

# **The Debt Collection Improvement Act**

## **Supplemental Testimony Government Reform Committee Subcommittee on Government Efficiency and Financial Management**

### **I. Introduction**

Mr. Chairman and Members of the Subcommittee, thank you again for inviting me to testify on June 17 regarding the Debt Collection Improvement Act. At that time, I agreed to get back to the Committee about a few issues that I was unable to address at the hearing.

### **II. Illegal Debt Collection Activity**

Chairman Platts asked specifically about a case, *Padilla v. Payco General American Credits*, 161 F. Supp. 2d 264 (S.D.N.Y. 2001) that I cited in my written testimony. This case was brought by a student loan borrower against a private debt collection agency collecting debts on behalf of the Department of Education.

In response to Chairman Platt's question, the federal District Court in this case found that the collection agency charged excessive collection fees. The court granted the borrower's motion for summary judgment on this issue, finding that the agency attempted to collect over \$2,000 in collection fees above the statutory limit. The court ruled this was a violation of the federal Fair Debt Collection Practices Act.

As further evidence of illegal behavior by debt collectors acting on behalf of the Department, I point you to another case, *Peter v. GC Services L.P.*, 310 F. 3d 344 (5th Cir. 2002). The Fifth Circuit in this case found that the envelope in which the debt collection letter arrived, which contained the name and address of the United States Department of Education, as well as a "penalty for private use" message, violated the Fair Debt Collection Practices Act. In response to the collection agency's arguments that the violation was benign, the court stated that the "Defendants' impersonation of the Department of Education is certainly not benign." The court noted that in enacting the FDCPA, Congress was especially concerned about agencies "impersonating public officials."

### **III. Limited Remedies for Borrowers**

It is important to note that the borrowers in the cases cited above used the federal FDCPA as a vehicle for private relief because courts have found that there is no private right of action for borrowers to bring cases based on violations of the Higher Education Act (HEA). These cases can be both complicated and time-consuming. As a result, there are few reported cases in the area of student loan collections. However, this does not mean that there are only a few problems. As I previously testified, our office continues to receive

frequent complaints from advocates about abusive and illegal student loan collection behavior.

Borrowers that do not have the resources to bring a lawsuit may seek relief instead by complaining to the Department. The Department has not provided sufficient information regarding how it responds to these complaints. For example, Ms. Shaw, Chief Operating Officer of the Department of Education's Federal Student Aid Division, testified that agencies that violate the FDCPA could lose their contracts with the Department. However, she did not specify whether the Department has ever exercised this power. To name just one example, at least one of the agencies cited above that violated the federal FDCPA continues to receive contracts from the Department.<sup>1</sup>

#### **IV. Excessive Collection Fees**

In response to questioning at the hearing, I also mentioned a case in which a class of borrowers sued the Department of Education for assessing up to 43% collection fees against certain student loan borrowers whose loans specified 25% collection fees. *Gibbons v. Riley*, Clearinghouse No. 50, 432 (E.D.N.Y. 1995). In the settlement agreement, the Department acknowledged errors in assessing collection fees and also admitted that it had no method for easily distinguishing those with the 25% collection fees provision from other borrowers. We understand that since about 2001, the Department has been working to resolve this problem and has been sending out notices to borrowers who may have been overcharged. I do not know if the Department has completed this process.

#### **V. Data on Student Loan Complaints**

Both Chairman Platts and Vice-Chair, Representative Blackburn asked me whether I could provide additional information about problems with Department of Education collection activity. In response to Representative Blackburn's question about whether there are more problems with the FFEL or Direct Loan programs, I answered that I had not specifically tracked problems by type of loan.

I do not have this data available at this time. However, it is my intention to organize and collect this data and submit it to both the Committee and to Ms. Shaw and others at the Department as soon as possible. In addition, NCLC submitted a Freedom of Information Act request on June 9, 2003 requesting information about the Department's evaluation of discharge applications as well as information about collection hearings. We plan to follow up this FOIA request with additional requests.

I would also like to point out that Ms. Shaw testified that the Department of Education Ombudsman office regularly tracks this information. Overall, the Department has much greater access to this information than we do and should be much better equipped to organize the data and make it available to the Committee and to the public.

Ms. Shaw indicated to me at the end of the hearing that she would like to hear from me about these problems. Since the hearings, I have spoken with Department staff about a couple of problems and have been impressed with their willingness to work with me and with other advocates to resolve problems. I appreciate their prompt response. I hope that

the Department's increased responsiveness will extend to increased openness about the complaints and problems they receive about student loan collection.

Although the Department has greater access to information about collection complaints, I again commit that our program will work to collect and organize the information we receive and provide it to both the Committee and the Department

Thank you for the opportunity to provide this supplemental testimony.

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1 GC Services is still listed on the Department of Education web site as a contractor collection agency.