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December 12, 2014

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
LBJ Education Building
#7W311
400 Maryland Ave., SW
Washington, D.C. 20202

Dear Secretary Duncan:

I am writing to follow up on my previous letters urging the Department to address a number of operational issues affecting student loan borrowers. This is primarily an update to my letter dated May 12, 2014, as I have not yet received a response to that letter.¹

This letter is focused on issues that the Department can and should address operationally without the need for additional regulations or legislation. We are also concerned about a wide range of policy issues, including the Department's recent decision to give a break to schools, not borrowers, in the cohort default rate calculations. We will continue to raise these policy concerns in separate communications.

I am pleased that the Department has made significant progress in some areas, including the recent focus on improving servicing and restructuring the disability discharge program. However, in our experience, the Department's servicing and collection performance continues to lag behind its successful origination efforts. The Department's failure to improve these systems causes significant harm to our clients and other borrowers seeking relief from student loan debt.

Lack of Access to Discuss Borrower Concerns

Before providing a summary of our key concerns, I want to thank you and others in the Department for your recent efforts to seek input from borrowers and their advocates. Since I met with FSA leadership earlier this year, a number of FSA and Department policy leaders have reached out to continue the dialogue. This includes a now regular monthly meeting with FSA

¹ I have attached a copy of the May 14 letter in the email sent along with this letter.

Deputy Director of Business Operations John Kane and quarterly meetings with the ombudsman's office. We were honored that Deputy Under Secretary Jeff Appel agreed to speak at our annual conference this year, including a question and answer session with CFPB Assistant Director Rohit Chopra. We hope that this new openness will continue.

Lack of Transparency and Need for More Information

We continue to have very serious concerns about the Department's failure to provide public information about servicer and collector performance and other key data about the student loan portfolio.

Glaring Problems with the FOIA Process

It is a tremendous waste of time and resources to require advocates and other interested parties to submit FOIA requests to try to get information that should be publicly available and is easily accessible to Department staff. We have sent numerous FOIA requests over the years and for the most part, have received very little information or heavily redacted information in return. We sued the Department earlier this year due to the lack of response to one such FOIA request. This complaint (without exhibits) is attached at Attachment A. The lawsuit related to our March 29, 2013 request for information about the Competitive Performance and Continuous Surveillance scores. The Department denied these requests pursuant to the exception for records related to trade secrets or because there were allegedly no responsive documents. While these documents were eventually obtained through litigation, the Department's use of the trade secrets exception to FOIA is extremely troubling. This exception is only meant to protect documents from third-parties, yet the Department used the exception to mask its own documents.

To give you a further sense of the serious flaws in the Department's policies, I include in Attachment B a detailed description of the rehabilitation chapter in various versions of the Department's private collection agency (PCA) handbook. As you can see in the attachment, the Department's FOIA lawyers are so aggressive that they even redact basic information about eligibility for rehabilitation. This is information that is clearly available in the regulations and elsewhere.

With respect to the redactions in the rehabilitation chapter, the Department in most cases cites section (b)(7)(E) as grounds for redaction. This exception from disclosure is allowed only if releasing the information would disclose techniques for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. There may theoretically be sections of the handbook that meet these grounds for exemption, but these should be very limited.

We also describe briefly in Attachment B the inconsistent redactions in a number of different versions of the March 2013 handbook that the Department sent to NCLC and other advocates.

We fear that the Department of Education is moving toward a model in which it justifies withholding basic information because of supposed proprietary contract arrangements. This may work well for Department employees seeking to avoid accountability, but it does not work best for borrowers and taxpayers.

We request a meeting to discuss these concerns further. Borrowers are entitled to programs such as rehabilitation. The programs exist to help borrowers succeed. It is a huge disservice to borrowers to “hide the ball” regarding the details of these programs. Further, it indicates to us that the Department is more concerned about collecting from borrowers in default than informing them about relief programs.

Lack of Data about the Student Loan Portfolio and Contractor Performance

We appreciate that the Department has begun to make some data available, particularly breakdowns of servicer performance by payment plan and other categories. We requested specific information in our May 2014 letter. The recent information the Department made public includes some partial responses to category number four below, but none of the other categories. We urge you to make more data public about the student loan portfolio.

In our May 2014 letter, we asked for information to better understand how the current student loan program is working and how to improve it, including:

- 1. Information and data about why borrowers default and incidence of re-default.**
For example, in our August 30, 2012 FOIA request, we asked for information, including studies and research, on re-default rates after rehabilitation and consolidation. The response we received is that there have been no studies on reinstated loans since September 2010.²
- 2. Copies of guidance to servicers and collectors other than the publicly available contracts.**
We are particularly interested in more detailed information about the borrower surveys, including the questions asked and methodology for surveying; and a complete and current version of the procedures manual for private collection agencies.
- 3. Information about servicer performance broken down by:**
 - Percentage of loans in various stages of delinquency
 - Percentage of borrowers enrolled in income-driven repayment (IDR)
 - Retention rates for those enrolled in IDR, and
 - Re-default rates

² Interestingly, at the December 1 Atlanta servicing summit, FSA Default Division Director Dwight Vigna cited a report on re-default rates to bolster his argument that rehabilitation is more effective for borrowers than consolidation. In response to my questions, he acknowledged that the study was from 2000 (nearly 15 years old) and was an internal study only.

4. Information about collection and servicer complaint systems.

This includes information about escalation procedures and how borrowers can find out about submitting complaints or providing other feedback to servicers and collectors. In addition, we have asked for information about the Department's oversight of servicers and collectors, including corrective actions taken and other sanctions.

