



1700 G Street NW, Washington, DC 20552

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Persis Yu  
Director, Student Loan Borrower Assistance Project  
National Consumer Law Center

Dear Ms. Yu,

Thank you for reaching out to express your concerns about student loan borrowers who will need to, for the next several months, manually submit income information when seeking to enroll in or recertify income and family size under an income-driven repayment (IDR) plan. We understand that the Department of Education's Data Retrieval Tool (DRT), which provided for a more automated IDR enrollment and recertification process, was temporarily taken off-line while the Department makes critical and significant improvements to data security that will help protect consumer privacy and prevent consumers from being victims of identity theft.

Below is a more detailed response to your questions, but in short, federal law provides for specific protections for borrowers seeking to enroll in or recertify an IDR plan. Specifically, Congress and the Department of Education designed a series of key consumer protections to mitigate the impact of servicing delays and breakdowns.

The Bureau continues to hear from consumers about servicing breakdowns that can occur when borrowers apply for IDR plans by manually submitting applications.<sup>1</sup> Additionally, the Bureau has found that illegal servicing practices that inhibit borrowers' ability to enroll in IDR may result in

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<sup>1</sup> See Consumer Financial Protection Bureau (CFPB), *Consumer Complaint Database*, <https://www.consumerfinance.gov/data-research/consumer-complaints/>; see also CFPB, *Midyear update on student loan complaints* (Aug. 2016), [http://files.consumerfinance.gov/f/documents/201608\\_cfpb\\_StudentLoanOmbudsmanMidYearReport.pdf](http://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf).

considerable harm to borrowers such as unnecessary interest capitalization, higher monthly payments, and losing months that would count toward loan forgiveness.<sup>2</sup>

As noted above, federal law provides specific protections for borrowers seeking to enroll in or recertify an IDR plan, and servicers are responsible for communicating these repayment options to borrowers, helping borrowers understand the application processes, processing and approving applications, and implementing the repayment options.<sup>3</sup> However, in 2016, the Bureau published a report describing the difficulties borrowers reported experiencing when trying to enroll in or recertify under an IDR plan using paper applications with alternative documentation of income.<sup>4</sup> Problems highlighted in this report include complaints about inaccurate denials, improper payment calculations, lack of assistance in completing applications, and unnecessary forbearance and interest capitalization driven by application processing delays.<sup>5</sup>

As student loan borrowers work with their servicers to complete their IDR enrollment or recertification,<sup>6</sup> they should be aware of three key consumer protections designed to mitigate the impact of servicing delays and breakdowns.

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<sup>2</sup> See CFPB, *CFPB Recovers \$11 Million for 225,000 Harmed Consumers* (Oct. 21, 2016), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-supervision-recovers-11-million-225000-harmed-consumers/>.

<sup>3</sup> See CFPB, *Education loan examination procedures* (Oct. 31, 2016), <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/education-loan-examination-procedures/>.

<sup>4</sup> See CFPB, *CFPB Finds Consumers Complain of Needless Hurdles in Applying for Lower Student Loan Payments* (Aug. 18, 2016), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-finds-consumers-complain-needless-hurdles-applying-lower-student-loan-payments/> [hereafter *Needless Hurdles*].

<sup>5</sup> See *id.*

<sup>6</sup> Currently, borrowers seeking to apply for IDR plans are directed to [www.studentloans.gov](http://www.studentloans.gov), where they are notified that they will be required to manually submit income documentation to their servicer to order to complete their IDR application. The Department advises borrowers, both through its website and the IDR application, to reach out to their servicer with any questions related to completing the IDR application. See Dep't. of Education, *Income-Driven Plans* (accessed Apr. 19, 2017), <https://studentaid.ed.gov/sa/repay-loans/understand/plans/income-driven>; Dep't. of Education, OMB No. 1845-0102, *Income-Driven Repayment (IDR) Plan Request*, <https://studentloans.gov/myDirectLoan/images/idrPreview.pdf> [hereinafter *IDR application*].

**1. Student loan borrowers without access to their tax returns have the right to provide alternative proof of income.**

Borrowers rely on their servicers to accurately explain the IDR application process and accurately inform borrowers of the range of options available to document income. For borrowers with taxable income, a recent tax return may be the best option. But for borrowers who cannot easily access their tax returns, alternative income documentation like pay stubs, W-2 forms, or letters from employers may also be acceptable.<sup>7</sup>

Despite the range of options available to borrowers to certify income, borrowers have complained to the Bureau that when submitting their alternative documentation of income, servicers may not correctly process the application using the income documentation, or may deny applications submitted with pay stubs or W-2 forms as missing sufficient income documentation. Other borrowers complain that different representatives at the same servicer provide conflicting guidance on what types of income documentation is acceptable.

