



BOSTON HEADQUARTERS
7 Winthrop Square, Boston, MA 02110-1245
Phone: 617-542-8010 • Fax: 617-542-8028

WASHINGTON OFFICE
1001 Connecticut Avenue NW, Suite 510, Washington, DC 20036
Phone: 202-452-6265 • Fax: 202-463-9462
www.nclc.org



**Comment submitted by
The National Consumer Law Center**

To the U.S. Department of Education

**Re: Comments on Agency Information Collection Activities;
Comment Request
Loan Rehabilitation: Reasonable and Affordable Payments (82 Fed. Reg. 13101)**

Docket No.: ED-2016-ICCD-0146

April 10, 2017

The following comments are submitted on behalf of the National Consumer Law Center's low-income clients. The National Consumer Law Center (NCLC) is a nonprofit organization specializing in consumer issues on behalf of low-income people. We work 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. Most of the clients we represent are low-income borrowers living in Massachusetts. 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.¹

We write in response to comments submitted by the Federal Servicers Policy Group (hereinafter "Federal Servicers") and American Student Assistance (ASA). The Federal Servicers submitted

¹ See the Project's web site at www.studentloanborrowerassistance.org. NCLC also publishes and annually updates practice treatises that describe the law currently applicable to all types of consumer transactions, including *Student Loan Law* (5th ed. 2015).

a proposal to simplify and streamline the experience for borrowers who transition from default to a loan servicer following completion of loan rehabilitation. ASA raised concerns with that proposal. We share many of the concerns raised by both sets of comments. We propose a different solution: that borrowers be allowed to apply for and complete their rehabilitation agreements through studentloans.gov, utilizing the IRS Data Retrieval Tool. We also provide one comment on the content of the proposed Reasonable and Affordable form.

I. Streamlining the Transition from Rehabilitation to Income-Driven Repayment

In October 2016, the Consumer Financial Protection Bureau (CFPB) Student Loan Ombudsman released a report estimating that over a third of borrowers who rehabilitate their loans will re-default within the first two years. It further highlighted industry estimates that re-default rates could be as high as 75% over the life of the loans. Under current law, borrowers are only allowed to rehabilitate their loans one time. Thus, borrowers who rehabilitate their loans and then re-default will no longer have this option available and risk perpetual default. This data raises great concerns that programs designed to help student loan borrowers may actually put them in a worse position.

Finding a solution to help these borrowers succeed is critical. We propose that borrowers be allowed to complete rehabilitation applications and agreements on studentloans.gov, just as borrowers are currently allowed to use studentloans.gov to complete consolidation applications. If allowed to use studentloans.gov and the IRS Data Retrieval Tool for their rehabilitation applications and agreements, borrowers would be using the same entry portal and nearly the same process for entering rehabilitation as they would for entering into (and later renewing) their IDR plans with the exact same documents. Unlike completing a form through a private collection agency and having that agency initiate the IDR plan, which ASA fears would give borrowers the false impression that they do not need to take action to maintain their income-related repayment amounts, having the borrowers use studentloans.gov for rehabilitation would show them exactly where and how to submit information to maintain their income-related payment amounts over the life of their loans.

In addition to addressing the concerns raised by the Federal Servicers and ASA regarding the transition to IDR, using studentloans.gov would also solve some of the problems in the initial setup of a rehabilitation plan. During its student loan debt collection pilot program, the U.S. Department of Treasury identified the returning of income documentation and the signed rehabilitation agreement as two of the biggest barriers to successful completion of a rehabilitation plan. 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. Allowing borrowers to electronically import their tax returns, or certify that they have no taxable income, as allowed in the IDR application, would reduce this barrier and help borrowers successfully rehabilitate their loans. The loan rehabilitation agreement could also be electronically signed through studentloans.gov. This practice would be consistent with the options already available for borrowers who electronically submit consolidation applications, whether to get out of default or for other reasons, on studentloans.gov.

Using studentloans.gov could also help borrowers understand how much they would be expected to pay after completing a rehabilitation. Some have criticized the reasonable and affordable process because it allows borrowers to rehabilitate their loans at a lower amount than they will be required to pay at the conclusion of the rehabilitation process. If not properly counseled, borrowers may rehabilitate without being able to afford their monthly payments post-default, setting borrowers up to redefault. Using studentloans.gov to provide borrowers who initiate a rehabilitation application with an estimate of their future payment amounts under different repayment plans would enable them to make more informed decisions about whether to use the reasonable and affordable process, or whether they can afford to get out of default--and stay out of default--at this time.

One shortcoming of the Federal Servicers' proposal is that it would only serve the subset of rehabilitating borrowers who utilize the reasonable and affordable form. Using studentloans.gov to initiate rehabilitation would likely capture a far greater number of rehabilitating borrowers. As the Federal Servicers and ASA have identified, getting borrowers with rehabilitated loans into income-driven repayment (IDR) plans is an important step in helping these borrowers succeed. Using studentloans.gov would also address the concern about improving the likelihood of successful transitions to, and continued enrollment in, IDR plans.

As ASA states, it is critical for each borrower to know who their new loan holder/servicer is after they resolve their defaults through rehabilitation. However, this is a huge hurdle regardless of whether the process for getting into IDR is streamlined. Our hope is that with careful design, studentloans.gov could help to facilitate the relationship between borrowers and their new servicers, while also expanding the website's role as a centralized portal through which borrowers can effectively manage their federal student loans.

II. Feedback on Proposed Reasonable and Affordable Form Content

Forms like this one should never include a mandatory requirement for applicants to allow robocalling and autodialing. Accessing the statutorily guaranteed right to rehabilitation by making reasonable and affordable payments should not come at the cost of waiving important consumer protections. At most, the form should include "yes" and "no" check boxes in which applicants have the option of providing consent.

Although we advocate removing this consent requirement altogether, if it is maintained then the sentence should at minimum be reworded so that it is clear that applicants are authorizing robocalling and autodialing. As written, that critical component is buried at the bottom of a three line long run-on sentence.

Thank you for your consideration of these comments. If you have any further questions, please feel free to contact Persis Yu at pyu@nclc.org or (617) 542-8010.