5. Breakdown of accounts sent to the Department of Treasury for offset, including by type of benefit program and by demographic information including age.

Key Operational Concerns

Servicing Performance Metrics and Borrower Choice

Unfortunately, consistent quality service is not the current borrower experience. Among other problems, we see servicers pushing borrowers into the quickest options, such as forbearance, rather than explaining and assisting borrowers to obtain more favorable long-term solutions, such as income-based repayment.

The servicing system has become so confusing that an entire industry of for-profit "debt relief" companies has sprung up to supposedly provide the services that the free government servicers are failing to provide.

We appreciate your response to our March letter raising concerns about the new servicer choice system. These concerns persist. In fact, the debt relief companies have grown bolder and more aggressive in the past year. The CFPB's actions this week demonstrate the serious problems caused by unscrupulous debt relief companies.

The Department has issued various warnings and blog posts about these companies, but this is not enough. We urge you to take action particularly as these companies misrepresent that they are affiliated with the Department and violate Department policies about use of NSLDS and private PINs.

Collection Agency Oversight

In our experience, collection agencies routinely violate consumer protection laws and prioritize profits over borrower rights. The GAO report earlier this year affirmed this unfortunate trend, finding that the Department documented instances where collection agency representatives provided false or misleading information to borrowers. According to the GAO report, when the Department found these violations, it simply provided feedback. This tender treatment of collection agencies breaking the law is in sharp contrast to the way borrowers are hounded forever when they run into financial distress. We focused on these issues in our September 2014 report, "Pounding Student Loan Borrowers: The Heavy Costs of the Government's Partnership with Debt Collection Agencies."

We have provided the Department of Education and more recently the CFPB with consistent examples of problems over the years with little or no response. This is a key topic we hope to discuss in meetings with Department staff. We are also interested in hearing more and providing feedback on the new contracts and on the newly announced collection pilot project with the Department of Treasury.

Rehabilitation and Reasonable and Affordable Repayment

Many of the problems we continue to see with collection agency misconduct are related to the rehabilitation process. We support the regulatory changes that came out of the prior negotiated rulemaking process. However, we are concerned about the inconsistencies we have seen in collector interpretation and application of the new rules. Among other issues, as discussed above, the Department's refusal to release public information about guidance to collectors compounds confusion.

We are also concerned that the Department may not be committed to fair implementation of the new process. For example, at the recent Atlanta servicing summit, Default Division Director Dwight Vigna referred to the new rules as setting borrowers up for failure. We completely disagree and would like to work with the Department to highlight any real concerns and ensure that the program operates as intended. Even if some in the Department do not support the new program, it must instruct its collectors to comply with the law and conduct rigorous oversight to enforce the law.

We have a list of questions that we are currently discussing with FSA staff, including questions about the post-July 1 rehabilitation rules. We urge the Department to respond to these questions as soon as possible. Further, we presume that at least some of this information is available in the PCA handbook that the Department refuses to share.

Additional Operational Issues

We wrote in May about our clients experiencing many problems accessing IBR. We have sent examples of these ongoing problems to the Department's ombuds office and to other Department staff and will continue to do so.

I will not go into these issues in detail in this letter. However, I am very concerned about these problems. We urge you to take steps to improve the administration of IBR AND to get comprehensive information to borrowers before they default.

Additional issues include:

1. Problems with disabled borrowers accessing SSA information for disability discharges.
2. Inconsistent administration of hardship programs related to offset.
3. Lack of information about criteria for alternative repayment plans.
4. Joint consolidation loans and whether servicers may exercise discretion to provide relief to borrowers, particularly those in dangerous domestic violence and other situations.

5. Problems with Perkins fee and balance calculations.
6. Process for borrowers to raise school-related claims in defense to collection.³
7. Clarification of eligibility for closed school relief, particularly for schools likely to be sold
8. Outstanding issues about disqualifying status false certification criteria and burden of proof for false certification.

I look forward to hearing back from you and appreciate your consideration of these important issues.

Sincerely,



Deanne Loonin
Director
NCLC's Student Loan Borrower Assistance Project
(617-542-8010; dloonin@nclc.org)

cc: (in alphabetical order)

Jeff Appel
Rohit Chopra
Joyce DeMoss
Ted Mitchell
James Runcie
Jamie Studley
Brenda Wensil

³ U.S. Senator Elizabeth Warren and twelve other senators highlighted these concerns in a letter to the Department dated December 10, 2014.

Attachment A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NATIONAL CONSUMER LAW
CENTER,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
EDUCATION,

Defendant.

2014 MAY 19 PM 2:26
CLERK OF COURT
DISTRICT OF MASSACHUSETTS

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for injunctive, declaratory, and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from Plaintiff, National Consumer Law Center ("NCLC"), by Defendant, the United States Department of Education ("ED").

JURISDICTION, VENUE, AND PARTIES

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

3. Venue lies in the District of Massachusetts pursuant to 28 U.S.C. § 552(a)(4)(B), which allows a FOIA plaintiff to bring suit in the district where it has its principal place of business.

4. Plaintiff NCLC is a public-interest, non-profit, advocacy and research organization, incorporated in Massachusetts, where it has its principal place of business. NCLC's primary mission is to use its expertise in consumer law to work for consumer justice and economic security for low-income people, the elderly, and other disadvantaged groups in the United States.