*Borrowers who submit alternative documentation of income that shows frequency of pay are entitled have their income certified under an income-driven repayment plan.*

**2. Borrowers who submit timely recertification applications are protected from payment snapbacks and unnecessary periods of forbearance.**

Normally, the IDR application process should take no more than a few weeks,<sup>8</sup> but an influx of manual IDR applications may result in delays. For recertifying borrowers who submit their paperwork on-time, if a servicer fails to process the paperwork on-time, the Department of Education requires that the servicer must keep the borrower at the same payment level until it is

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<sup>7</sup> For a borrower without any taxable income, acceptable documentation of income includes a signed attestation of the amount of the borrower's annual adjusted gross income, including an attestation of no income, if applicable. *See IDR Application, supra* note 5; *see also* CFPB, *Midyear update on student loan complaints* (Aug. 2016), [http://files.consumerfinance.gov/f/documents/201608\\_cfpb\\_StudentLoanOmbudsmanMidYearReport.pdf](http://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf).

<sup>8</sup> *See* CFPB, *Needless Hurdles, supra* note 2.

able to process the paperwork for the next year.<sup>9</sup> These interim payments, like other IDR payments, would also count towards PSLF.<sup>10</sup>

However, borrowers report that their recertification applications sit under review for weeks or months at a time, and that when an application the borrower submitted on-time is eventually processed after the borrowers' annual renewal date, servicers use forbearance to bridge the gap, or let the borrower's payment revert back to the standard 10-year payment amount for a month. Depending on the circumstances, both could cause significant consumer harm, including interest capitalization, and lost progress towards loan forgiveness.

We also hear from borrowers who complain that despite submitting proof of income that was timely when it was sent to the servicer,<sup>11</sup> months of processing delays can lead a servicer to reject the application because the servicer determines the proof of income is no longer timely.<sup>12</sup> These borrowers say that it can take several more months to sort out the delays and errors in order to finally enroll in IDR.<sup>13</sup>

*Borrowers who submit timely recertification applications are protected against being placed into forbearance or reverted back to their standard 10-year payment amount due to a processing delay.*

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<sup>9</sup> See 34 C.F.R. §§ 685.209(a)(5)(viii)(A), (b)(3)(vi)(E), (c)(4)(viii)(A), 685.221(e)(8)(i), (ii).

<sup>10</sup> See 34 C.F.R. §§ 685.209(a)(5)(viii)(A), (b)(3)(vi)(E), (c)(4)(viii)(A), 685.221(e)(8)(i), (ii).

<sup>11</sup> When submitting alternative documentation of income, borrowers should ensure that the income documentation is less than 90 days old from the date the IDR application is signed. See *IDR Application*, *supra* note 4; see also CFPB, *Midyear update on student loan complaints* (Aug. 2016), [http://files.consumerfinance.gov/f/documents/201608\\_cfpb\\_StudentLoanOmbudsmanMidYearReport.pdf](http://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf).

<sup>12</sup> See CFPB, *Midyear update on student loan complaints* (Aug. 2016), [http://files.consumerfinance.gov/f/documents/201608\\_cfpb\\_StudentLoanOmbudsmanMidYearReport.pdf](http://files.consumerfinance.gov/f/documents/201608_cfpb_StudentLoanOmbudsmanMidYearReport.pdf).

<sup>13</sup> See *id.*

### **3. Borrowers who do not anticipate the extra time required to complete an application have a right to a 10 day grace period.**

Federal law provides for a 10 day grace period after a borrower's recertification deadline in which a borrower can still submit an application and avoid the consequences of a missed deadline, such as interest capitalization.<sup>14</sup>

Borrowers who manually submit income documentation for the first time may be surprised to find that completing the recertification process takes longer than previous recertifications, and may miss their deadline to recertify because they need additional time to submit income documentation. The Bureau has received complaints from borrowers who struggle to meet servicer deadlines for submitting applications as a result of the income documentation requirements.

*Borrowers who need additional time to complete their recertification application after their annual recertification deadline are still protected, and should expect their application to be treated as timely, provided that their servicer receives the application before the end of the 10 day grace period.*<sup>15</sup>

**For certain borrowers, delays in IDR enrollment have a ripple effect that can amplify consumer harm.** The Bureau has repeatedly reported how certain populations of student loan borrowers are more vulnerable to servicing breakdowns when seeking to enroll or recertify an IDR plan. The potential for payments that revert the borrower's monthly payment to his or her standard 10 year payment amount, as well as the potential for increased use of deferment and forbearance, is particularly concerning for servicemembers, older Americans, and previously defaulted borrowers.

