, such as older consumers, servicemembers, veterans, and previously defaulted borrowers out of default. There are extraordinary penalties for borrowers who go into default, such as the seizure of Social Security benefits or Earned Income Tax Credits. The extra costs and collateral consequences of defaulting on a federal student loan can be devastating to the well-being and economic security of these vulnerable borrowers and their families.

As attorneys who represent low-income student loan clients, it is our experience that requirements to submit documentation are a huge barrier to our clients' success. As stated above, allowing borrowers to electronically import their tax returns greatly reduces this barrier and helps borrowers successfully apply for and renew their IDR plans. This IDR success in turn reduces unnecessary and often financially devastating federal student loan defaults.

What steps will your agencies take to ensure that vulnerable borrowers do not disproportionately suffer the consequences of the DRT outage?

6) Question 6: How should we be advising student loan borrowers?

Through our direct representation of clients, our support to advocates who represent student loan borrowers, and through our website, we provide practical advice to student loan borrowers. Given the extended duration of the DRT outage, many borrowers are going to be looking for answers about how to ensure that their applications are processed correctly and on time, and what to do if they encounter errors or delays in processing.

What should borrowers be doing to ensure that their applications are processed correctly and on time? What should borrowers do if their servicers do not process their applications correctly or on time?

Thank you for your attention to this matter. I look forward to your response.

Sincerely,

/s/

Persis Yu

Director, Student Loan Borrower Assistance Project