5. As part of its mission, NCLC initiated and administers the Student Loan Borrower Assistance Project. Along with providing resources and support to individual student loan borrowers, the Student Loan Borrower Assistance Project works to increase public understanding of student lending issues and to identify policy solutions that promote access to education, lessen student debt burdens, and make loan repayment more manageable.

6. Defendant United States Department of Education is a cabinet-level federal agency, which is subject to FOIA pursuant to 5 U.S.C. § 551(a).

7. Among other things, the ED (1) establishes policies related to federal education funding; (2) administers distribution of funds and monitors their use; (3) collects data and oversees research on America's schools; (4) identifies major issues in education and focuses national attention on them; and (5) enforces federal laws prohibiting discrimination in programs that receive federal funds. *See What We Do, United States Department of Education, available at <http://www2.ed.gov/about/what-we-do.html>.*

FACTUAL ALLEGATIONS

The ED's Debt Collection Activities

8. Pursuant to Title VI of the Higher Education Act of 1965, as amended, the ED provides billions of dollars in federal student loans to students and their families to help pay for higher education. 42 U.S.C. §§ 2751-2756b.

9. As of September 2013, about one out of seven student loan borrowers had defaulted on his or her loan within three years of beginning repayment, and approximately \$94 billion in outstanding federal student loans were in default. *Federal Student Loans: Better Oversight Could Improve Defaulted Loan Rehabilitation*, GAO-14-256, G.A.O. Report to Congressional Requesters 1 (March 2014), *available at* <http://www.gao.gov/products/GAO-14-256>.

10. The ED has entered contracts with private collection agencies ("PCAs") to recover defaulted student loan debt owed to the federal government.

11. The ED pays PCAs "commissions" for amounts recovered from federal student loan debtors and "bonuses" based on performance results measured through "Competitive Performance and Continuous Surveillance" scores or "CPCS" scores. *See generally FSA – Private Collection Agency (PCA) Service Area (SA) – Debt Collection, Request for Quotes*, United States Dep't of Educ., RFP No. ED-08-R-0052, May 29, 2008 ("May 2008 RFQ") at 23, *available at* <https://www.myeddebt.com/partner/PCALabelActionviewDocument;jsessionid=654AB883546DFC551905D4B9FA73B5F6?fileName=PCA.RFQ.v1.4.052908.pdf&pageName=getPCAsolicitR> eleased.

12. CPCS scores are determined by a weighted average of amount collected, total accounts serviced, and total administrative resolutions by each PCA.

13. According to a Request for Quotes issued by the ED in 2008, the CPCS system was designed to "incentivize all [PCA] contractors and to reward the contractors that provide the best performance under the task orders." *See* May 2008 RFQ at 23.

Plaintiff's Initial FOIA Requests and Defendant's Response

14. On March 29, 2013, NCLC submitted a FOIA request to the ED asking for:

- (1) All documents (including memorandum, letters, communications, forms, reports, and other data) used to calculate the Competitive Performance and Continuous

Surveillance (CPCS) scores for each Private Collection Agency Contractor for Fiscal Year 2012, including documents and data submitted by each Private Collection Agency to the Department of Education.

- (2) All documents, results, and calculations relating to the ranking of Private Collection Agency Contractors based upon CPCS standing and scores for Fiscal Year 2012, including but not limited to:
 - a. The overall score awarded to each Private Collection Agency Contractor for every Performance Evaluation done in FY 2012;
 - b. The number of points awarded to each Private Collection Agency Contractor in all categories for every Performance Evaluation done in FY 2012; and
 - c. Each Private Collection Agency Contractor's ranking for every Performance Evaluation done in FY 2012.
- (3) All memoranda, reports, and other documents indicating the amount of any bonuses and/or incentive fees paid to each Private Collection Agency Contractor based upon CPCS standing and scores or for any other reason in Fiscal Year 2012.

March 29, 2013 FOIA Request (Attached hereto as Exhibit 1).

15. By letter dated August 2, 2013, Ms. Elise Cook of the ED's "FOIA Service Center" effectively denied Plaintiff's March 29, 2013 request. *See* August 2, 2013 FOIA Response (Attached hereto as Exhibit 2).

16. The ED asserted that the bulk of the information responsive to Plaintiff's request was exempted from FOIA's disclosure requirements because it was "commercial or financial information obtained from a person [that is] privileged or confidential," 5 U.S.C. § 552(b)(4) ("Exemption 4"). The ED also asserted that it could not disclose documents "indicating the amount of any bonuses and/or incentive fees" paid to collection agencies because the ED did not have access to any such documents or information. *See* Exh. 2.

17. Attached to the August 2, 2013 letter, the ED included a CD-ROM containing nine (9) folders.

18. The first folder, titled "09302012 RFin66 National Summary Report," includes seventeen (17) fully redacted pages. (Attached hereto as Exhibit 3).

19. The remaining eight (8) folders appear to include information about the CPCS scores of PCA contractors over three-month periods in Fiscal Year 2012. Each folder contains a single page document that includes a title and a grid. The left column of each grid lists the names of PCAs, but the ED redacted all data regarding the PCAs' CPCS scores, rendering these eight documents incomprehensible and meaningless. (Attached hereto as Exhibits 4-1 to 4-8).

20. Pursuant to 5 U.S.C. § 552(a)(6)(A)(ii), the ED notified Plaintiff that it had 35 days to file an appeal within the agency. *See* Exh. 2, *supra*.