#### *Military Borrowers*

The strains of military life may make the necessary annual requirements to remain in an IDR plan particularly burdensome, and many military borrowers struggle to obtain the key

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<sup>14</sup> A borrower's recertification deadline is generally 35 days before the end of the previous 12-month payment period. Servicers are required to promptly process applications received within 10 days of this deadline. See 34 C.F.R. §§ 682.215(e)(8), 685.209(a)(5)(viii), (b)(3)(vi)(E), (c)(4)(viii). This requirement, in effect, creates a 10 day "grace period" for borrowers seeking to recertify an IDR plan.

<sup>15</sup> See 34 C.F.R. §§ 682.215(e)(8), 685.209(a)(5)(viii), (b)(3)(vi)(E), (c)(4)(viii).

protections tied to IDR. The Bureau estimates that each year, nearly 6,000 servicemembers suffer direct economic hardship driven by IDR recertification obstacles.<sup>16</sup> With potential delays and errors in manual IDR processing, military borrowers can be hit especially hard when their payments snap back to their standard monthly payment – unaffordable payments can impact the borrower’s credit, which plays a critical role in him or her obtaining and maintaining a security clearance, or the borrower can spend months or years in military deferment, causing him or her to miss out on interest subsidies and progress toward loan forgiveness.<sup>17</sup>

### *Older Americans*

Earlier this year, the Bureau reported on complaints from older Americans who struggle to enroll in IDR as they shift to fixed, and often lower, incomes during retirement.<sup>18</sup> In the report, we discussed how the inability to get into an affordable repayment plan can leave these borrowers struggling to make payments, or even drive them into default. This is particularly concerning given the potential for Social Security benefit offsets that come with defaulting on a federal student loan.

### *Previously defaulted borrowers*

Last year, we reported on the cycle of default driven, in part, by difficulties around getting in and staying in IDR.<sup>19</sup> The consumer protections promised under federal law should make it nearly impossible for the most vulnerable consumers to be trapped in default. However,

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<sup>16</sup> See CFPB, *Prepared Remarks of Seth Frotman, Assistant Director and Student Loan Ombudsman, at the Judge Advocate General’s Legal Center and School* (Oct. 18, 2016), [http://files.consumerfinance.gov/f/documents/201610\\_cfpb\\_Frotman-Remarks-JAG-School.pdf](http://files.consumerfinance.gov/f/documents/201610_cfpb_Frotman-Remarks-JAG-School.pdf).

<sup>17</sup> See *id.* In 2012, the Department of Education issued final guidance under the HEROES Act of 2003, waiving the requirement that they recertify their income each year under an income-driven repayment plan. See U.S. Department of Education, *The HEROES Act - Updated waivers and modifications of statutory and regulatory provisions governing the FSA Programs* (Sept. 2012), <http://ifap.ed.gov/fregisters/FR092712.html>. For more information on the Higher Education Relief Opportunities for Students (HEROES) Act, see Pub. L. 108-76.

<sup>18</sup> See CFPB, *Snapshot of older consumers and student loan debt* (Jan. 2017), [http://files.consumerfinance.gov/f/documents/201701\\_cfpb\\_OA-Student-Loan-Snapshot.pdf](http://files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf).

<sup>19</sup> See CFPB, *2016 Annual Report of the CFPB Student Loan Ombudsman* (Aug. 2016), [https://www.consumerfinance.gov/documents/1229/102016\\_cfpb\\_Transmittal\\_DFA\\_1035\\_Student\\_Loan\\_Ombudsman\\_Report.pdf](https://www.consumerfinance.gov/documents/1229/102016_cfpb_Transmittal_DFA_1035_Student_Loan_Ombudsman_Report.pdf).

borrowers' ability to get enrolled in an IDR plan quickly after rehabilitating a loan often means the difference between staying on track and re-defaulting on a loan.

As noted above, the Bureau has received complaints from borrowers around each of the consumer protections discussed. If your staff, clients, and student loan borrowers-at-large encounter these issues, they can submit complaints to the Bureau.<sup>20</sup>

Servicers play a central role in supporting long-term borrower success and effective student loan servicing is critical for borrowers seeking to enroll in or recertify an IDR plan, as IDR may mean the difference between getting by or going broke. The Bureau remains committed to pursuing actions against companies that engage in illegal servicing practices. We are also closely monitoring this market to ensure that student loan borrowers are treated fairly, including the anticipated millions of more student loan borrowers who will have to manually submit income documentation to complete their IDR application while the DRT is offline.

Sincerely,



Seth Frotman  
Student Loan Ombudsman  
Consumer Financial Protection Bureau

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<sup>20</sup> Consumers can submit a complaint to the CFPB by going to <https://www.consumerfinance.gov/complaint/>.