Plaintiff's Administrative Appeal and Exhaustion of Remedies

22. Pursuant to instructions on the ED's website, on September 4, 2013, NCLC transmitted its timely intra-agency appeal via email attachment addressed to EDFOIAappeals@ed.gov. *See* Sept. 4, 2013 Appeal (Attached hereto as Exhibit 5).

23. On November 20, 2013, NCLC transmitted another email to the same address, EDFOIAappeals@ed.gov, to "follow-up" on the status of the September 4, 2013 appeal. *See* November 20, 2013 Email (Attached hereto as Exhibit 6).

24. NCLC has not received a response to either its September 4, 2013 appeal or its November 20, 2013 follow-up.

25. FOIA prescribes that an agency "shall make a determination with respect to any appeal within twenty days after the receipt of such appeal." 5 U.S.C. § 552(a)(6)(A)(ii).

26. As of the date of this Complaint, the ED has not notified Plaintiff whether the agency has made a determination with respect to Plaintiff's September 4, 2013 appeal.

27. Because the ED's failure to respond to Plaintiff's appeal within twenty days after the receipt of the appeal amounts to a failure to "comply with the applicable time limit provisions" regarding intra-agency appeals, and the ED has failed to point to any exceptional circumstances justifying the delay, Plaintiff has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

COUNT I:

**THE ED ILLEGALLY HAS WITHHELD DOCUMENTS FOR WHICH NO
STATUTORY EXEMPTION EXISTS IN VIOLATION OF FOIA**

27. NCLC repeats and incorporates by reference the previous allegations.

28. By withholding and redacting the documents and information requested in NCLC's March 29, 2013 FOIA request, the ED has violated FOIA.

29. Contrary to the ED's assertions in its August 2, 2013 denial, the ED has access to all of the information and documents requested in NCLC's March 29, 2013 FOIA request.

30. Moreover, none of the documents or information requested in NCLC's March 29, 2013 FOIA request is subject to Exemption 4.

PRAYERS FOR RELIEF

WHEREFORE, the National Consumer Law Center respectfully requests this Honorable Court:

- a. Enjoin the United States Department of Education from illegally withholding documents and information responsive to NCLC's March 29, 2013 FOIA request and September 4, 2013 appeal that are not subject to a lawful FOIA exemption as set forth in 5 U.S.C. § 552(b);
- b. Declare that the ED has violated FOIA by failing to produce documents and information requested by NCLC in its March 29, 2013 FOIA request and September 4, 2013 appeal in accordance with the applicable statutory deadline;
- c. Declare that the ED continues to violate FOIA by withholding documents responsive to NCLC's March 29, 2013 FOIA request and September 4, 2013 appeal;
- d. Order the ED to turn over to Plaintiff the documents and information requested in NCLC's March 29, 2013 FOIA request and September 4, 2013 appeal;
- e. Award NCLC its costs and reasonable attorney's fees in this action; and
- f. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

By:


Stuart Rossman (MA Bar # 430640)
David Seligman (*pro hac vice* to be filed)
NATIONAL CONSUMER LAW CENTER
7 Winthrop Sq.
Boston, MA 02110
617-542-8010 (telephone)

Dated: 5/19/14

Attachment B

I. Redactions from PCA Handbook Chapter on Direct Loan Rehabilitation

A. July 2014 Version

In this section of the July 2014 redacted handbook, the Department repeatedly cites (b)(7)(E) to justify redaction.

The redacted information in July 17, 2014 version includes:

1. Borrower eligibility is completely redacted (p. 95).
2. Qualifying Payments is completely redacted (starts on p. 96) except for limited information defining a “timely” payment and bounced payments.
3. Nearly all of the information about acceptable payments amounts is redacted, including half of page 99, all of page 100, and most of page 101.
4. In the rehabilitation letter section, there is no letter provided and nearly all of page 103, all of pages 104 and 105 are redacted.
5. In the section on consumer information, other than an introductory paragraph, all of the information is redacted. (most of page 106, all of pages 107 and 108).

B. Earlier Versions

We obtained an unredacted copy of the July 12, 2012 version of the handbook from a private lawyer. In the attached excerpt from this version, we drew boxes around the sections that the Department redacted in one of the March 2013 redacted versions.⁴ Information such as the fact that Direct Loans are identified by the first letter “D” is redacted as well as all basic information about determining reasonable and affordable payments. Page 97 of the 2012 version includes an example about how to handle accounts with loans from multiple programs. The Department also redacted this example in 2013. The Department redacted all information about minimum payments in the 2013 version, among other key information.

II. Comparing Redactions

We have a number of redacted version, including three March 2013 redacted versions and the July 2014 version provided to NCLC by the Department. The Department inconsistently redacted information from each of the March 2013 versions.⁵

We highlight below just a few of the countless examples of inconsistent redactions. For example:

⁴ This March 2013 version was sent to Steve Rhode and available at: http://getoutofdebt.org/wp-content/uploads/2014/06/PCA-Procedures-Manual-B_new-OCR.pdf,

⁵ The three March 2013 redacted versions are the version we received from the Department, the version sent to Steve Rhode, and the version obtained by Electronic Privacy Information Center (EPIC) and posted here: <http://epic.org/foia/ed/EPIC-ED-2013-PCA-Manual.pdf>.

1. The highlighted sections in the March 2013 version attached discussing the statute of limitations for student loans are redacted in the 2014 version and in some of the other March 2013 versions.
2. The standard rehabilitation letter highlighted in one of the 2013 versions is completely redacted in the 2014 version.
3. The internal mail form on page 69 of the 2013 version is redacted in 2014.

CHAPTER 9: REHABILITATION

Rehabilitation is an ED "payment" program whereby an eligible borrower can, through appropriate and timely monthly payments, "rehabilitate" their defaulted loan(s) into good standing. Through the borrower's efforts of making consistent payments on-time, the borrower is able to receive certain benefits based upon a showing of good faith and a commitment to pay off their debt. Benefits include – reduced collection costs, removal from credit bureau report and ability to take advantage of appropriate program benefits such as deferments.

This Chapter will discuss rehabilitations within Direct Loans, Federal Family Education Loans (FFEL) and the Federal Perkins Loan Program (formerly NDSL).

1. DIRECT LOAN REHABILITATION

Reference: 34 CFR 685.211(f)

A. Loan Eligibility

- Only Direct Loans are eligible for Direct Loan Rehabilitation
 - These are identifiable by the first letter "D" in the debt identification number.
- Consolidation loans are eligible
- Loans rehabilitated prior to August 14, 2008 are eligible
 - A list of ineligible previously rehabbed loans will be created monthly under TSO dataset name ED0291.DLRH.REDEFAULT.TEXT. The debt ID is in positions 1-16 and the SSN is in positions 33-41 on this fixed-width (flat) text file.
- While there is no fixed minimum balance eligible for rehabilitation, balances that are less than twice the borrower's monthly payment will not be rehabilitated.
- Direct Loans with judgments are not eligible for rehabilitation

B. Qualifying Payments

Borrowers must make (9) nine full, timely, voluntary monthly payments of an approved amount in a (10) ten month period in order to qualify for Direct rehabilitation. Borrowers may miss one payment in a ten-month period and still qualify for Direct rehabilitation.

- "Full" payments
 - Defined as those meeting the L103 billing amount.

- Redacted*
- The full amount of the L103 *Redacted* billing amount must be received in the form of a voluntary payment within twenty days of the L103 *Redacted* billing due date—no more than twenty days early nor twenty days late
 - Involuntary payments (wage garnishments, offsets, DOJ payments, etc.) do not count toward this requirement.

➤ **Billing amount**

- May be changed at any point in the qualifying process, but *all* payments will be evaluated based on the L103 billing amount as of the close of business on the last day of the calendar month.
 - Increasing a borrower's billing amount may lengthen the time for him/her to qualify, if earlier payments were for a lower amount
 - Decreasing a borrower's billing amount may affect the PCA's eligibility for commission, since ED uses the billing amount to determine if the minimum payment percentage has been met
- Redacted*

➤ **"Split" Payments**

- Borrowers may make payments weekly or monthly, so long as the cumulative amount of voluntary payments received within 20 days of every due date equals or exceeds the current L103 billing amount.
 - Note: see the "Exception Requests" subsection on split payments for additional information about when/whether an exception request may be required
- Redacted*

➤ **"Timely" payments**

- Defined as those received at the payment center (i.e., have an effective date on the R103 screen) within twenty days of the L103 billing due date—no more than twenty days early nor twenty days late.
 - Nine full payments must be received within twenty days of a *single* due date in order for the borrower to qualify.
 - Due date may be changed at any point in the qualifying process, but the timeliness of all payments will be evaluated based on the L103 billing due date as of close of business on the last day of the calendar month.
- Redacted*

➤ **Bounced Payments**

- Payments reversed or stopped do not count toward the series of qualifying payments

➤ **Current Payments**

- Borrower must be current with his payments as of the last day of the calendar month.
 - Borrower must have made a timely full payment for the most recently expired monthly due date (i.e., the last monthly due date that is at least 20 days earlier than the last day of the calendar month) or for a subsequent due date that has not yet expired.

- Example: if the sweep occurs shortly after January 31, and the borrower's due date is the 15th of each month, the borrower must have made a timely payment for either:
 - His December payment (since on Jan 31 he still has time to make a timely payment for January), or
 - His January payment, or
 - His February payment

redacted

➤ **ED's Direct Debit Program (DDP) Payments**

- Count toward rehabilitation
- If the borrower is on DDP as of the last day of the calendar month, the DDP information will be used to calculate the borrower's billing amount and due date as follows:
 - The due date will be the 16th of the month (thus a payment received on any calendar day of any month will be timely for that month)
 - The billing amount will be the DDP amount multiplied by the number of payments debited per month (if debiting is weekly, the billing amount will be the DDP amount times 4, etc.)

redacted

C. Acceptable Payment Amounts

➤ **"Reasonable and Affordable Minimum Payment Percentage" Qualifying Payments**

- Must be based on the amount owed and on the borrower's "total financial circumstances."
- Based on the balance to be rehabilitated, monthly payments equal to a certain percentage of that balance may automatically be considered "reasonable and affordable", based on the table in *Section 1, Subsection 1* of this Chapter (minimum payment amounts).
- The PCA does not need to obtain a statement of financial status if the borrower's payments meet the minimum percentages in Section 1, subsection 1 of this Chapter.

redacted

New since 2009

➤ **"Reasonable and Affordable Income Based Repayment" Qualifying Payments**

- If a borrower can prove through the normal processes used to gather financial information that they **cannot** meet the R&A minimums based on the percentage amounts, the PCA should then use the financial information in the IBR Calculator.
- IBR Calculator
<http://studentaid.ed.gov/PORTALSWebApp/students/english/IBRCalc.jsp>
- The PCA must collect and keep copies of the financial information that is taken over the phone for all R&A repayment amounts that are done using the IBR

redacted

calculator. The PCA shall submit the documentation to the DMCS Servicer so it can be scanned in with the borrower's account information.

➤

➤ **Obtaining a completed statement of financial status**

- The PCA must obtain a statement if

▪ The PCA approves a monthly payment amount that is lower than the percentages stated in Section 1, subsection 1 of this Chapter AND if the borrower's payments are less than the greater of:

- \$50.00, or
- The amount of interest that accrues each month on the loan(s) being rehabilitated
- The PCA approves monthly payments that are less than the percentages stated in Section 1, Subsection 1 of this Chapter, the PCA will be paid an administrative resolution fee, rather than a commission, for the rehabilitation unless it is made under the R&A IBR. Rehabilitations made pursuant to the R&A IBR will be paid the Final Rehabilitation Commission.
- The R&A IBR plan is used

redacted

New
since
2009

➤ **Wage garnishment (or other monthly involuntary payment situation)**

- Borrower may qualify for rehabilitation by making voluntary payments in addition to his/her garnishment payments.
- The voluntary payments must meet all requirements as stated in this document; the fact and amount of the garnishment (or other involuntary) payments do not affect the requirements for rehabilitation.

➤ **Accounts with loans from multiple programs**

- Since every loan program (Direct, FFEL & FISL, NDSL-Perkins) has its own rehabilitation program, a borrower's total monthly payment should be calculated as the aggregate of the minimum payments for each program's cohort of loans in the account.

▪ Example: if the borrower has a one \$5000 FFEL and one \$5000 Direct Loan, for a total account balance of \$10,000, his monthly minimum *should not* be figured by using the minimum percent for a \$10,000 balance in Section 1, subsection 1 of this Chapter. Instead, a separate payment amount for the Direct Loan and FFEL should be calculated and added together. In this example, the borrower's total monthly payment would be \$129, whereas it would be \$114 if he owed \$10,000 of a single program type loan.

▪ This is because the loans will be split up at the time of rehab, and the new loan holder will be calculating a new payment amount based only on the amount assigned to that loan holder

redacted

➤ Additional considerations

- ED strongly recommends that PCAs establish payment amounts rounded up to the nearest five or ten dollars. It is easy for a borrower to transpose the digits on "precise" payment amounts—e.g., \$101.28—but the rehab evaluation programs will count a payment as missed even if it is one penny short.
- The minimum acceptable payment percentages are just that—minimums, not necessarily the most desirable amount. Borrowers should pay the maximum they can afford, and PCAs should always build in a "cushion" above the calculated minimum to anticipate interest rate increases, etc.

redacted

D. Monthly Transfer Process

Unlike FFELs, Direct Loans are automatically considered rehabilitated once the borrower makes his/her final qualifying payment. Shortly after the end of each calendar month ED will identify rehabilitated Direct Loans and transfer them back to the Direct Loan Servicer.

Only accounts that were set up on billing on the L103 as of close of business on the last calendar day of the month will be reviewed for transfer. The borrower's final qualifying payment must have posted (be visible on the R103) as of the last calendar day of the month in order for the account to guarantee it will be reviewed for transfer. It is possible that borrowers who make their ninth payment very shortly after month-end will still get picked up in the sweep—depending on when the sweep program is run.

redacted

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E. Exception Requests

An "exception" request is one where the account characteristics would appear to render the account ineligible for rehab. For example, a borrower's voluntary payment was mis-coded as a wage garnishment payment. The systematic review programs would therefore reject the account as ineligible. *Note: changing the billing information retroactively does NOT require an exception request if the borrower has made the requisite payments according to that new billing information.*

➤ Processing Steps:

- Change the collector number on the L103 to 00165
- Annotate the specific reason for the exception request on the L102 (e.g. "payment effective 5-1-04 was miscoded as a wage garnishment payment")
- Route the request through Atlanta. If a PCA believes that circumstances warrant an account's rehabilitation despite its apparent ineligibility, the PCA should route that request through ED. The ED monitor will annotate the notepad with the message ***REHAB EXCEPTION APPROVED if the exception is approved.
 - This note must have been entered during the calendar month being reviewed (i.e., the month during which the 9th payment for non-exception accounts will have posted).
- Once the ED monitor indicates the exception request has been entered, the PCA must

A 11
redacted

- All
 redacted
- Confirm that the note has been entered exactly as shown above—the programs will not recognize the exception approval if the notepad text is not verbatim
 - Limitations
 - Judgment loans are excluded by regulation so this requirement may not be circumvented by exception.
 - If ED determines that a Direct Loan does not have a valid/enforceable judgment, ED will have to remove the litigation indicator from the R116 screen.
 - The account must be on L103 billing.
 - The “minimum balance” requirement (two times the billing amount) cannot be circumvented by exception.
 - Accounts with a compromise agreement annotated on the L102 within the 120 days preceding the end of the month will be excluded from the sweep unless the account is flagged for exception approval.
 - Split payments
 - In general, accounts with split payments *do not* require an exception unless all of the following are true:
 - The borrower skips a monthly payment, and
 - The first installment of the split payment for the following month is timely for the skipped month
 - Example: if the borrower’s due date is the 15th and he skips his September payment, an exception will be required if he makes a split payment in October and the first installment of his split payment is received between September 25 and October 5.

F. Special Circumstances

- The normal minimum payment amount requirements are modified in the following circumstances where the borrower’s balance increases after his payment amount has been set:
 - New debt loaded during qualifying period.
 - Variable interest rate increase.
 - Treasury offset reversal increases the balance.
- The PCA may either raise the minimum payment balance to the new minimum, or:
 - Accept an admin fee for the rehab,
 - Advise the borrower to make a lump sum payment to pay the balance down to the point that the payment amount meets the acceptable minimum, or
 - Advise the borrower to make monthly payments for a longer period of time until the balance is paid down to the point that the payment amount meets the

acceptable minimum. In this case, the PCA must change the collector code to 00160 to prevent the account from rehabbing after the ninth payment.

- If the billing amount is increased:
 - The borrower must make a minimum of three payments at this higher amount *and*
 - Must have made the requisite nine payments to qualify.
 - Example: if a new debt is loaded after the borrower's third payment, he should make the final six payments at the higher level and can still qualify after making a total of nine payments. If the new debt is loaded after the borrower's eighth payment, he would have to make three more payments—a total of eleven—at the higher level to qualify.
 - The PCA should set the billing at this higher level and must request exception approval from Atlanta.

G. Post-Submission Procedures

ED will begin reviewing accounts for transfer eligibility shortly after the month-end. Accounts that are approved for transfer will be recalled from the PCA at that time.

- **TSO file**
 - ED will create a (Rxx.DLREHAB2.TEXT) containing the accounts included in the transfer.
 - Note: "Rxx" is the PCA's unique three-character file prefix node associated with all files created for EFT.
 - These files will be over-written each month as new transfers are processed, so PCAs must download them in a timely fashion.
 - Once a transfer has been processed, files for previous months will no longer be available.
 - The file has six columns of data:
 - SSN
 - Total transfer value of the rehabilitated loan(s) [note: this field, and the next two, have an implied decimal point two positions from the right]
 - L103 billing amount
 - Payment percentage
 - Indicator of whether the payment percentage was large enough to warrant a commission ("C") or an administrative resolution fee ("A")
 - "AG" code
- **Follow up on accounts accepted for transfer:**
 - Stop any pre-scheduled payments (DDP, Speed-Pay, etc.).
 - Notify the borrower to send his/her next monthly payment to Direct Loans; advise borrower to expect contact from the Direct Loan Servicer and that payment due dates and amounts might change.
 - The Servicer may be reached at 800-848-0979. Payments should be sent to:

Redacted

U.S. Department of Education

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P.O. Box 530260
Atlanta, GA 30353-0260

➤ **Problems**

- Review payment history. Before assuming there is a problem with the programs or reporting it:
 - Determine what the billing amount and due date was on the last day of the month (the L108 records changes to the billing information)
 - Review every monthly due date to make sure that a full voluntary payment was received within 20 days of that date
- Make billing change
 - If the borrower has made 9 payments but they are not timely according to the current billing due date, see if there is a due date for which all payments would be timely. If so, change the L103 due date; the account should be picked up for transfer at the end of the month in which you make the change.
 - Note: L103 address status may not be "U" in order to change billing info; you must ensure the address info is correct and update that to a "V".
- Report any problems to - Amy.Louie@ed.gov and Jessica.Liu@ed.gov

H. Accounts containing non-Direct and Direct Loans

The Direct Loan rehab process, which occurs automatically, dictates that the account be recalled. Thus, the PCA may not receive commission credit when the FFEL rehab payment posts, or a borrower with NDSL-Perkins loans may fall out of payment compliance.

Atlanta Regional Office will return these accounts to the PCA shortly after the account's recall. PCAs should proactively identify and monitor these accounts to ensure that billing is re-established on the L103 once the account is returned.

Helpful Hint: The file that Atlanta uses to return accounts to the PCA so that remaining debts can be rehabilitated is a letter request file. Any account with an undeliverable address at the time of the rehabilitation will not be included on the letter request file and will not be returned to the PCA. PCAs should ensure that all accounts rehabilitated have current deliverable addresses.

I. Minimum Payment Amounts Table – Direct Loans

The following table shows payment amounts (as a percentage of the balance to be rehabilitated) that may automatically be considered reasonable and affordable under the minimum payment percentage qualifying payment plan *and* that will entitle the PCA to a commission on the

rehabilitation balance transferred to Direct Loans. If the borrower's payment amount is pursuant to the Income Based Repayment Plan or less than the greater of

- \$50, or
- The amount of interest accrued each month on the loans to be rehabilitated

then the PCA must obtain from the borrower a completed statement of financial status (and associated supporting documentation) that justifies the payment is "reasonable and affordable".

If the balance to be rehabilitated⁴ is:

The minimum payment percentage is:

<= \$7500	1.29%
>\$7500 and <=\$10,000	1.14%
>\$10,000 and <=\$20,000	1.00%
>\$20,000 and <=\$40,000	0.87%
>\$40,000	0.76%

Example: if the borrower owes \$10,000 at the time of rehabilitation, his monthly payments must have been at least \$114 in order to be automatically considered "reasonable and affordable" and for the PCA to earn a commission.

2. NDSL-PERKINS LOAN REHABILITATION

⁴ The "balance to be rehabilitated" includes principal and interest, as well as any fees and collection costs that ED decides to charge. As of the writing of this document, ED does not include any fees or collection costs in the rehabilitation balance. This is subject to change, however, and note that collection costs may total as much as 18.5% of combined principal and interest.

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8. STATUTE OF LIMITATIONS

Section 3 of the Higher Education Technical Amendments of 1991, P.L. 102-26 eliminates any statute of limitations that has applied to enforcement actions to collect student loans made or insured under Title IV of the HEA. The amendment provides that a lawsuit may be commenced, a judgment enforced, or a garnishment or offset action taken by the Federal government to collect defaulted loans regardless of any Federal or State statutes of limitation that might otherwise have applied to these collection actions. The law also applies to actions by institutions and guaranty agencies to collect defaulted student loans.

Prior to this 1991 amendment, the limitation period for suits to collect student loans made or guaranteed under Title IV of the HEA was six years commencing from the date the government paid a guaranty claim for FISLs, See U.S. v. Bellard, 674 F.2d 330 (5th Cir. 1982), or, under § 484A(a) prior to that amendment, for six years from the date the loan was assigned to ED for GSLs and for Perkins/NDSLs - 484A(a)(4) of the HEA, 20 U.S.C. 1091a(a)(4) (1990; since amended by P.L. 102-26, supra); U.S. v. Menatos, 925 F.2d 333 (9th Cir. 1991). The 1991 amendment modified Section 484A to expressly abrogate these prior limitations for each of these kinds of loans. The amendment provides that litigation may be commenced, a judgment enforced, or a garnishment or offset action taken by the Federal government to collect defaulted loans regardless of any Federal or state statutes of limitation that might otherwise have applied to these collection actions.

A commonly encountered defense raised in the face of this authority is the claim that prior limitations periods had expired, rendering the loan judicially unenforceable under the law. Both the statutory terms governing the effective date of the 1991 amendments and the case law forcefully reject this claim. The effective date provisions of the law expressly provide that this authority applies to all "pending actions" to collect loans whenever those loans were made, including loans made before April 9, 1986, the date of enactment of the prior version of § 484A. Pub. L. 102-26, 3(c), as amended by Pub. L. 102-325, § 1551 (removing November 6, 1992 sunset provision).

The amendment therefore empowers the government to collect ED-financed loans time-barred under other limitations provisions that previously applied - U.S. v. Phillips, 20 F.3d 1005 (9th Cir. 1994); U.S. v. Hodges, 999 F.2d 341 (8th Cir. 1993); U.S. v. Glockson, 998 F.2d 896 (11th Cir. 1993); U.S. v. Mastrovito, 830 F.Supp. 1281 (D. Ariz. 1993); N.Y. Higher Education Services Corp. v. Laudenslager, 616 N.Y.S.2d 135 (N.Y. Sup. 1994); § 484A as amended applies to suits to collect ED-financed loan brought by guarantor. Although this retrospective, resuscitative effect may appear unusual, Congress has the power to revive time-barred claims because statutes of limitations are procedural rules, and can be established, modified, enlarged or eliminated by the jurisdiction under which a debt is enforced without violating a defendant's constitutional or statutory rights - See U.S. v. Menatos, 925 F.2d at 335, n.2 (9th Cir. 1991)

C. Letter Vendor Changes

If a PCA changes letter vendors after initial coupon testing, the contractor must contact the Assistant COR to arrange retesting of coupon letters.

2. REHABILITATION LETTERS

The standard rehabilitation agreement letter must include the following language:

This letter confirms my acceptance into the loan rehabilitation program and my agreement to repayment of my defaulted Federal Family Education Loan (FFEL) program student loans held by the U.S. Department of Education. I understand that compliance with this agreement is a prerequisite to the sale of my loans to an authorized lender.

Please check the appropriate paragraph:

- () I understand that I must make at least nine (9) monthly payments in the amount of \$«Insert», beginning «Insert», with each payment due on the same day each month thereafter. I must make the full payments in the agreed amount within twenty (20) days of their monthly due dates over a ten month period. If I fail to make the required number of on-time payments in a ten (10) month period, I will need to begin a new series of agreed-upon payments in order to qualify for rehabilitation of my loans.
- () I am currently making monthly payments. I understand that these payments, if timely, will be included in the calculation of the required minimum number of monthly payments. I will continue to meet my established monthly payment due date.

I also understand and agree to the following terms and conditions:

1. I understand that this agreement is null and void if I do not honor the terms of this agreement by making a full payment within twenty (20) of the monthly due date every month for a minimum of nine (9) months. Should this occur, I will need to begin a new series of agreed-upon payments in order to qualify for rehabilitation of my loans.
2. I cannot change the monthly payment amount without ED's agreement or the agreement of the collection agency servicing my account.
3. I may have to provide a new financial statement in order to support a request to change my monthly required payment amount.
4. I must continue to make monthly payments to ED beyond the required minimum period until I am notified in writing by ED or my new lender that the sale has been completed and that I am to begin making payments directly to my lender.
5. Any interest that I owe at the time my loan(s) is sold will be capitalized by the lender. In addition, the Department may add collection costs equal to 2% of the amount of principal and interest that I owe to the loan balance. Any outstanding interest and collection costs will be capitalized by the lender. This means that the lender will add any unpaid interest and collection

INTERNAL MAIL FORM (IMF)**SECTION I****FROM:** AG ____ **REQUESTOR'S NAME & TEL#:** _____ - _____**BORROWER'S NAME:** _____ **SSN** _____**DATE:** _____

(circle one)

TO: ATLANTA SERVICE CENTER
ATTN: Contract Services Branch**TO:** PIC
ATTN: Correspondence Unit**SECTION II**

(b)(7)(E)

OTHER:**EXPLANATION:****ED RESPONSE:**